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**IN THE FAMILY COURT  
AT AUCKLAND**

**I TE KŌTI WHĀNAU  
KI TĀMAKI MAKĀURAU**

**FAM-2016-004-000713  
[2023] NZFC 4415**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[DIKLAH AVIDAN] Applicant
AND	[TOVIA AVIDAN] Respondent

Hearing: 20 & 21 September 2022, 8 February & 27 April 2023

Appearances: I Blackford for the Applicant  
D Nanayakkara for the Respondent  
A Cooke as Lawyer for Child

Judgment: 27 April 2023

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**ORAL JUDGMENT OF JUDGE L de JONG  
[COCA: relocation and parenting]**

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***Introduction***

[1] [Yuval] is now 12<sup>1</sup> and identifies as a modern Orthodox Jew. This case is about who [Yuval] should live with and what contact he will have with the other parent.

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<sup>1</sup> Born [date deleted] 2011.

[2] [Yuval]’s mother wanted to relocate to Israel with [Yuval] but after careful thought she decided recently not to pursue her application and says she is willing to remain living in Auckland with [Yuval].<sup>2</sup>

[3] [Yuval]’s father lives in [Australia]. Mr [Avidan] wants [Yuval] to move there and live with him.

[4] I must decide whether it is in [Yuval]’s welfare and best interests to continue living with his mother in Auckland or move to Australia to live with his father.

[5] This matter was heard over four days ending today.

***What is the relevant background?***

[6] Mr and Ms [Avidan] were born in Israel. They met in 2001 and married in 2003.<sup>3</sup> Two of their three boys were born in Israel. [Moshe] is now [an adult].<sup>4</sup> [Binyamin] is about [15].<sup>5</sup> He has [details deleted].<sup>6</sup> [Binyamin] lives in [Australia] with his father, stepmother and stepsiblings.

[7] Mr and Ms [Avidan] lived in Australia for nearly five years where [Yuval] was born.<sup>7</sup> They moved to New Zealand in October 2014 and separated around 2015 or 2016.<sup>8</sup> An order preventing removal of the boys from New Zealand was made on 29 July 2016.<sup>9</sup>

[8] In 2016 Ms [Avidan] applied to relocate the boys to Israel. When that matter got to Court in 2018 Ms [Avidan] withdrew her application on day 3 of the hearing. Final shared parenting orders were made on 25 May 2018.<sup>10</sup> Among other things, this

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<sup>2</sup> Paragraph 2 of Ms [Avidan]’s affidavit dated 14 September 2022.

<sup>3</sup> [Date deleted] 2003 – bundle of documents p40.

<sup>4</sup> Born [date deleted] 2004 – bundle of documents paragraph 2(a) p6.

<sup>5</sup> Born [date deleted] 2007 – bundle of documents paragraph 2(b) p6.

<sup>6</sup> Bundle of documents paragraph 91 p25; paragraph [11] p52.

<sup>7</sup> January 2010 to October 2014 – bundle of documents paragraph [4] p51.

<sup>8</sup> Mr [Avidan] says July/August 2015 (bundle of documents paragraph 27 p10). Ms [Avidan] says it was March 2016 (bundle of documents paragraph 34 p140). Judge Partridge noted February 2016 as the date of separation (bundle of documents paragraph [1] p50) but acknowledged the date of separation is disputed by the parties (paragraph [5] p51).

<sup>9</sup> Bundle of documents paragraph [68] p65.

<sup>10</sup> Bundle of documents p45.

order provides for [Yuval] to be with his father from Thursday to Monday in week 1, Thursday to Sunday in week 2, and all Jewish festivals. The rest of the time [Yuval] is in his mother's care.

[9] Mr [Avidan] remarried<sup>11</sup> and now has two preschool aged children.<sup>12</sup> In December 2021 Mr [Avidan] moved with his new family to [Australia]<sup>13</sup> to take up employment as a rabbi in a synagogue on [location deleted].

[10] On 1 February 2022 Mr [Avidan] applied for orders in respect of [Binyamin] and [Yuval]. [Moshe] is not part of the proceedings because he is over 16 and moved at the end of 2021 to live with his father. Since the end of last year [Moshe] has been in Israel to [details deleted].<sup>14</sup> This is something he longed to do.

