

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

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**IN THE FAMILY COURT  
AT NORTH SHORE**

**I TE KŌTI WHĀNAU  
KI ŌKAHUKURA**

**FAM-2013-044-000745  
[2023] NZFC 8462**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[COLE WESTBROOK] Applicant
AND	[GEORGINA MILLS] Respondent

Hearing: 7 August 2023

Appearances: A Strang for the Applicant  
M Saini for the Respondent  
C Lee as Lawyer for the Children

Judgment: 15 August 2023

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**RESERVED JUDGMENT OF JUDGE A J FITZGERALD**

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**[Emilia] and [Zach]**

[1] [Emilia] is 15 years old. She will turn 16 on [date deleted] 2023. Her brother [Zach] is aged 14. He will turn 15 on [date deleted] 2024. Their parents are Mr [Westbrook] and Ms [Mills].

[2] Throughout their lives, [Emilia] and [Zach] have been exposed to their parents abuse of alcohol and to family harm incidents between them. As I explain below, in recent times the children have been subjected to physical and psychological abuse by their mother. [Zach] has been assaulted by his father and both he and [Emilia] have been psychologically abused by their father and exposed to unsafe parenting practices due to his permissive and inappropriate attitudes about alcohol.

[3] In fact, abuse of alcohol by the parties, family harm incidents between them, and allegations of abuse of a child predate the births of [Emilia] and [Zach] by many years. They have an older sister named [Christina] who is now [over 20] years old. Notifications of concern regarding the parents go back to [the 1990s] when [Christina] was a baby. A social work report provided in these proceedings refers to Oranga Tamariki<sup>1</sup> involvement in [the 1990s] because of concerns regarding alcohol abuse, domestic assault and wilful damage.

[4] There were more reported incidents in 2007 involving alcohol and violence where the Police were called. In 2008, Oranga Tamariki received a report of concern about [Christina] when she was at [school 1]. Concerns included Mr [Westbrook] allegedly assaulting [Christina]. The Police and Oranga Tamariki were involved again in 2010 due to similar incidents.

[5] In 2013, Ms [Mills] applied for a protection order against Mr [Westbrook] but later withdrew the application when they reconciled. In 2016, Ms [Mills] applied again for a temporary protection order and also for a parenting order. Those orders were made without notice to Mr [Westbrook].

[6] A final parenting order granting day-to-day care of the children to Ms [Mills], and reserving supervised contact to Mr [Westbrook], was made in February 2017. When making those orders, his Honour Judge Twaddle commented that the violence alleged was at the more serious end of the scale. Final protection, occupation and ancillary furniture orders were also made in favour of Ms [Mills].

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<sup>1</sup> Known as Child, Youth and Family Services at that time.

[7] In 2018, Mr [Westbrook]'s contact with the children became unsupervised. One factor influencing her Honour Judge Partridge to make that decision was Mr [Westbrook] saying that he had been alcohol free for almost two years. Judge Partridge said she considered that "extremely important." When asked about that at this hearing, Mr [Westbrook] admitted that his evidence in that respect was not true and that, "I was just telling the Court what they wanted to hear, to be honest."

[8] Alcohol has also been abused by Ms [Mills]. That is partly what led to the proceedings brought by Mr [Westbrook] on 18 November 2021. On that day he applied without notice for and obtained an interim parenting order granting him day to day care of [Emilia] and [Zach]. Ms [Mills] was to have supervised contact with the children. The allegations made by Mr [Westbrook] were that Ms [Mills] had been drinking large amounts of alcohol during 2020 and 2021 and was physically and psychologically abusing the children.

### **This hearing**

[9] The hearing on 7 August 2023 was to determine what the future care arrangements for [Emilia] and [Zach] should be. When the hearing was allocated, the focus was going to be firstly on addressing the safety concerns for the two children in their mother's care because of the allegations mentioned above.

[10] However, on 27 July 2023, Ms [Mills] made a without notice application to vary the current parenting order and vest the day-to-day care of the children in her. She provided photographs and screen shots from video clips in which [Emilia] and her friends appear to be drunk and drinking alcohol at Mr [Westbrook]'s place. There is a photo of alcohol bottles and cans covering the kitchen bench top in that home. There are also photos of girls who have fallen down seemingly drunk. Mr [Westbrook] has then fallen on top of them, also seemingly drunk, and slapped them repeatedly on their bodies. There are also allegations of Mr [Westbrook] assaulting [Zach]. When that application came before his Honour Judge Muir on 27 July 2023, he recorded that:

...serious issues of concern for the safety of the children with their father are raised here. If the allegations that he is supplying them and their friends with alcohol are true this must be stopped.

