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**IN THE FAMILY COURT
AT HUTT VALLEY**

**I TE KŌTI WHĀNAU
KI TE AWAKAIRANGI**

**FAM-2018-096-000385
[2020] NZFC 4676**

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

Hearing: 22 June 2020

Appearances: Applicant in person
R Brace lawyer to assist
L Barry for Respondent
S Robinson lawyer for children

Judgment: 30 June 2020

**RESERVED JUDGMENT OF JUDGE A P WALSH
[Care Arrangements]**

Introduction

[1] [Roderick Bellamy] (the father) has applied for parenting orders in respect of the four children of his relationship with [Andrea Holland] (the mother). The application is opposed by her.

[2] This matter had been set down for a defended hearing in November 2019, but the fixture had to be vacated when the Judge assigned to the hearing became ill. The advent of Covid-19 further delayed the hearing until 22 June 2020.

[3] In a pre-hearing conference, it became apparent the care arrangements for the children could not be finally determined. The mother has now applied for a guardianship direction enabling her and the children to relocate to [a town in the North Island]. That application is opposed by the father. There is also a guardianship issue to be determined relating to the names of twin children, if this matter cannot be resolved by agreement. Given these issues, the hearing on 22 June 2020 was to determine interim care arrangements for the children.

[4] Initially the father sought a s 133 psychological report, but that was opposed by the mother. She has since reconsidered her position and now seeks such a report, but that is now opposed by the father. I am satisfied, having regard to the issues relating to relocation, the dispute over the names of the twin children and the nature of the relationship between the parties, it will be necessary to obtain a s 133 report to assist in resolving guardianship issues and any long-term orders relating to the care of the children.

Background

[5] The parties were in an “*on / off*” relationship. It began in November 2010 and continued until the parties finally separated at the end of 2017.

[6] The first child, [Hayley Holland] was born [date deleted] 2013. On 24 July 2014, the mother applied without notice and obtained a temporary protection order against the father for herself and [Hayley]. She alleged the father had been subjecting

her to psychological abuse. She also obtained an interim parenting order granting her the day-to-day care of [Hayley]. The Court directed the father was to have contact supervised by either an approved supervised contact provider or a person approved by the Court.

[7] The protection order became final by operation of law on 24 October 2014. A final parenting order was made on 15 December 2014 granting the mother the day-to-day care of [Hayley] with provision for the father to have supervised contact.

[8] The parties resumed their relationship and on [date deleted] 2016 the second child, [Frederick Holland] was born. On [date deleted] 2018 the twin children, named by the mother as [Naomi Florence Holland] and [Rosa Jasmine Holland], were born.

[9] It appears as time went by the relationship between the parties became dysfunctional. There were numerous separations for varying periods. Informal arrangements were made when the parties were living apart for the father to have contact, but over time contact arrangements became problematic.

[10] In their affidavit evidence the parties have been critical of each other. At the hearing it became apparent the father perceives the mother as controlling his contact with the children and has relied upon the protection order to dictate his contact with the children. The mother perceives the father as determining what he will do to suit himself. She has found communication with the father to be continually difficult because of his personality, to the point where communication has broken down.

[11] On 7 September 2018 the father applied without notice for parenting orders in respect of all the children, but this application was placed on notice. The mother filed a response to this application. As noted above, an issue has arisen subsequently over relocation. On 3 June 2020 the mother applied on notice for a guardianship direction enabling her to relocate to [a town in the North Island] with all the children.

[12] There has been an ongoing issue relating to the registration of the births and the names of the twins. To date their births have not been registered as the parties have been unable to agree over their first names.

The Protection Proceedings

[13] As the protection order continues to operate, the Court is required to make findings under s 5(a) and s 5A of the Care of Children Act 2004 (the Act). The mother's application for a protection order was triggered by an incident on 6 July 2014. An argument developed between the parties. This incident occurred in the presence of [the daughter of the father from another relationship]. On 8 July 2014, the mother packed her belongings and took [Hayley] with her to stay with the maternal grandmother for two weeks. She emailed the father requesting him to vacate her property by 25 July 2014. She went to the home on 21 July 2014 to claim the property and stand up for herself. There was a further argument. The father refused to leave the home. She was convinced he would not leave the home no matter what she did. The mother remained in the home for three days. She alleged the father ranted at her during that period and tried to wear her down mentally and emotionally. A point was reached where she felt completely worn down and unable to stand up for herself. She did not want [Hayley] to be subjected to such a conflicted environment.

