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IN THE FAMILY COURT
AT MANUKAU

I TE KŌTI WHĀNAU
KI MANUKAU

FAM-2018-092-000804
[2021] NZFC 4244

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[NEIL SCHOFIELD] Applicant
AND	[DELIA HARGRAVE] Respondent

Hearing:	6 November, 10 December 2020
Appearances:	K Monet for the Applicant The Respondent in Person Dr A Cooke as Counsel to Assist C Riddell as Lawyer for Child
Final Submissions:	27 January 2021
Judgment:	12 May 2021

RESERVED JUDGMENT OF JUDGE A G MAHON

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[1] This judgment is the end of a long journey for [Steph] in this Court which began on 29 June 2017 when the applicant, Mr [Schofield], made an application for a parenting order in respect of [Steph], who was then 13 years old. Mr [Schofield] had

struggled to have any contact with [Steph] after the parties separated on [date deleted] 2017. He sought an order directing a "gentle re-introduction" of contact with her.

[2] [Steph] had been estranged from her father following the separation, which had occurred after an incident when [Steph] and her parents were at the beach. The respondent, Ms [Hargrave], found text communications on his cell phone between Mr [Schofield] and [Ashlie Benton], a close friend of Ms [Hargrave] who is now Mr [Schofield]'s wife. Mr [Schofield] had been having an affair with Ms [Benton].

2019 Hearing

[3] In my judgment of 28 May 2019, I summarised the relevant events subsequent to the separation which had influenced [Steph]'s views of her father. I found that the principal factor affecting [Steph] was not the physical altercation between her parents at the beach (the beach incident) but the psychological pressure on her from her mother's failure to support [Steph]'s relationship with her father.

[4] It was apparent to me that the beach incident involved pushing and shoving between the parties which was not instigated by Mr [Schofield] and there was a subsequent incident between Ms [Hargrave] and Ms [Benton] in which Ms [Benton] was the victim.

[5] Ms [Hargrave] felt angry and betrayed as a result of Mr [Schofield]'s affair with Ms [Benton]. She frankly acknowledged in her evidence at the 2019 hearing that, because of the intensity of her grief and anger about the separation, she encouraged, or at least took no steps to discourage, [Steph]'s identification with her mother's grief and anger towards Mr [Schofield]. This was notwithstanding that the underlying issues which led to the separation were 'adult' issues and not behaviour directly from Mr [Schofield] with [Steph]. [Steph] and Ms [Hargrave] both described a very close relationship with her father before the separation.

[6] By the 2019 hearing the estrangement between Mr [Schofield] and [Steph] was entrenched. However, I was encouraged by Ms [Hargrave]'s recognition of her part in encouraging this entrenchment and her acknowledgment of the serious emotional and

psychological consequences for [Steph], after Ms [Hargrave] made a commitment to assist in the reconciliation of [Steph]'s relationship with her father. Ms [Hargrave] agreed with Mr [Schofield] to adoption of a therapeutic approach to achieving this goal. She supported [Steph] receiving counselling from the respected child psychologist [the psychologist] for the purpose and on the basis set out in the in the following paragraph.

[7] The structure and purpose of therapy in cases of estrangement, which was adopted in this case, has recently been described in the following manner:[1]

> Court orders should specify the type of information being sought from the therapist. The information conveyed between the therapist and the Court must be broad enough to enable the Court to address the needs of the parties while being tailored enough to avoid inappropriate disclosures. The information described in the Court order should include whether the family members are attending appointments on time, cooperating with the therapist, and meaningfully engaging in the treatment program. Other disclosures may include a provision addressing the situation where the therapist is obligated by ethical and professional standards to terminate treating an individual for any reason. This can happen based upon the dynamics the therapist notices during treatment. For example, a therapist may decide to terminate joint therapy between a parent and child if it is later disclosed that the parent is abusing the child and such joint therapy is harmful to the child's emotional wellbeing. Another reason a therapist may terminate treatment is that the contact problem dynamics are so entrenched that it is reasonably clear to the therapist in his or her professional assessment that therapy will not accomplish its goals. The nature of these disclosures still protects the privacy of the therapy because little to no specific or substantive detail is needed by the Court. The Court needs this general information in order to monitor the cooperation of the parties, which ultimately affects the Court's analysis of the best interest of the child.

[8] Before I endorsed the agreement between the parties, I considered whether the Court first needed the assistance of expert evidence from a psychological report under s 133 of the Care of Children Act 2004 (the Act). I decided that such a report was not necessary because the time it would take to obtain a report might unnecessarily delay the proceedings.[2] There was no dispute about the estrangement and that the driving force behind it was the influence of Ms [Hargrave]'s overt and covert actions which had undermined the relationship between [Steph] and Mr [Schofield]. This was not a case where it was essential that the Court obtain a report under s133 to determine the

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1 Marissa Mallon "Post-separation parent-child contact problems: understanding a child's rejection of a parent and interventions beyond custody reversal" (2021) 33 J. Am. Acad. Matrim. Law. 609 at 633.

2 Care of Children Act 2004, s133(3)(c) and (d).

dynamic at play in the estrangement of the child who was the subject of the proceedings.

[9] I accepted Ms [Hargrave]'s evidence that she understood how detrimental her actions had been on [Steph], emotionally and psychologically. I was assisted by submissions from counsel appointed to assist the Court, Dr Allan Cooke, in which he summarised the known social science research on the underlying dynamic and consequences when children reject a parent following separation.

