

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

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**IN THE FAMILY COURT
AT AUCKLAND**

**I TE KŌTI WHĀNAU
KI TĀMAKI MAKĀURAU**

**FAM-2020-004-000250
FAM-2021-004-000555
[2022] NZFC 2178**

IN THE MATTER OF	THE FAMILY VIOLENCE ACT 2018 THE CARE OF CHILDREN ACT 2004
BETWEEN	[CHARLES BARKER] [MARTIN BARKER] Applicants
AND	[AMANDA HARRIS] [LAWRENCE MACAULEY] Respondents

Hearing: 24 to 27 January, 2 to 4 March, 7 April 2022

Appearances: C Townsend for the Applicants
S Abdale and A Simperingham for the Respondent [Harris]
(via AVL)
A Ashmore for the Respondent [Macauley] (via AVL)
R Collis as Lawyer for Child

Judgment: 20 May 2022

RESERVED JUDGMENT OF JUDGE K MUIR

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Introduction

[1] Six-year old [Lily Barker] has been living with her paternal grandparents in [location 1 deleted] since her grandfather, [Charles Barker], obtained a without notice interim parenting order on 19 March 2020. [Lily]’s contact with her mother, [Amanda Harris], was to be supervised. Unfortunately, three providers of supervised contact services who were engaged have now declined to continue to supervise contact with [Lily]. On 13 July 2021 [Lily] was uplifted by police from her mother and her mother’s new partner, [Lawrence Macauley], [details deleted]. [Amanda Harris] had taken [Lily] from school on the last day of term, 9 July 2021 in breach of the Court Orders. [Lily] has neither seen nor spoken with her mother since then.

[1] [Lily]’s father, [Martin Barker], seeks an order that [Lily] be in his day to day care when he returns to live in Auckland. [Martin Barker] currently lives in Australia. His application is supported by [Lily]’s paternal grandparents ([Charles Barker], [Susan Barker] and [Fay Barker]) and [Amanda Harris]’s parents ([Harris] and [Tracy Harris]), who have provided evidence in support.

[2] The [Barker] family say that an interim order which was made under the Family Violence Act 2018 (FVA) on 16 July 2021 against [Amanda Harris] and [Lawrence Macauley] should be made final. They say the order is necessary to protect [Lily] from exposure to family violence and psychological abuse. They ask that [Amanda Harris]’s contact be limited to fortnightly supervised contact provided she first undergoes a longitudinal mental health assessment as recommended by a psychiatrist and engages in therapy. They seek a number of other conditions to supervised contact that they say are essential for [Lily]’s protection. They also ask for a direction under s46R of the Care of Children Act 2004 (COCA) that therapeutic counselling for [Lily] be implemented.

[3] It is their case that the interim parenting order was necessary to protect [Lily] from exposure to adult conflict between [Amanda Harris] and her then partner [Kevin Ridge]. They say that [Amanda Harris] was abusing drugs, particularly methamphetamine at that time, and that she was and is suffering from a mental health condition which impacts on her ability to safely care for [Lily]. Their principal

concern is that [Amanda Harris] is unable to protect [Lily] from adult conflict that she is deeply involved in.

[4] [Amanda Harris] says that she is the victim of a conspiracy or collusion by the [Barker] family and people who are associated with them or who are under their influence. She denies that she has ever abused drugs and she denies that she has ever had any mental health issues which might impact her ability to care for [Lily]. She says that she was “*set up*” at the time of [Lily]’s uplift as the result of a conspiracy, particularly between [Martin Barker] and [Kevin Ridge]. She says that her electronic devices and social media accounts have been “*hacked*” and that documents and posts on social media that appear to be from her are forgeries. [Amanda Harris] asserts that she is a victim of serious injustice.

[5] She says she believes that [Lily] has suffered physical harm and psychological harm while living with [Susan] and [Charles Barker] and that [Lily] is deeply unhappy and is unsafe in their care.

[6] On 15 June 2021, [Amanda Harris] applied without notice for a protection order under the FVA against [Charles] and [Susan Barker]. She sought a direction that the order also protect [Lily]. She sought, as a condition of the order, that [Charles] and [Susan Barker] have supervised contact with [Lily] once per week and that [Lily] be returned to her day to day care immediately. Several other conditions were sought, including the condition that [Lily]’s father [Martin Barker] “*be placed under supervised care in New Zealand until further notice*”. She said, “[*Lily*] is at an *incredibly high risk of emotional damage*”. She sought to collect [Lily] from school that day.

[7] [Amanda Harris] continues to seek an order that [Lily] be returned to her immediate care submitting that her care of [Lily] be supervised by her fiancée [Lawrence Macauley].

The Issues

- (a) Should a protection order be made in [Amanda Harris]’s favour protecting [Lily]? Has [Amanda Harris] been subjected to violence, particularly psychological violence? Is an order necessary for her protection or for [Lily]’s protection?
- (b) Should the interim protection order made on 16 July 2021 on the application of the [Barker] family against [Amanda Harris], which protects [Lily] be made final? Has there been violence by [Amanda Harris], particularly psychological violence? Is the order necessary for [Lily]’s protection? If so, is it necessary for the order to include [Lawrence Macauley] as an associated respondent?
- (c) What orders should be made regarding [Lily]’s day to care and her contact with either [Amanda Harris], or her paternal family? How are [Lily]’s rights under s 4, 5 & 6 of COCA best promoted and advanced? In particular:
 - (i) Because of the counter allegations of violence in this case, and because a final protection order was recently made against [Amanda Harris] in favour of her former partner [Kevin Ridge], I have to be satisfied under s 5(a) and 5A of the COCA that the parenting orders that I make will keep [Lily] safe. In particular, that they will protect her from all forms of violence.
 - (ii) Taking account of the matters set out in ss 4, 5(a) to (f) and 6 of COCA I have to decide:
 1. Should a final parenting order be made in favour of [Martin Barker] as sought?
 2. Alternatively, should a final parenting order be made in favour of [Amanda Harris] as sought?

3. If a final parenting order is made in favour of [Martin Barker], what orders for contact if any, should be made for [Amanda Harris]?
4. Should all or any of the orders made be final orders, taking account of among other things, s 4(2) of COCA which recognises [Lily]'s right to have decisions affecting her, made and implemented within a timeframe that is appropriate to her sense of time?
5. If I decide that any of the orders that I make should not be final orders I will need to make directions for the progression and finalisation of this case in of [Lily]'s best interests.

[8] The serious allegations that [Amanda Harris] makes, if proven would mean that the orders currently in force in favour of the [Barker] family ought not to have been made and urgent action is required for [Lily]'s protection. Because of that I will deal with that issue in the context of her application for FVA orders first.

The Law

Credibility Issues

[9] In all of the findings of fact I make in this case, I will be deciding whether a relevant factual issue is established on balance of probabilities. In other words, is it more likely than not, the alleged event occurred as is claimed? I will bear in mind that the more serious or extreme an allegation is, the less likely it may be that the event occurred and hence the stronger the evidence should be before I conclude that the allegation is established on balance of probabilities.¹ This is in line with the approach adopted where serious allegations such as sexual abuse are made.

[10] In the credibility findings that I make in this case I will consider the following:

¹ *M v Y* [1994] 1 NZLR 527 at 533 (CA); and *S v S* [1994] 1 NZLR 540 at 546 (CA).

- (a) Whether contested evidence is consistent with the evidence of other witnesses whose evidence I have accepted.
- (b) Whether the contested evidence is consistent with objective evidence such as documents or text messages which are not disputed, or, if it is inconsistent, what explanation is offered for any inconsistencies.
- (c) Whether the witnesses account is inherently plausible – does it make sense? Is it likely that people would have acted in the way suggested?
- (d) Whether the witness has been consistent in their account overall and if not, why not?²

[11] Under s 12A of the Family Courts Act 1980, I have a discretion to receive any evidence, whether or not admissible, which I consider may assist in determining the proceeding. I will only exercise this discretion if I am satisfied the evidence is both relevant and reliable. I will always consider that evidence in the context of the relevant sections of the Evidence Act 2006. For example, I have considered evidence in this decision which might otherwise be inadmissible as hearsay. Examples include Oranga Tamariki CYRAS notes and Family Harm reports and reports from organisations such as [Lily]’s school and professional contact supervision providers.³

Family Violence Act

[12] In making my decisions under the FVA I will be guided by the principle that family violence in all its forms is unacceptable.⁴ Family violence is often behaviour that appears to be minor or trivial when viewed in isolation but that may form part of a pattern of behaviour that causes cumulative harm.⁵ Children are particularly vulnerable to family violence including seeing or hearing violence against others.⁶ Children are also at particular risk of lasting harm to their current and future

² *R v Taniwha* [2016] NZSC 123 at [45].

³ Although such documents can be admissible in some instances under Act s 19 of the Evidence Act as “business records”.

⁴ Section 4(a) FVA.

⁵ Section 5(b) FVA.

⁶ Section 4(d) FVA.

wellbeing.⁷ I will take account of the views of anyone that I find is a victim of family violence.⁸

[13] Family violence includes physical abuse and psychological abuse.⁹ It includes a pattern of behaviour that is made up of a number of acts that are all or any of physical abuse, sexual abuse and psychological abuse that is either coercive or controlling or causes the victim or may cause the victim cumulative harm.¹⁰ A number of acts that form part a pattern of behaviour may amount to abuse even if they may appear minor or trivial when viewed in isolation.¹¹

[14] The allegations in this case include allegations of psychological abuse which includes threats of physical abuse, intimidation or harassment, damage to property and financial or economic abuse.¹² Psychological abuse of a child can occur if a child is caused or allowed to see or hear physical or psychological abuse of a person with whom they have a family relationship or the child is put at real risk of seeing or hearing that abuse occurring.¹³ Psychological abuse may include or may be behaviour that does not include actual or threatened physical abuse.¹⁴

[15] In order to make a protection order, I have to be satisfied that family violence has been inflicted against the applicant, a child of the applicant's family or both. I also have to be satisfied that the making of an order is necessary, for the protection of the applicant, a child of the applicant's family or both.¹⁵ The Court of Appeal decision of *S N v M N* reminds me that a two-stage inquiry is required.¹⁶ Firstly, it must be established whether domestic violence has occurred. Secondly, I must consider whether a protection order is necessary. I need to be satisfied that the respondent is using or has used domestic violence against the applicant.¹⁷ I must be satisfied on

⁷ Section 5(e) FVA.

⁸ Section 5(m) FVA.

⁹ Section 9(2)(a) and (c) FVA.

¹⁰ Section 9(3)(a) and (b) FVA.

¹¹ Section 10 FVA.

¹² Section 11(1) FVA.

¹³ Section 9(2) FVA.

¹⁴ Section 9(4) FVA.

¹⁵ Section 79 FVA.

¹⁶ *S N v M N* [2017] 3 NZLR 448.

¹⁷ *S N v M N* (above n 16) at [20].

balance of probabilities whether violence has occurred.¹⁸ In deciding whether an order is “*necessary*”, I need to be “*satisfied*”, that the order is necessary, which is a matter of judgement, rather than a question of fact.¹⁹

[16] I bear in mind that where behaviour leads to reasonable fears for safety, it is unlikely that a Court could rationally refuse to grant a protection order, unless there are very strong indicators to the contrary.²⁰ However, a subjective fear of future violence must be reasonably held.²¹

[17] In the case of the application by Mr and Mrs [Barker] on behalf of [Lily], s 62 of the FVA specifically allows an application to be made by or for [Lily] by a representative. Under s 63(3) of the FVA the Court is to take account of any view that [Lily] expresses, if she expresses a view.

[18] In considering whether or not a final protection order should be made against [Lawrence Macauley], as [Amanda Harris]’s associate, I will need to consider whether [Amanda Harris] is encouraging, or has encouraged [Lawrence Macauley] to engage in behaviour against [Lily], where that behaviour, if engaged in by [Amanda Harris], would amount to family violence. In addition, I will need to consider whether the making of an order is necessary for [Lily]’s protection.²² I note that “*encourage*” is defined as including “*incite, counsel or procure*”.²³

[19] In some circumstances being “*in consort*”, without explicit words may amount to encouragement. Similarly passivity may amount to encouragement. However, a careful analysis of the action or inaction is required to determine whether the behaviour had a quality of encouragement about it.²⁴ Encouragement can be properly inferred from the whole of the circumstances and is not limited to words and actions positively designed to engage supportive action. It can be implicit as well as express.

¹⁸ Section 171 FVA and *N v R* [2021] NZHC 2213 [29] to [36].

¹⁹ *N v R* (above n 18) at [36].

²⁰ *S N v M N* (above n 16) at [23].

²¹ *Q v Q* [2012] NZFLR 582 per Heath J.

²² Section 89(2) FVA.

²³ Patrick Mahoney (ed.) *Brookers Family Law: Family Law: Adult Relationships* at FV 89.03.

²⁴ *L M T v P M R* (2006) 25 FRNZ 754 at [21], per Judge Smith.

It can be mutual, and it may have been motivated by reasons personal to the associated respondent.²⁵

Care of Children Act

[20] The decisions I make about [Lily] will be based upon my findings about what is in her welfare and best interests.²⁶ I must address all of the principles set out in s 5(a) to (f) of COCA with no particular weighting to be given to any of the principles, all of the principles essentially amount to fundamental rights that [Lily] has. However, s 5(a), which reminds me that [Lily]’s safety must be protected that she must be protected from all forms of violence, is the only one of those rights expressed in mandatory terms.²⁷ Where s 5(a) is relevant, it will generally carry decisive weight in my factual assessment.²⁸

[21] Because there is a final protection order in force against [Amanda Harris], I have to take account of the circumstances in which the order was made and any reasons that the Judge gave when making that order.²⁹ I remind myself that in considering whether there are any risks to [Lily]’s safety, a two-stage inquiry is required. I must firstly find whether the allegations of violence are proven on the balance of probabilities. I must then make a predictive assessment about whether [Lily] will be safe in the unsupervised care of the person who was allegedly violent.³⁰

[22] In assessing whether [Lily] is safe, I will “... *assess the violence that has been proven and then ... assess the likelihood of it being carried out against ([Lily]). The more serious the nature of the violence, the greater concern there will be when it comes to assessing the risk to ([Lily]).*”³¹

[23] I should not lose sight of [Lily]’s right for her care, development and upbringing to be primarily the responsibility of both of her parents.³² [Lily]’s care,

²⁵ *W v T* [2003] NZFLR 658 at [11], per Judge Inglis QC.

