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IN THE FAMILY COURT
AT AUCKLAND

I TE KŌTI WHĀNAU
KI TĀMAKI MAKAURAU

FAM-2020-004-000250
[2021] NZFC 1189

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[CHARLES BARKER] [MARTIN BARKER] Applicants
AND	[AMANDA HARRIS] Respondent

Hearing: 10 December 2020

Appearances: C Townsend for the Applicants
C Webster for the Respondent
R Collis as Lawyer for the Child

Judgment: 12 February 2021

RESERVED JUDGMENT OF JUDGE T H DRUCE
[Reasons for orders made 10 December 2020]

Introduction

[1] [Lily Barker] was born in Australia on [date deleted] 2015. Her mother, [Amanda Harris], 39, and her father, [Martin Barker], 36, were in a relationship in Australia from early 2014 until early 2017. The mother returned to live in Auckland

on or about [date deleted] 2017 bringing [Lily] with her. The father consented to [Lily]'s relocation on the basis that [Lily] and the mother were to be supported in Auckland by his family and he would visit his daughter every four weeks or so in Auckland.

[2] [Lily] and her mother initially lived with the father's mother, [Fay Barker], in Auckland for some months. During this time, the mother travelled [overseas] leaving [Lily] in [Fay Barker]'s care. During this period, Ms [Barker] permitted the maternal grandmother to spend some time with [Lily] during a visit by the grandmother to Auckland. On being informed of this visit by [Fay Barker] following her return from [overseas], the mother was upset and obtained rental accommodation for herself and [Lily]. She has had no contact with her parents for some years and it appears the maternal grandparents had never previously met [Lily]. However, [Lily] continued to have contact with both her paternal grandparents including the paternal grandfather's current wife, [Susan Barker], at least monthly.

[3] The mother was in a relationship with a Mr [Kevin Ridge] from November 2018 until mid-September 2019. This relationship was associated with significant conflict and distress. A s 132 social work report says that by February 2020 there had been eight family violence incidences brought to the police's attention. In six of these, Ms [Harris] was recorded as the primary aggressor. There is medical evidence of the mother likely suffering a broken rib in [dates deleted] 2019. While the mother gave varying (and unlikely) reasons for this injury, there is a clear possibility that the injury was caused by her partner's physical violence.

[4] Ms [Harris] demonstrated highly distressed behaviours at, and immediately after, the couple's breakup. These led to Mr [Ridge] having her served with a trespass notice, the police issuing her with a public safety order, and Mr [Ridge] being granted a temporary protection order on 27 November 2019. Ms [Harris] was served on 01 December 2019, but took no steps to defend the application and a final protection order was made by operation of law on 28 February 2020.

[5] During this period, Ms [Harris] was in close touch with her general practitioner. She consented to her GP's records being made available to Dr Patrick Daniels, a

psychiatrist, who has provided the court with his expert opinion evidence on Ms [Harris]'s mental health status as at 30 June 2020. In October 2019, the GP noted Ms [Harris] to be "agitated, chatty ++, with persecutory beliefs" but not displaying a full psychosis. She was initially treated with [details deleted] to better regulate her mood and aid sleeping.

[6] Ms [Harris]'s family violence behaviours took place at times in the presence of Mr [Ridge]'s three school aged children and [Lily]. Her post-separation harassment of him included attempts to talk to his children and one occasion where she spoke directly to the youngest child aged 9 reportedly speaking critically of her father. Mr [Ridge] reports his children being scared of her and says he decided it was unsafe for his children to remain in his care resulting in his suspending the shared care agreement he had with the children's mother for a period.

[7] Mr [Ridge] contacted [Lily]'s father in late 2019 and communicated his concerns about Ms [Harris]'s behaviour. This included information Ms [Harris] had twice breached the protection order and been charged criminally, and that she was believed to be abusing drugs. Understandably, the father's concerns inevitably escalated. He filed a "missing persons report" in late 2019 after being told the mother had disappeared with [Lily]. The police located both mother and daughter a week later at the [campground]. Mr [Ridge] says that he was told that she had been banned for life from the campground due to her "agitated and disruptive behaviour".

