

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

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**IN THE FAMILY COURT
AT WHANGAREI**

**I TE KŌTI WHĀNAU
KI WHANGĀREI-TERENGA-PARĀOA**

**FAM-2016-088-000494
FAM-2016-088-000495
[2023] NZFC 5116**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
AND	THE FAMILY VIOLENCE ACT 2018
BETWEEN	[SARAH STARR] Applicant
AND	NATHAN EJAYE PIKITEA WEBSTER Respondent

Hearing: 18 May 2023

Appearances: T Manuel-Belz for the Applicant
H Hummond on behalf of H Senior for the Respondent
C Muston as Lawyer for the Children

Judgment: 14 August 2023

RESERVED JUDGMENT OF JUDGE L KING

[1] In May 2021, Mr Webster was sentenced to nine years and five months preventative detention on eight counts of sexual violation by rape.¹ At the same time finite concurrent sentences were imposed: 15 years' imprisonment on 16 counts of

¹ *R v Webster* [2021] NZHC 1016.

sexual violation by unlawful sexual connection, six years' imprisonment on one count of kidnapping, and lesser terms of imprisonment on other charges.²

[2] Mr Webster's offending spanned a period from 1996 to 2007 against three of his former partners.³ Although Mr Webster denied 28 of the 30 charges, he was found guilty by a jury on all counts.

[3] Ms [Starr] was his third and final victim. The charges involving Ms [Starr] were sexual violation by rape (x 2), sexual violation by unlawful sexual connection (x 2), injuring with intent to injure and male assaults female.

[4] In describing Mr Webster's offending against Ms [Starr], Whata J stated:⁴

Your relationship with the third victim, S, also lasted about 10 years. S gave evidence she was 16 when you met her. You have two children together. This relationship followed the same pattern as the others; a relationship initially marked by kindness and loving, but later characterised by outbursts of brutal violence. That violence included violent vaginal and anal sex at the last address you lived at together... You also injured S on another occasion by slamming her head into a truck window... You also raped and had non-consensual oral sex with S on multiple occasions over the course of their relationship.

Finally, you also pleaded guilty to two representative charges of male assaults female for assaulting B and S during the course of those relationships, including hitting, punching, choking, kicking – to the head and other places – and dragging by the hair. These assaults often followed arguments or your jealous accusations.

[5] Mr Webster initially appealed both his convictions and sentence. Whilst he abandoned his appeal, his evidence at the hearing was to maintain his denial of any sexual offending against all three women, including Ms [Starr]. Mr Webster has not completed any rehabilitative programmes since being sentenced.

[6] It is against this background that Mr Webster seeks guardianship information about the parties two children, [Moana] and [Kiri] and Ms [Starr]'s daughter, [Hine].

² Five years' imprisonment on two counts of injuring with intent to injure. Two years' imprisonment on one count of assault with a weapon and one year imprisonment on two counts of male assaults female.

³ As I understand the evidence, the police investigation in respect of Mr Webster's offending commenced after Ms [Starr] made a statement to the police in 2018.

⁴ *R v Webster*, above n 1, at [12]-[13].

[7] Whilst Ms [Starr] agrees to provide Mr Webster with annual updates on their children's health and education, she opposes providing information about [Hine] notwithstanding Mr Webster's claim that he is her psychological father.

[8] Ms [Starr] also opposes Mr Webster's request for contact with [Kiri] and [Hine] by sending them letters, gifts and cards each month. During the hearing, Mr Webster abandoned his application for contact with [Moana] for reasons I shall set out further on.

[9] Whilst Ms [Starr] initially agreed to Mr Webster writing to the children and having contact in that manner when he was first incarcerated in 2018, her position has changed. She opposes Mr Webster's application for contact with all three tamariki.

[10] Ms [Starr] says many of Mr Webster's letters and drawings that she has received over the last five years have been offensive, inappropriate, and not child focused. She says he has written directly to her in breach of the protection order she has against him.

[11] Ms [Starr] has had to give evidence against Mr Webster in the District Court, High Court and now the Family Court. It is well accepted that giving evidence can retraumatise victims of family and sexual violence.⁵ It is therefore little wonder that Ms [Starr] requests the Court conclude these long running proceedings.

[12] I keep this in mind as I turn to consider the two issues for determination:

- (a) The frequency of medical and educational updates to Mr Webster and whether [Hine] is included in that order.
- (b) Mr Webster's request to send letters, gifts and cards to the children.

⁵ See Chief Victims Advisor to Government *Strengthening the Criminal Justice System for Victims: Survey Report* (August 2019); and Law Commission *The Justice Response to Victims of Sexual Violence: Criminal Trials and Alternative Processes* (NZLC R136, 2015).