[14] The mother alleged the father had an anger problem; he would flare up at the smallest things and remain enraged for a long time. She considered his anger was escalating. He was verbally abusive to her and referred to her in derogatory terms. The mother advised the father was not a physically violent person, although he had punched her in retaliation to her hitting him in the course of an argument. He would take his anger out on property. She considered the father's violence was mostly psychological; he was clever at manipulating her and messing with her head. She described the father as believing in alternate laws and many conspiracy theories. He spent a lot of time researching issues and said he did not recognise the laws of New Zealand or the Government. The mother produced a letter the father had sent to the Department of Internal Affairs which was signed in his blood. She said the letter indicated the father's view he owned [Hayley] as his property and he felt the same way about the mother.

[15] According to the mother, throughout the relationship the father was extremely controlling of her. He refused to have his name listed on anything because of his theories. He told her he would not support her unless he could use her property, put

his cars in her name and use all her accounts. He then had control of her through all these avenues. He refused to pay bills and told her she was an idiot when she tried to get them paid. As a result, a lot of debt had accumulated in her name.

[16] When she was pregnant with [Hayley], the mother admitted she struggled with her own temper. On one occasion she became infuriated with the father and punched him, and he punched her back. She confirmed he had never started any physical violence. Since giving birth to [Hayley], the mother claimed she had not lost her temper.

[17] In applying for the protection order, the mother wanted to regain sole possession of her home. She was terrified by the father's presence and said, "*he had an extreme hold over me*". She did not know how to break this, apart from applying for the protection order.

[18] The mother also applied for an occupation and ancillary furniture order, but those applications were not granted.

[19] No steps were taken by the father to oppose the making of a final protection order and the order became final by operation of law. Although the father was directed to attend an approved stopping violence programme, he did not do so. He was summonsed to Court for non-compliance with the programme direction, but the summons could not be served. The programme direction was cancelled on 26 January 2015.

[20] The mother completed a safety programme in July 2015.

The Current Proceedings under the Care of Children Act 2004

[21] The father said he had been involved in the parenting of [Hayley] and [Frederick] when the parties lived together. When the parties separated, the children remained in the care of the mother. His contact with the twins, at the time he filed his application in September 2018, had been occurring at the hospital almost daily for two to four hours, but had become almost non-existent after the children were discharged from hospital.

[22] He acknowledged there was an existing parenting order in respect of [Hayley] but claimed this order had been made “*after unanswered accusations were made by [Andrea] to the Family Court four years ago*”. The parties had subsequently reconciled. He alleged the mother had apologised for “*some little lies*”. Over time a pattern had emerged of the mother kicking him out when she became “*angry, vengeful and violent*”.

[23] The father made numerous allegations about the mother; they can be summarised as follows:

- The mother had ongoing anger issues and there had been occasions when she had physically harmed [Hayley].
- The mother suffered from depression and this was affecting the children.
- The mother restricted his time with the children and they were being deprived of contact with him.
- The mother had misrepresented matters to lawyer for child and to the police.
- The mother had been physically violent to him.
- The mother suffered from insomnia and was not coping with the care of the twins.

[24] The father acknowledged the relationship between the parties had been difficult and accepted he had not always given the mother what she wanted or put her first. He estimated the parties had separated about 15 times, sometimes just for a week or so and at other times for a couple of months. A point had now been reached where this could not continue. Attempts at counselling had been unsuccessful.

[25] While the father accepted some responsibility for the breakdown in the relationship, he considered the mother was more responsible for the problems that

arose in the relationship. He maintained she had personal issues that had emerged in counselling, but she would not address them. Instead she had restricted his contact with the children. She had named the twins without any consultation and had blocked him totally out of the pregnancy of the twins. She had influenced [Hayley] adversely and had alleged when he travelled with [Hayley] it was unsafe.

[26] The father emphasised concerns about alleged anger issues affecting the mother, claiming she lashed out and was violent at times. He referred to examples where he claimed the mother had been violent. He noted particularly an incident at a birthday celebration for [Hayley]. An argument developed. The mother hit him and pushed him causing him to fall onto the birthday cake she had spent hours preparing. He alleged she then stabbed him in the face with the knife she was using to put icing on the cake, drawing blood on his face and he produced a photograph of the injury. On other occasions she hit out at him, screaming and swearing profusely and was being verbally abusive.

