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**IN THE FAMILY COURT
AT HUTT VALLEY**

**I TE KŌTI WHĀNAU
KI TE AWAKAIRANGI**

**FAM-2018-096-000385
[2021] NZFC 7519**

IN THE MATTER OF	CARE OF CHILDREN ACT 2004
BETWEEN	[RODERICK BELLAMY] Applicant
AND	[ANDREA HOLLAND] Respondent

Judgment: 29 July 2021

RESERVED DECISION OF JUDGE C MONTAGUE

[1] These are proceedings under the Care of Children Act 2004 between the parties [Roderick Bellamy] and [Andrea Holland].

[2] They are the parents of the children [Hayley Holland], born [date deleted] 2013, aged seven, [Frederick Holland], born [date deleted] 2016, aged five, and twins [Naomi Florence] and [Rosa Jasmine Holland], born [date deleted] 2018, aged three.

Issues for determination

[3] The parties ask for the Court to decide the following issues which they have been unable to agree upon:

- (a) The first names of the twins – Ms [Holland] seeks to confirm their existing names [Rosa] and [Naomi] whereas Mr [Bellamy] seeks to change them to [Sadie] and [Lillian];
- (b) Ms [Holland]’s application to relocate the children to [location 1];
- (c) Final parenting arrangements for their children.

Background

[4] The parties were in an “on/off relationship” from November 2010 until the end of 2017.

[5] Ms [Holland] obtained a protection order (undefended) which was made final by operation of law on 24 October 2014.

[6] The parties resumed their relationship thereafter and conceived two more children, twins [Naomi] and [Rosa], although had separated again by the time they were born on [date deleted] 2018.

Hearing on 22 June 2020

[7] After a defended hearing on 22 June 2020 Judge Walsh made interim parenting orders which provided for the children to be in Ms [Holland]’s day to day care and to have contact with Mr [Bellamy] as follows:

- (a) For [Hayley] and [Frederick]:
 - (i) Wednesday each week from 8.20 – 8.30 am to 6 pm;

(ii) For alternating fortnights from 4 pm Saturday to 6 pm Sunday;
and

(b) For the twins – Sundays from 9 am to 6 pm (with [Hayley] and [Frederick]).

[8] The conditions attached to the order were:

(a) That Mr [Bellamy] provide porta-cots for the twins;

(b) No physical disciplining of the children;

(c) That Mr [Bellamy]'s vehicle was road worthy and legal;

(d) That all contact arrangements were confirmed 48 hours prior;

(e) That Mr [Bellamy] was responsible for transporting and was not to enter Ms [Holland]'s property, and that communication was to be by text or email.

[9] Judge Walsh considered the various safety issues raised by the parties and was satisfied that neither was a risk to the children. Whilst finding that Mr [Bellamy] would not intentionally harm the children, he expressed reservations about him potentially not fully appreciating risks to their safety by not having appropriate boundaries in place relating to their care. He was not satisfied that Ms [Holland] was violent, as alleged by Mr [Bellamy].

[10] The Judge was concerned that the children were being exposed to ongoing conflict between their parents and the disagreements over contact arrangements and the twins' names observing:

I am concerned for the reasons set out – the parties have fixed perceptions of each other that have become entrenched. Any long term care arrangement will need to take into account the poor state of communication between the parties. Issues arising out of relocation and disruption to relationships between the father and the children will also need to be carefully assessed.

[11] He directed a s 133 report to resolve the issues of long-term care arrangements and the guardianship matters of relocation and the names of the twins.

[12] The parties were directed to s 46G counselling.

Events since 22 June 2020

[13] On 27 August 2020, Ms [Holland] applied without notice to vary Judge Walsh's interim parenting orders on the grounds that the police had informed her that two members of the public had reported concern about Mr [Bellamy]'s treatment of [Hayley] at [location 2].

[14] Ms [Holland] alleged that [Hayley] told her that her father had pulled her hair, shouted directly in her ear and dragged her out of the bushes by her arm to the car on her knees.