[8] The father and his family members then experienced reduced contact with [Lily] from January 2020 onwards. The father became increasingly concerned that Ms [Harris] was "alienating herself" (and [Lily]) from both his and the maternal families. He also learnt on or about 19 March 2020 that the mother had been arrested for a third time and [Lily] had been again placed in his family's care.

[9] His evidence is that he booked to travel to New Zealand and see a lawyer in mid-March 2020 but that COVID-19 restrictions intervened. His father then initiated the present proceedings, filing without notice applications on 23 March 2020. Leave to apply was granted, an interim parenting order made in his favour and this was

supported by the issuing of a warrant. The Duty Judge, Judge Duggan, identified various reasons for making the interim orders:

- The applicant appeared to be currently using methamphetamine;
- The applicant was behaving erratically and out of character;
- [Lily], at the age of four, was "very vulnerable";
- The application was supported by the father, Oranga Tamariki, and the police;
- The applicant and his wife and the paternal grandmother were all familiar with [Lily]'s needs and were both "set up to care for her on an interim basis".

[10] The interim order made provided for the mother to have supervised contact at a supervised contact centre or with a person approved either by lawyer for child or this court.

The proceedings to date

[11] On 09 April, Ms [Harris] filed a without notice s 56 application seeking return of [Lily]'s care to her. This was placed on notice. On mid-April 2020, the father filed his own application for day-to-day care along with a s 46R application seeking [Lily]'s relocation to Sydney, Australia, to live with him.

[12] On 30 April 2020, Judge Burns set the interim matters down for an urgent half-day hearing.

[13] On 02 July 2020, the urgent hearing was vacated by consent and an interim parenting order was also made by consent providing for [Lily]'s day-to-day care to continue with her paternal grandfather and for her to have a minimum of eight hours supervised contact per fortnight with her mother made up of twice weekly visits of two hours each. A s 132 report was also called for and a further directions conference was directed to be held once the s 132 report was available. An interim report was

filed, date 25 August 2020, and a further directions conference was held on 02 September. Judge de Jong directed a half-day, submissions only, hearing "to determine whether or not [Lily] is returned to her mother's care pending a substantive hearing". This direction was made after consideration of other options including "a hearing to determine s 5(a) safety issues and interim care" and a full substantive hearing "to address all applications currently before the court".

[14] Faced with the view that either of these other options would require a three to four-day hearing, the record shows that counsel for the mother opted for a submissions only hearing "to primarily address whether [Lily] is returned to her mother's care in the interim".

The law

[15] The principles and provisions of ss 4-6 of the Care of Children Act 2004 apply. [Lily] was placed in her paternal grandfather's care due to concerns as to her safety in her mother's care. It is plain that the court has to address those safety concerns and make findings before permitting and supporting [Lily] to return to her mother's care.

[16] My conundrum, as the hearing Judge on 10 December 2020, was how to make safety findings in accordance with s 5(a) and s 5A (given that the mother remains subject to a final protection order) without the parties' extensive evidence (contained in two bundles of documents) being subject to test by way of cross-examination.

[17] The mother's evidence on many points is starkly in contrast to all other family members (both paternal and maternal). The polarity in the evidence might be summarised as follows. The mother sees herself as an unfairly treated, good mother who is drug free, able to maintain her work and life commitments and defending (until very recently) the one remaining representative charge of breach of protection order. She was earlier charged with burglary of Mr [Ridge]'s business premises but for reasons unknown, this charge was withdrawn.

[18] The other parties (and other witnesses such as the mother's parents) consider Ms [Harris] to be unstable due to compromised mental health and possible drug abuse

and at high risk of not supporting [Lily] having any continuing relationship with her extended family members if returned to her mother's care. In addition, they point to the mother's wilful breaches of her supervision contract with aDapt (an accredited supervised contact agency) resulting in aDapt withdrawing their services and recommending contact be limited to a supervised contact centre. They also point to the mother threatening to uplift [Lily] from her grandfather's care and to her intrusive and aggressive behaviour at Madill's Farm Park on 18 November where she allegedly tried to remove [Lily] from her step-grandmother's care at the end of [Lily]'s attendance at a children's sports event.