The Law

[13] In determining the parties' dispute, the children's welfare and best interests in their circumstances must be the first and paramount consideration.⁶ I must have regard to the principle that decisions affecting the children should be made and implemented within their sense of time as well as the principles contained in s 5 of the Care of Children Act 2004 (the Act).⁷

[14] I must identify those principles that are relevant, as well as those that are irrelevant, and articulate why I formed that view.⁸

[15] Each child must also be given reasonable opportunities to express their view on matters affecting them and any views expressed, either directly or through a representative, must be taken into account.⁹

[16] I now turn to consider the request for medical and educational information.

Request for medical and education information

[Hine]

[17] Mr Webster's request for regular updates on the children's health and education is pursuant to his application for the Court to determine a dispute between guardians.¹⁰

[18] As [Moana] and [Kiri]'s father, he is their guardian just like Ms [Starr].¹¹ Whether he is [Hine]'s psychological father is irrelevant; he is not her birth father and therefore not her guardian.¹²

[19] Accordingly, [Hine] is not caught by Mr Webster's application for education and medical information.

⁶ Care of Children Act 2004, s 4(1)(b).

⁷ Section 4(2)(a) and (b).

⁸ *K v B* [2010] NZSC 112 at [19] to [23].

⁹ Care of Children Act 2004, s 6(2).

¹⁰ Mr Webster's s 46R application dated 8 June 2022.

¹¹ Care of Children Act 2004, s 17(1).

¹² DNA testing undertaken by Mr Webster in December 2022 has established that he is not the biological father of [Hine] – at page 18 of the bundle.

[Moana] and [Kiri]

[20] As a guardian, Mr Webster is entitled to information regarding [Moana] and [Kiri]'s health and education unless the Court orders otherwise.¹³

[21] Whilst he initially requested the name of the children's school and medical clinic, Mr Webster subsequently agreed to any identifying information in relation to the children's school and GP clinic being redacted.¹⁴

[22] Mr Webster proposes education updates be provided to him twice a year. No real reason was provided by him for six monthly rather than annual updates. In cross-examination Mr Webster accepted another possibility could be to "bundle" the school reports up for each academic year and have them sent to him all at once.¹⁵

[23] In relation to medical information, Mr Webster agreed with Ms [Starr] that annual updates would suffice, but requested more frequent updates.¹⁶

...in the event that, you know, that there was an accident, like they hurt themselves on the playground or something and it may be a broken arm or sprained an ankle then I would like to know, you know? Just as a parent, like, you know...

[24] Despite having ample opportunity to present his case, Mr Webster has not provided a person to act as intermediary for Ms [Starr] to pass any additional information to him.

[25] The possibility of Mr Webster's [son], [Tipene] Webster, acting as an intermediary was raised at the hearing.

[26] Ms [Starr] said [Tipene] visited her and the children at her home four times last year. None of the visits were planned, but simply involved [Tipene] calling in and spending time with his younger sisters and Ms [Starr]. Whilst Ms [Starr] thought he had recently moved to Whangārei, she was uncertain about that.¹⁷ Similarly, whilst

¹³ Care of Children Act 2004, s 16(3).

¹⁴ Page 3 of the notes.

¹⁵ At page 8 of the notes.

¹⁶ At page 31 of the bundle.

¹⁷ At page 58 of the notes.

she spoke positively of her relationship with [Tipene] in recent times, her evidence in 2021 was that [Tipene] was “under his father’s thumb” and easily influenced by the Webster family.

[27] Whilst Ms [Starr] said she will inform [Tipene] Webster via Facebook messenger if there are any serious medical matters that arise for [Moana] or [Kiri] during the year, I do not intend to make that a condition of the order. Firstly, [Tipene] Webster was not called to give evidence about this. Secondly, Mr Webster’s evidence suggests he has very little contact with his son, [Tipene].¹⁸

[28] Even if he was notified, there is little that Mr Webster can do to fulfil his role as [Moana] and [Kiri]’s guardian given he is serving a sentence of preventative detention and on his own evidence is unlikely to be released from prison.¹⁹

[29] It is a principle of the Family Violence Act 2018 that:²⁰

decision makers should consider the views of victims of family violence, and respect those views unless a good reason exists in the particular circumstances for not doing so...

[30] Annual updates will keep Mr Webster informed about the children’s health and education on a regular basis yet ensure Ms [Starr] is not retraumatised by having to provide such information more frequently.

[31] In such circumstances, I determine [Moana] and [Kiri]’s welfare and best interests favour Ms [Starr] providing Mr Webster with an annual update on their medical and educational progress by the end of January for the preceding year.