²⁶ Section 4 COCA.

²⁷ [Lily]’s safety “must be” protected this contrasts with “should be” used in s 5(b) to (f).

²⁸ *Kacem v Bashir* [2010] NZFLR 84.

²⁹ Section 5A COCA.

³⁰ *M v Y* [1994] 1 NZLR 527 (CA) at page 534.

³¹ Duffy J in *Lowe v Way* [2015] NZHC 93 at [83].

³² Section 5(b) COCA.

development and upbringing should be facilitated by ongoing consultation and cooperation between her parents and any other person having a role in her care under a parenting or guardianship order.³³ Where practicable, [Lily] should have continuity in her care, development and upbringing.³⁴ I will endeavour to ensure that [Lily] continues to have a relationship with both of her parents and that her relationship with her family group is preserved and strengthened. That should ensure that [Lily]’s identity is preserved and strengthened.³⁵

Issue 1 – [Amanda Harris]’s FVA Application

[24] [Amanda Harris]’s FVA application was made 15 months after the orders placing [Lily] in the care of the [Barker] family. Her application was made four months after His Honour Judge Druce delivered a decision following a submission only hearing addressing whether [Lily] was to be returned to her mother’s care pending resolution of the proceedings.

[25] Judge Druce had acknowledged there were risks to [Lily]’s interests and welfare in not having a full and continuing relationship with her mother and that what he called the “*chasm*” between the paternal families view and [Lily]’s mother’s view of each other was an ongoing risk to [Lily]’s psychological welfare. He noted that there were signs that [Amanda Harris] was taking steps to address trauma which he hoped might lead to a “*de-escalation in her pattern of troubled family and inter-partner relationships*”.³⁶

[26] Judge Smith, who dealt with [Amanda Harris]’s without notice FVA application noted the application was to proceed on notice:

“The application appears to be an attempt to circumvent the directions made by His Honour Judge Druce on 18 May 2021 rather than an application for a protection order. While I accept these matters are urgent, that has already been recognised by Judge Druce in his Minute of 18 May 2021.”³⁷

³³ Section 5(c) COCA.

³⁴ Section 5(d) COCA.

³⁵ Section 5(e) and (f) COCA.

³⁶ *[Barker] v [Harris]* [2021] NZFC 1189 at [55].

³⁷ Judge Druce had recorded the agreement of all counsel that it was unacceptable to wait for the allocation and completion of a s 133 report and that the matter should be referred to Long Cause Fixtures for a five day hearing.

[27] In her application in support of the FVA application, [Amanda Harris] had said:

- (a) She feared that [Martin Barker] would “*continue to file more evidence containing lies against me*” and “*his continued slander of me is abusive*”.
- (b) She was fearful that [Martin Barker]’s family, including his brother [Frank Barker], would “*harass me, my new partner and his children and our home*”. She alleged that in 2019 [Frank Barker] broke into her home and smashed up [Lily]’s sandpit. She said that the [Barker] family had lied to the Court about [Frank Barker] “*to cover up his drug and gang activities and out of control behaviour*”. She alleged that both [Martin Barker] and [Frank Barker] had drug problems “*which their parents are ignoring and hiding*”.
- (c) She said she was worried that [Lily] was not being allowed to express herself, that she did not want her hair cut, and that her wishes were ignored which she said was “*abusive*”. She alleged that [Lily] had told her during a supervised contact visit at [supervised contact centre], “*Mummy I want to come home. I’m scared and I don’t want to be where I am any longer*”.
- (d) She alleged that [Lily] was removed from her care based on untrue allegations of methamphetamine use and associated mental health problems.
- (e) She repeatedly referred to the death of [Martin Barker]’s brother, [Albert Barker], by suicide when he was a teenager, alleging there were unresolved mental health issues in the [Barker] family.
- (f) She claimed that she had been “*psychologically, financially and spiritually abused*”.

[28] [Amanda Harris]’s allegations were expanded in other affidavits she filed and during cross-examination, particularly cross-examination of [Martin Barker] and [Kevin Ridge]. She alleged that a methamphetamine pipe and other evidence of drug use found by the police during a search had been planted in her home as a result of a conspiracy between [Kevin Ridge] and [Martin Barker]. She alleged [Kevin Ridge] had used “*contacts in the police*” and [Martin Barker] had arranged to have the evidence planted in her home by his brother [Frank Barker]’s “*runners*”.³⁸

[29] She claimed [Martin Barker] and his father and stepmother had arranged to have the without notice application for interim parenting orders for [Lily] “*ready to go*” in anticipation of her arrest. She said [Kevin Ridge] had kept her cellphone and/or iPad after they separated and was using one of her devices to send emails to himself, which appeared to be from her, in order to establish that she was breaching a protection order that he had obtained against her.

[30] In support of these allegations [Amanda Harris] put documents in cross examination to [Martin Barker] and [Kevin Ridge] which she claimed were photocopies of screenshots from a mobile phone or another device or devices. [Amanda Harris] said the photocopies had been placed in her letterbox by an unknown person on two separate occasions approximately two years earlier.³⁹ She claimed that the text messages, which comprised photocopies of five screenshots, were messages that had been sent and received on an iPad or old iPhone of hers which [Kevin Ridge] had retained. [Kevin Ridge] denied that he had kept her iPad or iPhone, or that he had used it as alleged. He accepted that he did have some of her property in his possession but said that it was in a box in a “*lock up*” which was returned to [Amanda Harris] as soon as he found it.

[31] In addition to the screenshots of text messages there were three pages [Amanda Harris] said were copies of screenshots of “*WhatsApp*” communications. In support of her claim that they had been left in her letterbox, she pointed out that the documents

³⁸ [Amanda Harris] was evidently suggesting that [Frank Barker] who lives in [location 3] had a network of “*drug runners*” as a result of nationwide drug dealing activities.

³⁹ Had objection been taken it is doubtful that the documents would have been admissible. Unless [Amanda Harris] was the author of the documents, she was not in a position to verify them or produce them.

appeared to have been folded before they were photocopied by her as she had found them in her letterbox folded. She was unable to satisfactorily explain why they had not been annexed to or referred to in any of her affidavits in the past two years. She claimed she had supplied them to her lawyer at the time and that her lawyer had declined or refused to put them in evidence. She did not explain why they had not been annexed as an exhibit to any of the affidavits that she had filed on her own account or any of the affidavits that had been filed by her current lawyer.

[32] The documents, if genuine, would not only have evidenced [Amanda Harris] being “*set up*” at the time [Lily] was uplifted, but would also have established that [Kevin Ridge] had followed [Amanda Harris] to [location 4]⁴⁰ in December 2019 at a time when [Martin Barker] had alleged she had “*disappeared*” with [Lily], leading to him making a false report of concern to the police.⁴¹ If genuine the documents could have established multiple attempts to pervert the course of justice.

[33] The alleged screenshots did show a date. The top of the first screenshot simply said “*Monday*” and underneath an image of [Lily] and [Amanda Harris] and the name “[*Martin (daddy) Barker*]”. Similarly, the screenshots that were allegedly of a WhatsApp exchange had the name “[*Martin*]” at the top of the screen and “*Today 10.32*”, rather than a date.

[34] [Amanda Harris] accepted that meant that the screenshots must have been taken either on the day the messages were created or within the same week, as if they had been created any time after that a date would have featured.

[35] [Amanda Harris] was unable to say who might have put the documents in her letterbox. She accepted that for her to have acquired them, and for them to be genuine, someone would need to have taken screenshots from phones or devices that were either in [Kevin Ridge]’s possession or [Martin Barker]’s possession. She accepted that whoever did this would have had to have access to their screen lock passcodes or to

⁴⁰ The alleged WhatsApp document included a message: “*Thanks for following her to [location 4]! That was a good set up cheers mate.*”

⁴¹ [Amanda Harris] alleged the complaint was “false” because [Martin Barker] in fact knew where she was. I accept his evidence that he was genuinely concerned for [Lily]’s welfare after not hearing from them for several days and not knowing where they were.

have been able to unlock their phones biometrically. She assumed that it was either [Martin Barker] or [Kevin Ridge] who took the screenshots and then copied them. She also accepted that either [Martin Barker] or [Kevin Ridge] must have left them in her letterbox or that someone else had found the photocopies or taken the photocopies from them and placed them in her letterbox. She acknowledged that seemed, to use her own word, “*ridiculous*”.⁴²

[36] [Martin Barker] and [Kevin Ridge] denied any knowledge of the text message and WhatsApp exchanges.

[37] [Amanda Harris] denied that she had written the messages, she denied that she had manufactured them and presented them to the Court. Despite her denials, I find on balance of probabilities, taking into account the consequences of this finding, that the documents are forgeries. Either [Amanda Harris] has manufactured them, or they have been manufactured on her behalf. Apart from [Martin Barker] and [Kevin Ridge], she is the only person who would have known about the events in the forged documents. She is the only person with any motive to create the documents or with any interest in the content as the messages “*confirm*” allegations that she alone has consistently made. I accept [Martin Barker] and [Kevin Ridge]’s evidence on this issue as consistent and credible. It is unlikely they would have created such a convenient chain of messages (for [Amanda Harris]’s case), let alone copied them or otherwise allowed [Amanda Harris] to acquire them.

[38] There is no credible evidence that the methamphetamine pipe and other evidence of drug use found in [Amanda Harris]s home by the police was “*planted*”.⁴³ [Amanda Harris]’s mother [Tracy Harris] gave evidence that she had found a methamphetamine pipe in [Amanda Harris]’s clothing drawer when she was putting away clothes at a time [Amanda Harris] was living with [Fay Barker]. [Tracy Harris] produced a photograph of the pipe that she found. Although [Amanda Harris] denied that the pipe was hers, it was likely that it was her pipe, because of the evidence of

⁴² NOE 159.

⁴³[Amanda Harris] produced an affidavit from a neighbour, Ms [Smith] who said she had seen someone on [Amanda Harris] roof one evening between 2 March and 8 March 2020. In her closing submissions it was submitted this evidence corroborated the allegation the “P Pipe” found by police was planted, as did the fact that she was not charged for possession by the police. I do not find either of those matters are of any real probative value in relation to this issue.

drug use that the police found when they searched her home on 18 March 2020 and because of observations that members of the police and members of the [Barker] family made of [Amanda Harris]’s behaviour. [Martin Barker]’s evidence is that he was advised by a police officer that [Amanda Harris] was “*fried*”, “*she looks like a skeleton, and she’s definitely on drugs ...*”. Although that evidence is hearsay, I accept he was told that by a police officer. This evidence arose when he was being challenged that there was no basis for his belief [Amanda Harris] was using drugs. He was entitled to respond with details of the information he had when forming that belief.⁴⁴

[39] [Kevin Ridge] confirmed that she had used methamphetamine. [Amanda Harris] denied that allegation. She claimed it was [Kevin Ridge] who was using methamphetamine and produced a photograph she had taken of him smoking a methamphetamine pipe in a bathroom. His evidence was that he had used the drug with her encouragement, that it was her pipe and that he believed she was regularly using Methamphetamine throughout the relationship. His evidence is consistent with the other evidence of drug use by [Amanda Harris], including observations of her demeanour and appearance by the police and members of the [Barker] family prior to [Lily] coming into their care. I prefer his evidence on this issue to that of Ms [Harris], he did not deny using the drug himself, his evidence was consistent and credible.

[40] The falsification of the screenshot evidence is also consistent with evidence that satisfies me [Amanda Harris] has manufactured “*screenshot evidence*” on other occasions. Annexed to [Amanda Harris]’s 15 March 2021 affidavit were documents that she said were photocopies of screenshots of texts exchanged between her and [Fay Barker]. [Amanda Harris] and [Fay Barker] had generally enjoyed a supportive relationship. [Amanda Harris] and [Lily] had lived with [Fay] for several months after their return from Australia. [Fay Barker] had cared for [Lily] when [Amanda Harris] had travelled to South Africa for a wedding. During that time [Fay Barker] had invited [Lily]’s maternal grandmother, [Tracy Harris], to visit with [Lily]. [Amanda Harris] was unhappy about that and it was shortly after that that [Amanda] moved to live independently. However, she retained contact and a positive relationship with [Fay Barker].

⁴⁴ NOE 313.

[41] The text messages appeared to include acknowledgements by [Fay Barker] that her son [Frank] was involved in drug use, in damaging [Amanda Harris]'s property such as *"he has put wholes in my wall"* (sic) and that he was involved with gangs. In one of the exchanges [Amanda Harris] was complaining [Frank] had destroyed a sandpit she was building and was *"off his head"*. [Amanda Harris] claimed the texts dated from 2017. They included a text allegedly from [Fay Barker] which read *"Mel its [Albert] anniversary would you and [Lily] like to come let off balloons with me and have a Prosecco x"* (sic). [Amanda Harris]'s evidence was that this was an invitation for her to attend a commemoration of the anniversary of [Albert Barker]'s death by suicide. The exchange suggested that they meet *"by the tree in [location deleted]"*. [Amanda Harris] asked *"is that the one where it all happened? x"* Her evidence in effect was that she was being invited to a commemoration where [Albert] had committed suicide.