[19] Ms Webster submits that it is open to the court to order [Lily]'s return to her mother's day-to-day care if there is "independent" evidence that shows that [Lily] will not be placed at risk by her return. Ms Webster relies on various sources of such evidence:

(a) Hair strand tests conducted on samples taken from the mother in May and June 2020, both containing negative findings;

(b) Dr Daniels' psychiatric opinion that the mother's "trauma and stressor-related disorder (DSM-5)" and her possible "fluctuating paranoid disorder" do not directly adversely impact on her ability to safely parent [Lily];

(c) The mother's recent change of plea to guilty on the one representative charge of breach of protection order (on which she hopes to be granted a s 106 discharge);

(d) The findings of the s 132 report;

(e) Positive aspects of the aDapt reports as to [Lily]'s enjoyment of her time with her mother and her mother's positive "core parenting skills";

(f) The steps the mother has been taking in response to Dr Daniels' opinion including her continuing use of [details deleted], monthly attendances

on her GP, attending a Living Without Violence course, and making an ACC sensitive claim for therapy as a victim of sexual abuse.

[20] I accept that the court is usually greatly assisted by having expert and/or "independent" factual evidence, but I do not accept that, as a matter of law, this permits the court to ignore the parties' and their witnesses' admissible evidence as to the mother's behaviour and the risks that may arise. Further, there is the obvious point as to what evidence or information the independent and/or expert witnesses have had access to. This proves to be important in assessing Dr Daniels' opinion evidence.

[21] I have therefore approached the task having read all the relevant evidence before the court and indeed I have re-read the evidence prior to issuing this judgment. If, on the totality of the evidence there is a clear and compelling case, beyond reasonable argument to the contrary, that the safety concerns that underpinned the court's earlier decision to remove [Lily] from her mother's care have clearly resolved, then the court might order [Lily]'s prompt return to her mother's care, but I am alive to the serious procedural arguments to the contrary and these issues have not been subject to full argument.

[22] I keep in mind that the welfare and best interests of [Lily] in her particular circumstances must be the first and paramount consideration and that the s 5 principles must be taken into account having regard to their relevance to [Lily]'s circumstances (all appear relevant) and that [Lily]'s views must be taken into account. Finally, s 5A requires this court to have regard to family violence of any party to the proceedings where a temporary or final protection order has been made.

Findings

[23] I now address the safety and welfare issues.

Substance abuse

[24] Ms [Harris] has filed documents evidencing two "clear" hair strand test results for samples taken on 04 May and 02 June 2020. Both tests were for 3.81 centimetres of hair and were conducted by Omega Laboratories. At least two questions arise:

(a) The 04 May test notes that "Step 4 is incomplete" for which no explanation is given; and

(b) Ms [Harris] elsewhere gives evidence of having tests for two, 3.81 centimetres sections, of hair (which were expected to cover six months' more or less of hair growth) but I am unable to locate any evidence of two separate sections of hair having been analysed. This is usually indicated by the Omega Laboratories referring to Section A and Section B samples.

[25] Further, from the party evidence available and from Dr Daniels' report, there is evidence of Ms [Harris]:

(a) Being found by her parents to have a "P" glass pipe in her clothes drawer on 23 April 2017 (which they photographed);

(b) Being found to have opiates in her blood on 04 August 2020 when being assessed at Auckland Hospital;

(c) Admitting past use of "P" to her GP on 10 October 2019 and also admitting current use of Ritalin supplied "by a friend" at that time;

(d) Admitting use of Zopiclone, a sedative, for sleeping over a six-month period prior to 27 July 2018 and again admitting continuing use of this drug in July 2019. It remains unclear whether this was prescribed medication or not, but its use apparently caused concern to her GP in 2019 due to the drug's addictive qualities;

(e) Drinking alcohol which was noted in two of the family violence incident reports (for 24 May and 31 July 2019);

(f) Saying that the police had located a "P" pipe and (empty) point bag at her home on 18 March 2020. She appears to have no direct knowledge of the police finding these items but expresses the view that if they were found then they would have been "planted" by others. There is no evidence that she has been charged with possession of the pipe;

(g) Observed to have bleached her hair for a short period around the April-May 2019 period, during the period of her hair strand tests. She is described as having then returned to her usual (brown) hair colour. Doubts are raised as to the reliability of the hair strand test results in such circumstances;

(h) Being in some $3,500 arrears in her rent (which the father arranged to be paid through his mother for [Lily]'s benefit).