[11] However, Judge Muir did not grant the without notice application because this hearing was pending. Instead, he directed that the issues arising out of Ms [Mills]’s application be considered by the judge at the hearing that had already been allocated to determine Mr [Westbrook]’s existing application.

[12] When making my decisions regarding the care arrangements for [Emilia] and [Zach], their welfare and best interests are the first and paramount consideration.<sup>2</sup> All things relevant to their welfare and best interests must be considered in their particular circumstances at this moment in their lives. That includes their safety and the need for them to be protected from all forms of violence.<sup>3</sup>

[13] [Emilia] and [Zach] have both been given the opportunity to express their views on the issues that concern them in these proceedings through their lawyer Ms Lee. I must take their views into account.<sup>4</sup>

[14] Both Mr [Westbrook] and Ms [Mills] gave evidence at the hearing. As well as their evidence, I have reports from Oranga Tamariki, the Police and letters from [school 1] where [Emilia] and [Zach] attend. There have been concerns about their behaviour at school which have resulted in them being suspended.

*Mr [Westbrook]*

[15] Mr [Westbrook] has no insight at all into the problematic alcohol use in his home. He says he has cut back significantly on the amount of alcohol he drinks because of a seizure he had a few years ago and now “only” consumes one bottle of wine a night. He does not think that is excessive “comparing that to what I used to drink...but I don’t get drunk or anything.” He allows a culture of drinking in the home that he can see no problem with. That includes giving [Zach] alcohol to drink at age 13 which he justified by saying, “I started drinking when I was six, seven. Who cares?” He gave [Emilia] 12 cans of KGB for her 15<sup>th</sup> birthday and sees nothing wrong with that.

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<sup>2</sup> Care of Children Act 2004 (“the Act”), s 4.

<sup>3</sup> Section 5(a).

<sup>4</sup> Section 6; UN Convention on the Rights of the Child 1989, art 12.

[16] Although the videos clearly show young girls drunk in his home, crawling on the floor asking for more alcohol, talking about “chunningy”<sup>5</sup> but still wanting more to drink, he was dismissive saying, “Oh, they’re drama queens and I wouldn’t say it’s to excess.” He tried to claim that the only time the girls had been drinking alcohol was on [Emilia]’s birthday on [date deleted] 2022, but that is clearly not true. The video and Instagram footage of children drinking and being drunk in his home was from more than one occasion.

[17] I have no doubt at all that Mr [Westbrook] was significantly playing down the extent to which that is happening. I am sure he is “just telling the court what [he thinks] it wants to hear” and minimising these issues, just as he did before Judge Partridge in the 2018 hearing. In relation to his own drinking, I note that the children refer to him drinking Jim Beam as well as his bottle of wine each night.

[18] Despite his denials in relation to alcohol abuse in the home, and other inappropriate behaviour, Mr [Westbrook] made comments occasionally that revealed the truth of the situation. For example, he suggested that a can of drink that one of [Emilia]’s friends was shown holding in a photograph might have been Fanta. When he was then asked, “Do you think it was Fanta?” his reply was, “Probably not, knowing the girls.”

[19] There were other disturbing features of his inappropriate behaviour towards [Emilia] and her friends in his home. One of the videos showed girls who appeared to be drunk, falling on the floor and Mr [Westbrook] falling on top of them, slapping them on their bodies numerous times. He too appears drunk and had trouble standing up afterwards. [Zach] was present while this was happening. However, Mr [Westbrook] claims that this was happening at about 2.30 or 3.00 pm and that they were not drunk. Even if I give Mr [Westbrook] the benefit of the doubt about that, it shows a disturbing lack of judgment to behave in that way if he was sober. For some time during his evidence, Mr [Westbrook] would not accept that there was anything wrong with this behaviour, nor with calling the girls “fuckwits”. However, after seeing the video, he eventually conceded “It doesn’t look good. I’ll grant you that.”

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<sup>5</sup> Vomiting.

[20] The extent to which Mr [Westbrook] has normalised alcohol abuse in the home is reflected in the children's belief that although he drinks a bottle of wine every night, and sometimes bourbon as well, he is not drunk. That is a very dangerous notion he has created for the children; to make them think consuming that amount of alcohol is somehow safe. Any person drinking that much alcohol would be drunk and incapable of doing such things as safely driving a vehicle or responding appropriately in the event of an emergency concerning the children.