[27] The mother disputed the father's allegations about her being violent. She denied specifically hitting the children in anger. She conceded there had been occasions when she had smacked [Hayley] and claimed the father had also smacked her. She disputed suggestions she had mental health issues. She denied she was depriving the father of having contact with the children and rejected suggestions she was jealous of the relationships the children had with him. She noted while he was a "*fun parent*", he was not involved in daily routines relating to the care of the children; when they were with him he did not have any normal routines.

[28] There had been an incident in 2016 where [Hayley] had scratched the mother on her face and had refused to stop doing this when asked to do so. The mother reached out to do the same to her and accidentally scratched her harder than she intended as [Hayley] moved her head.

[29] The mother confirmed there had been an incident on [Hayley]'s 4th birthday. She had become very stressed, preparing for [Hayley]'s birthday and trying to cope with the care of the other children. The previous night the father had been at the home and was to help her get ready for the party the following day. An argument occurred,

and he left the home. He did not return until the following morning when the mother was stressed out. When he returned, he began harassing her and was critical about her behaviour the night before. She asked him to leave but he refused to do so and mocked her. She tried to get him to go and pushed him out of the kitchen, but he pushed her back. She then shoved him, and he fell on to the cake and ruined it. At the time he thought this was funny and laughed at what he had done. She was upset and cried over what had happened. She did not recall injuring him with the knife. The knife in question was a blunt butter knife and she could not see how it could have left the injury he claimed was shown in the photo.

[30] The mother expressed concern the father would annoy and harass her. She found it difficult to make any arrangements with him; often he made arrangements at the last minute and then would change them. In June 2018 she instructed her lawyer to write to the father to explore mediation, but he did not respond. In that letter she expressed a wish for there to be more stability and routine about the children's contact. She was prepared to participate in Family Dispute Resolution and she put forward proposals for the father to have contact at defined times on Wednesdays and Saturdays. At the time she was pregnant with the twins and wanted to have care arrangements resolved and a clear understanding reached over changeovers.

[31] The mother noted the father had initially refused to sign the birth registration papers for [Hayley] and [Frederick] and at one stage wanted [Frederick] to be called "[deleted]". The father denied that allegation.

[32] While the father alleged the mother had mental health issues, she maintained her mental health was "*generally pretty good*". At times she had received assistance from agencies in the care of the children.

[33] The mother maintained the father continued to be psychologically abusive to her. She alleged he was an inconsistent and unreliable partner. He was not supportive financially, emotionally, physically or psychologically while they were in a relationship. When the parties were living together, she maintained the care of the children was not shared equally.

[34] The mother refuted the father's claims about making contact difficult. He had to collect the children and take them to the beach or park or his mother's home because he did not have an income and did not want the financial commitment of a home. She was always happy for contact to take place at his mother's home because she knew the paternal grandmother would supervise and support his care of the children.

[35] The mother recounted the difficulties that arose over medical treatment for [Rosa] after she was born. She alleged medical staff were concerned about the attitude of the father. The father rejected these allegations and claimed medical staff appeared to have a pre-conceived notion about him based on what the mother had told them.

[36] The father acknowledged there was an issue over the first names of the twins. There was also a dispute between the parties as to the correct pronunciation of [Frederick]'s first name. He disputed the mother's concerns about his lack of routines for the children and sleeping arrangements for the twins. Although he did not have bedding for the twins, he described how he would take them for a drive and they would go to sleep in their car seats.

[37] Communication between the parties remained problematic. During the Covid-19 lockdown periods, the father considered the mother had been obstructive in dictating times when he was to contact the children. He described how on occasions he would call, but there would be no response. He maintained the mother continued to abuse him psychologically and repeated his concerns about her hitting the children.

[38] The father acknowledged he had different beliefs from the majority of people and had a particular interest in legal issues. Issues had arisen between the parties over the use of medication and nutrition of the children.

[39] The father was living currently in an emergency accommodation arrangement; he was occupying a unit at a motel which contained a Queen bed and a single bed. He had applied for accommodation enabling him to have all the children live with him when in his care, but that application was still to be resolved.

[40] Despite the disagreements between the parties, the father remained hopeful matters could be resolved by agreement.

[41] The mother expressed concern about the issues relating to the names of the twins not being resolved. She was concerned particularly about the father calling the twins by different first names and the confusion this caused not only for the twins, but also for [Hayley] and [Frederick].