[10] Given the agreement to adopt a therapeutic approach, I did not make direct findings on where [Steph]'s estrangement from her father fitted in the continuum from affinity/alignment or realistic estrangement at one end of the spectrum, to alienation at the other end. Subsequent events have, however, made it clear that this is a case of alienation and [Steph] is a young person in the following dynamic:[3]

> An alienated child is one who freely and persistently expresses unreasonable negative feelings and beliefs (such as anger, hatred, rejection and/or fear) towards a parent that are disproportionate to their actual experience of that parent.
>
> In such cases, the child's resistance or rejection is primarily, though rarely exclusively, the result of the alienating parent's conduct, conscious or unconscious, subtle or obvious, direct or indirect. But for those behaviours, the child would not have resisted or rejected the parent to the same extent.

[11] I recognised the challenge for Ms [Hargrave] in sincerely acting as the loving and authoritative parent and encouraging [Steph]'s meaningful engagement in counselling with [the psychologist], given the closeness of her relationship with [Steph]. In the letter I wrote to [Steph], a copy of which was annexed as a schedule to the judgment of 28 May 2019, I acknowledged the challenge for [Steph] in meeting with [the psychologist], considering her expressed view that she didn't want to see her father. I reassured her that what she said to [the psychologist] during counselling sessions would remain confidential. She could then discuss these personal family issues with an experienced therapist without the pressure of anyone else present or the risk that anyone would find out what she had said to [the psychologist].

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3 *[Schofield] v [Schofield]* [2019] NZFC 3931 at [30].

[12] I was obliged to case manage this case from November 2018 because of my serious concerns for [Steph] after the breakdown of her previous agreed counselling. [Steph] had met with a counsellor several times but then felt betrayed when the counsellor suggested that Mr [Schofield] be involved in a counselling session. My concern for [Steph]'s welfare arose because of my knowledge of the potential detrimental outcomes for children like [Steph] who are estranged from a parent. I described the risks in the following manner:[4]

> [29] The effects of rejection or alienation on children in adulthood were described by the Australian clinical psychologist, Vincent Papaleo, in a presentation to the NZLS Family Law Conference, as:
>
> > More highly symptomatic compared to controlled groups; showed very heightened levels of anxiety; lowered levels of self-esteem; less social competency; with a higher risk of depression; and displayed generally lowered levels of psychological functioning across their childhood and into their adult lives, extending into intermittent relationships and parenting.

Therapy with [the psychologist]

[13] The position of Mr [Schofield] throughout the proceedings has been to respect [Steph]'s views and minimise the pressure on her by supporting a therapeutic process. He did not ask for a face-to-face meeting with [Steph] until it was [the psychologist]'s view that [Steph] was ready for a meeting. Mr [Schofield] agreed to meet [the psychologist]'s costs in assisting [Steph].

[14] Counselling began on 6 September 2019 and an important part of the agreement between the parties was that [the psychologist] would be permitted to report on [Steph]'s progress in family therapy but that private communications she had with [Steph] during counselling sessions remained confidential. [The psychologist] provided several reports on that basis which complied with the obligations of confidentiality.

[15] I was surprised to learn, when reading the report of [the psychologist] dated 24 April 2020, that [Steph] had participated in few, if any, private counselling sessions with [the psychologist] without Ms [Hargrave] also present. Nevertheless, [the

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[4] *[Schofield] v [Schofield],* above n 3.

psychologist]'s positive view about [Steph]'s progress led [the psychologist] to propose that the next step in the therapeutic process should be a joint father-daughter counselling session to which both parents and [Steph] (albeit reluctantly) agreed.

[16] It appears that the first counselling session between [Steph] and [the psychologist] when Ms [Hargrave] was not also present, took place on 8 June 2020, and this was followed by a further meeting on 12 June 2020 during which [the psychologist] worked with [Steph] on the details of the meeting she and [the psychologist] were to have with Mr [Schofield].

[17] It is relevant to the findings in this judgment to record parts of [the psychologist]'s final report dated 10 September 2020 in detail.

> **Final Counselling Report**
>
> **[Steph Schofield]**
>
> Following is a summary of my final three sessions with [Steph].
>
> In preparation for the (agreed) joint father-daughter counselling sessions I met with [Steph] on 08/06/20 and 12/06/20.
>
> *Monday 8 June 2020*
>
> At [Steph]'s request this meeting took place at her school, as she believed this would provide her with sufficient support. Both [Steph] and I separately liaised with her Dean, [name deleted – the school Dean], who was very helpful in offering support, including making herself available as needed. [Steph] also reported that one of her teachers had taken a particular interest as another support person.
>
> Although [Steph] requested that [the school Dean] accompany her into the session, I concluded that this would not be appropriate (for a number of reasons). As a compromise, [the school Dean] arranged to remain in her office (directly across the hallway from our meeting room) throughout the session in case [Steph] needed any extra support. Upon arrival, [the school Dean] also greeted [Steph], and reminded her about these support arrangements.
>
> As expected, [Steph] did not need any additional support throughout the session.
>
> Consistent with her long-standing pattern throughout the counselling process, she was initially resistant to the idea of joint sessions with her father (despite having agreed to this). However, she was able to engage in the counselling session, and shifted to a position at which she was agreeable to undertake 3 joint sessions. [Steph] consulted her schedule, we negotiated 3 suitable dates, and planned for the first session to take

place at school. As [Steph] is very keen on McDonalds, she accepted my suggestion to ask Mr [Schofield] if he would bring some into the first session. She provided me with a detailed list of the food items that she wished me to pass on to Mr [Schofield], and went so far as to consider how the dessert items might be kept cold. (I also obtained permission from [the school Dean] for this plan).