[32] Mr Webster has not proposed how Ms [Starr] will be notified in the event he is moved to another prison. He gave his evidence via AVL from the Auckland South Correctional Facility where he is serving his sentence. Accordingly, the only order I can make is one requiring Ms [Starr] to post the annual updates to that prison.

¹⁸ At page 44 of the notes.

¹⁹ At page 28 of the notes.

²⁰ Family Violence Act, s 4(m).

[33] Furthermore, the obligation on Ms [Starr] shall be to post the information to his last known prison until she is advised otherwise by the prison authorities.

Conclusion

[34] I make an order that Ms [Starr] shall send Mr Webster annual health and education updates in respect of [Moana] and [Kiri] on the following terms:

- (a) Ms [Starr] shall redact any identifying information in relation to the children's school and GP clinic.
- (b) Ms [Starr] is to post the annual updates by the end of January each year to Auckland South Correctional Facility or such other facility as she is notified of by Corrections.

Mr Webster's request to send letters, gifts and cards

[35] In November 2018, the Court made an interim parenting order providing for Mr Webster to have regular telephone contact with all three children at times agreed between the parties and on strict conditions. The order also provided for:²¹

Mr Webster and his whanau to provide gifts to the children as appropriate to the address of [address redacted].

Ms [Starr] will ensure the children will receive these gifts. Ms [Starr] may monitor the gifts to ensure they are child focused and accompanied by a card and suitable greeting or salutation.

[36] At that time, the parties had been separated around two and a half years with Mr Webster living either in Whangārei or Tauranga. Lawyer for child reported that [Moana] wanted to speak with her dad and that she missed him. Ms [Starr] also supported phone contact and receipt of gifts on strict conditions.

[37] The evidence before the Court is that there were ongoing difficulties with effecting phone calls: either because the children did not have a separate mobile phone

²¹ Interim parenting order dated 5 November 2018 at pages 498 to 499 of the bundle.

for Mr Webster to call (although he says he supplied a cellphone) or Ms [Starr] no longer supported telephone contact.

[38] Although Mr Webster no longer seeks telephone contact, he seeks to continue to send letters, gifts, and cards to [Hine] and [Kiri] each month.

[39] Initially, his application extended to include [Moana]. However, during the hearing, Mr Webster accepted [Moana] did not want any contact with him and withdrew his request for contact.²²

[40] Mr Webster has a keen interest in art. He gave evidence that whilst in prison, he completed a level 4 paper towards his art studies and spoke about undertaking a master's programme. Some of the drawings and letters received from Mr Webster are included in the evidence.

[41] Mr Webster seeks to maintain a relationship with [Hine] and [Kiri] through the medium of art by continuing to send them drawings and by writing letters to them. Not only will it preserve the children's relationship with him, but it will also provide them with an opportunity to learn Māori, something their mother is unable to pass on to them.²³

[42] Mr Webster says that he has moved on from his past relationship with Ms [Starr] and that he simply wants to communicate and maintain his relationship with his tamariki.

[43] Ms [Starr] remains concerned about the inappropriateness of Mr Webster's letters and drawings and contends that he continues to pose a risk to the children's psychological safety as well as breaching the protection order.

²² Given Mr Webster is no longer pursuing contact, I am not required to make a finding in relation to Ms [Starr]'s claim that Mr Webster sent [Moana] a pair of used, scuffed [detail deleted] shoes which upset [Moana].

²³ Mr Webster's letters produced in evidence are written in both Māori and English.

What are the children's views?

[44] At lawyer for child's request, I met with all three children immediately prior to the hearing. As well as Mr Muston, Ms [Starr]'s partner's mother, [Tabitha] was present as a support person for the children. I elected not to interview either [Hine] or [Kiri] and excused them from the meeting as it quickly became clear that it was [Moana] only who wanted to speak with the Judge.

[Moana]

[45] [Moana] is [under 13] years old and told me she was in [details deleted] Intermediate School. She was [under eight years old] when her parents separated in [2016].

[46] [Moana] was visibly upset and cried during much of our meeting. At one point, I offered to end the meeting to avoid causing her further upset, however she declined. It was clear she wanted me to know her views.

[47] [Moana] referred to her father by his first name, Nathaniel and not Dad. [Moana] was very clear that she did not want to see her father. Nor did she want to receive either phone calls or presents from him.²⁴ [Moana] just wanted it all to end – meaning for the court case to conclude.

[48] Mr Muston described [Moana] as being “super anxious” since counsel met with her during the week prior to the hearing and that [Moana] was unable to attend school as a result.