[42] The mother retained concerns about the father's accommodation being unsuitable for the children. She was particularly concerned that the father had not provided porta-cots for the twins. She considered his routine of transporting the children in a motor vehicle while they slept in their car seats was unsatisfactory and they did not get enough sleep. Although the father wanted to have the older children overnight, she did not think this was appropriate given his current accommodation arrangements.

[43] Informal contact arrangements had been operating for some time. On Wednesdays the father would collect the children at approximately 8.20 am – 8.30 am and deliver [Hayley] to school. All the children would be returned to the mother at about 6.00 pm. On Sundays he would have all the children in his care from 8.30 am until 6.00 pm. The mother maintained, however, there were often arguments about contact arrangements, particularly when the father did not comply with changeover requirements from time to time. She also had concerns about the safety of the children when travelling in motor vehicles with the father, arising from how he drove the vehicles.

[44] Communication continued to be problematic. The mother described how she was troubled by the strange behaviour and unusual beliefs of the father. On occasions the father had made unannounced visits to [Frederick] at his daycare centre and this caused disruption to care arrangements. There were ongoing issues over the children's diet; the mother expressed concern about the father's "*vegan beliefs*".

[45] The mother's application for relocation to [a town in the North Island] had been prompted by a deterioration in the maternal grandmother's health. She had developed

a medical condition that would deteriorate over time and she would need ongoing support and care.

Section 132 Report - 20 December 2018

[46] A comprehensive s 132 report 20 December 2018 was completed. The report was to assess and comment on the parties' living arrangements and suitability in terms of the children's care and whether there were any care and protection concerns for the children in either parent's care. The report was also to address any criminal and family violence history relating to the parties.

[47] The reportwriter recorded the extensive views of each party about the other and the allegations as set out in the affidavit evidence filed by each party.

[48] The reportwriter interviewed [the father's daughter from his previous relationship]. Generally, [the daughter] was critical of the father's behaviour and spoke positively about the mother. The reportwriter also set out the comments of a number of other parties she interviewed. These parties did not complete affidavit evidence. At pages 8 and 9 the reportwriter made the following observations about the father:

In my view I feel it was inappropriate of [Mr Bellamy] to make an application to the Family Court for shared care of [Hayley] and [Frederick] when he had no accommodation or means to provide for the children's needs. In the event that [Mr Bellamy] does obtain more permanent accommodation, he will first need to be able to furnish his property before one could consider him having the children there. It appears [Mr Bellamy] has never managed a household on his own and I have some questions about his means and ability to do so.

The information that I have obtained has raised some concerns about the children's safety in [Mr Bellamy]'s care. I am concerned in particular about allegations around [Mr Bellamy]'s dangerous driving, drinking alcohol while driving and appearing under the influence when he has had [his daughter from a previous relationship] in his car. Information obtained from New Zealand Police has raised concern there is a current warrant for [Mr Bellamy]'s arrest for a number of unpaid fines relating to driving offences.

It appears that [Mr Bellamy] has never had any routine or stability in his own adult life and therefore I have questions around his capacity to provide these things for the children. [Mr Bellamy] has never cared for any of the children for any significant length of time and I am worried about how he will manage the day to day care of the children on his own in a manner that is consistent and meets the children's needs.

I have some worries about [Mr Bellamy]'s somewhat relaxed views on parenting and although I do not believe [Mr Bellamy] would ever intentionally harm his children, I am concerned about the possibility of the children having an accident through [Mr Bellamy] being careless or allowing his children to engage in activities that might be risky.

There is no doubt that [Mr Bellamy] has a unique outlook on life and some unusual views. Through the course of this assessment I have had some queries around whether [Mr Bellamy] may have some form of mental health issue and I am of the opinion this is an area that requires further assessment.

The twins' medical records provided in [Ms Holland]'s affidavit indicate that [Mr Bellamy] may have some opinions around things like antibiotics and this raises some concern for me about [Mr Bellamy] being able to respond appropriately to the children's health needs.

It is clear from the information I have obtained that the children love their father and enjoy spending time with him. There is also no doubt [Mr Bellamy] has some positive parenting attributes that his children really benefit from. That said, it is paramount that the children are kept safe and I do not feel confident about this issue while they are in [Mr Bellamy]'s care or assured that the children's needs would be consistently met over any significant length of time.

I believe the Court may be assisted by appointing a psychologist to undertake a more in-depth assessment around the nature and quality of the children's relationship with [Mr Bellamy], his parenting style and how this might impact on the children, any concerns about [Mr Bellamy]'s mental health and its impact on the children, [Mr Bellamy]'s ability to keep his children safe and meet their needs and what would be the most suitable care or contact arrangements for the children with [Mr Bellamy].