[15] Mr [Bellamy] was charged with breach of protection order and the interim Parenting Orders were suspended. Supervised contact was available to Mr [Bellamy], but he declined all contact on the basis that he objected to being supervised.

[16] The breach of protection order charge was heard before Judge Thompson on 1 March 2021.

[17] In his decision the Judge noted that whilst the observation of the two bystanders as to Mr [Bellamy]'s behaviour was alarming, he did not consider cause to find physical abuse and was not satisfied beyond reasonable doubt that the protection order had been breached.

[18] He did wonder about the issue of psychological abuse, however that was not an issue before him to decide.

The 133 Report

[19] The s 133 report was filed on 8 January 2021 by Geraldine Keith. She was able to observe the children with their father on only one occasion.

[20] In summary, the salient observations from her report were:

- (a) [Hayley] and [Frederick] were missing their father and expressed a strong desire to see him.
- (b) Mr [Bellamy] illustrated an ability to steer a steady, warm, authoritative and loving course with the children.
- (c) In the brief window of observation, Ms Keith was unable to extrapolate a prediction as to whether under the pressure of having all four children, Mr [Bellamy] could maintain a safe level of overall vigilant and management of their very different behavioural responses in more complex or less well contained situations.
- (d) When the twins were called by their father (by his chosen names of [Lillian] and [Sadie]) they showed no registering of being called into action.
- (e) That their bewilderment would grow if Mr [Bellamy]'s determination to call them by different names continued and could create anxiety and confusion once they were into their fourth year of development.
- (f) Mr [Bellamy]'s lack of insight and compromise ran the risk of overloading his children with anxiety.
- (g) The twins had large gaps in time between opportunities for connection with their father. Chances for secure development of their bonding with him needed to happen.
- (h) [Hayley] was a child that could act quickly in a determined way needing careful pre-emptive management before events escalate.
- (i) Mr [Bellamy] might encourage [Hayley] to push boundaries, impacting her ability to settle into normal boundaries at school, which would have implications for her future relationship to the wider world.

- (j) A change of school would be a pity for [Hayley] who had currently settled at [name of school deleted] (which had taken some time).
- (k) [Frederick] had a strong attachment with his father.
- (l) Ms [Holland] needed to keep her fears around the children's safety in their father's care in perspective.
- (m) Mr [Bellamy] needed to be mature and circumspect in recognising his parenting approach was very different to Ms [Holland]'s and he needed to support that.

The Law – ss 4, 5 and 6, Care of Children Act

[21] Section 4 of the Care of Children act prescribes that the welfare and best interests of a child is to be the Court's first and paramount consideration.

[22] Section 5 of the Act sets out certain principles that the Court is required to take into account when determining what is in the welfare and best interests of a child.

[23] Section 6 of the Act prescribes that the Court shall give to a child the opportunity to have his or views made known to it, such views to be taken into account by the Court but not necessarily determinative.

[24] Copies of the above sections are set out below for the benefit of the parties:

4 Child's welfare and best interests to be paramount

(1) The welfare and best interests of a child in his or her particular circumstances must be the first and paramount consideration—

(a) in the administration and application of this Act, for example, in proceedings under this Act; and

(b) in any other proceedings involving the guardianship of, or the role of providing day-to-day care for, or contact with, a child.

(2) Any person considering the welfare and best interests of a child in his or her particular circumstances—

(a) must take into account—

(i) the principle that decisions affecting the child should be made and implemented within a time frame that is appropriate to the child's sense of time; and

(ii) the principles in section 5; and

(b) may take into account the conduct of the person who is seeking to have a role in the upbringing of the child to the extent that that conduct is relevant to the child's welfare and best interests.

(3) It must not be presumed that the welfare and best interests of a child (of any age) require the child to be placed in the day-to-day care of a particular person because of that person's gender.

(4) This section does not—

(a) limit section 6 or 83, or subpart 4 of Part 2; or

(b) prevent any person from taking into account other matters relevant to the child's welfare and best interests.