[49] I accept Ms [Starr]'s evidence that the length of time these proceedings have been before the Family Court have taken their toll on both her and her children, particularly [Moana] whom she described as having flashbacks in the lead up to the hearing.

²⁴ The option of telephone calls was discussed with [Moana] based on written submissions filed by Mr Webster's lawyer.

[Hine]

[50] [Hine] is now [under 10] years old. She was [under 3] years old when the parties separated. She has remained in her mother's care since then.

[51] It has been established that Mr Webster is not her biological father. She has not had any face to face contact with Mr Webster since he was incarcerated in September 2018 when she was [under four] years old.

[52] Mr Muston reports that when he spoke with [Hine] in July 2022:²⁵

[Hine] told me that she had two dads – [Brett Lenox] and [Marcus Flynn]. She did not know who Mr Webster was.

[Kiri]

[53] [Kiri] was [under one year] old when her parents separated. She was [under 4 years] old when Mr Webster was incarcerated. She has been raised by Ms [Starr] and Mr [Flynn] and is now [under eight] years old.

[54] Mr Muston reports that [Kiri] has no living memory of Mr Webster. Lawyer for child urges the Court to treat [Kiri] in the same manner as her sisters and submits that Mr Webster's application for contact in the manner proposed will not promote the children's welfare and best interests. Mr Muston submits that to allow Mr Webster to have any contact with the children will be to their detriment.

[55] Before I consider the children's safety, I turn to consider Mr Webster's relationship with [Hine] and his claim that he is her psychological parent.

Mr Webster's relationship to [Hine]

[56] A psychological parent can be a mother or father figure the child has bonded with over a period of time.²⁶ A "psychological parent" is able to apply for a parenting order with leave of the Court under ss 47(1)(d) and 47(1)(e).²⁷

²⁵ Lawyer for child report dated 15 July 2022 at page 414 of the bundle.

²⁶ *Temple v Barr* HC Wellington CIV-2010-485-561, 24 August 2010 at [30].

²⁷ *Family Law - Child Law* (online ed, Thomson Reuters) at [CC47.04A].

[57] The parties were in a relationship and lived together when [Hine] was born in [date deleted]. [Kiri] was born less than two years later in [date deleted]. Ms [Starr]'s evidence is the parties separated in [2016] although Mr Webster may dispute that date.²⁸

[58] In Ms [Starr]'s pleadings from 2016 to 2018, she referred to Mr Webster as the father of all three children; this included [Hine].²⁹ The first evidence Ms [Starr] gives to the contrary is in December 2020 when she advises the Court that Mr Webster is not [Hine]'s father:³⁰

He is definitely not the father of [Hine] because DNA tests were done. If he wants another one done he can pay for it himself.

[59] In July 2022, Ms [Starr] filed the result of a DNA test undertaken in February 2020 in which it records:³¹

These results very strongly support [Brett Lenox] as the biological father of [Hine] Webster.

[60] It is clear from Ms [Starr]'s own evidence that in the early years, she treated Mr Webster as if he were [Hine]'s father. She agreed to him having telephone and non face to face contact with all three children in November 2018.

[61] Accordingly, I am satisfied Mr Webster's relationship with [Hine] from her birth in [2014] until at least [2018] was as a psychological parent.

[62] Since September 2018, Mr Webster has been incarcerated for half of [Hine]'s life; she is [under 10] years old. The question I must now consider is whether that psychological bond continues to exist.

²⁸ That order was made final by operation of law in January 2017.

²⁹ See Ms [Starr]'s 2016 affidavit in support of her applications for protection, parenting and to determine a dispute between guardians at page 155, paragraph [2] of the bundle; her May 2018 affidavit at page 136, paragraph [2] of the bundle and September 2018 affidavit at page 122, paragraph [2] of the bundle.

³⁰ Page 104 at [17] of the bundle.

³¹ At pages 68 to 69 of the bundle.

[63] This situation was considered by the High Court in *D v N*.³² The child was initially raised as if she was D's daughter, the parties then separated just before she turned one. A parenting order was initially made allowing D contact with the child. This was later suspended due to D's use of drugs and alcohol, his unreliability, and breach of the parenting order. Supervised contact was then agreed to but soon fell over.

[64] D was sent to prison for driving offences, and while in prison, the parenting order was discharged. Following his release from prison, D applied for a parenting order seeking contact with the child. In the Family Court, this was found not to be in the child's best interests and was declined.

[65] In upholding that decision and in relation to the term "psychological parent", Downs J commented:³³

[E]ven if the term "parent" is capable of extending to a "psychological parent", just as that category may arise through circumstance, so may it end. As will be apparent from the background, a number of circumstances have contributed to a situation in which the appellant no longer occupies the position of stepfather in relation to J, who, it should not be forgotten, was only four when contact was suspended.