At the conclusion of this session, [Steph] was relaxed and chatty, and she returned to class in a positive state of mind.

Later that afternoon, [Steph] sent me a text message stating that she had become very distressed, she had been crying and had gone home early. I tried to call her when I received the message but could not reach her.

Unfortunately, [Steph] did not access the support plan at school, nor did she contact me when she began to feel distressed.

I emailed Ms [Hargrave] later that evening and arranged to meet again with [Steph] on Friday 12th June after school at the local McDonalds.

Friday 12th June

I spent 1 ¼ hours at McDonalds with [Steph] (purchased her a meal).

When I explored what had happened on the previous occasion, [Steph] confirmed that she had not been distressed at the conclusion of the session but had become emotional at some point during the lunch break later that day. She was unable (or unwilling) to tell me what had triggered her distress.

Again, by the conclusion of this session, [Steph] was willing to proceed with father-daughter sessions. We confirmed the first meeting to occur on Monday 15th June at the school.

[Steph] agreed to access her support people (and her internal strategies) if she felt distressed or anxious prior to that session.

As previously, [Steph] ended the session in a relaxed and joking frame of mind.

Monday 15th June

The Court is already aware that [Steph] left the school just before the joint father-daughter session. Mr [Schofield] had already arrived as planned (with the McDonalds meal that had been requested by [Steph]) and was waiting in a meeting room.

[Steph] later sent me a text saying that she refused to continue with counselling.

Saturday 5th December – Final Session

In accordance with the reserved judgment of Judge AG Mahon (05/08/20) Ms [Hargrave] transported [Steph] to my office for a final session.

In preparation for this session, I asked Mr [Schofield] to prepare a video for [Steph], essentially "saying goodbye" to [Steph] and expressing a hope that she would be able to contact him at some point in the future.

It was disheartening to discover that [Steph] presented quite differently at this session, essentially having regressed to her pre-counselling state, but now completely unwilling to engage in a productive discussion. She refused to watch Mr [Schofield]'s video and stated "that part of my life is over".

As there was no possibility of agreeing to any type of indirect contact (letters, messages, gifts) it can only be hoped that [Steph] might initiate contact with Mr [Schofield] at some point in the future. As she is now very focused on saving money for a car (and might eventually need financial assistance) this might be one possible "window of opportunity".

[18] [The psychologist] disputed what both [Steph] and Ms [Hargrave] said occurred at the conclusion of counselling. She recorded in the report:

- [Steph] had not told [the psychologist] the previous week that she would abscond from school and the reason [the psychologist] had not advised in this respect was not because of the confidentiality of the counselling process, as Ms [Hargrave] claimed. Had [the psychologist] been told by [Steph] this was her intention, rather than that she agreed to participate in the meeting which was finalised in detail at that counselling sessions, [the psychologist] would have changed arrangements accordingly. [Steph] told [the psychologist] at the final counselling session that she had not thought of running away until about 10pm the night before the proposed meeting.

- Ms [Hargrave] had claimed in an email that she spent "an hour searching the streets" to find [Steph] who she found hiding behind a brick wall some distance from school and extremely upset. [The psychologist] said that Ms [Hargrave] could not have spent an hour searching for [Steph] because Ms [Hargrave] made immediate phone contact with [Steph] after being told by [the school Dean] that [Steph] had absconded. [Steph] confirmed that she had answered her mother's call but not calls from others. [Steph] further confirmed that she had waited on a specific side street so that any teachers who might possibly be looking for her, would not find her before her mother did. She was not hiding.

- [Steph] denied she was distressed when she left the school grounds or afterwards. Her distress was occasioned by the number of people trying to contact her by cell phone.

- Ms [Hargrave] had told the Court that she could not persuade any friends or family to assist in transporting [Steph] to counselling. Mr [Schofield] had in fact arranged three of his family members to assist but Ms [Hargrave] said she had rejected the offer as she believed [Steph] didn't know any of them well enough. From [Steph]'s perspective, it wasn't that she didn't know these family members but rather that as they hadn't bothered to contact her for such a long time that she didn't want them involved.

[19] [The psychologist] committed to retaining the video from Mr [Schofield] for 12 months from the date of her report on 10 September 2020, in case [Steph] still wished to watch it.

[20] During the period [the psychologist] was counselling [Steph], Mr [Schofield] had to seek Court directions several times to ensure counselling continued due to Ms [Hargrave]'s lack of co-operation. A pattern then developed of Ms [Hargrave] avoiding in-person or telephone appearances in the Court which I referred to in my Minute of 16 September 2021 when I included the following paragraph from Ms Monet's submissions for that hearing:[5]

> [10] … Ms [Hargrave]'s conduct throughout the proceedings [has been] "a mockery of judicial process and involvement by abusive and manipulative behaviour". [Ms Monet] characterised Ms [Hargrave]'s conduct in this manner in the context of the prospect of [Steph] never seeing her father again and as a result carrying the burden of her mother's distress and resentment about her father and his new partner, for the rest of her life.