5 Principles relating to child's welfare and best interests

The principles relating to a child's welfare and best interests are that—

(a) 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:

(b) a child's care, development, and upbringing should be primarily the responsibility of his or her parents and guardians:

(c) a child's care, development, and upbringing should be facilitated by ongoing consultation and co-operation between his or her parents, guardians, and any other person having a role in his or her care under a parenting or guardianship order:

(d) a child should have continuity in his or her care, development, and upbringing:

(e) a child should continue to have a relationship with both of his or her parents, and that a child's relationship with his or her family group, whānau, hapū, or iwi should be preserved and strengthened:

(f) a child's identity (including, without limitation, his or her culture, language, and religious denomination and practice) should be preserved and strengthened.

6 Child's views

(1) This subsection applies to proceedings involving—

(a) the guardianship of, or the role of providing day-to-day care for, or contact with, a child; or

(b) the administration of property belonging to, or held in trust for, a child; or

(c) the application of the income of property of that kind.

(2) In proceedings to which subsection (1) applies,—

(a) a child must be given reasonable opportunities to express views on matters affecting the child; and

(b) any views the child expresses (either directly or through a representative) must be taken into account.

[25] The children's welfare and best interests, not the welfare and best interests of either parent, is to be the Court's first and paramount consideration as Judge Murfitt observed in *SI v U* at paragraph [73]:¹

It is not only the Court which should look at decisions affecting the lives of children with a focus on the welfare and best interests of the child. Parents should, and frequently do make decisions in their own lives, deferring their own ambitions or satisfaction because of the needs of their children. Some parents surrender employment, others chain themselves to employment because of their children's needs. Some forsake opportunities for travel, sport, and social fulfilment because they are parents. Others choose to live in certain locations because that is best for their children.

[26] The Court is not infrequently faced with circumstances where a parent has acted in a way that most would regard as unacceptable with relation to his or her relationship responsibilities to the other parent. For the wronged parent, the reality is that his or her interests are to be seen separately and distinctly from the child's welfare and best interests. That position is enshrined in s 4 of the Act, referred to above, and is so to ensure that a child's welfare and best interests are not lost in analysis of the rights and wrongs of the parents.

[27] Issues of safety in terms of parental conduct are of course a different matter and are mandatorily required to be addressed pursuant to s 5(a) of the Act.

¹ *SI v U* FC New Plymouth FAM-2005-043-939, 20 July 2007 at [73].

The Law - Relocation

[28] There is no presumptive approach to be adopted by the Court with relation to whether relocation should be approved or declined.

[29] The Supreme Court in *Kacem v Bashir* observed at paragraph [36]:²

The literature suggests that there are at least two competing schools of thought about relocation cases generally. There are those who consider relocation should generally be approved, and there are those who think that generally it should not. It is not our purpose, nor would it be appropriate, to express any preference. What is clear is that if there were to be any presumptive approach to relocation cases, it is contestable what that approach should be. This is very much a policy issue for Parliament, not judges. At the moment the New Zealand legislature has not opted for any presumptive approach. That is the way cases must be approached by the courts unless and until legislative change dictates otherwise.

[30] The New Zealand courts apply an individualised assessment of what is in the welfare and best interests of the child and do not subscribe to the “happy mother, happy child” approach to relocation in the English jurisdiction, identified in *P(LM) (otherwise E) v P(GE)*, with the following observation:³

I am very firmly of the opinion that the child’s happiness is directly dependent not only on the health and happiness of the mother but on her freedom from the very likely repercussions, of an adverse character, which would result effecting her relations with the step-father and her ability to look after her family peacefully and in a psychological frame of ease, from the refusal of the permission to take the child to New Zealand which I think quite clearly his welfare dictates.

[31] That approach was rebutted in New Zealand in the seminal Court of Appeal decision of *Stadniczenko v Stadniczenko* which reinforced that it is the welfare and best interests of the child that is to be the Court’s first and paramount consideration.⁴

[32] In *Brown v Argyll*, Justice Priestly confirmed:⁵

Centre stage is the s 4(2) requirement that the welfare and best interests paramount assessment must focus on the particular circumstances of a child.

² *Kacem v Bashir* [2010] NZFLR 884 at [36].