[66] Ms [Starr] has re-partnered with [Marcus Flynn], and they have two young children together. Ms [Starr] and Mr [Flynn] care for all five children.

[67] Just as a child can form a bond with someone who is for all intents and purposes their parent, so too can that bond end and/or be superseded by another person. That is the situation here.

[68] Accordingly, I find Mr Webster's prior relationship as a psychological parent to [Hine] has ended – likely shortly after his incarceration. Ms [Starr]'s partner, Mr [Flynn], has likely assumed that role as [Hine]'s stepfather. Additionally, [Hine] has a relationship with her birth father, Mr [Lennox].³⁴

³² *D v N* [2017] NZHC 1211, [2017] NZFLR 426.

³³ At [43].

³⁴ Ms [Starr]'s affidavit of July 2022 at page 40 at [13] of the bundle.

[69] In line with *Hopkins v Jackson*, I turn to consider whether Mr Webster’s relationship to [Hine] is that of a whāngai parent, notwithstanding this issue was not raised at the hearing: both parties are Māori, and these are tamariki Māori.³⁵

[70] Whāngai is a Māori customary practice where a child is raised by someone other than their birth parents, usually a relative.³⁶ Often it means placing a child with their grandparents, but it could also be another family member, or someone unrelated. It can be a short-term, long-term, or permanent arrangement. A child is never placed without discussion and never placed with people whom the whānau does not know.³⁷ The practice of whāngai can vary between different iwi.³⁸

[71] The Law Commission has recognised that the relationship between a child and their whāngai parents is a relationship of parent and child for all “significant” purposes.³⁹

[72] In *Nikau v Nikau*, the child’s whāngai parents applied to the Family Court for a parenting order. The Family Court made a parenting order which provided shared care which included the whāngai parents in recognition of the fact that it was in the child’s best interest.⁴⁰ However, on appeal to the High Court this shared custody was reduced to one weekend a month with the whāngai parents.⁴¹

[73] Of relevance, both the Family and High Court found that whāngai parents, for the purposes of s 5(b) of the Act, were not parents.⁴² However, the Court of Appeal left this question open.⁴³

³⁵ *Hopkins v Jackson* [2022] NZHC 2649.

³⁶ Basil Keane “Whāngai – customary fostering and adoption – The custom of whāngai” *Te Ara – the Encyclopaedia of New Zealand*, <http://www.TeAra.govt.nz/en/whangai-customary-fostering-and-adoption/page-1> (accessed 7 May 2020).

³⁷ Merata Kawharu and Erica Newman “Whakapaparanga: Social Structure, Leadership and Whāngai” in Michael Reilly and others *Te Koparapara – An Introduction to the Māori World* 48 at 61.

³⁸ Keane, “Whāngai”, above n 36.

³⁹ Law Commission *Adoption and Its Alternatives: A Different Approach and a New Framework* (NZLC R65, 2000) at [180].

⁴⁰ *Nikau v Nikau* [2018] NZCA 566 at [9].

⁴¹ At [10].

⁴² At [17].

⁴³ At [29].

[74] The Court of Appeal recognised (and seemingly approved) the High Court Judge's acknowledgment of the importance of the powerful bonds between a whāngai child and their whāngai parents.⁴⁴

[75] The short point here is that any relationship Mr Webster had with [Hine] prior to his incarceration, whether as a psychological or whāngai parent, has been lost. It is also arguable that a whāngai relationship ever existed because at the relevant time when Mr Webster was present in [Hine]'s life, the evidence is silent on whether it was known that he was not her biological father.

[76] The net effect is that the following principles which I am required to consider when determining [Hine]'s welfare and best interests do not apply nor assist Mr Webster as he is neither her parent nor guardian:

- (a) Section 5(b) – [Hine]'s care, development and upbringing should be primarily the responsibility of her parents and guardians.
- (b) Section 5(c) – [Hine]'s care, development and upbringing should be facilitated by ongoing consultation and cooperation of her parents... and any other person having a role in her care under a parenting or guardianship order.
- (c) Section 5(d) – [Hine] should have continuity in her care, development and upbringing; and
- (d) Section 5(e) – [Hine] should continue to have a relationship with both her parents...

[77] The second part of s 5(e) recognises that a child's relationship with her family group, whānau, hapu or iwi should be preserved and strengthened. Mr Webster is no longer part of [Hine]'s family group. However, the word whānau can be capable of wide interpretation. Is the father of two of [Hine]'s four siblings' part of her whanau?

⁴⁴ At [30].