[26] In assessing this evidence, the hair strand test results are strong evidence that Ms [Harris] was not regularly using any of the substances tested for during the February-May 2020 period. On the other hand, there is significant evidence of a history of some substance use and financial problems and there is some reasonably arguable basis for challenging the reliability of her hair strand test results.

[27] Accordingly, I am not satisfied that there is a clear case beyond reasonable argument that the mother's substance poses no risk to [Lily]'s safety in her mother's care.

Mental health

[28] The mother relies on Dr Patrick Daniels' psychiatric opinion dated 30 June 2020. He records only having access to the mother's affidavit sworn 20 May 2020 (with its significant annexures) but otherwise to none of the other affidavits or reports available to the court. This is of importance as it limited the range of data he had on

which to assess whether Ms [Harris] has been unrealistically fearful/paranoid of others. However, she did give him access to her general GP's medical records covering the period from her return to New Zealand in 2017 to 18 June 2019.

[29] His opinion is that Ms [Harris]'s presentation is most consistent with "Other Trauma and Stressor-Related Disorder (DSM-5)" and that the "corroborative material" (which I read as the GP's medical notes) "raises the possibility of a fluctuating paranoid disorder".

[30] Mr [Ridge] gives detailed evidence of her anxious and paranoid thinking and her variable mood in his 09 June 2020 affidavit filed in support of the father's application. I refer to paragraphs 9-13 in particular. Mr [Martin Barker] also refers to Ms [Harris] having "serious mood swings" during their relationship and that she was "aggressive" about wanting to live in Auckland and pursue another relationship that she had commenced during the last six months of their own relationship.

[31] A further feature of the mother's evidence is that she has made extraordinary allegations against the [Barker] family, for example, that the father in Sydney and his brother in Queenstown are involved in drug trafficking and that the mother and [Fay Barker] were held at gun point in Ms [Barker]'s home by someone claiming that the father's brother owed money for drugs. [Fay Barker] unequivocally replies saying this never happened and that she would have gone to the police if it had. There are numerous other examples of similar serious allegations and (on balance) the weight of evidence as it stands, albeit yet to be tested, indicates that the mother has a propensity to depart from the truth in an attempt to gain advantage and/or hit back psychologically when others "hold their ground" against whatever she may want at the time.

[32] Returning to Dr Daniels' opinion, I do place weight on his opinion that while Ms [Harris]'s mental health presents no direct danger to [Lily]'s safety, her disorder "may adversely impact on her capacity to engage in consistently supportive adult relationships".

[33] I consider this to be the crux of the risk to [Lily] arising from her mother's mental health presentation. All of the evidence currently available points to the mother

being unable to sustain ongoing family relationships and there is the plain risk that if [Lily] was to be returned now to her mother's care, her mother would find it psychologically near impossible to support [Lily] maintaining close relationships with her father and grandparents. I hold this view notwithstanding that her proposals at the hearing included regular contact with the paternal family members.

[34] The mother's anxieties for [Lily]'s safety in the grandparents' care, and her distrust of the grandparents' motives, underpin her problematic behaviours during supervised contact. She clearly breached the rules at aDapt by briefly videoing [Lily] while asking [Lily] questions out of sight of the supervisor. She then copied this record to a third person who in turn brought it to the paternal family's attention. This is detailed at page 7 (of 13) of the aDapt report dated 21 October 2020.

[35] It also appears to underpin her conduct at Madill's Farm Park on 24 November 2020. The mother's evidence is remarkably different to Mrs [Susan Barker]'s account. The mother admits pressing to take [Lily] with her and her transcript from the short video she took just prior to the end of the interaction (see paragraph 32 of the mother's affidavit sworn 04 December 2020) evidences her blaming Mrs [Barker] for "false allegations" and her alleging Mrs [Barker] to be motivated by her own adult needs. It is not disputed that this whole interaction occurred in front of [Lily].