[42] [Amanda Harris] produced these texts in an attempt to prove that [Frank Barker] had in fact broken into her house that day. *"[Fay] this is getting out of control. Your son just broke into my house you saw the picture message he sent. You keep covering for his tracks all the time this is getting out of control. When are you all going to make this stop!"* [Fay Barker]'s response was allegedly *"Yes I know and I am sorry. Can you please meet with me to talk this over. I've been to your house looking for you. I don't want you too get [Frank] in trouble. He is about to have a new family and having [Frank] locked up won't help anyone."* [Fay Barker] is also alleged to have said *"Yes I know you found drugs in [Martin]'s bag and in [Frank]'s room and yes I did ask you to let me handle it but can we please talk"* and *"Please don't call the cops till I talk to you"*.

[43] [Fay Barker] emphatically denied sending the texts. She noted in her affidavit in reply that there were no dates on the texts. Some of the text messages had time signatures such as *"text message today 15:29"*. Again, that must indicate that the screenshots were taken at the time or on the day the text message was created.

[44] [Amanda Harris] tried to explain this anomaly when she was cross examined. She claimed that she was in the habit of regularly taking screenshots of messages *"... lots of different messages on different occasions for records based on what we do at*

the gym, who sent me the messages and what we're doing that's what I do."⁴⁵ However, in her affidavit of 15 March 2021 she claimed that since receiving the judgment of Judge Druce on 12 February 2021, where he found she had a propensity to lie, she had "... *retrieved from Apple, text messages that tends to corroborate what I stated in my affidavit evidence which the Judge said were lies about the [Barker] family.*" She did not then say that she had taken screenshots of the text messages at the time they were created. Her affidavit declared that it was the text messages rather than photos of them that had been recovered and that she was attaching copies of them.

[45] I find that the text exchanges with [Fay Barker] are forgeries created by or for [Amanda Harris]. [Fay Barker]'s evidence was clear and credible. She would not have celebrated the anniversary of [Albert]'s death. She would not have arranged to meet near the tree where he had killed himself. She did recall a meeting on a beach with balloons on the day that would have been [Albert]'s birthday. In her affidavit evidence she said the composition, spelling and grammar were not the way she talks or writes and that she had adopted the practice in dealing with [Amanda] when she received texts which were "*very angry and emotional*" of not addressing, defending or engaging in the accusations levelled at her family, as she had found if she adopted that approach the texts soon stopped.

[46] [Fay Barker] recalled a different occasion when after watching [Lily] at [details deleted] on the beach, [Amanda] had yelled out "*[Frank]'s breaking into my house*" and "*took off*". [Fay Barker]'s reply was "*He's in [location 3], don't be ridiculous*". The police turned up at her home looking for her son later that day. She told them that [Frank] was in [location 3] and had not been near [Amanda]'s house. She denied that she had pleaded with [Amanda Harris] not to make a complaint to the police, saying that the police had already been to visit her home.

[47] I accept [Fay Barker]'s evidence. [Amanda Harris]'s evidence about the text messages was inconsistent and I find untruthful. I do not understand why [Amanda Harris] believed [Frank Barker] had broken into her home nor why she wanted the Court to believe it had occurred, but there is no credible evidence that it did.

⁴⁵ NOE 168.

[48] [Amanda Harris] also produced in evidence documents that she said were screenshots of text exchanges between her and [Martin Barker].⁴⁶ Again, the text messages she annexed did not include date information. It is likely that [Amanda Harris] created or was involved in the creation of those documents as well. Unfortunately, as a result I am unable to rely on many of the documents that [Amanda Harris] produces in order to corroborate her evidence.

[49] Some of the things that [Amanda Harris] said were true. She alleged that [Frank Barker] had been growing small marijuana plants on his balcony in [location 3] when she and [Martin Barker] stayed there with [Lily]. [Martin Barker] denied this allegation even though she was able to produce photographs which, although badly lit, appeared to show him on a balcony with small marijuana plants. I accept [Amanda Harris]'s evidence that [Frank Barker] was growing these plants and that [Martin Barker] knew about it. It follows that [Martin Barker]'s evidence on this occasion was untruthful. However, the allegation is not directly relevant to [Lily]'s welfare and best interests, nor does it lead me to the conclusion that the balance of [Martin Barker]'s evidence was untrue. It was regrettable that he chose to lie about this incident, but I find that does not establish a general propensity to dishonesty.

[50] [Amanda Harris] was an unreliable and unconvincing witness. She was willing to contradict information that appeared to be authentic and reliable if the information was unfavourable to her. For example, she emphatically denied that she had breached the rules and failed to comply with staff directions at the [supervised contact centre 1]. The contact supervisors had expressed a number of concerns. They included concern that during supervised contact [Amanda Harris] would pick [Lily] up and hold her close, running with her and talking constantly into her ear so that staff members could not keep up and could not hear what was being said. [Amanda Harris] denied this. She said it was [Lily] that took her hand saying, "*let's run mummy*". She claimed [contact care 1] were lying and that they were also lying when they reported that she had entered a prohibited area close to a boundary fence, against their instructions that she should not, in order to introduce [Lily] to [Lawrence Macauley]. She claimed that she had been given specific permission by a [supervision member] to do this. That is

⁴⁶ Exhibit B to her affidavit of 15 March 2021 for example.

inconsistent with the records the [supervisor and manager] produced at the time.⁴⁷ I find her account is untruthful.

[51] One of the most striking examples of a lie by [Amanda Harris] arose in cross examination about an email that she had sent on 9 July at 3.15 pm, immediately after she had abducted [Lily] from her school in breach of the Court orders.⁴⁸ The email was addressed, amongst other people, to the Auckland District Court, the Prime Minister of New Zealand, Oranga Tamariki, the Chief Justice, Auckland High Court, various New Zealand and international media organisations and [Amanda Harris]’s lawyer Ms Abdale. The email cited in detail many of the allegations that [Amanda Harris] has made against the [Barker] family in these proceedings. It included phrases and claims that [Amanda Harris] repeated on a number of occasions when she gave evidence in Court, such as *“I coach over 450+ children in a week in gymnastics as my primary job. That is around 125 children I engage in, in a safe environment I provide. I co-parent 3 other children with my new partner in our new home together.”* The allegation that drugs had been planted in her home was repeated. She made allegations that a District Court Judge who had heard her case was conflicted and had membership *“in an exclusive Auckland gentlemen’s club”* with [Charles Barker]. These allegations of conflict and corruption were repeated by [Amanda Harris] to the police officers and Oranga Tamariki officials who executed the warrant to uplift [Lily] from [location 2].

[52] That email can only have been written and sent by [Amanda Harris]. It was received by the Family Court at Auckland at around 3.15 pm on 9 July 2021, the day and time it was sent by her. It was annexed to [Susan Barker]’s affidavit of 15 July 2021. [Amanda Harris] did not deny that she had drafted or sent the email in her affidavit in reply. She denied it for the first time when it was put to her in cross examination.⁴⁹ She claimed, disingenuously, that she could not have sent the email at that time because she was in the back seat of the car travelling with her daughter [Lily] towards the unauthorised holiday at [location 2]. She claimed she would not have

⁴⁷ I find the [contact centre 1] records are reliable. They were created at the time of the incidents. They included information that was consistent with things that were told to [Susan Barker] at the time. They have no motive to lie. The records are admissible under s 12A Family Courts Act and s 19 Evidence Act.

⁴⁸ B 6/51.

⁴⁹ NOE 469

written the letter because she would not have included information about [Albert Barker]'s suicide. In fact, she had referenced [Albert Barker]'s suicide in a number of affidavits she had filed in Court and while she was yelling at the police officers on the slopes of [location 2], during the execution of the warrant to uplift – an event that occurred in [Lily]'s hearing.

[53] However, although [Amanda Harris]'s evidence is consistently unreliable, it does not necessarily follow that her application for a protection order must fail. Clearly it should not have been filed on a without notice basis. There is an obligation of utmost good faith which requires applicants to fully, frankly and truthfully disclose matters that are relevant to the relief that they are seeking when they apply for orders without notice, even evidence that is unfavourable to their positions. [Amanda Harris]'s application and affidavit clearly did not comply.⁵⁰

[54] There is no substance to [Amanda Harris]'s allegation that [Martin Barker] and [Kevin Ridge] conspired to “*set her up*”. There is no credible evidence to support her claim that [Martin Barker] or other members of the [Barker] family were implicated in this conspiracy. Her claims that her social media accounts and electronic devices have been hacked are not supported by any credible evidence. There is a Facebook page called “[*details deleted*]”, which includes a number of posts clearly created by [Amanda Harris]. She denied responsibility for the Facebook page or the posts, again referring to her claim she had been “*hacked*”. She eventually and reluctantly accepted that some of the posts on the Facebook page, which contained untrue and defamatory things about the [Barker] family and about a District Court Judge, had either been created by her or on occasions commented on favourably by her. I find on balance of probabilities the posts and the Facebook pages were still being regularly maintained and monitored by her.

[55] [Amanda Harris] was asked to confirm who was involved in the alleged conspiracy.⁵¹ She said she believed the conspirators included [Charles Barker],

⁵⁰ In *Martin v Ryan* (1990) 6 FRNZ 187 at 212 per Fisher J: “It is trite to say that on all ex parte applications the utmost good faith must be observed. There must be full and frank disclosure of all material facts whether or not they assist the applicant. Failure to observe that duty will normally (although not inevitably) result in discharge of the order, whether or not the order would have been justified on other grounds ...”

⁵¹ NOE 422 to 435.

[Martin Barker], [Kevin Ridge], [Fay Barker], [Susan Barker], her mother [Tracy Harris] and [Frank Barker] (“*probably*”). She acknowledged that she had alleged in her live video feed that a District Court Judge had been accepting bribes from a party in the proceeding but denied she believed he was part of the conspiracy. Although she accepted that she had been implying that the police were “*on the take*”, she said that she did not now believe they were co-conspirators. She was clear however, that there were many things contained in the police reports which were adverse to her that were not true. She was asked about the contact supervisors at [two contact centres]. She said, “*the actions of both [contact centres] have certainly weighed in favour of the [Barker]s instead of myself*”. She suggested there was a “*collusion*” rather than a “*conspiracy*” involved and that they had been “*influenced*” by the [Barker] family. She did not trust Oranga Tamariki but was not willing to say that she believed they were part of the conspiracy or collusion.

[56] [Amanda Harris]’s allegations that [Martin Barker] had filed evidence containing lies against her or had slandered her were also untrue. There is no reasonable foundation for her claims that she was fearful that [Martin Barker]’s family including [Frank] would harass her partner, his children or her home. I do not know whether [Frank Barker] has a drug problem as she alleges but there is no credible evidence that he does. In any event it is irrelevant to [Lily]’s welfare or safety. There is no credible evidence that [Martin Barker] has a subsisting drug problem which his parents “*are ignoring and hiding*” as [Amanda Harris] claimed in her application.⁵²

[57] There is no credible evidence to support her concern that [Lily] was not being allowed to express herself or that her wishes were being ignored. [Susan Barker], [Fay Barker] and [Charles Barker] were cross examined at length about their care of [Lily]. I find that they are loving and concerned grandparents and that [Lily] is well treated and protected in their homes, and that she is loved, treasured and protected by [Martin Barker] and his new partner [Roxie Oakley].⁵³

⁵² [Martin Barker] had produced a negative three-month hair follicle test with a sample taken on 25 May 2020 at B2/244. I note again that the report was not directed to any officer of the Court, but no challenge was made by [Amanda Harris] to the authenticity of that report.

⁵³ The s132 report of 2 December 2020 corroborates the evidence that [Lily] is safe and nurtured in her current care arrangements.

[58] [Amanda Harris] produced a photograph in evidence which she claimed showed bruising to the side of [Lily]'s head. She alleged the bruising was present on 13 July 2021 when she took [Lily] from school and she noticed when she was brushing [Lily]'s hair that the area was tender. She was alleging that [Lily] had been hit by someone in her paternal grandparents' home. I viewed an enlarged colour copy of that photograph. It did not appear to show any indication of bruising or injury. [Lily]'s school reported that they had observed no evidence that she had been injured in any way. [Susan Barker] was clear that when [Lily] was dropped off at school that day she was not injured in any way. [Susan Barker]'s responses in cross examination were consistent, thoughtful and credible. I find that [Lily] was not physically injured while she was in her paternal grandparents' care.

[59] [Susan Barker] was also cross examined about [Amanda Harris]'s allegation that [Lily] was being psychologically abused. [Amanda Harris] said that [Lily] was telling her "*things about what you were doing to her in her supervised contact sessions when she was at [supervised contact centre]*". [Susan Barker] had encouraged [Lily] to draw a picture for her mother before one of the supervised contact sessions. The picture featured a drawing of a house, what appears to be a cat holding balloons, and the words "*I love you so so so so ... so so much mummy*". [Amanda Harris]'s evidence about this picture was inconsistent. In her affidavit sworn 15 June 2021 she claimed that she had sought "*professional advice regarding this picture*" and had been advised that [Lily] is distressed and making a clear call for help. She claimed that the words were not "*so so so so ...*", but they are "*SOS*", that [Lily]'s cries for help needed to be heard and actioned for her psychological safety. No independent evidence of any such "*professional advice*" was ever provided.

[60] Later, in her affidavit filed in August 2021, she claimed that [Lily] had told her, after she had been unlawfully taken from school, that the picture was a cry for help, "*Mummy it's not "so" it's "SOS" like when you need help when you are on an island in the middle of sea. Mummy I don't want to be there anymore, and [Susan] kept telling me that I have to behave myself, and that if I did I'd get presents.*" [Amanda Harris] said [Lily] had explained to her that she had recently learnt about "*SOS*" as the emergency help signal at school.

[61] When [Susan Barker] was cross examined she denied [Amanda Harris]'s allegation that she had told [Lily] when going to contact centre 1] that if she behaved herself, did not talk to her mother and hugged ([Susan Barker]) in front of the camera before she went in to see her mother, she would get a present after she was picked up. She also denied that [Lily] had learnt about SOS as the emergency sign at school. She is a retired [details deleted] and on a boat trip with [Lily] after [Amanda Harris]'s affidavit was filed, in the course of a safety briefing that she conducted, she told [Lily] what should happen if there was an emergency. She discussed the boat's radio with [Lily] and asked her did she know what SOS was. [Lily] responded saying, "no, no?" [Susan Barker] went on to say "so Ms Abdale from that, either she's got a very bad memory or this – [Amanda Harris]'s take on a loving photograph, a loving painting that says "so, so, so much" is incorrect".⁵⁴ I accept [Susan Barker]'s evidence on this point.