[78] Similarly, does the principle which recognises [Hine]’s identity should be preserved and strengthened support Mr Webster’s request for contact notwithstanding he is neither her parent nor guardian?⁴⁵

[79] Mr Webster’s letters to the children are written in both English and Māori. Whilst Ms [Starr] recognises [Hine] and [Kiri] may benefit from Mr Webster’s knowledge of and ability to korero Māori, she remains concerned for their safety. Ms [Starr] simply does not trust Mr Webster to do the right thing by any of the children.

[80] I will return to this point after I have considered Mr Webster’s application through a safety lens.

Mr Webster’s request for contact

[81] Any order for contact must ensure [Hine] and [Kiri] will be protected from all forms of violence.⁴⁶ Violence is defined as physical, sexual or psychological abuse.⁴⁷

[82] Unlike the other five principles in s 5 which says the Court “should” have regard to, this is a mandatory principle.

[83] Mr Webster does not seek either face to face or telephone contact, therefore there is no risk of either physical or sexual abuse. Instead, he proposes contact occur by him sending letters, drawings, gifts and cards to the children.

[84] Again, Mr Webster has not proposed an intermediary to post correspondence to. Instead, he proposes he continue to send correspondence to the same address provided for in the interim parenting order.

[85] At the time that order was made, Ms [Starr] lived at that address with her father, and he monitored Mr Webster’s correspondence. Ms [Starr] moved out of that address

⁴⁵ Section 5(f).

⁴⁶ Section 5(a).

⁴⁷ Family Violence Act 2018, s 9(2).

four years ago. Ms [Starr]’s evidence is that whilst her father continues to live there, he does not consent to receiving any correspondence from Mr Webster.⁴⁸

[86] Ms [Starr]’s father was not called to give evidence in these proceedings.

[87] During the hearing, Mr Webster proposed his son [Tipene] could be the intermediary however he has not filed any evidence nor was he called as a witness. Furthermore, both parties’ evidence at the hearing suggests a strained relationship between Mr Webster and his son, [Tipene].

Ms [Starr]’s concern of ongoing psychological abuse

[88] A person psychologically abuses a child if that person-

- (a) causes or allows the child to see or hear the physical, sexual, or psychological abuse of a person with whom the child has a family relationship; or
- (b) puts the child, or allows the child to be put, at real risk of seeing or hearing that abuse occurring.⁴⁹

[89] “Psychological abuse may be or include behaviour that does not involve actual or threatened physical or sexual abuse.”⁵⁰ A single act may amount to abuse. A number of acts that form part of a pattern of behaviour (even if all or any of those acts, when viewed in isolation, may appear to be minor or trivial) may amount to abuse.⁵¹

[90] At the time the interim parenting order was made, Judge Hunt recorded:⁵²

Ms [Starr] makes it plain that the provision of gifts does not encompass letters, particularly not letters that are either touching on matters relating to her or addressed to her, these are to be child-focused accompanied by a card and suitable greeting or salutation but nothing more.

[91] Ms [Starr] says that over the nearly five years Mr Webster has been incarcerated, she has continued to receive correspondence from him which is not child

⁴⁸ At page 60 of the notes.

⁴⁹ Section 11(2), Family Violence Act 2018.

⁵⁰ Section 11(4).

⁵¹ Section 10.

⁵² At [21] of the judgment at p 504 of the bundle.

appropriate. Instead, she says his drawings for the children are offensive and highly inappropriate.

[92] She has also received correspondence from Mr Webster which is addressed to her directly.

[93] Ms [Starr] says Mr Webster has neither the insight nor the ability or desire to adhere to court conditions.

[94] In terms of Mr Webster's request for contact, there are two possibilities:

- (a) The correspondence is passed directly to the children, or
- (b) Ms [Starr] receives and vetoes Mr Webster's correspondence before being passed to the children.

Correspondence passed directly to the children

[95] Without an intermediary to vet Mr Webster's correspondence, Ms [Starr] says the children will be subjected to ongoing psychological abuse.

[96] The evidence contains drawings the children received from Mr Webster who had intended the drawings would hang on the wall in the children's bedrooms.

[97] All the drawings were of young adult females in fairly provocative poses and dressed in very little. Mr Webster's evidence was these drawings were of female RnB/rock artists including Doja Cat, Dua Lipa, Aaliyah and Lisa Left Eye.

[98] One drawing was of Doja Cat depicted as an angel drinking from a bottle of alcohol with a burning cigarette in her right hand. Mr Webster's evidence was he sent that drawing six to seven weeks before the May 2023 hearing so very recent.⁵³

⁵³ At page 37 of the notes of evidence.