[49] At page 14, the reportwriter made the following observations about the mother:

It is my assessment there are no care and protection concern for the children in [Ms Holland]'s care.

The information I have obtained from members of both sides of the family as well as professionals all spoke positively about [Ms Holland]'s care of the children. There is no doubt that it is very difficult for [Ms Holland] to parent four children under the age of 5 on her own, but it seems overall, she is managing this well.

[Ms Holland] has acknowledged she has on occasion acted violently towards [Mr Bellamy]. Ms [G Holland] has also told me she has raised concerns with [Ms Holland] about the need for her to manage her anger more appropriately. Ms [G Holland] has not had any concerns around this since [Ms Holland] has been separated from [Mr Bellamy]. I am of the view there is no independent evidence to support that [Ms Holland] has a serious issue with her anger that she needs to address.

[Ms Holland] is currently engaged with [Dr A] in Family Start and has the support of a Work and Income funded support worker to assist her with the care of the children. [Ms Holland] has completed an Incredible Years

parenting programme and does have support from [the father's daughter from his previous relationship] as well as [Mr Bellamy]'s family. I do not believe that [Ms Holland] requires any additional support to care for the children, but believe she has the ability and means to access this should she require it.

[50] In respect to the criminal and family violence histories for the parties, the report recorded:

[Mr Bellamy]

Attached and marked {"A"} is a copy of [Mr Bellamy]'s criminal and family violence history.

This information shows that [Mr Bellamy] has three criminal convictions in 1984, 1994 and 2009 for operating a vehicle carelessly.

On 16 October 2018 the Court issued a warrant [Mr Bellamy]'s arrest for unpaid fines on a variety of different driving offences.

[Mr Bellamy] was given notice to vacate and was trespassed from a [Lower Hutt] property on 30 January 2017.

The armed defenders squad were called to manage [Mr Bellamy] in 2011 when the property he owned went up for a mortgagee auction.

[Mr Bellamy] has been involved in seven incidents of family harm between the periods of May 2006 to January 2017. [Mr Bellamy] is recorded as the offender in one of these family harm incidents, the suspect in two, the clear offender in two and a subject of in two of these family harm incidents.

[Ms Holland]

Attached and marked {"B"} is a copy of [Ms Holland]'s criminal and family violence history.

[Ms Holland] has no criminal convictions.

[Ms Holland] has been involved in five incidents of family harm between the periods October 2014 to January 2017. All of these family harm incidents involved [Mr Bellamy]. [Ms Holland] has never been recorded as the offender in any of these incidents of family harm.

Report of Lawyer for Child - 3 October 2018

[51] Mr Robinson had completed a report 3 October 2018. He noted then the father's contact with the children did not have any set pattern and was arranged on an ad hoc basis.

[52] Mr Robinson did interview [Hayley] the day before her fifth birthday. She advised she saw the father "*lots of the time, too much*" and "*it had been too much for*

a while". She was unable to say why it was too much. She then commented that the amount of time she was currently spending with the father was "*good*".

[53] Given the ages of the other children, Mr Robinson did not seek to obtain their views.

[54] Mr Robinson observed while the father's application suggested he was seeking day to day care of the children, he had also put forward a proposal for contact. He understood the father acknowledged that until he obtained suitable accommodation, he was not in a position to have the children in his day to day care. In the meantime, arrangements for contact between the children and the father needed to be more structured.

The Law

[55] Section 4 of the Act stipulates the welfare and best interests of a child in his or her particular circumstances must be the first and paramount consideration in any proceedings under the Act involving day-to-day care, contact or guardianship issues relating to a child. The Court must take into account the principle that decision affecting a child should be made and implemented within a timeframe appropriate to the child's sense of time and the principles in s 5.

[56] The principles relating to a child's welfare and best interests are set out s 5:

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.