[21] Mr [Schofield] had filed an affidavit in which he alleged that on Sunday the 9th of August 2020, Ms [Hargrave] parked across the driveway of his home. [Steph] was in the front passenger seat. Both Mr [Schofield] and Ms [Benton] were outside their house when they heard someone in the vehicle yell "whore" in a "loud piercing voice" as Ms [Hargrave] drove away.

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5 Minute of Judge AG Mahon dated 16 September 2020.

[22] I was so concerned about this event and the breakdown of [Steph]'s counselling with [the psychologist] that I directed a hearing was to take place on 6 November 2020 to consider further orders/directions in this case.

Further Developments

[23] My concern for [Steph] increased when I was informed that on 31 October 2020 [Steph] had:

(a) Filed a complaint against [the psychologist] with the Psychologists Board.

(b) Made a posting on [the psychologist]'s website in which she was extremely critical of [the psychologist] and the effect on her of the counselling with [the psychologist]. [Steph] wrote that she had engaged with another counsellor to deal with the trauma [the psychologist] has caused her.[6]

[24] Mr [Schofield] had made an application, before he became aware of these events, in which he asked for leave to discontinue all Family Court proceedings. He did so as it had become clear to him that Ms [Hargrave] would continue undermining the interventions which she had agreed would assist [Steph] in developing a better lawyer Ms Riddell in a report filed for the hearing:

> The only way for [Steph] to avoid the continual stress and trauma imposed upon her is to make the choice that will see it all go away (as she sees it) and choose not to see

Hearing 10 December 2020

[25] The hearing on 6 November 2020 had to be adjourned because Ms [Hargrave] failed to appear.

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[6] The contents of both the complaint and the website posting were contrary to Ms [Hargrave]'s evidence and what [Steph] separately told her lawyer, [the psychologist] and me about her meetings with the counsellor. The comments were intended to damage [the psychologist]'s professional reputation and were professionally and personally abusive of [the psychologist].

[26] Both parties were cross-examined at the adjourned hearing on 10 December 2020.

[27] Mr [Schofield] was granted leave to withdraw his discontinuance application. He sought leave because of both the developments referred to in paragraph [23] above and that [Steph] was now engaged with another counsellor who would have no knowledge of the background to the case and the Court's concerns.

The evidence of Ms [Hargrave]

[28] Ms [Hargrave] agreed that on 9 August 2020 she and [Steph] had been [at location deleted] where Mr [Schofield] lives. She had seen Mr [Schofield] at the top of the driveway of his house.

[29] Ms [Hargrave] said she had gone to [location deleted] to pick [Steph] up from a friend's place. On her way home she chose to drive past the parties' old family home at [address deleted] (Mr [Schofield] now lives at [address deleted]). She saw Mr [Schofield] in his driveway although her explanation as to why she stopped even near Ms [Hargrave]'s home was difficult to follow.

[30] Although Ms [Hargrave] remembered [Steph] winding down the window when her vehicle was at or near Mr [Schofield]'s driveway, she wasn't sure whether [Steph] had called out "whore" in the direction of Mr [Schofield] and his wife. She recalled that every time she saw Mr [Schofield] she started to shake because of her recollections of their marriage and her mind went blank. This occasion was no different and that is why she didn't remember what she or [Steph] said as she drove away from Mr [Schofield]'s house. Nor did she recall whether [Steph] noticed her mother shaking from shock. She said [Steph] may have noticed this though as she had seen Mr [Schofield]'s abuse of Ms [Hargrave] during their marriage and [Steph] had a similar reaction to her mother's reaction when she saw her father.

[31] Ms [Hargrave] was concerned about [the psychologist]'s ability to maintain confidentiality in the counselling process. While initially reluctant to disclose what led to the apparent breach of confidentiality to which she was referring, eventually Ms

[Hargrave] disclosed the nature of the breach after Mr [Schofield] said he wasn't worried about any disclosure Ms [Hargrave] may make about him to the Court.

[32] The breach had occurred when, about a year previously, [the psychologist] told Ms [Hargrave] that Mr [Schofield] was so stressed she was concerned he may commit suicide because of a comment he had made to her. In his evidence, Mr [Schofield] denied he had ever said anything to [the psychologist] which suggested he was so desperate that he was contemplating suicide. The estrangement from [Steph] had been difficult for him but [the psychologist] could not have developed such a concern from his brief interaction with her.

[33] When pressed on how [Steph] had the information required to prepare the complaint to the Psychologists Board and the posting on [the psychologist]'s website, knowledge which could only have come from reading Court documents, Ms [Hargrave] denied that she had shown [Steph] any Court documents. However, as she said that as she was working fulltime, [Steph] could easily have accessed the documents if she had wanted to as they were in her bedroom at home. Ms [Hargrave] denied any prior knowledge of the complaint or website posting.

[34] Ms [Hargrave] confirmed what she had said in 2019 that because of how angry she was at Mr [Schofield], she had undermined his relationship with [Steph] for about a year by preventing Mr [Schofield] from having contact with [Steph]. She said in 2019 that she had turned her life around mainly because of the supportive relationship she was now in and no longer undermined the father daughter relationship. Yet at this hearing two years later, Ms [Hargrave] talked about being "85 percent" over the bitterness and resentment she had felt to Mr [Schofield] following separation. She apparently still woke up screaming in the middle of the night because of the trauma of the relationship and was still in counselling as a result.