[62] [Charles] and [Susan Barker] were visited by police on two occasions after the July 2021 uplift following "Concern of Safety Reports" by [Amanda Harris]. On one occasion [Lily] was asleep upstairs and the police left satisfied about the situation for [Lily] in her grandparents' home. On the second occasion [Lily] was awakened and came downstairs. The police officers observed her interacting warmly with her grandparents. There were no concerns whatsoever about her care in the home of her grandparents.

[63] [Amanda Harris]'s claim that [Lily] told her during a visit at [contact centre 1], "Mummy I want to come home. I'm scared and I don't want to be where I am any longer" is unsupported by any credible evidence. [Amanda Harris] had taken a short video of an interaction between her and [Lily] during a visit at the [contact centre] in breach of the rules of the centre. The exchange was:

- [Amanda Harris]: "Baby what does [Susan] and [Charles] say to you that you can't what?"
- [Lily]: "Live with mumma."
- [Amanda Harris]: "Is that what they say to you? How often do they say that to you?"

⁵⁴ NOE 196.

- [Lily]: “Um lots of times.”
- [Amanda Harris]: “Do they, that’s not very nice is it?”
- [Lily]: “Na.”
- [Amanda Harris]: “Do you get upset with it?”
- [Lily]: “Yeah.”

[64] [Lily] is playing on climbing ropes the entire time and appears to be trying to distract her mother or move her onto another activity. [Lily] does not appear to be upset or even particularly interested in the conversation. There is no way of knowing what [Amanda Harris] had said to [Lily] prior to this recording and it is difficult to see how she thought the recording might assist her case.

[65] I also find that [Amanda Harris]’s allegation that [Lily] was removed from her care based on deliberately false allegations of methamphetamine use and associated mental health problems is wrong. In the application in support of interim parenting orders filed on 19 March 2020, [Charles Barker] deposed that he was concerned that [Amanda Harris] was using or had become addicted to methamphetamine and potentially other substances. He gave evidence that [Amanda Harris] was arrested for breach of a protection order on 7 March 2020 and that [Lily] had been looked after by [Fay Barker] following that arrest. It was clear that he had good reason to believe she had a history of drug use. Although he was criticised in cross-examination for relying in part on hearsay, I find his belief was genuine and reasonably founded. [Amanda Harris] was again arrested on 18 March 2020 and at the time of his affidavit [Lily] was being cared for by [Fay Barker] and [Susan Barker] collaboratively.

[66] [Martin Barker] had been informed by a police officer that [Amanda Harris] had been charged with burglary and that a methamphetamine pipe was found in her home together with a bag that tested positive for the drug. There was ample evidence for [Martin Barker] and [Charles Barker] to believe that [Amanda Harris] had used illegal drugs in the past despite her subsequent emphatic denials. There was also corroborative evidence available to me. [Amanda Harris] produced a clinical summary from the Auckland District Health Board dated August 2019, which noted in a narcotic screen that opiates had been detected. She offered no explanation for the

methamphetamine pipe and “*point bag*” that were found in her home by the police, other than they had been planted. She offered no explanation for the methamphetamine pipe that her mother found in her clothing.

[67] [Amanda Harris] filed an affidavit from a psychiatrist, Patrick Daniels, and in his review of [Amanda Harris]’s clinical notes he referred to an entry in her health records from 10 October 2019, which notes she had reported having “*tried P in the past but denies taking any now/recently*”. [Amanda Harris] subsequently denied that she had ever tried P and claimed that the entry was an error. However, given the evidence of others including [Kevin Ridge], I find that the clinical note is likely to be an accurate business record maintained by the Health Board and that [Amanda Harris] herself has previously confirmed that she used methamphetamine, even though she has likely tried to minimise the extent of her use.

[68] [Amanda Harris] produced four drug test results including three hair strand test results. The first hair strand test exhibited was a photocopy of a negative result apparently from The Drug Testing Agency for a sample collected on 4 May 2020 which showed negative results for all substances including methamphetamine.⁵⁵ However, the report noted “*Step 4 is incomplete. 1.5 inches (3.81 centimetre) – head hair.*” There was no evidence there to clarify what “*Step 4 incomplete*” meant. [Fay Barker] had noted [Amanda Harris]’s hair was peroxidized at about the time the drug test was taken and [Martin Barker] exhibited a photo of [Amanda Harris] which he said she provided after she had taken the drug test showing that her hair was dyed brown again. He deposed that her lawyer had been asked to provide the hair sample for independent analysis but there had been no response.

[69] There was no evidence provided as to whether and how hair bleaching and re-dyeing might affect a hair strand test. However, the original result certificate was not annexed to the affidavit filed nor was it produced to the court. Best practice would have seen the test results directed by the testing agency to lawyer for the child so that there could be no suggestion the results provided to the court were not genuine.

⁵⁵ B180.

[70] A urine test result dated 8 April 2020 was also negative. However, the exhibit also appeared to be a photocopy in the original affidavit, and again it was provided in evidence by [Amanda Harris] rather than through lawyer for the child.⁵⁶ A urine test result would not have provided any evidence of any historical drug use anyway. A negative “Notification of Drug and Alcohol Test Result” showing a hair specimen sample taken on 28 April 2020 was also annexed to her affidavit of 29 June 2020, again as a photocopy obtained and supplied by [Amanda Harris].⁵⁷ Finally [Amanda Harris] annexed a photocopy of another TDDA negative test result to her affidavit of 4 December 2020.⁵⁸ She said it was a six-month hair test. It was not. It stated that the hair sample taken was “1.5 inches (3.81 cm)-Head Hair”. That was the same length of sample taken for the other three-month TDDA test result. That sample for that three-month test was collected on 2 June 2020.

[71] The three hair strand drug tests [Amanda Harris] said she was exhibiting were all taken within two months of each other. Therefore none of them provided evidence about possible drug use any earlier than late January 2020. In the absence of the original certificates and in the absence of evidence of authenticity via a secure chain of custody for the test results, I am unable to conclude on balance of probabilities that [Amanda Harris] was not abusing drugs, particularly methamphetamine at around the time of the without notice parenting orders. There is a range of evidence which indicates that she may well have been. Because she has produced a number of other exhibits which I have found are not genuine, I cannot rely on the exhibited documents as authentic.

[72] The evidence satisfies me that there was a sufficient basis for the [Barker] family to believe that [Amanda Harris] was adversely affected by methamphetamine or other drugs at the time they obtained orders under the COCA on a without notice basis. [Amanda Harris]’s claim that this was a deliberately false allegation must fail.

[73] I am also satisfied that the [Barker] family had good reason to be concerned for her mental state. The Oranga Tamariki report of concern records were produced

⁵⁶ B1/53.

⁵⁷ B2/364.

⁵⁸ B2/451.

to the Court. They recorded a number of interactions between [Amanda Harris] and the police, where the police were concerned about their behaviour and state of mind. At 11.10 pm on 31 July the police had been called to a conflict between [Amanda Harris] and [Kevin Ridge]. They described [Kevin Ridge] as looking calm, relaxed but exhausted and out of options. They described [Amanda Harris] as “*very aggressive on police arrival*”. She was “*yelling at the top of her lungs at [Kevin] and police attendance*”. She was swearing and yelling and behaving aggressively with [Lily], as a three year old, held on her hip. [Lily] seemed distressed.

[74] On 4 August 2019 [Amanda Harris] was referred to social workers after alleging that she was being frequently harassed by [Frank Barker] who she said was a gang member. She claimed that she had gang members riding up and down her street and that [Frank] had broken into her home. She believed it was being done to intimidate and frighten her, saying that [Martin Barker] was applying for full custody and [Amanda Harris] believed he was aware of the harassment. There is no evidence to support any of those allegations. The police also investigated a family incident on 14 September 2019, when [Amanda Harris] had climbed in through [Kevin Ridge]’s cat door to his house after they separated and refused to leave.

[75] There was a record of a home visit to [Amanda Harris] by Oranga Tamariki on 26 December 2019. She was recorded as appearing “*hypervigilant*”, “*looking out the window when cars drove past*”. She claimed that [Martin Barker] had admitted that his brother, [Frank], had sent people to drive past her house and scare her. [Amanda Harris] said she has a “*sixth sense for knowing when something isn’t right and will check outside to see what is going on*”. There were also notes of a telephone conversation with the Family Harm police officer Anne Harbrow. Ms Harbrow said complaints had been made about [Kevin Ridge] following or harassing [Amanda Harris] when he was not in the country. Ms Harbrow recorded that she was unsure about whether or not [Amanda Harris] was using drugs. She thought there was some paranoia but was unsure whether it was through drugs or other mental illness.

[76] I find [Amanda Harris]’s behaviour was erratic, confrontational and escalating over a period of several months leading up to her arrests.

[77] The affidavit of Dr Patrick Daniels, of the Bexley Clinic, noted the presence of a paranoid disorder.⁵⁹ He said he had not been provided with evidence to conclude that any of the reported emotional symptoms had been sufficient to impact on [Amanda Harris]’s ability to parent her daughter. However, Dr Daniels had not been provided with the affidavit evidence that had been filed in the Family Court up to the date of his report. He had only been provided with the affidavit of [Amanda Harris] dated 20 May 2020. He noted that symptoms of paranoia can fluctuate and that detailed corroborative information would be required to determine whether [Amanda Harris]’s self-reported beliefs were based on faulty or disordered reasoning.

[78] Dr Daniels also noted that [Amanda Harris] had used the stimulant Ritalin and he was of the view that substance may have resulted in mood instability and contributed to “*heightened persecutory beliefs*”. Dr Daniels was sufficiently concerned about her fluctuating emotional state to consider that further longitudinal assessment and monitoring within a treatment setting might be useful to ensure that there was no deterioration in her condition. He noted this must be recent. “... *for example, an emergence of more prominent paranoid symptoms, which might then adversely impact on her day to day function and parenting capacities*”. He recommended monthly reviews with her GP, along with a referral back to [a healthcare group] for more assertive treatment and support if needed. “*This treatment setting could be within a community mental health clinic, the community care provided through regular primary care assessments, or if there are concerns about risk to self or others, as an inpatient.*” He referred in particular to notes from [Amanda Harris]’s GP that she had been assessed by the [community mental health team] where it had been considered that she may have a delusional disorder.

[79] [Amanda Harris] has not followed any of Dr Daniels recommendations.⁶⁰ There has been no longitudinal assessment. Dr Daniels ability to fully assess [Amanda Harris] was undoubtedly compromised because [Amanda Harris] failed to ensure that he was provided with all the relevant information that was then available to the Court. Despite that, his evidence corroborates the belief held by the [Barker] family that

⁵⁹ B2/374.

⁶⁰ She said in evidence that she had been receiving counselling from “The Happiness Hustler”, apparently a “lifestyle coach” and personal trainer. Clearly not the kind of longitudinal assessment or community mental health care Dr Daniels was contemplating.

[Amanda Harris] was suffering from mental health problems at the time [Lily] was removed from her care.

[80] I find it is likely that her mental health issues were significant at that time and that they were impacting on her ability to care for [Lily]. Both Mr [Barker], who visited her home, and the police expressed concern about the disorganised state of her home. [Amanda Harris] had been involved in confrontations with other adults in [Lily]'s presence, often while [Lily] was held on her hip, including confrontations with [Kevin Ridge] which led to her arrest and at least three significant confrontations with [Martin Barker], which will be detailed later in this judgment.

[81] It follows that [Amanda Harris]'s claims that [Lily] was removed from her care based on untrue allegations of "*associated mental health problems*" is also wrong.

[82] Finally, [Amanda Harris] claimed in general terms that she had been "*psychologically, financially and spiritually abused*". There is no evidence to support any psychological or spiritual abuse.⁶¹ As for the issue of financial abuse, in closing submissions it was asserted that [Martin Barker] and the [Barker] family were seeking to control her and that [Martin Barker]'s "*sudden termination of the child support he had agreed to pay voluntarily*" had placed her under a great deal of pressure causing her stress. It was submitted "*this stress was to set up the stage for [Charles Barker]'s without notice application for parenting orders and [Lily]'s immediate uplift*".

[83] [Martin Barker] accepted in cross examination that he had stopped paying child support from about 11 February 2022 and that there was an element of "*control*" to that decision.⁶² It was clear he did this out of a sense of frustration and concern about [Amanda Harris]'s financial mismanagement, her failure to ensure [Lily] had consistent contact with him and after he and his partner had been confronted and verbally attacked on at least two occasions by [Amanda Harris] in [Lily]'s presence. On one occasion she had taken the keys from [Martin Barker]'s car to prevent him from leaving. On the other occasion, she had blocked his car in the driveway using her car.

⁶¹ Nor is there any explanation as to what "*spiritual abuse*" might be.

⁶² NOE 317 to 326.

[84] [Amanda Harris] was also refusing to communicate with him consistently about his contact with [Lily]. She had interfered with a two-week holiday that he was enjoying with [Lily] in [location deleted] to the point where the holiday had to be called short. He was concerned that [Lily] was being isolated from her paternal grandparents and that [Amanda Harris] was not using the money for [Lily]'s support. He said, "*I was just trying to keep cash out of her hands so she wouldn't go buy drugs with it ...*".⁶³ Despite suspending the child support payments he had arranged for his mother to clear arrears of rent for [Amanda Harris] of \$3,500 after 11 February 2022 and he was paying for Uber Eats and other direct expenses. He did however say that he would deduct \$200 from the child support payments every time [Lily] was not made available for phone contact.⁶⁴

[85] There is no doubt that using child support payments as an element of control might amount to economic or psychological abuse. However, I find that although [Martin Barker]'s decision to suspend the child support payments may have been unwise, he acted out of frustration and genuine concern and he had otherwise taken significant steps to ensure that she was well supported, as had his father and mother through additional payments from time to time when [Amanda Harris] claimed to be short of money. His decision to suspend those child support payments does not justify the making of a protection order in [Amanda Harris] or [Lily]'s favour. There is no credible evidence that a protection order is necessary for the protection of [Amanda Harris] or [Lily].