[57] Where a protection order has been made against a parent, the Court must have regard to s 5A:

5A Family violence to be taken into account

- (1) This section applies if—
 - (a) an application is made to the court for—
 - (i) a guardianship order under [section 19](#) or [27](#); or
 - (ii) a direction under [section 46R](#) in relation to a guardianship dispute; or
 - (iii) a parenting order under [section 48](#) (whether an interim parenting order or a final parenting order); or
 - (iv) a variation of a parenting order, under [section 56](#); and
 - (b) 1 or both of the following kinds of orders made under [section 79](#) of the Family Violence Act 2018 is or are, or at any time has or have been, in force against 1 or more parties to the application:
 - (i) a temporary protection order:
 - (ii) a final protection order.
- (2) In taking into account the principle in [section 5\(a\)](#), the court must have regard in particular to the following matters:
 - (a) whether a temporary protection order, or final protection order, is still in force:
 - (b) the circumstances in which that order was made:
 - (c) any written reasons, given by the Judge who made that order, for that Judge's decision to make that order.
- (3) In taking into account the principle in [section 5\(a\)](#), the court must, if practicable, have regard in particular to—

- (a) all relevant convictions (if any), of 1 or more parties to the application, for an offence against [section 112](#) of the Family Violence Act 2018 (breaching a protection order or related property order), or for any other family violence offence:
- (b) all relevant safety concerns (if any) that an assessor or a service provider has notified or advised under [section 185](#) or [204](#) of the Family Violence Act 2018.

(4) In this section, **family violence offence** means an offence—

- (a) against any enactment (including the Family Violence Act 2018); and
- (b) involving family violence (as defined in [section 9](#) of that Act).

[58] Section 6 provides where there are proceedings involving issues relating to the guardianship or contact with the child, then the child must be given reasonable opportunities to express views on matters affecting the child. Any views the child expresses, either directly or through a representative must be taken into account.

[59] Section 16 sets out provisions relating to exercise of guardianship, in particular the duties, powers, rights and responsibilities of a guardian. Section 16(5) stipulates in exercise of the duties, powers, rights and responsibilities of a guardian in relation to a child, a guardian of the child must act jointly with any other guardians of the child and must consult wherever practicable with the aim of securing agreement.

[60] The duties, powers, rights and responsibilities of a guardian relate to:

- (a) Providing day to day care of a child, contributing to the child's intellectual, emotional, physical, social, cultural and other personal development; and
- (b) Determining for, or with helping a child to determine questions about important matters affecting the child. Those important matters include the child's place of residence, medical treatment, education, culture, language and religious denomination and practice.

The Hearing – Analysis and Findings

[61] After hearing and seeing the parties give their evidence, I am satisfied there is a significant issue relating to the breakdown in their communication.

[62] The relationship between the parties was volatile and dysfunctional. They separated on numerous occasions. Inevitably as this relationship evolved, communication between the parties became increasingly problematic.

[63] As noted, when reviewing the affidavit evidence, the parties made numerous allegations against each other. The father emphasised his concerns about the mother's anger and the risk this posed to the safety of the children. When I considered this allegation, I noted the observations noted by the s 132 report writer that she found there were no care and protection issues for the children when in the care of the mother. She confirmed her views at the hearing. I was not satisfied on the evidence the mother was violent as alleged by the father.

[64] When the mother gave her evidence, she described how she found it very difficult to communicate with the father given his personality and his beliefs. The father acknowledged that people found him to be "*quirky*" and that he had beliefs not shared by others. I find these characteristics of the father's personality have contributed to ongoing communication difficulties. It became evident the mother found she could not reason with the father when disagreements arose; these disagreements would end up being circular in nature and would go nowhere. Over time it appeared the mother became frustrated because of the attitude and position adopted by the father when she tried to discuss matters with him relating to their relationship and the children.

[65] In 2014, the mother alleged the father had subjected her to psychological abuse in the way he interacted with her. The father denied these allegations, but I note he did not take any steps to oppose the making of a final protection order.

[66] When I reviewed the father's evidence, I noted he perceives the mother as using the protection order in order to control his contact with the children and to dictate the terms of such contact. It was evident he resented the existence of the protection

order and saw no need for it to be continued. He referred to a letter the mother had written in February 2016 in respect of charges he was facing in the District Court relating to breaches of the Probation order. It appears the charges were subsequently withdrawn. The mother indicated in that letter she did not consider the protection order was the correct path of action in addressing relationship issues. She recorded the father was not a violent man. This has been made clear in her affidavit filed in the protection proceedings and in the very minor nature of the offences he had been charged with. She described the father as being a loving father and noted they were expecting another baby together in May 2016. It was her wish the Court forgive them for their mistakes and accept their apologies for the time and resources taken up in the process; it was her wish the protection order be discharged.