Evidence of Mr [Schofield]

[35] Mr [Schofield]'s evidence focused on the incident when Ms [Hargrave] and [Steph] were [at location deleted] on 9 August 2020. He produced photos of Ms [Hargrave]'s vehicle that day and was certain that he had seen her car parked at the

bottom of his driveway and that [Steph] was in the passenger seat looking up the drive to his home. Nor was he in any doubt that Ms [Hargrave] had seen him outside his house or that the word "whore" was shouted from the car although he couldn't tell whether it was by Ms [Hargrave] or [Steph].

[36] In her evidence Ms [Hargrave] had surprisingly said [Steph] wanted to attend Mr [Schofield]'s wedding two days after the hearing. Mr [Schofield]'s response to this suggestion can best be described as "incredulous", given that [Steph] had refused to have any contact with him whether direct or indirect (effectively) since the separation. He was extremely concerned about Ms [Hargrave]'s motive for supporting her daughter's attendance at the wedding and why [Steph] wanted to be there.

Family Violence proceedings

[37] After the hearing I became aware that on 2 December 2020 Mr [Schofield] had applied on notice for a protection order against Ms [Hargrave]. In his affidavit filed in support of the application, Mr [Schofield] described the incident on 9 August 2020 as further evidence of Ms [Hargrave]'s obsession about his life and her attempts to destroy his relationship. These attempts had previously included a physical assault on both him and Ms [Benton]. She and her four children were traumatised by these ongoing events as they did not know what she would do next.

[38] Ms [Hargrave] took no steps to oppose a protection order being made against her. In an updating affidavit, sworn 4 March 2021, Mr [Schofield] said how Ms [Hargrave] had secretly arranged for [Steph] to attend the wedding as a guest of someone she knew would be attending. The guest had received an invitation to the wedding for him and 'a partner' to attend. He said it was only after the topic was raised in Court on 10 December 2020 that Ms [Hargrave] agreed [Steph] would not try to attend the wedding.

[39] Her Honour Judge Tan granted a final protection order at a formal proof hearing on 16 March 2021. She found that Ms [Hargrave] had engaged in violence and continued to do so since 2017. The violence included psychological abuse of Mr [Schofield] and attempts to destroy his relationship. She had also physically assaulted

Mr [Schofield] and Ms [Benton]. Her Honour accepted Mr [Schofield]'s evidence that Ms [Hargrave] had traumatised Ms [Benton] and her children by her obsessive behaviour which included stalking. Her Honour made the following observations:[7]

> [12] I then turn to the issue of whether a protection order is necessary. Notwithstanding the separation of the parties of some three years I form the view that an order is necessary because this behaviour have been ongoing post-separation. It is behaviour which when I take as cumulative and look at it, it is a pattern which is of concern. I also take note of the views of the applicant and his fear and concern about the harassment, and that this amounts to behaviour that is also levelled towards his family, including his current wife and their children.

[40] Her Honour was satisfied that a final protection order was necessary not only for the protection of Mr [Schofield] but also of his wife and her children. A special condition was added to the final order to record that it would not be a breach of the non-contact provisions if Ms [Hargrave] contacted Mr [Schofield] via the mobile application "OurFamilyWizard" for communications about [Steph].

Issues

[41] The issues for determination are:

(a) Whether [Steph] should be placed under the guardianship of the Court for limited purposes to ensure she does not engage in any therapeutic process without prior approval of the Court.

(b) Whether, in the alternative, an order should be made under s 46R of the Act with the same effect but on the basis that Ms [Hargrave] and [Steph] could be the subjects of the provisions of the order.

(c) Finally, whether [Steph]'s wishes for finality without any orders being in place should be followed as being in her welfare and best interests.

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[7] *[Schofield] v [Schofield]* [2021] NZFC 2449.

The Law

[42] I have previously set out the law applicable to parenting applications.

[43] It is however necessary to also address the legal issues arising from the application by Mr [Schofield], after he become aware of [Steph]'s complaint to the Psychological Society and posting on [the psychologist]'s website. A court decision is required to ensure that the counselling to which [Steph] referred in her documents, does not take place as the counsellor would not have the information necessary to understand the adult dynamic in the proceedings which led to [Steph]'s estrangement from her father.

[44] Mr [Schofield] also referred to [Steph]'s greater competence to make decisions because of her age and maturity and the risks to [Steph] emotionally and psychologically, if she was permitted to continue this counselling with [name deleted – counsellor A] of [practice name deleted] in [Auckland] which her mother had assisted [Steph] to organise.

[45] The Court has the power to place a child under its guardianship pursuant to s 31 of the Act. The Court cannot invoke this section in the absence of an application by a party and Mr [Schofield] has made such an application. The jurisdiction has been described in the following manner:[8]

> [28] The guardianship jurisdiction is to be invoked cautiously and only after proper enquiry, but it is nevertheless a flexible and resourceful remedy. The touchstone for invoking the jurisdiction is the need to protect a vulnerable child. Although the jurisdiction is broad and unfettered, it has been described as a jurisdiction of last resort which should not be exercised without consideration of other interventions which might achieve the stated goal.

[46] A guardianship order would be for the limited purpose of ensuring that [Steph] did not undergo any counselling which was not first approved by the Court.

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[8] *SG v DSG* [2019] NZHC 218.