***What does Mr [Avidan] say ?***

[11] Mr [Avidan] says that although he and Ms [Avidan] had a shared parenting order, [Moshe] and [Binyamin] spent increasingly more time in his care before he moved to Australia.

[12] Mr [Avidan] says he would not have moved to Australia had it not been for his three boys wanting to move there with him, even before his present job was advertised.<sup>15</sup> Mr [Avidan] says he has the job of a lifetime in that part of the world because rabbi positions do not come up very often.

[13] Mr [Avidan] understood Ms [Avidan] was initially supportive and was considering a move to Australia herself but declined to move, so he applied for an order to relocate [Yuval] to Australia.

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<sup>11</sup> [Date deleted] 2019 – bundle of documents paragraph 7 p120.

<sup>12</sup> [Ofra Avidan] born [date deleted] and [Anat Avidan] born [date deleted] – bundle of documents paragraph 3 p6.

<sup>13</sup> Bundle of documents paragraph 7 p2.

<sup>14</sup> Bundle of documents paragraph 12 p228.

<sup>15</sup> Bundle of documents paragraphs 45 & 46 p15; paragraph 8 p228.

[14] Mr [Avidan] describes himself as a “modern and progressive Orthodox Jewish man.”<sup>16</sup> He describes his boys as “Orthodox and very observant Jewish children and identify as such (this was referred to in the previous litigation extensively). The children have become increasingly concerned at movement away from their observation and practice of Orthodox Judaism in their mother’s home and they had become concerned about the lack of proper observation of important religious practices with their mother’s household.”<sup>17</sup>

[15] The boys have a very close relationship with their stepmother, according to their father.<sup>18</sup> He says they identify as “religious Jews”<sup>19</sup> but their mother is not a practising Jew.<sup>20</sup> [Binyamin] and [Yuval] have a close bond and “it is imperative to me that the children remain together no matter where they live.”<sup>21</sup>

[16] Mr [Avidan] was concerned the children were being left home alone for many hours by their mother<sup>22</sup> and that she did not support their relationship with him.<sup>23</sup> He says there has been a breakdown in Ms [Avidan]’s relationship with [Moshe] that ended in a “physical altercation” and the police were called.<sup>24</sup> He says there was also a deterioration in Ms [Avidan]’s relationship with [Binyamin] that resulted in him becoming “disturbed, emotional, anxious and stressed”<sup>25</sup> and [Yuval] more withdrawn.<sup>26</sup> Mr [Avidan] says the boys reported to him that their mother punished them by being “emotionally unavailable and not speak to them for up to six or seven hours at a time.”<sup>27</sup>

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<sup>16</sup> Bundle of documents paragraph 18 p230.

<sup>17</sup> Bundle of documents paragraph 40 p13.

<sup>18</sup> Bundle of documents paragraph 53 p17.

<sup>19</sup> Bundle of documents paragraph 68 p20.

<sup>20</sup> Bundle of documents paragraph 69 p20.

<sup>21</sup> Bundle of documents paragraph 57 p238.

<sup>22</sup> Bundle of documents paragraph 100 p27; paragraph 53 p237 ([details deleted]).

<sup>23</sup> Bundle of documents paragraphs 102 & 103 p28; paragraph 110 p30 (not allowing them to travel to Australia because of Covid-19 but wanting to travel to [another country] and Israel).

<sup>24</sup> Bundle of documents paragraphs 114 to 116.

<sup>25</sup> Bundle of documents paragraph 117 p32.

<sup>26</sup> *Ibid.*, and paragraph 124 p34.

<sup>27</sup> Bundle of documents paragraph 117 p32.

[17] Mr [Avidan]’s position is that Ms [Avidan] would not allow the boys to visit him in Australia before he moved but changed her position once she needed to travel to Israel.<sup>28</sup>

[18] Ms Blackford’s submissions on behalf of Mr [Avidan] dated 14 September have been updated. In essence those submissions remain the same. The boys want to live in Australia with their father, each other, their stepmother, and half-brother. Both parents accept [Yuval] leads a life of strict observance of Jewish religious practices. Mr [Avidan] says his needs cannot be met in New Zealand but can in Australia.