[86] It follows that [Amanda Harris]'s application for a protection order is dismissed. An application had been made by the [Barker] family for the application to be struck out. Given the significant omissions from the evidence that [Amanda Harris] filed in support of her application and the significant false allegations that were contained in that application, had the application for strike out proceeded independently of this substantive hearing, there would have been justification for that order to be made.

⁶³ NOE 323.

⁶⁴ NOE318

[87] I find that [Amanda Harris]’s application for a protection order was “*retaliatory*”. It was, as Her Honour Judge Smith observed, an attempt to circumvent directions made by Judge Druce. The [Barker] family are entitled to costs in relation to that application.

Issue 2 – Should the Interim Protection Order Obtained by [Barker] Family be made Final?

[88] The application for a protection order in favour of [Lily] filed by [Charles Barker], [Martin Barker] and [Susan Barker] on 9 July 2021 was accompanied by an application for a warrant to enforce the parenting order that had been made on 19 March 2020, by an application for appointment as [Lily]’s representative, for suspension of contact between [Lily] and [Amanda Harris] and for a guardianship direction that counselling be provided for [Lily]. The warrant to enforce was granted on 9 July 2021 by Judge Burns who noted [Amanda Harris] “*had taken the law into her own hands*” in breach of the Court order. He noted an escalating pattern of behaviour culminating in “*snatching the child from school*”. On 15 July 2021 [Susan Barker] filed her affidavit in support and on 16 July 2021 Judge Walsh granted the without notice application sought appointing the applicants as representatives for [Lily] and made a temporary protection order under the Family Violence Act against [Amanda Harris] to protect [Lily], [Martin Barker], [Charles Barker] and [Susan Barker]. [Lawrence Macauley] was included as an associated respondent “*given his collusion and active involvement in the child’s abduction*”.

[89] On 9 July 2021 [Amanda Harris] and [Lawrence Macauley] were travelling for a family holiday with [Lawrence Macauley]’s three school-aged children. It was the day before the start of the July term holidays. [Amanda Harris]’s evidence was that she asked that they “*drive by*” [Lily]’s school and [Lawrence Macauley] agreed. She said she got out of the car and “*agonised*” whether or not she should uplift [Lily] and take her on holiday. She said she decided spontaneously that she would. Stills from CCTV footage recorded at the school show [Lily] being carried from the school in [Amanda Harris]’s arms. [Amanda Harris] was confronted by a teacher but lied and continued to take [Lily] without advising the [Barker] family of her intention, without permission and in breach of the Court order.

[90] I do not accept her claim and [Lawrence Macauley]'s claim that this was a spontaneous decision. There was a car-seat in the vehicle for [Lily]. [Amanda Harris] and [Lawrence Macauley] had clearly left for their holiday with the intention of uplifting [Lily] and taking her along with them. [Amanda Harris] must have prepared her 15 July email and the accompanying "*Whakamarumaruru ruling*" document sometime prior to the uplift with the intention of sending it once [Lily] was in her care. In cross examination she denied all knowledge of the *Whakamarumaruru ruling* document, claiming not to know what the word meant.⁶⁵ That document is an eight-page "manifesto" which set out [Amanda Harris]'s views as to how Courts, Oranga Tamariki and others involved should go about uplifting children from their parents. It was clearly written by [Amanda Harris] because it includes detailed references to her personal sense of injustice. It refers to "*both my ex and the father of my child colluding together*". It repeats her claim that she teaches "*over 125 children a day, coaching gymnastics, I parent three other children on a 50:50 shared care with my partner ...*".

[91] In a media interview later given to the New Zealand Herald, [Amanda Harris] said that she had "*meticulously planned the day she would take her daughter from school and discussed the idea of a holiday with her daughter the week before she took her*".⁶⁶ She justified her decision to uplift [Lily] by casting it as [Lily]'s choice "*I told my daughter we were away for a week. I said, if you want to come with mummy that's fine you can come, but if you don't that's okay so I'll give you a hug and a kiss. She jumped up and said, "Mum let's go".*" [Lily]'s mother should not have given her that invidious choice.

[92] [Lily] was abducted by her mother three days after Judge Druce issued his decision dated 6 July 2021 declining [Amanda Harris]'s application to recall or for leave to appeal the decision he had made in December 2020. [Amanda Harris] was clearly aggrieved by that decision.

[93] [Lawrence Macauley] actively participated in the decision to uplift and retain [Lily]. His evidence was that he was in daily contact with the police. He was declining

⁶⁵ It means to shade, shelter, protect.

⁶⁶ B6/148 to 152.

to tell the police where they were, and he was declining to return [Lily] despite being told an order had been made requiring her return.

[94] [Lily] was eventually found with [Lawrence Macauley], his children and [Amanda Harris] [location 2]. [Charles] and [Susan Barker] travelled to National Park to collect [Lily]. [Amanda Harris] and [Lawrence Macauley] were approached by Oranga Tamariki representatives and police officers on the [location 2] slopes. [Amanda Harris] filmed the events on her telephone, livestreaming them. Two videos of her livestream were produced as exhibits. [Lily] is playing happily in the snow nearby with a group of children. [Lawrence Macauley] is arguing persistently with the authorities. From time-to-time [Amanda Harris] adds commentary to the livestream such as “... *these people are up here trying to take my daughter away for no reason*”, “*this is a joke this is an absolute joke*”. She says, “*I need ... as many people up there right now to just get in behind what we’re doing and how we’re doing it and why we’re doing it.*” She is standing next to [Lily] during some of this commentary. She names the [Barker] family. She says to [Lily], “*Honey you don’t want to go do you? What do you want to do?*”. She yells at the authorities “*I can tell you now my child is not going back to the [Barker]’s because they’re drug users*”. “*You can do whatever you want to me but [Lily]’s not going.*” She alleged that a District Court Judge was “*friends with [Charles Barker]*”.

[95] [Lawrence Macauley] appears to be suggesting that there should be a negotiation, a discussion with the [Barker] family before [Lily] is taken. He says, “*we’d prefer to speak with the father though*”. [Lawrence Macauley] repeats the allegation that Mr [Barker] is “*best mates with the Judge*” at one point. [Amanda Harris] refers to [Albert Barker]’s suicide, “*They’ve had a child commit suicide in their care. The Court’s getting back handers.*” Clearly agitated and distressed [Amanda Harris] again approaches [Lily] saying, “*I’m so angry right now*” and asking [Lily] “*Do you want to go with [Susan], with grandma, you don’t do you.*” [Lily] appears to be trying to focus on her game of frisbee. This must have been a confusing and distressing position for [Lily] to be in.

[96] [Amanda Harris] and [Lawrence Macauley]’s evidence was that [Lily] was highly distressed as they drove her down the [town near location 2]. Neither of them

were able to accept that they were responsible for that. They were also oblivious to the concern and distress that they had caused [Lily]'s father and grandparents during the time that they were "*on the run*" with [Lily]. When he was cross examined [Lawrence Macauley] still seemed to be of the view that [Charles] and [Susan Barker] ought to have had a negotiation or discussion of some kind with them, that they ought to have been allowed to "*finish their family holiday*" with [Lily] before she was uplifted.

[97] [Amanda Harris]'s inability to shield [Lily] from her adult conflicts was on display throughout this incident. She has a strong sense of righteous injustice and appears to be unable to suppress or manage her anger.

[98] [Lily] has been exposed to incidents such as this too frequently during her young life. Her grandmother [Tracy Harris] recalled an incident when the family were gathered at a [rest home] with [Amanda Harris]'s maternal grandmother who was dying. [Lily] was present and without evident provocation, [Amanda Harris] started loudly abusing her mother calling her "*a bit fat bitch*" and "*useless*". [Lily] walked out of the room saying to her uncle "*That's just mum going off again*".

[99] [Martin Barker], his partner, [Roxie Oakley], and [Susan Barker] all gave evidence of the confrontation that occurred when they had been invited to [Kevin Ridge]'s home to celebrate [Lily]'s fourth birthday. All had been going well until they were leaving. At that point [Amanda Harris], with [Lily] on her hip, started loudly confronting and abusing [Martin Barker] and [Roxie Oakley]. The abuse continued as they left the property with [Amanda Harris] standing on the balcony yelling at them on the driveway and in the street. [Martin Barker] described [Amanda Harris]'s body language as very aggressive and confronting. The language that she used was foul. [Roxie Oakley] was in tears as a result.

[100] In January 2020 [Martin Barker] and [Roxie Oakley] had travelled to New Zealand from Australia to enjoy a two-week holiday with [Lily] at the family bach in [location deleted]. Throughout their time at the beach [Amanda Harris] was calling with threats to come and pick up [Lily]. [Roxie Oakley] recalled that during a Facetime call [Amanda Harris] told [Lily] that she was going to see [Lily]'s friends to

their birthday party but [Lily] was going to be missing out and “*are you sure you don’t want to come back home?*”. Obviously, that was upsetting for [Lily].

[101] When they returned to Auckland [Amanda Harris] confronted them at their car, took [Lily] on her hip and was aggressively insisting that [Martin Barker] talk with her. She took the keys from the car ignition forcefully and refused to give them back. Towards the end of the confrontation [Martin Barker] took a short video which shows [Amanda Harris] walking around in an agitated state holding [Lily] and at one point throwing a set of car keys to the ground. She called [Roxie Oakley] a slut, and [Roxie Oakley] was in tears at this point. [Martin Barker] and [Roxie Oakley] drove to [Susan] and [Charles Barker]’s house. [Amanda Harris] followed them and blocked their car in the driveway, continuing to abuse them, preventing them from leaving for the airport where they had a flight due to leave for Australia.

[102] There have also been two occasions since [Lily] was in the care of [Susan] and [Charles Barker] when [Amanda Harris] has confronted [Susan Barker] in public while [Lily] was with her. One of those occasions occurred at Madills Farm and another at [location deleted]. Both of those confrontations were distressing for [Susan Barker] and for [Lily]. I accept [Susan Barker]’s evidence that she tried to manage those encounters in order to avoid distress for [Lily]. [Amanda Harris] unfortunately was unable to regulate her anger.

[103] In the affidavit in support of the without notice protection order, [Susan Barker] recalled how at 2.26 pm on 9 July 2021 she received a call from [location 1] School telling her that [Lily] had been picked up by her mother, last seen walking down [street name deleted] at speed. The school was calling the police. She annexed to that affidavit an email that [Amanda Harris] had sent to the school at 2.20 pm. “*As guardian and parent of [Lily Barker] whom the concerns I have around the safety of her and the environment she is in. I am collecting my daughter; SHE IS IN SAFE HANDS AND WILL NOT BE AT ANY RISK WHAT SO EVER.*” (sic).

[104] On the evening of 9 July 2021 [Charles] and [Susan Barker] were contacted by a police officer who advised them that [Lawrence Macauley] had eventually answered his phone telling him that he “*completely supported [Amanda] and the actions she*

was taking”, that [Lily] was with him, [Amanda] and his three children, and that they would be enjoying a family holiday until Sunday. [Lawrence Macauley] had refused to tell the officer where they all were.

[105] [Susan Barker] described the experience of [Lily]’s uplift on Wednesday 14 July as “*absolutely horrendous*”. They had been contacted by the police who had located [Lily] at a hut at [location 2]. They had flown to [town near location 2] and hired a car as they did not want [Lily] to be in a police car with strangers for hours. When [Lily] finally came into their care “... *she was utterly traumatised, crying and shaking. It took many hours to settle her to sleep in my arms.*” She confirmed that [Amanda Harris] and [Lawrence Macauley] had posted the video of the uplift to social media stating that they would send copies to the media as well.

[106] Subsequently there was substantial publicity about the uplift in national media. [Susan Barker] annexed a number of social media posts made by [Amanda Harris] including a photo of [Lawrence Macauley] hugging [Lily] close with the words “*How a real man (Dad) interacts with a child these were the words 12 hours into [Lawrence] and [Lily] meeting each other.*” In cross examination [Amanda Harris] denied having taken the photo, written those words or having posted the image to social media. She was not telling the truth, it was clear to me that she had done those things. Following [Lily]’s uplift [Lawrence Macauley] and [Amanda Harris] both published inaccurate and defamatory posts to social media. On the Facebook page “[*details deleted*]” [Amanda Harris] published “*a Protection Order has been placed on Grandfather and wife married to him for a protection order for [Lily] and I, but yet the courts still come and take her from me!*” (sic)

[107] In her July affidavit [Susan Barker] also noted [Lily]’s confusion and distress after she was introduced to [Lawrence Macauley] by [Amanda Harris] through the fence at [contact centre 1] on 3 July 2021. When [Susan Barker] had called to collect [Lily] following contact with her mother [Lily] told her “*Guess what! I met mummy’s new boyfriend today ... mummy took me around back of the building and he was waiting for me by the fence. He said, “hello [Lily]”.*” [Contact centre 1] staff confirmed the events and told her a report would follow. On the trip home [Lily] announced that her mother was going to have a baby also, saying “*Mummy said she*

needs me with her to help her now. I should go back to mummy; mummy is getting married.”

[108] [Lily] was distressed, crying and continued to cry heavily. She was clearly confused and upset by the information that she was told and having difficulty processing it. She said through her tears that maybe she could spend some time with daddy and her baby brother and some time with mummy and her baby. She said quietly to [Susan Barker], “*You know [Susan] it is against mother nature that you stole me*”. [Susan Barker] attempted to quietly reassure her, but she described [Lily] as being on a rollercoaster of emotion after the events. She noted that [Lily] continued to display unusual and distressed behaviour for some time after that event.