[47] The alternative approach recommended by Dr Cooke, counsel appointed to assist the Court, would be a direction under s 46R of the Act prohibiting Ms [Hargrave] from initiating any therapeutic intervention for [Steph].

[48] Mr [Schofield] is no longer able to pursue an application for parenting order as to contact because [Steph] is now outside the jurisdiction of the Court for this purpose. The Court can however make an order placing [Steph] under the guardianship of the Court or issue guardianship directions.

[49] The application for guardianship directions under s 46R was made to allow [Steph] to have counselling with [the psychologist] and an interim order was made on the application by consent. I accept the submissions of Ms Monet on behalf of Mr [Schofield] as an amendment of the application to seek a final order as to guardianship directions prohibiting Ms [Hargrave], or [Steph] herself, from initiating any therapeutic intervention for [Steph] unless the Court had given prior approval to the counselling/therapy

[50] Dr Cooke identified the applicable legal position now [Steph] is 16 years old:

(a) The Court can no longer make an order for day-to-day care or contact unless there are special circumstances.[9]

(b) The Court can make guardianship directions if [Steph]'s parents cannot agree.[10]

(c) The Court can place [Steph] under the guardianship of the Court.[11]

[51] Dr Cooke submitted that, should [Steph] be placed under the guardianship of the Court, her parents' guardianship rights would not be affected. Given her age and maturity and the presumed ability she has to increasingly make her own decisions, should [Steph] decide to arrange therapeutic counselling she considers appropriate then a direction from the Court prohibiting her from proceeding with unauthorised

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[9] Section 50(1).
[10] Section 46R.
[11] Section 31.

counselling would be questionable, as would an original decision to impose such a blanket prohibition.

[52] If a direction was made that Ms [Hargrave] was not to engage a therapist to work with [Steph] other than sanctioned by the Court, but this occurred in breach of the direction at the instigation of Ms [Hargrave], a criminal remedy would be *prima facie* available under s 78.

Discussion

[53] Effective intervention by the Court in [Steph]'s life over the past two years has relied on the good faith commitment of both parents to put aside their own view of each other and focus on the welfare and best interests of their daughter.

[54] In many parenting cases which go to a final hearing in the Family Court, one party is adamantly opposed to any or even limited contact between the child and the other party and it is not possible to reach a consent position. Rather, the decision on the optimum outcome for the child is left to the Judge. No Family Court Judge is critical of a party asking that a decision be made by the Court rather than reached by negotiation, as a consent outcome is often not possible when one party genuinely believes the relationship the child has with the other parent should be constrained in some manner not acceptable to the other parent.

[55] In this case Mr [Schofield], counsel and the Court accepted Ms [Hargrave] was genuine in the commitment she made early in 2019 to support [Steph]'s therapy with [the psychologist]. Over the ensuring two years Ms [Hargrave] has continued to insist that she never talks negatively about Mr [Schofield] to [Steph] and that she has continued to support the steps she agreed with Mr [Schofield] would be taken to assist [Steph] in reconciliation of the relationship with her father.

[56] Each time Mr [Schofield] or Counsel to Assist the Court has asked for the Court to intervene to keep counselling with [the psychologist] on track because of a step allegedly taken by Ms [Hargrave] to undermine that process, Ms [Hargrave] has provided an explanation refuting the suggestion she has been anything but supportive

and said that as a parent, she has been assertive in ensuring that [Steph] meaningfully engages with [the psychologist] in counselling despite [Steph]'s opposition.

[57] While each incident may be explained in the way Ms [Hargrave] has suggested, in the evaluative exercise I am required to undertake, I must consider the evidence 'in the round' and determine the complete picture rather than its parts.

[58] I have already referred to my earlier finding that Ms [Hargrave] exaggerated the incident at the beach which led to the separation. I have referred to actions by Ms [Hargrave] which showed a pattern of publicly abusive behaviour directed by Ms [Hargrave] towards Mr [Schofield] and Ms [Benton] and her family for the entire period since separation.

[59] At the hearing last December, Ms [Hargrave] faced evidence from Mr [Schofield] that she had intentionally gone to his home with [Steph] with the intention of acting in an abusive manner to both Mr [Schofield] and/or Ms [Benton]. Alternatively, she had driven past the property and when seeing Mr [Schofield] and/or Ms [Benton] acted in such a way.

[60] It was difficult to tell which of the two scenarios applied but what was clear from Ms [Hargrave]'s evidence is that she attempted to mislead the Court about what occurred by the untenable explanation she gave for being [at location deleted] in the first place. Even if she was in fact "accidentally" outside his house, I accept the evidence of Mr [Schofield] that Ms [Hargrave] chose to stop at the bottom of his driveway and that the word "whore" was shouted from the open passenger window of the vehicle. Ms [Hargrave] did not deny that these words may have been uttered.

[61] Where any credibility in her evidence was lost was when she did not frankly admit this word was yelled from her vehicle by her or [Steph]. She would have known and her failure to be honest with the Court on that one part of the evidence added to my concern that Ms [Hargrave] had not been honest in any of her evidence about the incident.

[62] Nor do I accept Ms [Hargrave]'s version of events when answering questions about [Steph]'s posting on [the psychologist]'s website and her complaint to the Psychological Board.

[63] [The psychologist]'s final report contradicted Ms [Hargrave]'s claims about what had occurred around the time of the final meeting between [Steph] and [the psychologist]. I prefer [the psychologist]'s version of events as she is an independent professional with no personal interest in the case. Also, [the psychologist]'s version is supported by [Steph]'s description of events to her.