[19] During the course of these proceedings Mr [Avidan] has informed the Court that he has engaged with family therapy to address his communication. That became a feature of the evidence.<sup>29</sup> Mr [Avidan] agrees to a condition being imposed to the parenting order that requires him to continue attending therapy as required.

***What does Ms [Avidan] say?***

[20] Ms [Avidan] accepts Mr [Avidan] was motivated to move to Australia because of employment and community issues within the Jewish community. She says this was not the only time he moved for these reasons.<sup>30</sup>

[21] Ms [Avidan] says “[o]nce the children were told of the move [Mr [Avidan]] set about convincing them it was best.”<sup>31</sup> She is concerned about the level of influence Mr [Avidan] has over the boys and his “power/control over the children as a rabbi and their father, so whatever he says about religion is taken as the truth and I’m always represented to them as unworthy or morally unsound.”<sup>32</sup>

[22] Ms [Avidan] accepts she was willing to think about the suggestion she move to Australia with the children but within days, decided she would not.<sup>33</sup> Ms [Avidan]

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<sup>28</sup> Bundle of documents paragraph 34 p233.

<sup>29</sup> See notes of evidence p103 onwards.

<sup>30</sup> Bundle of documents para 24 p137.

<sup>31</sup> Bundle of documents paragraphs 12 & 14 p133.

<sup>32</sup> Bundle of documents paragraph 31 of Ms [Avidan]’s affidavit dated 14 September 2022.

<sup>33</sup> Bundle of documents paragraphs 8 & 9 p132.

is concerned the boys have been inappropriately included in adult issues by Mr [Avidan] and he has influenced them to move to [Australia].<sup>34</sup> She says this was not helped by Mr [Avidan] telling the boys that he wanted to take them to Australia but that their “crazy” mother was stopping them.<sup>35</sup> He did a number of things to persuade them and undermine her such as organising a video, shipping their belongings to [Australia], arranging [Australian] school interviews without reference to her, telling Auckland schools the boys were not returning, organising flights for the boys without reference to her and telling the Auckland and [Australian] congregations that the boys were moving to [Australia]. He also gets the boys to report any of her “transgressions.”<sup>36</sup>

[23] Ms [Avidan] says [Binyamin]’s criticism of her mirrors what Mr [Avidan] says about her. She says this extended to [Yuval] making comments “fed to him”<sup>37</sup> by Mr [Avidan]. These included comments like “dad is paying you too much child support, you told our community that Dad was beating his kids, you won’t give Dad the Jewish divorce that he wants.”<sup>38</sup> Ms [Avidan] claims Mr [Avidan] has also shared correspondence between lawyers with the boys.<sup>39</sup>

[24] Ms [Avidan] claims [Binyamin] in particular has made disparaging and negative comments to her such as her being “spat upon, tarred and feathered for my evil behaviour,” that she should be stoned for her “transgressions,” that she will not go to heaven when she dies, and that she deserved to be hit by a car when riding a bike on Sabbath.<sup>40</sup> She says she does not blame Mr [Avidan] for “[Binyamin]’s feelings against me, but I do see his behaviour as encouraging and condoning [Binyamin]’s behaviour.”<sup>41</sup> She says these sorts of beliefs and remarks reflect Mr [Avidan]’s criticisms.<sup>42</sup>

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<sup>34</sup> Bundle of documents paragraph 6 p131; paragraph 16 p134.

<sup>35</sup> Bundle of documents paragraph 16 p134; paragraph 25 p138; p181; paragraph 40 p141.

<sup>36</sup> Bundle of documents paragraph 38 p140.

<sup>37</sup> Bundle of documents paragraph 29 of Ms [Avidan]’s affidavit dated 14 September 2022.

<sup>38</sup> Bundle of documents paragraph 29 of Ms [Avidan]’s affidavit dated 14 September 2022

<sup>39</sup> Bundle of documents paragraph 226 p138.

<sup>40</sup> Bundle of documents paragraph 41 p141.

<sup>41</sup> Bundle of documents paragraph 72 p148.

<sup>42</sup> Bundle of documents paragraph 45 p142.

[25] Ms [Avidan] acknowledges she withdrew her application to relocate the boys to Israel in the 2018 hearing. She did so believing “NZ was the best place for the children.”<sup>43</sup> Ms [Avidan] says Mr [Avidan] even opposed her taking the boys to Israel in 2021 to [details deleted]<sup>44</sup> but finally relented.