[21] Mr [Westbrook] also minimised the concerns regarding [Emilia] and [Zach]'s behaviour at school. [Emilia] has been suspended this year for gross misconduct. She is described as being a harmful and dangerous example to other students and has allegedly assaulted another student. [Zach] was also suspended at one point because of his disrespect towards teachers. Both children are often late for class and sometimes do not get there at all.

*Ms [Mills]*

[22] An initial report of concern was received by the Police in October 2020 in relation to Ms [Mills] assaulting both [Emilia] and [Zach]. She was issued with a Police Safety Order. More reports of concern were to follow. There are also allegations of psychological abuse of the children, for example, by Ms [Mills] threatening to kill herself if the children did not listen to her. She is also said to have been calling [Emilia] horrible names such as "fat", "a slut" and "a bitch".

[23] Joint investigations were carried out by Oranga Tamariki and the Police because of these concerns. On one visit, the Police observed a lot of blood throughout the house and punch and kick marks in the hall. [Emilia] and [Zach] were interviewed as part of that process and described being frequently assaulted and verbally abused by their mother who was drinking alcohol excessively. These concerns carried on through 2020 and 2021. Physical abuse of both children by Ms [Mills] was substantiated by Oranga Tamariki who assessed Mr [Westbrook] as the safer parent at that time.

[24] Eventually an FGC was held on 12 May 2022 and a safety plan was developed to manage the concerns in relation to Ms [Mills]. There had been agreement in April 2022 about her having unsupervised contact with the children and by November 2022 regular overnight contact was occurring. At the November 2022 review of the FGC plan, Oranga Tamariki no longer considered there to be care and protection concerns for the children given the courses Ms [Mills] had completed. They closed their file.

[25] Despite the findings of Oranga Tamariki and the observations of the Police, Ms [Mills] denies assaulting the children. She did attend several courses but has not done a non-violence programme. According to Ms [Mills], Oranga Tamariki had initially said she would benefit from such a programme but afterwards said she did not need it. When questioned about attending such a programme she said “I am not a violent person in nature. I don’t like conflict.” The only abusive name she admits calling [Emilia] is “bitch”.

[26] Before applying to the Family Court on 27 July 2023, Ms [Mills] had taken her concerns to the Police and Oranga Tamariki. They chose not to intervene because these proceedings were already before the Court. In a Police report regarding an incident on 19 June 2023, there is mention of an audio recording Ms [Mills] made when she went to collect the children from Mr [Westbrook] that day. That recording was played at the hearing. In it, a very distressed [Emilia] can be heard saying that she had just had an argument with her father who had said he would kill himself. She mentions Mr [Westbrook] had drunk a bottle of wine and three or four bourbons. She also mentions that he had assaulted [Zach]. Also on the recording, Ms [Mills] can be heard telling [Emilia] that Mr [Westbrook] used to punch her and say that he is going to kill himself. She said other negative things as well and conceded this was not appropriate and says she now regrets it.

### *Findings*

[27] As mentioned above, there have been reports regarding the abuse of alcohol and of family harm incidents involving Mr [Westbrook] and Ms [Mills] spanning nearly 30 years. Throughout their entire lives, [Emilia] and [Zach] have witnessed the abuse of alcohol by their parents, have been exposed to family violence between their

parents, and have been the victims of family violence perpetrated directly on them by their parents.

[28] I am satisfied, on the balance of probabilities, that both parents have physically assaulted the children in the ways the children have reported to others over the course of these proceedings. They have also been psychologically abused in various ways, including being exposed to the parents' negativity toward each other, emotionally manipulative comments by the parents, such as threatening to kill themselves, and rude and abusive name-calling.

[29] Deciding about the future safety of the children when living with their parents requires an assessment of the risk that these things that have happened in the past will continue to happen in the future. That risk is very high in this case given how long it has been happening.

[30] Sadly, that risk is made even greater by the lack of insight and ownership by both Mr [Westbrook] and Ms [Mills] as to the nature and extent of their abusive and inappropriate behaviours. Neither of them is a completely safe parent for the children to live with. The issue for me becomes one of choosing the least damaging option and how best to minimise the risk of future harm to the children.