³ *P(LM) (otherwise E) v P(GE)* [1970] 3 All ER 659.

⁴ *Stadniczenko v Stadniczenko* [1995] NZFLR 493.

⁵ *Brown v Argyll* [2006] NZFLR 705.

This is as true for relocation cases as it is for all other disputes involving children.

[33] In summary, what can be observed is that s 4 and s 5 of the Act must always be the focus of the Court's consideration.

The s 5 principles

[34] I now consider the s 5 principles in relation to the issues I am asked to determine on the facts of this case.

[35] Because Ms [Holland] has sought that Mr [Bellamy]'s contact remain supervised, I need to consider whether the children are safe in Mr [Bellamy]'s unsupervised care.

[36] She argued that Mr [Bellamy] could not appropriately parent and manage all four children together because he was permissive of sexual exploration (specifically allowing [Frederick] to hold his penis), negligent of healthy boundaries, and unable to manage his anger illustrated by the incident on [location 2] with [Hayley], leading to his arrest.⁶

Section 5(a) - Safety

[37] Whether the children are safe pursuant to s 5(a) is a mandatory consideration.

[38] In *Lowe v Way*, Duffy J summarised the preferred approach when considering whether or not children are safe is to assess the violence that has been proven and then to assess the likelihood of it being carried out against the subject child.⁷ The more serious the nature of the violence the greater the concern there will be when it comes to assessing risk to a child.

[39] I must determine on the balance of probabilities whether or not violence has occurred and then assess the safety of the children having regard to the relevant factors.

⁶ Affidavit of [Andrea Holland], 27 August 2020; Affidavit of [Andrea Holland], 25 February 2021 at [23].

⁷ *Lowe v Way* [2015] NZHC 2377.

If it is found that violence has been proven and that there is a likelihood that the children will be subjected to unacceptable risk in their father's care I must, pursuant to s 59 of the Act, direct that only supervised contact occur.

[40] I listened carefully to the evidence on the incident with [Hayley] on [location 2]. It was my assessment that there was a lack of anger management and/or regulation by Mr [Bellamy] who over-reacted and raised his voice in such a serious way that it caused alarm to by-standers.

[41] I consider his tone must have been very intimidating for [Hayley] given that the adults who observed it, as complete strangers, felt the need to contact the police.

[42] Although the incident with [Hayley] on the beach was unfortunate, I find it did not reach a level of violence so serious as to restrict Mr [Bellamy]'s contact to supervised. He needs to ensure, however, that his reactions do not reach that unacceptable level again in his future management and disciplining of the children when they misbehave.

[43] On the suggestion of sexual permissiveness on the part of Mr [Bellamy], I find on the balance of probabilities, as supported by the psychologist, that [Frederick]'s touching of his father's penis was natural curiosity and am satisfied having heard from Mr [Bellamy], that there was no underlying abuse or intention of abuse on his part.

[44] Save for the concern about Mr [Bellamy]'s tendency to encourage a lack of boundaries on [Hayley]'s part, there were no concerns raised by Ms Keith about the children's emotional safety in his care and no other safety concerns arising since Judge Walsh's decision establishing a need for supervision.

[45] Further, lawyer for child's position remained as it was in the hearing before Judge Walsh, that there was not the need for supervised contact.

[46] Having regard to all of the above factors I find on the balance of probabilities that the children are not at risk of physical, sexual or psychological violence in either of their parents' care.

Section 5(b) – Care, development and upbringing

[47] Ms [Holland] has been primarily responsible since 2018 for the twins' care, development and upbringing, and for the last year or so for all four children.

[48] Relocation of the children with her to [location 1] would impact on the ability of Mr [Bellamy] to be primarily involved in the care, development and upbringing of the children.

Section 5(c) – Consultation between parents

[49] It is clear to date that these parties have not fully engaged in their roles as parents and guardians and have failed to communicate and consult effectively.

[50] There has been an extremely difficult start to the parenting relationship of the twins and the parties have been unable to develop and maintain any ability to consult or cooperate other than at the very minimal level through email and text.

[51] Neither see any blame in themselves and both consider the other almost impossible to communicate with. That is the current communication standoff.