[109] In seeking the suspension of contact and the protection order, [Susan Barker] deposed she was concerned to ensure that [Lily] would be able to “*go about her life without worrying that the respondent can snatch her again*”. She wanted to provide [Lily]’s school with the ability to keep [Lily] safe and to provide her grandparents with some security. A special condition was sought that the respondent not be allowed to post allegations against either the Court or any members of the [Barker] family on social media or distribute them to the media, and they asked that [Lawrence Macauley] be joined as an associated respondent.

[110] The order that was granted on a without notice basis was clearly necessary at the time it was made. It was essential that [Lily] be protected from the impact of her mother’s confrontations. [Lily]’s father and grandparents were entitled to be protected from serious psychological abuse that both [Amanda Harris] and [Lawrence Macauley] had visited upon them through the untrue and defamatory allegations that were published on social media and through other media outlets.

[111] I find, on the balance of probabilities, that both [Amanda Harris] and [Lawrence Macauley] have used violence, specifically psychological violence, against [Charles Barker], [Susan Barker], [Martin Barker] and [Lily].

[112] In relation to [Lily], [Amanda Harris] has in the past allowed [Lily] to be exposed to significant conflict including physical confrontations between [Amanda

Harris] and [Kevin Ridge] and foul, verbal abuse directed by [Amanda Harris] to her father and paternal grandparents. Some of the characteristics of psychological abuse that were identified by Judge Welsh in *G v C* have been displayed all too frequently by [Amanda Harris] against the [Barker] family.⁶⁷ She has repeatedly participated in behaviour that has been designed to unsettle, antagonise, offend, annoy, provoke or worry them. Taking [Lily] from school without any discussions, keeping her for several days without any direct communication or explanation and acting in the conscious knowledge that she was deliberately breaching Court orders that were made to protect [Lily], exposed [Lily]’s father and paternal grandparents to significant distress and concern.

[113] [Amanda Harris]’s own application for orders under the FVA, an application which was brought without any reasonable foundation, was an element of her abuse. The complaints to the police that she made leading to intrusive welfare checks were also abusive. She had no reasonable basis to be concerned for [Lily]’s safety. The allegations that [Lily] was physically abused while in her paternal grandparent’s care were clearly distressing and are part of her pattern of psychological abuse. Her repeated defamatory allegations of corruption, deception, drug abuse and drug dealing levelled against various members of the [Barker] family are also abusive. She has published unfounded allegations widely, both through the news media and on social media platforms.

[114] I find that she takes no responsibility for any of her conduct. She clearly has not reflected on the impact her behaviour has had on her daughter, let alone on [Lily]’s paternal family. To the contrary, she continues to deny responsibility through her unfounded accusations of “*hacking*” – allegations which she essentially points towards the [Barker] family, no doubt increasing their distress.

[115] There is no sign that her conduct will cease at any time in the future. I am satisfied that a protection order is necessary for the protection of [Lily] and the applicants and that the applicants are entitled to the order they are seeking.

⁶⁷ *G v C* [1997] 16 FRNZ 201 at 208.

Associated Respondent

[116] As for [Lawrence Macauley], he was instrumental in [Lily]'s abduction. He was the main conduit for communication of defiance to the police during the time until they were apprehended. He was present in Court during [Amanda Harris]'s cross examination, but despite witnessing her repeatedly give evidence which was clearly untrue and which he must have known to be untrue, he remained loyally supportive to her.

[117] On 23 December 2021, [Lawrence Macauley] filed a without notice application for orders under the COCA seeking that [Lily] come into his and [Amanda Harris]'s care. That application was withdrawn just prior to the substantive hearing but it should never have been filed. There was no reasonable basis for the orders that were being sought. His affidavit in support contained a number of matters which were untrue and which he must have known to be untrue. The affidavit opened with the statement "*I am the stepfather to [Lily Barker] ... she knows me well and feels safe in my care*". He had spent less than five days in total with [Lily].

[118] His affidavit included significant information he cannot have known, it referred extensively to events that occurred long before he was in a relationship with [Amanda Harris]. The application was clearly made, not only with her knowledge but with her encouragement and support. The affidavit that he filed made it clear that he did not accept any responsibility for the distress that [Lily] suffered when she was uplifted. His affidavit included references to [Albert Barker]'s suicide, which is not in any way relevant to the relief that he was seeking and which I find were included gratuitously, no doubt at [Amanda Harris]'s behest, knowing the distress that it would cause [Martin], [Charles] and [Fay Barker] in particular.

[119] When he was cross-examined, he gave a number of inadequate explanations as to why he chose to file that application just prior to Christmas, timing which was highly distressing for the [Barker] family. Part of his motivation was that he had wanted [Lily] to be with them on Boxing Day when he planned to propose to [Amanda Harris]. He said when questioned, that he had not had an opportunity to obtain legal

advice before filing the application prior to Christmas.⁶⁸ However, he persisted with his support for [Amanda Harris]’s pattern of abusive conduct in statements he made in documents filed in Court which were psychologically abusive, even in the New Year.

[120] On 10 January 2022 he filed an “*urgent interlocutory application*” seeking a direction that [Lily] be transferred to his day to day care immediately. It was accompanied with a “*memorandum*”, which was evidently intended as an affidavit. In that document he repeated in that document allegations that [Amanda] had been “*set up to defame her*”. He alleged that the temporary protection order obtained in July 2021 “*by [Charles Barker] [was] solely and entirely as a gag to stop [Amanda] going public with the comments made to her by [Lily] about how she was feeling and being treated in the grandfather’s care, and that she ([Lily]) desperately wanted to be back living with her mother.*”

[121] Although [Lawrence Macauley]’s counsel submitted that he could not be seen as “*an active perpetrator*” in relation to ([Lily]’s uplift and being taken to) [location 2] he was one of the two key participants, although he clearly acted with [Amanda Harris]’s encouragement. On his behalf that it was not accepted that “*this level of participation is sufficiently individualised to meet the s 89 level. He did not act discretely; he was simply present and reacted to the reactions of [Amanda Harris].*” I do not accept that submission. In the livestream video he was leading the obstinate debate with the police and Oranga Tamariki. He was the chief communicator with the police while he and [Amanda Harris] were “*on the run*”.

[122] It was submitted that he did not think that uplifting [Lily] from school was “*a good idea*” and counselled against it. It is difficult to see why he travelled to the school with a car seat for [Lily] in his car.

[123] [Lawrence Macauley] exhibited a lack of understanding or empathy for the impact that his actions and [Amanda Harris]’s actions had on the [Barker] family similar to that displayed by [Amanda Harris]. He still appeared to believe that it was

⁶⁸ Although he said he had been told by [Amanda Harris]’s lawyer Ms Abdale about two weeks before Christmas that he could apply – NOE 583

unreasonable that [Martin Barker] and [Susan Barker] did not “*negotiate*” with him in relation to [Lily] being returned to their care, despite the fact that he had defiantly acted in breach of Court orders to their considerable distress.

[124] It was submitted that [Lawrence Macauley] had reflected on the events of 2021, that he had had the opportunity to listen to contrary evidence he had not heard previously and “*perhaps most importantly Mr [Macauley] has given evidence of his law-abiding nature*”. His allegedly law-abiding nature was not on display when he was refusing to cooperate with the police.

[125] [Lawrence Macauley]’s lawyer urged the Court to be cautious “*about seeing the making of a protection order against Mr [Macauley] as some form of punishment to him for perceived disrespect for the Court process or foolish action*”. That is not the reason that I have decided that [Lawrence Macauley] must be included as an associated respondent in the orders that I am making. I have made that decision because I have decided on balance of probabilities that he has used violence, particularly psychological violence as outlined above and he has done so with the encouragement and support of [Amanda Harris]. I am satisfied that the order is necessary for [Lily]’s protection and for the protection of [Martin Barker], [Susan Barker] and [Charles Barker]. They believe that the order is necessary for their protection. Their belief is reasonable. [Lawrence Macauley]’s support and loyalty for [Amanda Harris] was on display when he was cross examined. He did not display any real indication that he had reflected, nor that he was unlikely to act in a similar way in the future should the occasion arise.

Issue 3 – [Lily]’s Care and Contact

[126] [Lily] came to New Zealand from Sydney with her mother at the age of 19 months. The parental separation was evidently amicable initially because [Lily] and [Amanda Harris] lived with [Fay Barker] and enjoyed good relationships with the [Barker] family. When [Amanda Harris] travelled [overall] for a wedding, [Lily] was cared for by her father in the home of his mother [Fay Barker]. On a number of other occasions [Lily] was cared for by her paternal grandparents. The relationship between [Amanda Harris] and the [Barker] family appears to have fractured following

[Amanda Harris]’s return from [overseas] when she learned there had been contact between [Lily] and [Lily]’s maternal grandmother, [Tracy Harris]. [Amanda Harris] has not maintained a relationship with her mother and evidently did not want [Lily] to establish one.

[127] However, [Lily] remained principally in the care of [Amanda Harris] until 19 March 2020 when the interim parenting order was made.

[128] In opening submissions [Amanda Harris] was seeking a discharge of the interim parenting order in favour of an order that [Lily] return to her day to day care with [Lawrence Macauley] to provide “*family supervision*”. She had proposals for contact between [Lily] and her father.

[129] In her closing submissions [Amanda Harris] pursued three principle arguments.

- (a) She contended that the existing without notice orders ought not to have been made in the first place, alleging that there was a breach of the obligation to fully and frankly disclose all relevant information.⁶⁹ I do not accept that submission. I have already found that there was a reasonable basis for the belief expressed in the affidavit in support that [Amanda Harris] was abusing drugs and has mental health issues which were impacting on her ability to keep [Lily] safe. Detailed submissions were made that the affidavit in support ought to have disclosed that Oranga Tamariki had concluded that they “... *had not received any information to suggest that [Lily] is not being well cared for by [Amanda]*”.⁷⁰

Given that [Charles Barker]’s affidavit refers to a notification made to Oranga Tamariki and to their suggestion that [Martin Barker] apply for interim custody, I accept that Oranga Tamariki’s advice that they had insufficient information to act ought to have been disclosed. However,

⁶⁹ Citing *Martin v Ryan* (above n 49) and *Parker v Heath* [2018] NZFC 1952, per Judge Coyle.

⁷⁰ Exhibit B CYRAS notes at page 39.

the omission of that information is not so significant to justify the without notice order being discharged. It is likely the Court would still have been satisfied that a without notice order should be made. The balance of the affidavit accurately set out serious grounds for concern as to [Lily]'s safety and given everything that was known about [Amanda Harris]'s erratic and violent behaviour in [Lily]'s presence s 5(a) required immediate steps to be taken to ensure she was safe.

- (b) [Amanda Harris] submitted that a s 133 psychologist report is essential for the Court to obtain expert evidence on the restoration of [Lily]'s relationship with her mother “*and any other factors integral to [Lily]'s best interests and welfare*” before any final orders are made. A s 133 report has been directed with [Amanda Harris]'s consent, however in a conference on 17 May 2021 Judge Druce noted the agreement of all counsel that it was unacceptable to await the allocation and completion of the s 133 report before the substantive hearing commenced. Judge Druce directed that the matter was to proceed to a hearing with or without the s 133 report. He noted that the five-day fixture was to determine the safety issues and the parents substantive parenting cases. I am able to determine the parenting order that should be made without the psychologist's opinion. It is not necessary, and there are a significant number of other reliable sources of evidence for me to be able to decide who should be responsible for [Lily]'s day to day care.
- (c) [Amanda Harris] submitted that the current interim parenting orders are contrary to [Lily]'s welfare and best interests and should be discharged. I deal with this issue below.

[130] Section 5A of the COCA is relevant here because orders have been made under s 79 of the Family Violence Act against [Amanda Harris] by Judge von Keisenberg in favour of [Kevin Ridge] on 13 January 2022. I am thus required to take into account the circumstances in which the order was made and the Judge's written reasons. I note Her Honour was concerned that [Amanda Harris] had been charged with breaches of

the interim protection order made in [Kevin Ridge]’s favour.⁷¹ Judge von Keisenberg was concerned about the impact [Amanda Harris]’s confrontational behaviour might have had on [Kevin Ridge]’s three school aged children.⁷² Judge von Keisenberg’s concern as to [Amanda Harris]’s unregulated behaviour in the presence of his young children echoes a concern that I have.

[131] [Amanda Harris] is unable to regulate her anger or protect [Lily] from conflict and from her contempt for the [Barker] family. Her inability to control her anger was also displayed during the incident that led to [contact centre 2] declining to continue to act as contact supervisors, [Lily] and [Amanda Harris] had been enjoying supervised contact with a [contact centre 2] provider when a bottle was thrown from the street which broke somewhere in their vicinity. Despite attempts by the [contact service 2] supervisor, [Amanda Harris] was unable to contain her anger. They reported that she had started crying in front of [Lily], talking about being “*targeted*”, that someone had placed a tracking device on her car.⁷³ The two supervisors present decided to bring contact to an end, “*the noise of the bottle shattering on the driveway would have been very scary for [Lily] and of course seeing her mother distraught*”. When [Lily] got back in the car she said, “*Mum always cries, and she always calls the police*”.⁷⁴

[132] [Amanda Harris]’s inability to shield [Lily] from conflict was on display on 18 November 2020 when [Susan Barker] was confronted at Maddills Farm after [Lily] had finished a sports event. I accept the account given by [Susan Barker] of the incident.⁷⁵ [Amanda Harris] was following [Susan Barker] demanding to see [Lily], obstructing her path. She was loudly accused of “*stealing*” [Lily]. I am concerned that [Amanda Harris] appeared to be attempting to video part of the confrontation. Her repeated recordings of [Lily], whether for “*evidential purposes*” or for livestreaming showed no regard for [Lily]’s right to privacy.

⁷¹ [Ridge] v [Harris] [2022] NZFC 290 at [22].

⁷² Paragraph [7](f), [7](g), [7](i), [26], [27], [52].

⁷³ B2/422.

⁷⁴ B2/422, email [name deleted] of [contact centre 2] to [Lily]’s lawyer, 2 November 2020.