[99] The second drawing of Doja Cat was of her face and top half of her torso above her chest, with no clothes on other than a collar around her neck, with her mouth open and tongue held upwards to her top lip.⁵⁴

[100] Another drawing was of a young female with her eyes closed, head raised, kneeling with her hands placed between her legs and wearing only underwear. Mr Webster said that was a picture of the now deceased singer, Aaliyah. At the hearing, he accepted “on reflection” it was not an appropriate drawing for the children.⁵⁵

[101] Even more concerning was Mr Webster’s drawing of a young woman in a revealing singlet that had thin straps, a low neckline, was narrow through the torso area meaning much of her chest area was exposed. Mr Webster had also shaded the area under the woman’s breasts and drawn in nipples. He estimated he had drawn that around 2018. [Moana] would have been [under nine] years old and the other two children, pre-schoolers. Again, Mr Webster accepted the drawing was “a bit too explicit”.⁵⁶

[102] The fact that Mr Webster gave these drawings for the children to hang in their bedroom shows just how little insight he has about what is and is not child appropriate. Similarly, although Mr Webster accepted at the hearing that many of his drawings were inappropriate and he would agree to a condition that he does not send drawings of the human form, I consider that concession is too little, too late.

[103] Without an appropriate person to veto Mr Webster’s correspondence to the children, I find there will be an unacceptable risk of psychological harm to them if they receive correspondence directly from Mr Webster.

Ms [Starr] receives and vetoes Mr Webster’s correspondence before being passed to the children

⁵⁴ At pages 8 and 9 of the bundle.

⁵⁵ At page 29 of the bundle.

⁵⁶ At page 41 of the bundle.

[104] Ms [Starr] is a victim of Mr Webster's serious and sustained physical, sexual and psychological abuse.

[105] Mr Webster physically and sexually violated Ms [Starr] during the early stages of the parties' relationship.

[106] In October 2016, Mr Webster verbally abused her and then strangled her whilst she was holding [Kiri], then aged [under 3] years old. Both [Moana] and [Hine] were present.⁵⁷ Ms [Starr] applied for and obtained temporary protection and interim parenting orders on a without notice basis a few days later.⁵⁸ A final protection order was made three months later by operation of law.

[107] On 30 August 2017, Mr Webster, assaulted Ms [Starr] by two hard slaps to her face connecting with her ear and neck. He was charged with contravenes a protection order and male assaults female.

[108] On 29 October 2017, Mr Webster arrived at Ms [Starr]'s father's property where she was staying, unannounced and uninvited, and after being told to leave, became confrontational. He was again charged with contravenes a protection order and possession of an offensive weapon.

[109] In July 2018, after Mr Webster had entered not guilty pleas to all four charges, Ms [Starr] was required to give evidence against him at a judge-alone trial. He was found guilty and convicted on two counts of contravenes a protection order, male assaults female and possession of an offensive weapon and sentenced to twelve months imprisonment.⁵⁹

[110] Later that same year, and again in breach of the protection order, Mr Webster sent a four page letter to Ms [Starr] whom he referred to as [details deleted]. Excerpts from that letter as follows:⁶⁰

⁵⁷ At pages 155 to 166 of the bundle.

⁵⁸ Protection order dated 16 January 2017 at pages 532 to 538 of the bundle.

⁵⁹ *Police v Webster* [2018] NZDC 13556 at pages 509 to 516 of the bundle.

⁶⁰ At pages 24 to 26 of the bundle.

Hello [detail deleted]... Ive been dreaming of you lately...I dont have much more time left on earth maybe 10 years if im lucky and my mum's time is limited as well...I have changed and it is for the better, [details deleted], I'm no good to anybody in here my family need me.

[111] The next year, in December 2019, and again in breach of the protection order, Mr Webster sent a four page letter to Ms [Starr] in which he says the following:

I dont hate you im not angry but i do miss you and the girls something wicked.

I hope you live forever my love.

I no I will never return home to my family alive.

I only did what I did to bring about change so our babies wouldn't have to go through it again.

I now know that you never actually loved me but I will always love you [detail deleted].

I hope you live forever my love.

I would appreciate if you could send some pix of them please it would help keep my spirits up and it would be good for my moral as your aware the Crown are trying to give me a sentence of permanent or preventative (sp) detention or for the rest of my natural life with no parol or release date till I die

[112] His plea for Ms [Starr] to support him by keeping his spirits up as he may receive a sentence of preventative detention shows just how little insight Mr Webster has. As to the impact of giving evidence against Mr Webster in the High Court trial, Ms [Starr] deposed:

It was profoundly traumatic having to relive his violence on me by giving evidence against him. It was a harrowing time.⁶¹

[113] In relation to these proceedings, Ms [Starr]'s evidence in April 2021 was:⁶²

I have just found that responding to these proceedings is incredibly traumatic. That trauma has been an issue for me throughout these proceedings and has caused me to delay in responding before. I have resumed weekly counselling (with a psychologist approved by ACC who specialises in sexual assault claims) to deal with the stress of it all.