[52] It is an unhealthy dynamic for the children making it critical that the parties start to do whatever work is required to assist them in their communication and consultation around their children.

Section 5(d) – Continuity of care, development and upbringing

[53] The principle in s 5(d) was an important one in terms of the focus at the hearing and I note the comment of Justice Fisher in *D v W* where he said:⁸

A child's greatest non-physical need is for love and security. Parental love requires an unconditional and irrational commitment to the child. Bonding grows out of an interaction with the child, but the strongest bond is not necessarily with the person who has spent the most time caring for the child. It is the quality and intensity of the interaction that matters most. Disruption to the child's existing world is to be avoided if possible. Security is promoted

⁸ *D v W*

by stable family relationships, consistent and dependable attitudes and behaviour, familiar surroundings and a known routine. All else being equal disruption to the status quo should be avoided but, of course, competing considerations may outweigh this.

[54] The children's continuity of care, development and upbringing has in the last year at least rested entirely with Ms [Holland].

[55] [Hayley] has been at one school and the twins at one pre-school.

[56] The parties are agreed on the children's form of education being [details deleted].

[57] I note the comment from Ms Keith that a change in school for [Hayley] in the event of relocation would be a pity given that she appears to be settled in her school after some concerns around her behaviour.

Section 5(e) – Relationship with parents and wider family group

[58] The children are bonded and attached to their parents. Severance of that relationship is something that is unlikely to be diminished in terms of the older two children, however I must take into account the fact that the twins have spent very little time in their father's care, in fact only once in the last year and never overnight.

[59] I have regard also to Ms Keith's opinion that opportunities for them to form attachment with their father need to occur.

[60] I consider in particular the quality of the relationship between the children and their father diminishing if a relocation occurs and the effect of the lack of engagement in such things as physical contact, school drop offs and collections, homework, weekday extra-curricular activities, weekday bedtimes and the like.

[61] With the exception of Ms [Holland]'s mother who will be closer to her if she relocates to [location 1], I understand that the extended family reside in the Wellington region.

Section 5(f) – Identity of the children

[62] There are no particular cultural or religious issues as to identity for these children.

Issue 1: The twins' names

[63] Mr [Bellamy] does not like the names [Rosa] and [Naomi] that Ms [Holland] chose for the twins. He was candid in his evidence that he would struggle to call the twins by the names [Rosa] and [Naomi], because of his dislike for them.

[64] He argued he was not consulted on the names.

[65] He wants their names changed to [Sadie] and [Lillian].

[66] I formed the view that he would continue to call them [Sadie] and [Lillian] when they were with him, regardless of my decision or the confusion that may cause them as referenced in the psychological evidence.

[67] Ms [Holland] was firmly of the view that the children would be disadvantaged by a change in name.

[68] She argued they have been called and have responded to [Naomi] and [Rosa] since their birth.

[69] She disputed that she did not consult Mr [Bellamy] and maintained that for the first 18 months of their lives Mr [Bellamy] did not suggest any alternative to their names, despite being asked by her to do so. Instead, Mr [Bellamy] referred to them as “big baby” and “little baby”, although Mr [Bellamy] said he called them “big beautiful” and “little beautiful”.

[70] Ms [Holland] felt unable to compromise on the issue, so strong was her belief that it would be contrary to the twins' best interests if she did.

[71] Ms Keith commented, that given the context of the parties' deep distrust of one another and inability to cooperate, that a back down by Mr [Bellamy] on this issue, would be a wonderful opportunity for compromise.

[72] Mr [Bellamy] did accept in his oral evidence at the hearing that despite his distaste for the names [Rosa] and [Naomi] and his perceived lack of consultation by Ms [Holland], that to call the twins by different names may be confusing for them.

Analysis

[73] I consider that given the parties' substandard level of communication it is unlikely Ms [Holland] did effectively consult with Mr [Bellamy], but I accept that she gave him the opportunity to provide alternative names.

[74] Again, as a consequence of their poor communication, I consider it likely that Mr [Bellamy] did not provide any alternatives.