[67] The mother explained at the time she wrote that letter, she had done so under pressure from the father and his family. She now regretted writing such a letter and wasting the time of the police. I am satisfied after hearing the mother give her evidence on this matter she was under a lot of stress at the time. It became clear as time went by, especially after the birth of the twins, problems continued in the communication between the parties and their “*on / off*” relationship continued.

[68] I find there is an ongoing tension between the parties arising out of care arrangements for the children. The father appears to be resistant to having care arrangements clearly defined and would like a more relaxed informal arrangement. I do not consider that type of arrangement is achievable in this case given the fixed negative perceptions the parties have of each other and their inability at this stage to communicate in a constructive way as the guardians of the children.

[69] I was also troubled by the views of the father that he wanted matters to be resolved “*in peace*” by agreement. In assessing his views on this issue, I noted the mother had become frustrated over time because of his alleged inability to comply with arrangements and wanting to change them when it suited him. The evidence confirmed there had been numerous occasions when arguments had arisen over the father not complying with contact arrangements or changing them at short notice.

[70] Sadly, a point has been reached where the mother has become completely frustrated at trying to reason with the father because of his attitudes, beliefs and unwillingness to resolve matters. This is well illustrated by the issue that has arisen over the first names of the twins and the fact the parties have still not registered their births. The father explained in his affidavit evidence and at the hearing how he had issues relating to the registration of the children's names and the legalities associated with the naming of children. After hearing him give his evidence on this matter, I have to say I have no understanding of what his concerns are; they did not make any sense to me.

[71] A situation now exists where the father is calling the twins by different first names to those given to the children by the mother. She described in her evidence how she had tried to get this matter resolved, but the father would not make a decision. As matters stand, the impasse over the naming of the children is prejudicial to their welfare and best interests. As they grow older, their identity must be enhanced as provided in the principle set out in s 5(f).

[72] I found the father's approach to resolving the issue of the children's names unrealistic. He set out in his affidavit evidence his proposal for resolving the issue by requiring the mother to give an answer to resolve the matter. I found such an approach unhelpful because he is well aware of the views of the mother and the reasons why she chose to name the children when she could not get any response from him. This "*standoff*" over finalising the names of the children and registering their births is indicative of the dysfunctional relationship between the parties and the breakdown of their communication.

[73] When I assess safety issues in the context of s 5A, I am satisfied the father would not intentionally harm the children, but I have reservations about his parenting of the children and the fact that he may not fully appreciate risks to their safety through not having appropriate boundaries in place relating to their care. There is no doubt the father enjoys the time with the children. The mother acknowledged the children do enjoy spending time with him. I am concerned however, the children are being exposed to ongoing conflict between their parents when disagreements arise over

contact arrangements and issues relating to the registration of the twins' births and their names.

[74] The father took no steps to oppose the making of a final protection order. The mother alleged he has subjected her to psychological abuse. I find this psychological abuse continues to arise intermittently when there are disagreements between the parties. Until the parties resolve communication issues, the potential for ongoing allegations of psychological abuse will remain.

[75] The mother has expressed concerns for the safety of the children when being transported by the father. Her concerns are understandable given the father's history of traffic convictions. She is also concerned about the children being psychologically harmed over issues relating to the names of the children. That is a matter that will have to be resolved by the Court if the parties do not resolve that issue themselves and I will refer to that issue later in this judgment.

[76] The father does not earn a regular income. He has described his philosophy about earning an income and has been reluctant to apply for a benefit. He does not have any permanent accommodation. The mother maintains the father has had ample time to set up accommodation to enable him to have overnight contact with the children, but he has chosen not to do so. The father described how he has applied through the Ministry of Social Development for rental accommodation, but I found his evidence about this application vague. He seemed to be under the impression he would have no difficulty getting rental accommodation and maintained he needed an order enabling him to have care of the children to support the application. He observed he was confronted with a "*catch-22*" situation in that if he did not have such an order that would impede his application for rental accommodation. On that point he advised he would need care of the two older children for at least 43% of the nights to qualify for rental accommodation.

[77] Concerns were expressed in the s 132 report about the father's ability to provide appropriate accommodation and be in a financial position to support the children. I share those concerns.

[78] Presently the father acknowledged he could not have all four children in his care overnight. He proposed that he have the two older children stay with him overnight. The mother believed his proposal for overnight accommodation was not in the best interests of the children. She emphasised the importance of the children having regular bedtime routines. She was concerned the father's proposal for overnight contact would disrupt these routines. The father maintained he would have no problem with ensuring the older children went to bed at an appropriate time, even if this meant the lights would be switched off and he would remain sitting in the dark as it were, until he went to bed. He explained in that situation, he would be able to occupy himself by working on his computer or using lighting in such a way as not to disturb the sleep of the children.