[64] In view of this pattern of behaviour by Ms [Hargrave], I can only conclude that she, and probably also [Steph], had a malicious motive in secretly trying to arrange for [Steph] to attend Mr [Schofield]'s wedding [last year]. It is not hard to imagine the distress caused if [Steph] had been at the wedding.

[65] I am not sure what Ms [Hargrave] means when she said in her evidence that she was "85% resolved" about the separation from Mr [Schofield]. Two years previously Ms [Hargrave] had said that she had recovered psychologically and emotionally from the separation within a year, yet now four years later she is still apparently struggling. The extent to which Ms [Hargrave] cannot move on is shown by the number of incidents and their similar pattern.

[66] I find that Ms [Hargrave] has actively continued to alienate [Steph] from her father. Whether she ever wanted [Steph] to reconcile with Mr [Schofield] and have a healthy relationship with him is not possible to determine on the evidence but, if she did, when [Steph] started to show progress in her therapy, Ms [Hargrave] could not cope with the prospect of [Steph] enjoying even the smallest reconciliation of that relationship.

[67] The [location deleted] incident is a public example of the hopeless position [Steph] has been in since separation. It was apparent from my meetings with [Steph] that she closely identifies with and worries about her mother. In those circumstances, requiring [Steph] to engage in counselling for such a long time with [the psychologist] has placed [Steph] under more, not less, pressure.

[68] It is extremely rare for counselling of a teenager in the parenting dynamic [Steph] has found herself since separation, to take place on the basis that the teenager and her mother, the person who is struggling in the relationship from which the child was estranged, would be present at any counselling sessions. This is what has occurred for [Steph] with [the psychologist] except, it appears, on the final two meetings, when only [Steph] and [the psychologist] were present.

[69] The failure of Ms [Hargrave] to be honest in her evidence throughout the period I have case managed this file, has been ultimately abusive of [Steph] and Mr [Schofield] and disrespectful of the Court. It is not disputed that Mr [Schofield]'s separation from Ms [Hargrave] after she found out about his affair with one of her best friends was difficult to cope with, for both Ms [Hargrave] and [Steph]. As I noted in my 29 May 2019 judgment, there was an understandable reason for Ms [Hargrave]'s initial opposition to Mr [Schofield] having contact with [Steph] and to [Steph]'s own resistance to contact at the time. There can be no justification four years later.

[70] Mr [Schofield] has not tried to justify his affair and the way the separation happened. He has accepted responsibility for what occurred and the unfortunate way in which Ms [Hargrave] and [Steph] found out about his affair. His focus throughout this case has been on supporting [Steph] to work through her own sense of grief and rejection from the separation so she can develop a healthy relationship with him. For this to occur Ms [Hargrave] needed to separate her relationship with Mr [Schofield] from his relationship with [Steph], the later relationship being lifelong. This is not a case where the estranged parent's relationship with the child before the separation was poor. Both Ms [Hargrave] and [Steph] agreed with Mr [Schofield]'s evidence that he and [Steph] enjoyed a very close relationship. Mr [Schofield]'s commitment to helping [Steph] has been at a high financial and emotional price for him.

[71] The dilemma for the Court is how to now address the case in a way which achieves an optimum outcome in the very narrow range of options legally available to the Court. The options are further limited as it is my view that, of the types of

alienating parents described by Marissa Mallon, Ms [Hargrave] meets the third and most extreme category, that of an obsessive alienator:[12]

> Naïve alienators are passive and sometimes unintentional in their exercise of parental alienating behaviour. They do not act to reinforce the child's relationship with the other parent and occasionally say or do something to promote or reinforce alienation. Active alienators are vulnerable to emotional triggers that result in their parental alienating behaviour. They usually surrender to their feelings of hurt and anger, which result in impulsive alienating behaviours directed at the child that promote or reinforce alienation. The emotional dysregulation active alienators experience prevents them from maintaining a clear focus on the child's needs. Obsessed alienators seek to harm or terminate the child's relationship with the other parent. This is sometimes accompanied by the obsessed alienator's delusion that the other parent is abusive to the child, when that is not true. An obsessed alienator rarely has the emotional insight or perspective to recognize the harmful effect of parental alienating behaviour on the child.

[72] While I accept that [Steph] could be placed under the guardianship of the Court for specific purposes to protect her from what would be an abusive process of counselling with a counsellor unaware of the true dynamic of [Steph]'s parenting, I agree with Dr Cooke that a preferred way forward is by an order under s 46R of the Act.

[73] I do not agree with Dr Cooke's submission however that the Court could not impose a prohibition on [Steph] seeking out therapeutic assistance of her own volition because from a perspective of her age and maturity, and under the lens of *Gillick* competency, she is an adolescent with agency for whom such a restriction would be inappropriate.

[74] In *[F] v [P]* the Court made the following observations:[13]

> [119] More recently, Judge Clarkson concluded in *L V H* that while a 12-year-olds stated wishes were clear, the child's "real" wishes were much less so, and that a state of cognitive dissonance existed. It was common ground in that case that the determination of the weight to be attached to the child's wishes was entwined with the issue of alienation and as the Australian Family Court has ruled in *In the Marriage of R (Child's Wishes)* where the wishes have been influenced by an alienating parent it is open for the Court to give less weight to the expression of the child's wishes than would normally be the case.