[75] Ms [Holland]'s failure to consult was therefore negated by Mr [Bellamy]'s failure to address the issue for some 18 months.

[76] As I have stated, the Court's paramount consideration is what is in the twins' welfare and best interests.

[77] They have always been known by and identified by the names [Rosa] and [Naomi]. Their sense of identity should not be a casualty of their parents' failure to communicate.

[78] I have considered the possibility of Mr [Bellamy] continuing to call them different names when they are with him and the potential adverse consequences of that as identified by Ms Keith.

[79] As a practical consequence, quite apart from the psychological evidence that warns against a name change, I consider the confusion for the twins being called two different names by two different parents in two different homes, contrary to their welfare and best interests.

[80] The confusion will extend to their interactions with friends, school and other organisations they engage with. They cannot be subjected to that.

[81] I also observed that there did not appear to be any particular significance to either party attached to the twins' middle names.

Decision

[82] Having regard to all of the above factors I find on the balance of probabilities that it is not in the twins' best interests to change their names from [Rosa] and [Naomi].

[83] In order to reflect each of the parties' choices and in an endeavour to dilute the adult conflict on this issue, I intend to include Mr [Bellamy]'s preferred names as the twins' middle names in substitution for their existing middle names.

[84] That way, if Mr [Bellamy] insists on calling them by the names [Sadie] and [Lillian] when they are with him, those names will at least have some connection to their legal names, minimising the potential adverse impact on their sense of identity and mitigating confusion in their day to day lives as they grow older.

Issue 2: Relocation

[85] In support of her application for relocation, Ms [Holland]'s reasons were:

- (i) Financial. She can provide a better standard of accommodation in [location 1].
- (ii) That the move will provide some space and physical distance between she and Mr [Bellamy] and therefore relief from the conflict.
- (iii) That her social and emotional needs will be met in the [location 1] region where she has support from friends which will have a positive trickle-down effect on the children.

(iv) That the children will be closer to their maternal grandmother.

[86] Mr Robinson put to Ms [Holland] in cross-examination that relocation was really, for her, about getting away from the conflict with Mr [Bellamy].

[87] Whilst that wasn't necessarily accepted as the only reason, it was apparent that Ms [Holland] was seeking to put some distance between herself and Mr [Bellamy], to acquire peace from what she sees as the ongoing disagreements and trauma she experiences having to parent with him in close proximity.

[88] Mr [Bellamy] was strongly opposed to relocation.

[89] He would view relocation, if permitted, as another injustice heaped upon him and continue to hold Ms [Holland] in the low regard that he currently does, because of what he perceives to be her control over his time with the children.

The children's views

[90] None of the children appropriately, have been specifically asked about relocation and to her credit, Ms [Holland] has not involved them in that dispute.

Analysis

[91] What was clear from the evidence was that both parents love their children and that in particular, [Hayley] and [Frederick] expressed a keen wish to spend more time with their father.

[92] The factors that weigh for and against relocation appear to be:

For:

- (a) The ability for Ms [Holland] to focus more effectively on parenting the children by placing some distance between herself and Mr [Bellamy] and the children will experience her as a more relaxed and optimum parent.

- (b) Ms [Holland] will be able to provide a better home at a more reasonable rent for the children.
- (c) She will be closer to her emotional and social networks and she and the children will be closer to her mother.

Against:

- (d) Less time for the children with their father.
- (e) A likely reduction in his involvement, in particular with [Hayley] and [Frederick]'s schooling and other activities.
- (f) Less opportunity to develop the twins' relationship with their father.
- (g) Less proximity for the children to extended family members in Wellington.
- (h) Disruption to [Hayley] and [Frederick]'s schooling.

[93] I must weigh the importance and negatives of relocation including the issue of engagement by Mr [Bellamy] in the children's weekday life in the future.

[94] Whatever my decision, the adults in the children's lives need to start thinking beyond the square and be prepared to make sacrifices themselves in terms of improving their communication to achieve better outcomes for their children.

Lawyer for child's position

[95] Mr Robinson submits that a relocation, if permitted, does not make the difficulties go away, but simply creates further distance for Ms [Holland] from them.