[36] In her affidavit sworn 04 December 2020 at paragraph 34, Ms [Harris] says:

> Since [Lily] was taken from me, I have had time to think about how we got to this place. I realise that my life had begun to unravel and that I have not really ever fully addressed the sexual abuse I suffered as a child. I acknowledge that some of my behaviour gave the [Barker]s cause for concern and I am now finally ready to address the issues that have been responsible for that behaviour and for some of the unwise decisions I have made about men. To that end I have made a "sensitive claim" to ACC and I am now eligible for funded counselling for sexual abuse. The claim has been accepted and I have had the first consultation. However, treatment will not begin until the New Year.

[37] It is plain from her GP's notes that Ms [Harris] was acutely distressed in October 2019. In June 2020, she presented to Dr Daniels in a "mildly anxious mood and circumstantiality with her thought content characterised by a pre-occupation with various family stresses and her belief that she had been set-up so that the police would

find drugs in her property". Dr Daniels notes that "detailed corroborative information is required to determine whether these self-reported beliefs are based on faulty or disordered reasoning. A patient may have fixed false ideas that appear reasonable in one context but when considered more broadly can be seen as suggestive of a paranoid disorder".

[38] Dr Daniels goes on to recommend monthly reviews with her GP alongside a referral back to [(a community mental health service)] for more assertive treatment and support if needed.

[39] In summary, I find that there are distinct grounds for concern as to Ms [Harris]'s mental health functioning that continue notwithstanding that the acute stresses she experienced in late 2019, with the breakup of her relationship with Mr [Ridge], and in 2020 with the removal of [Lily] from her care, are somewhat diminished. While the evidence supports her being successful socially in her adult life and in her employment, nevertheless there is a pattern of vulnerability in her relationships with intimate partners and with close extended family members. Her self-reported history of trauma appears to link with her fearful/paranoid thinking about others when faced with conflict or loss. Her fearfulness of the paternal family and her own parents mean that [Lily] is very clearly at risk of having important family relationships interrupted/severed.

[40] Accordingly, I am not satisfied that there is a clear and compelling case, beyond reasonable argument to the contrary, that the mother's mental health and related cognitive functioning poses no further risk to [Lily]'s psychological welfare and safety.

Family violence and s 5A

[41] Section 5A requires the court when assessing [Lily]'s safety to take into account any temporary or final protection order that is, or has been, enforced against any of the parties. A final protection order remains in force against Ms [Harris] in favour of Mr [Ridge] and Ms [Harris] recently pleaded guilty to a representative charge of breach of protection order. As the family violence proceeding was not

contested by the mother, there is no court judgment to refer to. Judge Wills records brief reasons for making the temporary protection order on 27 November 2019. She notes the evidence that Ms [Harris] punched Mr [Ridge] in the face and her having also threatened him with physical violence. She notes that "the pattern of harassing and threatening behaviour constitutes family violence in terms of the Act" and she also refers to Mr [Ridge]'s children's fear arising from their exposure to her behaviours.

[42] I do place weight on the carefully detailed evidence that Mr [Ridge] filed, supported by documentary annexures including photographs from his security cameras, email exchanges, police safety order, trespass notice and telephone records.

[43] It is to be noted that Oranga Tamariki formed the view at the time that [Lily] had suffered psychological abuse by being exposed to "several" family violence incidents. They did not take matters further following the mother's separation from Mr [Ridge] notwithstanding that there were further post-separation incidents on 16 September, 11 (or 12?) November and 16 January 2020.

[44] There is a clear pattern of Ms [Harris] acting impulsively in angry/anxious/blaming ways during times of stressed relationships. The evidence is extensive and pervades her relationships with each of the [Barker] family members, her former partner, Mr [Ridge], and her own parents. This even includes plainly supportive persons such as Mrs [Fay Barker] with whom she stayed in 2017. There is strong evidence of Ms [Harris] having smashed a door window at Ms [Fay Barker]'s home to try and gain entry on 26 or 27 March 2020 just after [Lily] was uplifted ([Fay Barker] was with [Lily] in [a town outside Auckland]). There is also evidence that she returned to the property later the same day to spray out her own fingerprints. Her image was captured by CCTV at the time.