The offending against me was very serious as it was against the other women that the respondent abused physically and sexually. I feel like I am reliving it again when dealing with these proceedings.

⁶¹ At paragraph [10], page 103 of the bundle.

⁶² At paragraphs [25] and [26], page 75 of the bundle.

[114] In relation to sitting through the hearing, including when Mr Webster gave evidence, Ms [Starr] said:⁶³

It's been hard. It's been really hard, knowing that [Moana] come and spoke to you today and knowing that I had to let her go home, still upset and crying 'cos she wanted to stay by me, but me having to spend all day up here and not be able to go home and keep my baby company, it hurts. All I do is look after my kids, all I do is feed them, clothe them, put a roof over their head, make sure they've got the best education, take them to holidays, being able to make them happy because she's always so scared. I don't want her like that anymore. She's going to go to counselling, she will get there...

..and [Moana] come home and goes: "Mum, I had a flashback, did this happen?" And sometimes I've got to lie: "No, Baby, it didn't happen". Do you know how hard it is for a mother to have to deal with that? I'm sorry, but this is not healthy. This is not a healthy life to live. I just want them to be happy, I'm sorry.

[115] I endorse the words of Judith Herman in her 2022 publication: *Trauma and Recovery: The Aftermath of Violence*.⁶⁴

People subjected to prolonged, repeated trauma develop an insidious, progressive form of post-traumatic stress disorder that invades and erodes the personality... The worst fear of any traumatised person is that the moment of horror will recur, and this fear is realised in victims of chronic abuse. Not surprisingly, the repetition of trauma amplifies all the hyperarousal symptoms of post-traumatic stress disorder.

[116] Ms [Starr] has suffered far more trauma than any person should. She found strength within herself in 2016 to apply for a protection order against Mr Webster. She found the strength to make statements to the police about the separate 2017 charges and the historical physical and sexual violence she was subjected to in and around 2007 (noting some of the charges were representative charges).

[117] Finally, Ms [Starr] dug deep and found the strength to oppose Mr Webster's request for contact notwithstanding the trauma that has revisited upon her over the seven years these proceedings have been alive.

[118] Ms [Starr]'s strength exemplifies the whakatauki:

⁶³ At pages 61 and 62 of the notes.

⁶⁴ Judith L Herman *Trauma and Recovery: The Aftermath of Violence— From Domestic Abuse to Political Terror* (4th ed, Basic Books, New York, 2022) at 125 – 126.

Me aro ki te hā o Hineahuone

Pay heed to the dignity and strength of women.

[119] Ms [Starr] has endured enough.

[120] I am not satisfied Mr Webster has any insight into the impacts of his violence on Ms [Starr] and the children given he continues to deny he sexually abused Ms [Starr] (as well as two other former partners) and has not undertaken any form of rehabilitation.

[121] I find that it is entirely unacceptable to require Ms [Starr] to receive and veto Mr Webster's correspondence in circumstances where I am satisfied there is an unacceptable risk of psychological harm to the children if they receive correspondence directly from Mr Webster.

Conclusion

[122] [Moana] does not want any contact with Mr Webster. He is neither [Hine]'s psychological nor whāngai parent. [Kiri] has no living memory of Mr Webster.

[123] [Hine] and [Kiri] are still very young children, and they must be protected from ongoing psychological harm. The only principle that may support contact is that of preserving [Hine]'s te reo Māori, something which Ms [Starr] considers as beneficial to her. However, the price is too high: [Hine] does not remember Mr Webster, does not have a relationship with him and Ms [Starr] is her mother and can follow up on that aspect herself.

[124] I find that [Hine] and [Kiri]'s welfare and best interests weigh in favour of Mr Webster not having contact.

[125] In such circumstances, I decline to make an order providing for Mr Webster to have contact with any of the three children and dismiss his application.

[126] I make an order that Ms [Starr] shall send Mr Webster annual health and education updates in respect of [Moana] and [Kiri] on the following terms:

- (a) Ms [Starr] shall redact any identifying information in relation to the children's school and GP clinic.
- (b) Ms [Starr] is to post the annual updates by the end of January each year to Auckland South Correctional Facility or such other facility as she is notified of by Corrections.

Judge L King
Family Court Judge | Kaiwhakawā o te Kōti Whānau
Date of authentication | Rā motuhēhēnga: 14/08/2023