[96] He did raise as a negative the change of school for [Hayley].

[97] On balance, he submitted that the grounds were on the light side to support relocation being in the children's best interests and that relocation didn't necessarily advance matters for them.

Decision

[98] After a careful analysis of the above factors, the s 5 principles and all of the identified pros and cons, I have reached the conclusion that on the balance of probabilities it is in the children's welfare and best interests to continue the status quo and decline the relocation application.

[99] The primary reasons for my conclusion are:

- (a) The children's best interests will be met by having both parents within the same region as that will allow, in particular for the twins, the development of their relationship with their father to build.
- (b) It will also enable [Hayley] and [Frederick] to spend more time with their father in accordance with their expressed views and wishes.
- (c) With strict rules around the terms of care arrangements, the level of conflict between the parties should be able to be minimised to the same extent Ms [Holland] had hoped relocation would achieve.

[100] Whilst the New Zealand higher Courts have made it clear that New Zealand does not adopt the position advocated in the decision in *P v P*, that "happy mother is a happy child" is a priority, I have nonetheless considered Ms [Holland]'s plight.

[101] I perceive it possible for Ms [Holland] to place some distance between she and Mr [Bellamy] within the [location 3] region without causing disruption to the children's status quo.

[102] I note further that Ms [Holland] confirmed that she wanted to return to the workforce in the Wellington central region and a relocation may make that more difficult for her.

[103] When giving evidence Ms [Holland] was, in my view, resolutely in her ability to place the children's needs first in her wish to protect the children from conflict. This was in stark contrast to Mr [Bellamy]. He has been so stuck in his negative perspective toward Ms [Holland] that he has been unable to address his children's need to see him in refusing to have any court ordered contact.

[104] I intend to reserve Ms [Holland] leave to re-apply if Mr [Bellamy] elects not to exercise his court ordered contact.

[105] On the basis that the children's residence will be [location 3], I now consider the best care arrangements for the children.

Issue 3: Parenting Orders

What Final Parenting Orders does Ms [Holland] seek?

[106] Ms [Holland] proposes that:

- (a) The children remain in her day-to-day care;
- (b) Mr [Bellamy] have one day per month contact, supervised.
- (c) The children relocate to [location 1] with her.

What Final Parenting Orders does Mr [Bellamy] seek?

[107] Mr [Bellamy] proposes a shared care arrangement on a three day continuously revolving cycle 9 am to 9 am for [Hayley] and [Frederick], and a two day continuously revolving cycle 9 am to 9 am for [Naomi] and [Rosa].

Lawyer for child's position

[108] [Frederick] and [Hayley]'s views have consistently been positive about their father.

[109] Mr Robinson reminded the court that the care arrangements directed by Judge Walsh were in their infancy at the time they came to a halt as a result of the incident with [Hayley] on [location 2].

[110] He submitted that it was in the welfare and best interests of the children to have some clear rules around care arrangements to give the opportunity for Judge Walsh's orders to be tested and for both parties to unequivocally "buy in" to clear rules of engagement.

Analysis

[111] As I have said, [Hayley] and [Frederick] have expressed a wish to spend more time with their father. That is not in dispute.

[112] Ms [Holland] accepts that, as she did before the hearing in June 2020.

[113] A serious issue for these children is their parents ongoing conflict and the potential that they will be exposed to it, directly or indirectly.

[114] The controversy and disagreement over the twins' names is symptomatic of their poor relationship as parents.

[115] Although Ms [Holland] is concerned about Mr [Bellamy]'s inability to regulate his anger and manage all four children appropriately in his care in anything other than a supervised setting, it was also her evidence that her preference was for all four children to have contact together.

[116] I am mindful that Ms Keith was unable to predict how well Mr [Bellamy] would cope with all four children given his lack of experience arising from his refusal to have contact with them under supervision.

[117] As Ms Keith said, whilst all the children are showing age appropriate connectedness with their father, they have still been disadvantaged by his refusal to see them in the past year because of restrictions that he blames Ms [Holland] for.