[31] [Emilia] and [Zach]'s shared experience of their parents' behaviour has resulted in them developing some resilience and strategies to cope with the problems inherent in living with either parent. They are also of an age now where they will choose for themselves when they want to be with either parent. The following observation was made in one of the social work reports:

“Both [Zach] and [Emilia] are caring and articulate young people. They are a team, are experiencing the same upbringing, and give each other a sense of comfort and safety. [Emilia] and [Zach] both have cooking and cleaning skills and are fairly sufficient at taking care of themselves. They both present as incredibly mature and resilient for their age, which is the norm for them and is indicative of the responsibility and stress they have been carrying due to mum's issues which they have been exposed to.”



*[Emilia] and [Zach]’s views*

[32] [Emilia] said to Ms Lee that she thinks both her parents are childish and she cannot be bothered any more with Court, with her mother’s application and with the hearing. [Emilia] is upset with her mother for using footage from her Instagram account to support her recent applications. I expect she will also be unhappy about the recording made on 19 June 2023 being used as well. She said, “My relationship with Dad is stronger now because Mum is prepared to sabotage our relationship to have us back.” As well as that, Ms [Mills] has not made an apology to [Emilia] for the abuse she subjected her to in 2020 and 2021.

[33] [Zach] says he wants to live mainly with Mum and see Dad on the weekends or have set days where he would see Dad. He prefers living with his mother because he did so for 11 years. He is therefore used to it and it is easier. He said that he and his mother hang out together, have dinner together, go for walks and do activities. He spends more time with her than he does with his father. If he lives with his mother, [Zach] believes his relationship with both parents will improve.

**Result**

[34] I have decided not to make a parenting order in relation to [Emilia]. If I was to make an order it would expire on her birthday on [date deleted] this year and so it would be of very limited application.<sup>6</sup> I have concerns about her welfare with either parent for the reasons given above. Requiring her to live with her mother is unrealistic at this time for reasons that will be obvious from what is set out above. [Emilia] is likely to disregard such an order anyway. Apparently, [Emilia] has been eagerly awaiting her 16<sup>th</sup> birthday so as not to be subject to a parenting order any longer. I consider it to be in her welfare and best interests to bring that time slightly forward so that she can make her own choices about the time she spends with each parent.<sup>7</sup>

[35] Given [Zach]’s age, significant weight should attach to his views. The reasons he gives for preferring to live with his mother appear valid and considered. As a result

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<sup>6</sup> The Act, s 50.

<sup>7</sup> Section 48 of the Act provides the Court with discretion as to whether to make a parenting order.

of Ms [Mills] completing the FGC plan in November last year, Oranga Tamariki assessed there to be no care and protection concerns for the children when with her. She would therefore appear to be the slightly safer choice for day-to-day care at this time. The risks in that regard can be reduced by requiring her to receive counselling in relation to anger management issues that she did not receive under the 2022 FGC plan. Risks in relation to [Zach]'s safety can be further reduced if neither parent consumes alcohol when he is in their care. Ms [Mills] says she is not drinking alcohol so a condition to that effect should cause no problems for her. Mr [Westbrook] claims he can go without drinking when he puts his mind to it and so such a condition should not cause him problems either.

[36] Ms [Mills] said she is willing to attend communication counselling and a direction is made in that respect.<sup>8</sup> I cannot find mention in the evidence of Mr [Westbrook]'s willingness to be involved but he is directed to do so in the hope it will improve the relationship between the parties. The Family Court Co-ordinator is asked to make that referral to someone suitably qualified to help the parties address their communication issues. Twelve sessions directed. The counsellor is also to provide Ms [Mills], in sessions on her own, with counselling in relation to anger-management issues.<sup>9</sup> Six sessions directed. Leave is reserved to the parties and the counsellor to request further sessions.

[37] Mr [Westbrook]'s contact with [Zach] is to be every second weekend and such other times agreed by the parties and having regard to [Zach]'s views.

[38] A parenting order is therefore made granting Ms [Mills] day to day care of [Zach] and reserving contact with Mr [Westbrook] to be in terms of paragraph [37].

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<sup>8</sup> Section 46G(2)(a).

<sup>9</sup> Under s 46G(2)(b). Section 46G is not limited to communication counselling and indeed does not specifically refer to communication although it is implicit that a referral under s 46G(2)(a) would be for that purpose. Providing Ms [Mills] with counselling around anger management issues under s 46G(2)(b) will help encourage her compliance with the parenting order granting her day to day care of [Zach] and ensuring he is safe in her care.

The order is subject to the conditions referred to in paragraph [35] and also to the referral to counselling referred to in paragraph [36].

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Judge AJ Fitzgerald  
Family Court Judge | Kaiwhakawā o te Kōti Whānau  
Date of authentication | Rā motuhēhēnga: 15/08/2023