[79] The mother remained concerned the father had not yet obtained porta-cots for the twins. She did not support the father's routines whereby he would take the twins for a drive so they would fall asleep in their car seats. On those occasions they would sleep for approximately 45 minutes. She felt these sleep periods were not long enough; when the twins were in her care and had afternoon naps, they would sleep for up to two to two and a half hours. I find the mother's concerns about the sleeping arrangements for the twins are reasonable. It is incumbent on the father to provide porta-cots for the children rather than rely on transporting them in a motor vehicle so they can sleep in their car seats.

[80] When I have regard to the principles in s 5(b), (c) and (d), I find these issues need to be further assessed given the dysfunctional relationship between the parents. I find the mother is a capable and committed caregiver of the children. I am also satisfied the father cares very much for the children and does want to be actively involved in their upbringing. This will not occur while he maintains his belief systems and is not prepared to resolve issues of guardianship such as naming and registering the births of the twins and being committed to resolve communication issues.

[81] Given the father's current accommodation, the concerns about his financial ability to care for the children and the communication issues, I consider at this stage the Court must define the periods of contact. Given the limitations arising from the father's accommodation, I have determined it will be possible for him to have

overnight contact with [Hayley] and [Frederick] on a fortnightly basis on Saturday nights. The parties have been operating an informal contact arrangement whereby he has the children on Wednesdays and Sundays and I consider that arrangement can continue to operate subject to conditions I will attach to the parenting orders and subject to provision for overnight contact on a fortnightly basis for [Hayley] and [Frederick].

[82] In reaching this decision about an interim contact arrangement, I have considered the safety issues raised by the mother. I note Mr Robinson considered there were no safety issues preventing the older children having overnight contact with the father and I am satisfied on the evidence that is the case.

[83] As I indicated at the outset of this judgment, I consider a s 133 report is necessary to enable the Court to resolve issues relating to guardianship matters pertaining to relocation and the names of the children and their long-term care arrangements. 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.

Orders and Directions

[84] I make the following interim parenting orders:

1. The mother is to have the day-to-day care of the children.
2. The father is to have contact with the children on the terms and conditions as follows:
 - (a) On Wednesday of each week he is to uplift the children between 8.20 am – 8.30 am and to return the children to the mother by 6.00 pm.

- (b) On Sundays starting from 5 July 2020 from 9.00 am until 6.00 pm.
 - (c) On alternating fortnights starting from 11 – 12 July 2020, [Hayley] and [Frederick] are to have overnight contact with the father from 4.00 pm on Saturday until 6.00 pm on Sunday. The twin children will continue to have contact on Sundays as provided in Order 2(a).
3. The following conditions are to be attached to the parenting orders:
- (a) When the father has contact with [Naomi] and [Rosa], he is to provide porta-cots for each of them to enable them to have a sleep while in his care.
 - (b) The children are not to be subjected to any form of physical discipline.
 - (c) The father will at all times when operating a motor vehicle, comply with road transport law and regulations; and in particular relating to the transportation of the children and will not drive in such a manner so as to create any safety issues for the children.
 - (d) All contact arrangements are to be confirmed by text 48 hours before the start of any contact period.
 - (e) The father will be responsible for all transport arrangements to implement contact and he is to comply strictly with collection and return times as provided in the orders. He is not to enter the mother's property.
 - (f) Communication between the parties is to be by either texts or email.

[85] As I indicated at the hearing, the issues relating to the registration of the births of [Naomi] and [Rosa] and their first names must be resolved. Unless the parties resolve those issues within 21 days of the delivery of this judgment, I request Mr Robinson to file and serve an application under s 46R to resolve these matters. In such event the file is to be referred to a Family Court Judge for such directions as required to have the application set down for hearing.

[86] I request Mr Robinson, in consultation with the parties and counsel to prepare a brief for a s 133 psychological report and to submit that brief for approval to the Court within 14 days.

[87] If the parties are prepared to undertake s 46G counselling, then I direct s 46C is authorised and I approve 12 sessions.

[88] Leave is reserved to apply for further directions on 72 hours notice.

A P Walsh
Family Court Judge

Signed at am/pm this day of 2020