⁷⁵ B2/409 to 411.

[133] Section 5(a) requires me to protect [Lily] from all forms of violence. [Lily] has been exposed too often to her mother's intense hostility towards members of the [Barker] family. She has been unable to regulate her conduct even in the context of supervised contact. [Amanda Harris] has also acted in a distressed, agitated and dysregulated manner in [Lily]'s presence during confrontations with [Kevin Ridge] and [Lily]'s maternal whānau. [Amanda Harris] has repeatedly breached rules set by contact supervision providers and has ignored their requests or directions.

[134] Given that I have made a protection order in favour of [Lily] I find that [Lily] is not safe in her mother's care without supervision. I will consider the issue of what may constitute adequate supervision later in this judgment.

[135] No legitimate s 5(a) concerns have been raised about the [Barker] family or [Martin Barker]. [Lily] has been nurtured in the principal care of her grandparents since the interim orders were made. She enjoys extensive video contact with her father, her father's fiancée Ms [Oakley] and her baby brother at least daily. The evidence of [Susan Barker] in particular, satisfies me that [Lily] has been appropriately emotionally supported when she has been exposed to her mother's distressing behaviour. I accept that [Martin Barker] has not had [Lily] in his principal care for significant periods of time recently.⁷⁶ His opportunities to visit New Zealand have been limited because of the Covid-19 epidemic. His intention is to move to New Zealand and establish a home in the [location 1] area as soon as his fiancée's immigration status is regularised. [Lily] will remain in the same neighbourhood, attending the same school and be able to maintain the close relationship she has with all three of her paternal grandparents. I am satisfied that the [Barker] family can provide a safe environment for [Lily].

[136] [Amanda Harris] submitted that the video evidence of the confrontation that when she took the keys from [Martin Barker]'s car shows "*that he does not stop from making disparaging remarks about [Lily]'s mother in front of [Lily]*". I accept it would have been better if [Martin Barker] had moderated his comments on that occasion, but the video captures the end of what was a long confrontation and I find that the conflict

⁷⁶ Although [Lily] was able to travel to Australia to visit him.

was initiated and maintained by [Amanda Harris]. [Amanda Harris] is also critical of [Martin Barker]'s refusal to talk directly to her about [Lily], and his insistence on communication being through his lawyer. Direct communication was only exposing [Lily] to conflict. It is understandable that the [Barker] family do not feel safe communicating "*directly*" with [Amanda Harris]. The evidence satisfies me that there is a significant risk that anything they say will be misreported by her.

[137] It was also submitted that [Martin Barker] has a "*tolerance of illicit drug use*". There is no evidence that [Lily] will be exposed to risk from drug use by her father. The presence of small marijuana plants at [Frank Barker]'s home in [location 3] is the only evidence of any note that [Amanda Harris] produced, and it is of marginal relevance at best.

[138] Section 5(b) of COCA emphasises that [Lily]'s care, development and upbringing should primarily be the responsibility of her parents and guardians. It is important that [Lily]'s fractured relationship with her mother is restored in a way that is concurrent with her safety and as soon as it is safe to do so. It is likely that [Amanda Harris] will need to take significant steps to address her anger, her inability to regulate her behaviour and to resolve any subsisting mental health issues to the extent that they impact on [Lily]'s safety and welfare. Even then it will take some time to rebuild the relationship between [Martin Barker], [Lily]'s wider family and [Amanda Harris]. However, history suggests there is every prospect that this can happen. [Amanda Harris] received significant material and emotional support from the wider [Barker] family for a substantial period of time after she returned from Australia.

[139] Unfortunately, [Lily]'s right to have both of her parents participating in her care must in this case be subordinated to her right to safety. The evidence satisfies me on balance of probabilities that the [Barker] family did what they could to maintain [Amanda Harris]'s involvement in [Lily]'s life.⁷⁷ [Lily]'s s 5(b) rights can best be immediately protected through the orders that are being sought that she be in the day to day care of her paternal whānau.

⁷⁷ For example, [Susan Barker] encouraging [Lily] to draw pictures for her mother prior to contact visits.

[140] Under s 5(c) [Lily]'s care, development and upbringing should be facilitated by ongoing consultation and cooperation between her parents "*and any other person having a role in ... her care under a parenting or guardianship order*". [Lily]'s parents will need to acquire the skills over time to enable them to cooperate and consult constructively. However, the evidence satisfies me that the [Barker] family and [Martin Barker] are more likely to promote dialogue and genuine consultation than [Amanda Harris] is.

[141] Section 5(d) emphasises that [Lily] should have continuity in her care, development and upbringing. [Amanda Harris]'s proposal was that [Lily] should live with her, [Lawrence Macauley] and his children in [location deleted] and attend [detail deleted] Primary School. [Lily] has lived in the [location 1] area since her return from Australia at the age of 19 months. [Martin Barker]'s proposal is that she will continue to live there and continue to attend the same school maintaining the same circle of friends. I am satisfied that he and his family are able to ensure that there will be continuity in [Lily]'s life. In particular, [Lily]'s relationship with both her maternal and paternal grandparents will be maintained if she is in [Martin Barker]'s principal care. Those relationships are unlikely to be nurtured by [Amanda Harris].

[142] Sections 5(e) and 5(f) of COCA emphasise [Lily]'s right to continue to have a relationship with both of her parents and remind me that her relationship with her wider family group should be preserved and strengthened with her identity and culture.

[143] I find that if [Lily] is in [Amanda Harris]'s principal care there is little prospect of her relationship with the [Barker] family or indeed with her maternal grandparents being fostered, preserved or strengthened.

[144] [Lily] is clearly and rightly still very fond of her mother. She has told lawyer for the child that she would like to live weekends with her mother. It is a concern that [Lily] has had no contact with her mother for so long and that her contact was as limited as it was for as long as it was. However, that is principally the result of the things that [Amanda Harris] has done. The [Barker] family as a whole, and [Martin Barker] in particular, will need to work hard to put aside any animosity that they may now have towards [Amanda Harris] and to ensure that [Lily]'s relationship with her

mother is rebuilt in a secure way. I accept that they will need assistance. Their applications included an application for an order that [Lily] could attend therapeutic counselling. It is likely that some therapeutic counselling will be of assistance to [Lily], but care will need to be taken about the focus of that counselling. Appropriate communication counselling in due course may also assist the [Barker] family and [Amanda Harris] in re-establishing a constructive parenting relationship.

[Lily]’s Views

[145] [Lily] has made it clear to her lawyer that she has been happy in the care of her grandparents.⁷⁸ [Lily] is looking forward to living with her father [Martin], his partner [Roxie] and her brother [Sam] in Auckland. School is going well for [Lily]. She was looking forward to Year 2 and she was able to name nine children as friends in school and in the neighbourhood. She was enjoying her time at her beach house in [location deleted] and spending time with her cousin, [Sunday]. She said the trip to the snow at [location deleted] (with her mother) was good and she was looking forward to going to [overseas] with “*Dad, [Roxie] and [Sam] – [Roxie] and Dad going to get married*”.

[146] On 4 January 2021, [Lily] told her lawyer that if she had a choice she would want to be weekends staying with Mum and school days with Dad and [Roxie] and until they come to Auckland she wanted to stay with [Charles] and [Susan Barker].⁷⁹ [Lily]’s wish to live in the care of her father and until he is in Auckland, with her grandparents, can be met. I am satisfied that an order that sees her in the day to day care of her grandparents until her father returns to Auckland, and then in his day to day care, is an order that promotes [Lily]’s welfare and is in her best interests.

[147] Regrettably, [Lily]’s wish to spend weekends with her mother cannot yet be met. It is not yet safe for [Lily] to spend weekends with her mother.

⁷⁸ B3/4, Report of Lawyer for Child, 29 April 2020; and Report of Lawyer for Child, 20 April 2020 at 10.1.

⁷⁹ Report of Lawyer for Child, 20 January 2022.

[Lily]'s Contact with her Mother

[148] I am satisfied that any contact that [Lily] has with her mother needs to be vigilantly supervised. [Amanda Harris] has demonstrated that she will at least “*test the boundaries*” and that she is prepared to breach clearly established rules and guidelines that are in place to protect [Lily].

[149] [Amanda Harris]'s opening and closing submissions emphasised her wish to have [Lily] in her care with contact to be supervised by [Lawrence Macauley]. That is clearly inappropriate given the orders that I have made under the Family Violence Act in relation to [Lawrence Macauley]. I find that he has not been able to prioritise [Lily]'s welfare and best interests over his support for [Amanda Harris]'s position. In cross examination he held firm to the belief that he was able to provide objective supervision.⁸⁰ His evidence indicated that he supports [Amanda Harris]'s view that there has been collusion between [Kevin Ridge], the [Barker] family and [Amanda Harris]'s parents.⁸¹

[150] The position of the [Barker] family was that [Amanda Harris] should have fortnightly supervised contact at a supervised contact centre “... *on the condition that she first undergo a longitudinal assessment in a treatment setting at [healthcare group]*”. They sought a number of conditions to that supervision including that she take any medication provided as a result of the mental health assessment and engage in any other therapy recommended as a result of the assessment.

[151] Next to [Lily]'s safety, the first priority for her is to re-establish a safe relationship with her mother. That can only be done if contact recommences as soon as possible. I am conscious of [Lily]'s right under s 4(2) of COCA to have decisions made and implemented within a timeframe that is appropriate to her sense of time. Too much time has passed already without matters being resolved for [Lily]. If re-establishment of her contact with her mother must wait until (for example) her mother concedes that she should undertake a longitudinal mental health assessment and until

⁸⁰ NOE 306.

⁸¹ NOE 304.

she complies with my recommended therapy or treatment there is likely to be further significant delay at best.

[152] The evidence has satisfied me on balance of probabilities that it is likely that [Amanda Harris] is suffering from or has suffered from a mental health condition of some description which has impacted on her ability to safety parent [Lily].⁸² It is important for [Lily]’s sake that her relationship with her mother move beyond the restraints of supervised contact, which will necessarily be time limited, when that is safe for [Lily]. For that to happen, [Amanda Harris] will need to provide the Court with at least a reliable diagnosis and prognosis. Any professionals she consults will need to have access to all the relevant material including this decision. If it is [Amanda Harris]’s position that she is not suffering from a mental health condition, then she will need to produce reliable evidence expert evidence to that effect. I find that it would not be appropriate for her contact with [Lily] to move beyond supervised contact until the Court can be satisfied that the issues raised by Dr Daniels, and by [Amanda Harris]’s inability to regulate her anger and to protect [Lily] from her conflicts with others have been addressed.

[153] It is appropriate that [Lily] have some counselling and if indicated through that counselling, therapy as soon as possible. [Amanda Harris] had herself sought a direction that [Lily] be offered counselling by Simone Powell, an experienced and appropriately qualified psychologist who would be a suitable appointment if she is available.⁸³

[154] In her closing submissions, [Amanda Harris] submitted that a s 133 report was essential for the Court to obtain expert evidence on the restoration of [Lily]’s relationship with her mother. I agree that the s 133 report already directed remains essential, but its focus needs to be on that issue. I am satisfied that the report is the best source of information on that issue. Following the conclusion of the hearing of evidence in this matter, I was advised by the registry that the report that had been directed was now “*at the front of the queue*” and that the file would be prepared for

⁸² I do not know whether she has a subsisting mental health issue. Although that may explain, in part, her dissociation from the truth throughout her evidence.

⁸³ B6/61(g) affidavit of [Amanda Harris], August 2021.

delivery to a senior psychologist. I am therefore satisfied that the proceedings – at least as far as the restoration of contact between [Lily] and [Amanda Harris] is concerned – will not be unduly delayed by the time taken to prepare the psychological report. Given the need for [Amanda Harris] to address the concerns the Court has as to her dysregulated behaviour and mental health issues, the delay in completion of the report will not have an unacceptable effect on [Lily].⁸⁴

[155] I therefore find that a s 133 report should be prepared. I have prepared an amended draft brief which is attached as Appendix I to this judgment. I am going to allow the parties seven days to provide any comments or concerns on the scope of that brief before the file is referred to the psychologist with all the accompanying pleadings and a copy of this decision.

[156] In the meantime, supervised contact between [Lily] and [Amanda Harris] should commence as soon as possible. In the orders below I detail the conditions that will apply. [Lily]’s lawyer has said that [Amanda Harris] appeared to have exhausted the options for supervised contact available in Auckland. Hopefully not. I note that the organisation [named deleted] which provides externally supervised contact appears not to have yet been used. There may be other suitable supervised contact centres or professionals available. I will extend the brief of lawyer for child to require him to liaise with the Kaiarāhi and Registry staff at Auckland District Court with a view to identifying an appropriate supervision provider or supervised centre.

Interim Orders or Final Orders?

[157] I have already referred to [Lily]’s right to have these proceedings determined within a timeframe that is meaningful for her. I am satisfied on balance of probabilities that it is in [Lily]’s welfare and best interests that she be in the day to day care of her father when he returns to New Zealand, and of her grandparents until then. There is no point in making a further interim parenting order for her day to day care. [Lily] is entitled to some certainty and finality in her life. It is therefore appropriate that the order that I make regarding day to day parenting be a final order.

⁸⁴ These conditions for directing a report all addressed in s 133(6) of COCA.

[158] However, unfortunately for [Lily], that will not bring these proceedings to an end. Contact that sees her having only supervised contact with her mother with the time limits that entails is not satisfactory in the long term. I therefore find that it is essential that the contact order that I make for [Amanda Harris] be an interim order.