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12 Mallon, "Post-Separation Parent-Child Contact Problems", above n 1, at 615-616.
13 *[F] v [P]* [2015] NZHC 1362.

[75] This is the position with [Steph]'s views and while she is still under the jurisdiction of the Court for the guardianship decision of engaging in therapy in any form, my finding of the extent to which she is alienated from her father means that, subject to my further comments at the conclusion of this judgment, I must be cautious about [Steph] engaging in therapy notwithstanding the expectation of independence at her age.

[76] I favour the use of s 46R for the reasons set out in paragraphs [23] and [24] of Dr Cooke's submissions of 22 December 2020.

> [23] The alternative relief is that to be obtained under a direction via **s46R.** This would be directed at Ms [Hargrave] herself – as the section is directed to parents and the **exercise** of their rights/powers/duties/incidents **of guardianship**. The conceptual thrust of the provision is that once a direction is given, it is implemented, and the child is then subjected to the order and its terms. If there is non-compliance, then responsibility for that is sheeted home to the guardian against whom the direction is made.
>
> [24] If application was made and a direction issued that Ms [Hargrave] was not to engage a therapist to work with [Steph] other than sanctioned by the Court, and this occurred at the instigation of Ms [Hargrave], the direction would be breached and a remedy prima facie available under s78.

[77] There are then sanctions available to the Court for any breach of such a direction with the potential of a criminal conviction under s 78.[14]

Conclusion

[78] Ms [Hargrave] gave the Court an undertaking last December that she would not allow [Steph] to be further involved in counselling until the outcome of this case was known. As Dr Cooke correctly submits, any breach of such an undertaking could result in a criminal prosecution for contempt.

[79] This Court can make the guardianship directions referred to below which place serious obligations on Ms [Hargrave] to comply with the directions prohibiting [Steph]

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[14] Under s 78 any person who contravenes a parenting or guardianship order or prevents compliance with such an order, commits an offence and is liable on conviction to a term of imprisonment not exceeding three months or a fine not exceeding $2,500.

from involvement in any counselling for the next two years unless the Court has first approved the counselling proposed.

[80] The overall outcome of this case is a tragedy for [Steph] who has been denied the opportunity of a relationship with her father during these crucial years of her childhood. Any relationship which developed may not have been a traditional one of regular contact, but it would have maintained the relationship, one which is now of two strangers. This outcome of no relationship in any form has the risks for [Steph]'s emotional and psychological health in the future which are discussed earlier in this judgment.

[81] [Steph] has the right to make an application to have access to this and earlier judgments and other documents on this file after her 20th birthday. However, opportunities to reflect on her relationships with each of her parents in adulthood cannot substitute for functional relationships with them both in her young adult life.

[82] I considered the effect of the guardianship directions which remain in place until the 8th of December 2022, if Ms [Hargrave] believes [Steph] needs counselling or therapy in the period until the order expires. If this is the case an application can be made to the Family Court for approval of the counselling. Approval is likely to be given if the counselling is independent of Ms [Hargrave] and with someone who is found by the Court to be suitably qualified and experienced and who has access to relevant Court decisions in this case.

[83] A direct approach by [Steph] at school for counselling assistance whether at school or with another professional recommended by the school counsellor, would not be affected by this order as that process would occur independently of and not be instigated by Ms [Hargrave]. It is important that this decision not be interpreted as preventing others from genuinely assisting [Steph] in any therapeutic process. I have noted the Court's serious concern for [Steph] in this judgment. Rather, it is Ms [Hargrave] having any part in this process[15] which will be a breach of the order as her

[15] Other than an application by Ms [Hargrave] for approval of therapy/counselling, which would be promptly addressed by the Court.

parenting of [Steph] since separation has been and continues to be psychologically abusive of [Steph].

Outcome

[84] A copy of this judgment is **not** to be issued to Mr [Schofield], his lawyer or Ms [Hargrave] until **2pm Friday 14th May 2021** to enable Dr Cooke to take the steps in [86] and for Ms Riddell those in [88].

[85] Mr [Schofield]'s application for a final parenting order as to contact lapsed on 8th December 2020 by operation of law and his application to withdraw that application is no longer necessary.

[86] I make a final order on Mr [Schofield]'s amended application for counselling under s 46R on the following terms:

> *Neither parent is in any way to facilitate [Steph]'s engagement in counselling or therapy without prior consent of the Court.*

[87] Dr Cooke is to provide a copy of the above order under s 46R to the counsellor at [school details deleted] and [counsellor A] of [practice name deleted].

[88] I then conclude Dr Cooke's appointment.

[89] I conclude Ms Riddell's appointment after 13th May 2021 to give her the opportunity to meet with [Steph] to explain the outcome in this judgment.

[90] On the issue of costs contribution:

(a) The Registry is by to provide each party with details of the costs incurred by the Court with Ms Riddell and Dr Cooke within 14 days of the date of this judgment.

(b) Each party is to file any submissions on cost contribution within a further 21 days.

(c) After six weeks the file is to be referred to me in Chambers for determination of cost contribution.

[91] I have addressed Mr [Schofield]'s application for costs against Ms [Hargrave] in a separate judgment.

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Judge AG Mahon
Family Court Judge

Date of authentication: 12/05/2021
In an electronic form, authenticated electronically.