[45] Her behaviours occurred whether [Lily] was present or not. This is recorded in the police family violence records and on CCTV where [Lily] was photographed with her mother during the mother's harassment of Mr [Ridge]. Unsurprisingly, there is evidence from the paternal family that [Lily] is aware that her mother does not like her paternal family and she has spoken of her memory of her mother being upset and calling the police on a number of occasions.

[46] In conclusion, I am not satisfied that a clear and compelling case, beyond reasonable argument to the contrary, that the family violence safety concerns that underpinned the court's earlier decision to remove [Lily] from her mother's care have clearly resolved. I find that Ms [Harris] is in the early stages of addressing her propensity to family violence as is evidenced by her recent plea of guilty to the representative charge of breach of protection order and her commencing a Living Without Violence programme.

[Lily]'s views and development

[47] [Lily] told her lawyer late April 2020 (by telephone during the first level for lockdown) that she was happy living in [the town outside Auckland] (where she was in her two grandmothers' care as the paternal grandfather was an essential worker living and working in Auckland). [Lily] explained that her mother was living in her "bubble" in Auckland.

[48] In June 2020, [Lily] met with her lawyer and told him she wanted to see her mother. It is important to note that [Lily] had had no contact with her mother since 23 March 2020. In fact, contact did not resume until after additional terms were agreed between the parties on 02 July. It is important to note that in late April the mother's lawyer wrote to lawyer for child advising that she preferred not to have contact because it would be too upsetting for [Lily].

[49] [Lily] had an unplanned meeting with her mother in her step-grandmother's presence at [a suburb of Auckland] on 11 June. [Lily] was reportedly unsettled and upset for some 30 minutes or so after the meeting. While her emotional response is significant, I am unable to form any view as to why although it may be easily explainable as a simple grief reaction.

[50] In the aDapt report, [Lily] is described as a communicative, energetic girl with a big smile who enjoys her time with her mother. Social work inquiries at her school establish that she is regarded as a well-adjusted and happy child who has settled into school very well and who is a pleasure to teach.

[51] [Lily] is reported by her step-grandmother to not talk about her mother in their home except when prompted during her nightly prayers before bed. She is reported to continue showing some unsettled behaviours after some of her supervised contact visits with her mother. She is noted for both aggressive and regressive behaviours at these times.

[52] I conclude that [Lily] wants to have a continuing relationship with her mother and is generally settled and happy in her grandparents' care and at her school. There are definite signs that she is aware of her mother's negative views of her paternal family. However, the strength and origins of these views need to be better understood.

Conclusion

[53] For the reasons given above, on 10 December 2020 I was not satisfied there was a clear and compelling case, beyond reasonable argument to the contrary, that the safety concerns that underpinned the court's earlier decision to remove [Lily] from her mother's care had resolved and that it was in [Lily]'s best interests to grant the mother's application for her return to her mother's day-to-day care.

[54] I acknowledge there were, and remain, risks to [Lily]'s interests and welfare in not having a full and continuing relationship with her mother. The "chasm" between the paternal family's and the mother's view of each other is an ongoing risk to [Lily]'s longstanding psychological welfare. This is aggravated by the nature of litigation itself, the delays in getting the essential child psychological evidence before the court, and the father's inability to exercise visiting contact with his daughter in New Zealand (and vice versa) notwithstanding that he is maintaining very close AVL contact with [Lily].

[55] There are now signs that Ms [Harris] is taking steps to address her sexual abuse and family of origin traumas and it is to be hoped that this will lead to a de-escalation in her pattern of troubled family and intimate partner relationships. I also note that she actively supported the necessity for a s 133 child psychological report (which I directed on 10 December 2020).

[56] Nevertheless, her conduct during 2019 and throughout 2020 must have adversely affected [Lily]. Fortunately, [Lily] appears to be a resilient and happy child and her development continues positively without apparent serious impact. The s 133 report will better assess whether this view is sound or not.

[57] Procedurally, I do think it relevant to record that this court has been ready and willing to set these proceedings down for either a full safety hearing or a full substantive hearing. These options were specifically addressed in July, September and December 2020. It has been the mother's decision to not proceed in this manner and that has had an impact on the direction of these proceedings.

[58] I empathize with her frustration with the delays, but in such circumstances and given the resources available to the court, the current delay is unavoidable.

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Judge TH Druce
Family Court Judge

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