[159] I note there is some divergence of judicial opinion as to whether it is appropriate to effectively make two contemporaneous separate parenting orders. The wording in s 48 and s 49 of COCA is singular stating, “*on an application made to it for the purpose by an eligible person, the Court may make a parenting order ...*”.⁸⁵ That has led some Judges, including Judge Coyle in *Quince v Rock* to conclude on plain reading that the Act does not allow a final order and an interim order to be made on the same application.⁸⁶

[160] I prefer the view taken by Judge Murfitt in *Giamatti v Greig* and Judge Rogers in *Buckingham v Ross*.⁸⁷ I agree with Judge Rogers that it is doubtful the legislature intended to prevent the finalisation of matters that are not in dispute or that require finality just because there are other issues to immediately be resolved. My primary focus must be the welfare and best interests of [Lily]. Above all, [Lily] needs to be protected from unnecessary future conflict including unnecessary future litigation. By making a final parenting order as to her day to day care there is a real prospect that any future litigation will be more constrained and focused. A final order as to [Lily]’s day to day care might also work to protect [Lily] by, for example, providing a disincentive to [Amanda Harris] attempting to use her contact with [Lily] as an opportunity for “*evidence gathering*”.

Costs – [Lawrence Macauley]

[161] [Lawrence Macauley] withdrew his application for this under the FVA prior to hearing. It is clear to me that application ought never to have been filed and certainly not on a without notice basis. The application to strike the proceeding out brought by the [Barker] family would have succeeded. The respondents to his application are

⁸⁵ Section 48(1) COCA.

⁸⁶ *Quince v Rock* [2015] NZFLR 687 at [5].

⁸⁷ *Giamatti v Greig* [2015] NZFLR 876; *Buckingham v Ross* [2015] NZFC 6391 at [36]-[39].

entitled to costs. Costs are at my discretion, but it is a discretion that must be exercised judicially and I must be guided by Rules 14.2 to 14.12 of the District Court Rules (DCR).⁸⁸

[162] I find it is appropriate that costs are awarded on a 2B scale using the rates derived from the District Court Rules. With the memorandum as to costs dated 25 March 2022, Ms Townsend filed a calculation of costs on 2B scale. I approve that calculation which totals \$7,926.50, subject to confirmation that it does not exceed the costs actually incurred. [Lawrence Macauley] submitted that his application “*was literally only live for a matter of weeks*” and that beyond the memorandum seeking to strike out filed by the [Barker] family, no substantive reply was required. Given that the application ought not to have been filed in the first place, I would have awarded increased costs in respect of that application had they been sought. It is clearly appropriate that costs follow the event. [Lawrence Macauley] submitted that in the absence of confirmation that the actual costs were less than scale costs, I should not make a costs order. Ms Townsend submitted the overall costs incurred by the [Barker] family in these proceedings exceed \$180,000. An exact particularised calculation of the costs associated with [Lawrence Macauley]’s application may be difficult, but the order as to costs in relation to [Lawrence Macauley]’s application is to lie in Court until a schedule estimating the actual costs is filed. If the actual costs are less than the scale recovery of the actual costs, those actual costs are justified given the timing of his application, the fact it was filed without notice, the further steps he took in January 2022 to seek an immediate order and his admission that his decision to file just prior to Christmas was motivated by his wish [Lily] be present for his proposal to [Amanda Harris].

Costs – [Amanda Harris]

[163] [Amanda Harris] opposes any order for costs being made against her. She was initially self-represented. She was then in receipt of Legal Aid while she was represented by Ms Webster. She has been legally aided while she was represented by Ms Abdale. Her Legal Aid grant covers attendances in relation to care/contact issues,

⁸⁸ *S B v D C*, High Court Auckland, CIV 2011-404-100, 5 October 2011 at [36] per Toogood J. The discretion must be exercised judicially and in a principled manner.

enforcement of any care order, defence of the FVA application against her and relocation.⁸⁹ I was directed to s 45(2) of the Legal Services Act which reminds me that I am not to make an award of costs against a legally aided person in a civil proceeding unless I am satisfied there are exceptional circumstances. It was submitted that there were no exceptional circumstances for costs to be awarded, that the proceedings were primarily about [Lily]’s welfare and best interests and [Amanda Harris] as her mother had a right to participate in them fully.

[164] Ms Townsend, on behalf of the [Barker] family, filed a detailed memorandum in support of costs. Costs were sought against [Amanda Harris] in respect of:

- (a) Her without notice application for a protection order filed on 25 June 2022;
- (b) The applications for leave to appeal and recall and her opposition to an application for [Lily] to have contact in Sydney with her father; and
- (c) The COCA proceedings.

Without Notice Application for a Protection Order

[165] This is an application that [Amanda Harris] filed on her own behalf. She was not in receipt of Legal Aid at the time of filing. Her grant of Legal Aid has not been extended to cover the costs of her application and the [Barker] family is entitled to costs. The application should not have been brought. It was essentially “retaliatory” and it was significantly in breach of the obligation to fully disclose. If increased costs had been sought in relation to that application, they would have been awarded. Counsel prepared a calculation of costs calculated on a 2B basis. They total \$22,729.

[166] Costs should follow the event. It is difficult to separate the attendances involved in the substantive hearing of this matter in relation to [Amanda Harris]’s without notice for a protection order from the COCA applications and the application for a protection order brought by the [Barker] family against her. No doubt there was

⁸⁹ Memorandum of Ms Abdale, 19 May 2022.

a contribution to the costs of preparation in the hearing, but I do not accept that it would have been the two days allowed for in paragraph 16.3, 16.4 and 17.1 of the plaintiff's schedule. I am prepared to allow one day for each of those attendances. The other matters in the schedule are appropriate. Costs of \$15,092 are awarded against [Amanda Harris] in relation to that application.

Applications for Leave to Appeal, for Recall and re [Lily]'s Travel to Sydney

[167] Costs are sought on a 2B basis. Ms Abdale's memorandum of 19 May 2022 indicates [Amanda Harris] was not legally aided in relation to the leave to appeal and recall applications, and her opposition to [Lily]'s holiday in Sydney with her father, then costs should follow the event. [Amanda Harris] was unsuccessful. Her leave to appeal and application for recent applications were lacking in merit. These issues were determined in a single hearing on 17 May 2021 and costs should follow the event. The calculation at \$16,903.50 is appropriate and costs in that sum are awarded against her.

COCA Proceedings

[168] Section 45(1) of the Legal Services Act provides that liability for an order for costs "*must not exceed an amount (if any) that is reasonable for the legally aided person to pay, having regard to all the circumstances including the means of all the parties and their conduct in connection with the dispute.*"⁹⁰

[169] I do not have any direct information as to [Amanda Harris]'s means. I note she is now in a relationship with [Lawrence Macauley] who is a self-employed architect. I note that she is in employment, but her circumstances may be modest as she has qualified for legal aid.⁹¹ It was noted that it was not unreasonable to award costs due to the defendant's financial circumstances when all that was known was that they were in receipt of legal aid.

⁹⁰ Section 45(1).

⁹¹ I note however *Syed v Malik* [2020] NZHC 1854 at [20].

[170] No order for costs may be made against [Amanda Harris] in relation to applications where she is legally aided unless I am satisfied that there are exceptional circumstances.⁹²

[171] Under s 45(3) in deciding whether there are exceptional circumstances I could take account of a number of factors including any contact that caused the other party to incur unnecessary costs, any failure to comply with procedural rules and orders, any misleading or deceitful conduct, any unreasonable pursuit of one or more issues on which the legally aided person fails and any other contact that abuses the processes of the Court.

[172] In relation to the COCA proceeding, [Amanda Harris]'s active participation as [Lily]'s mother was essential. She took a significantly different view as to what would be in [Lily]'s welfare and best interests to the view the Court has arrived at, but that in itself does not constitute an exceptional circumstance. She has however, undoubtedly engaged in conduct that caused unnecessary costs to be incurred. That included the removal of [Lily] from school in breach of the Court orders; the substantial parts of her affidavit evidence, documentary evidence and oral evidence which were untrue; that she tendered documents which were forged; and that she repeated in many documents her unfounded allegations of conspiracy, collusion and lies.

[173] I do not know whether her attempt to use those documents and her untruthful evidence was deliberately misleading and deceitful or was a product of, or partly a product of, a mental health condition.⁹³ I find that her conduct caused the [Barker] family to incur unnecessary costs and the scope of the hearing was significantly protracted as a result.

[174] I find that the calculation of scale costs at \$78,598.50 would have been justified but for [Amanda Harris]'s grant of Legal Aid. Indeed, given that solicitor and client costs for the [Barker] family already exceeded \$180,000 and given that [Amanda Harris]'s conduct undoubtedly significantly increased the costs incurred in the

⁹² Section 45(2).

⁹³ Noting that Dr Daniels was unable to reach a clear conclusion as to the extent of [Amanda Harris]'s paranoia in the absence of a longitudinal assessment.

proceeding, I would have been minded, taking account of the principles in Rule 14.6 of the District Court Rules, to order that those costs be increased by a third but for the grant of Legal Aid. The specification that I make under s 45(4) of the Legal Services Act is that [Amanda Harris] would have been ordered to pay \$78,598.50 uplifted by 33%, but for the impact of s 45 on her liability.

[175] I find there are exceptional circumstances which justify an award of costs against [Amanda Harris] in any event. The award should reflect the additional costs incurred by her breach of Court orders and the untrue evidence and documents that she sought to rely on. I am satisfied that while under s 45(1) and (4) [Amanda Harris] should not be required to pay the overall costs of the proceedings, it is appropriate that she pay costs in relation to the increased costs due to the exceptional circumstances outlined above.

[176] Precision is impossible but taking account of the uplift in costs of 33% that I would have awarded on the \$78,598.50, the order that I make under s 45(4) is that [Amanda Harris] should pay the sum of \$26,000 in relation to those parts of the COCA proceedings for which she is now legally aided. That incorporates costs incurred for those relatively short periods in the course of the COCA applications when she was not legally aided.

Orders and Directions

1. I make a final parenting order pursuant to which:
 - a. [Lily] is to remain in the day to day care of her grandfather [Charles Barker], and step-grandmother [Susan Barker] until [Martin Barker] is able to relocate to Auckland. Following [Martin Barker]'s return to Auckland, [Lily] is to be in his day to day care. It is a condition of the parenting order that they are not to speak adversely about [Lily]'s mother in [Lily]'s hearing or talk to [Lily] about any aspect of these proceedings.

- b. [Lily] will be permitted to travel out of New Zealand for any long weekend and for up to 10 days in each school holiday period for the purposes of a holiday. The only condition on that travel is that [Lily] is not to be taken to a country that does not recognise the Hague Convention on the Abduction of Children.
2. I make an interim order for [Lily]'s contact with her mother. [Amanda Harris] is to have fortnightly supervised contact, either at a supervised contact centre or supervised by an independent external supervision provider for up to four hours on the following conditions:
 - a. She is to abide by all the conditions of the supervised contact centre or supervision provider.
 - b. She is not to videotape or otherwise record [Lily] and is not to otherwise use contact as an exercise in "*evidence gathering*".
 - c. She is not to speak adversely about [Lily]'s paternal family in [Lily]'s hearing or talk to [Lily] about any aspect of these proceedings.
 - d. She is not to engage in any conflict with anyone during contact with [Lily]. [Lily] is not to be exposed to any violence.
 - e. [Lawrence Macauley] is not to be present until further order of the court.
 - f. If these conditions are not adhered to, contact is to be immediately suspended.
4. A final protection order protecting [Lily], Mr [Charles Barker], Ms [Susan Barker] and Mr [Martin Barker] is made against [Amanda Harris] and against [Lawrence Macauley] as an associated respondent. [Amanda Harris] is specifically prohibited from publishing any untrue or

defamatory statements about the applicants whether on social media or otherwise.

5. I make a direction under s 46R as sought by [Lily]'s paternal family that [Lily] may receive appropriate counselling from a psychologist to address any trauma that she may have suffered. The psychologist chosen and the nature of any therapy are to be subject to approval by lawyer for the child and he may seek further directions from this Court if necessary.
6. The s 133 report previously directed is to be prepared but is to be prepared on the basis of the attached amended brief, and in that regard any party who wishes to comment on the attached draft is to file a memorandum by 4.00 pm on Thursday 26 May. which is to be referred to me in Chambers. If no comments are received, the brief is to be forward to the psychologist instructed after 26 May.
7. Lawyer for [Lily] Mr Collis' brief is extended to enable him to liaise with the Kaiārahi at Auckland and the Auckland Registry to identify a suitable supervised contract provider as soon as possible.
8. [Amanda Harris]'s application for a protection order under the Family Violence Act and for parenting orders under COCA are dismissed.
9. This is a complex case and it is appropriate that it continues to be case managed by me pursuant to Rule 416UA of the Family Court Rules.
10. The matter is to come back to me in a 30-Minute judicial conference for further directions on the earliest available date after 22 July 2022 in the hope the s133 report may be available by then. Memoranda as to directions sought are to be filed 3 days prior to that conference.
11. [Lawrence Macauley] is to pay costs of \$7,926.50 in relation to FAM-2021-4-1147/1148.

12. [Amanda Harris] is to pay costs of \$15,092 in relation to her application for a protection order, \$16,903.50 in relation to her application for leave to appeal, for recall of judgment and in relation to the opposition to travel to Sydney argued before Judge Druce, and \$26,000 in relation to the COCA proceedings.

Signed at Auckland this 20th day of May 2022 at 3.20 pm

K Muir
Family Court Judge

Draft Brief for Section 133 Report Writer

- (a) How can [Lily]'s relationship with her mother be restored and time in her mother's care be increased in a way that is commensurate with [Lily]'s safety?
- (b) What are the significant issues for [Lily] in her relationship with her mother and her father and their relationship with each other and how can they be best addressed?
- (c) What is the effect or likely effect on [Lily] of the parties' ability or otherwise to cooperate in parenting [Lily]?
- (d) What if any supports or interventions are appropriate for [Lily], for [Amanda Harris], for [Martin Barker] or any of [Lily]'s wider family to ensure that [Lily] can enjoy safe and secure relationships with all of her key family members?
- (e) What if any, interventions are appropriate to assist each party with their parenting and communication skills in order to ensure that [Lily] can continue to develop secure and safe relationships with her parents and wider family?
- (f) Any other issue that in your view significantly impacts [Lily]'s safety, welfare and best interests?