[118] Ms Keith also considers it important that the children reconnect with their father “quite quickly” and that it is critical to any care arrangement that a clear pattern of contact and rules of transportation is established.

[119] She strongly recommended that Mr [Bellamy] discuss, particularly with [Hayley], clear plans around their activities and that he support activities arranged by Ms [Holland], as well as her parenting generally.

[120] It is important that the children are spared the conflict zone and understand (particularly for [Hayley]) that they must obey the rules and laws of two parents, not one.

[121] Ms Keith was of the view that the twins needed shorter time with their father, but that it was also an important part of the children’s reality that they spend time together with him.

[122] Lawyer for child did not support the proposal put forward by Mr [Bellamy]. The difficulty the Court also has with his proposal is that it is too haphazard for the children. It does not allow for any set routines to be put in place or a reliable pattern of care that sees the children in their mother’s care at certain times and their father’s care at certain times.

Decision

[123] Having regard to all of the above factors, the psychological evidence and the passage of time since contact between the children and their father has occurred, I consider it is in the children’s welfare and best interests for the type of care arrangement envisaged by Judge Walsh to once again be reinstated and enlarged to achieve finality.

[124] Mr [Bellamy] is on notice that the court expects strict compliance with these orders and if there is not, Ms [Holland] may reapply to relocate the children.

[125] Accordingly, I make the following orders:

- (a) The application for relocation is declined.
- (b) The twins are to be known by the names [Naomi Lillian Holland] and [Rosa Sadie Holland].
- (c) The children shall be in the day-to-day care of Ms [Holland].
- (d) Contact shall be reserved to Mr [Bellamy]

In respect of [Frederick] and [Hayley]:

- (i) Each Wednesday from after school until before school Thursday.
- (ii) Alternate weekends from after school Friday to before school Monday.
- (iii) For one week of each school term holidays.
- (iv) For alternate weeks in the Christmas holidays.

In respect of the twins:

- (v) Every second Sunday to coincide with [Hayley] and [Frederick]'s Sunday from 9 am to 6 pm for the next six months.
- (vi) For the following six months from 4 pm Saturday to 6 pm Sunday.
- (vii) Thereafter, every second weekend at the same time as [Hayley] and [Frederick].
- (viii) When the twins commence school, their contact shall be the same as [Hayley] and [Frederick]'s contact.

- (e) Christmas care arrangements are as follows:
- (i) For all four children, from 9am Christmas Eve to 12 noon Christmas Day on odd numbered years.
 - (ii) For all four children from 12 noon Christmas day until 5 pm boxing day on even numbered years.
 - (iii) The children shall be in Ms [Holland]'s care at least three working days prior to the commencement of term 1 of each school year.

[126] The following conditions are to be attached to the parenting orders:

- (a) The children are not to be subjected to any form of physical discipline.
- (b) The parties will ensure they are operating a motor vehicle at all times compliant with the Road Transport law and regulations when transporting the children. They will not drive in such a manner as to create any safety issues for the children.
- (c) All changeovers shall occur at school.
- (d) When changeovers do not occur at school, they shall occur at a midway point to be agreed and if it cannot be agreed as determined by lawyer for the children.
- (e) Communication between the parties is to be by either text or email.
- (f) The parties shall encourage and foster the children's relationship with the other parent and shall support all activities agreed between them.
- (g) Mr [Bellamy] shall ensure he has appropriate bedrooms/bedding for the children when they are in his care.

[127] The parties have been directed to s 46G counselling, but I understand that has not occurred. I direct 12 sessions of communication counselling at this stage pursuant to s 46G.

[128] Lawyer for child's appointment remains until the midway point for changeover is clarified.

[129] Thereafter Ms [Holland]'s counsel is to file draft orders for sealing.

[130] Leave is granted to Ms [Holland] to bring a further application for relocation of the children if there is not substantial and consistent compliance by Mr [Bellamy] with these orders over the next 6 month period.

Judge C Montague
Family Court Judge

Date of authentication: 28/07/2021

In an electronic form, authenticated pursuant to Rule 206A Family Court Rules 2002.