[26] Ms [Avidan] believes that once the 2018 proceedings ended Mr [Avidan] “stopped speaking to the children about me, the close, warm, wonderful relationship between us resumed almost overnight.”<sup>45</sup> But she says when Mr [Avidan] decided to go to Australia the “bad-mouthing from previous years recommenced” and the change in the boys was “instant.”<sup>46</sup>

[27] Although Ms [Avidan] has applied again to relocate [Yuval] to Israel<sup>47</sup> she asked for permission during the hearing process to withdraw that application “because I genuinely thought this would give him a totally Jewish cultural and spiritual experience and he could grow up around my family. However, in hindsight, [Yuval]’s needs cannot all revolve around religion. His stability and the settled routine he has in New Zealand should continue.”<sup>48</sup>

[28] On 21 September last year I granted Ms [Avidan] permission to withdraw her relocation application for the boys to Israel.

[29] Ms [Avidan] wants [Yuval] to continue at [school 1] until he is old enough to attend [school 2] in [year deleted] where many of his friends will go and where [Moshe] went. She says the college accommodates [Yuval] continuing to observe Jewish events such as Sabbath on Friday night, Saturday at the Synagogue, Jewish customs and community activities.

[30] Ms [Avidan] says she maintains a kosher kitchen and observes Jewish traditions. While she has “chosen to no longer be a strictly observant Jew”<sup>49</sup> she has

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<sup>43</sup> Bundle of documents paragraph 21 p135.

<sup>44</sup> Bundle of documents paragraph 19 p135.

<sup>45</sup> Bundle of documents paragraph 30 p139.

<sup>46</sup> Bundle of documents paragraph 31 p139.

<sup>47</sup> Bundle of documents paragraph 23 p135; p277.

<sup>48</sup> Bundle of documents paragraph 6 of Ms [Avidan]’s affidavit dated 14 September 2022.

<sup>49</sup> Bundle of documents paragraph 38 p140.

told the children many times she supports their choice to be strict followers. She says [Yuval] conducts morning prayers and follows Jewish traditions but does not have the “very strict and orthodox approach to Judaism”<sup>50</sup> adopted by [Binyamin].

[31] Ms [Avidan] proposes that [Yuval] spend half the school holidays and most of the Jewish holidays in Australia. She is prepared to visit Australia with [Yuval] twice a year. She is concerned that if [Yuval] moves to [Australia] her relationship will be undermined even more by what Mr [Avidan] says and does with the boys.

[32] [Yuval] is said to be “less affected”<sup>51</sup> by Mr [Avidan]’s influence than his brothers but she fears he will over time “be taught to disrespect me” and to see me as “crazy” and “bad.”<sup>52</sup>

[33] Ms [Avidan] understands [Binyamin] currently wakes at 6 am, travels by bus to and from school for an hour, and gets home about 5 pm. She says this would be too much for [Yuval], especially if he is also expected to look after his half siblings. In the last July holidays Ms [Avidan] understands Mr [Avidan] spent a week with [Yuval] and then went back to work for the second week leaving [Moshe] to care for him.

[34] Ms [Avidan] accepts the boys want to live in Australia with their father but says they have been “moulded”<sup>53</sup> by their father. She says [Binyamin] moved to live with his father because Mr [Avidan] “encourages the children not to comply with the terms of the parenting order.”<sup>54</sup> He even manipulated the boys to propose to their step-mother in front of the whole congregation on behalf of their father because he told them they “must”<sup>55</sup> when they were 14, 11 and 8 respectively.

[35] Submissions filed on behalf of Ms [Avidan] focus on Mr [Avidan]’s position of power and influence as a senior Rabbi and religious leader. It is claimed [Binyamin] has been alienated against his mother by his father<sup>56</sup> and that [Yuval] “is exhibiting

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<sup>50</sup> Bundle of documents paragraph 15 of Ms [Avidan]’s affidavit dated 14 September 2022

<sup>51</sup> Bundle of documents paragraph 47 p142.

<sup>52</sup> Bundle of documents paragraph 47 p143.

<sup>53</sup> Bundle of documents paragraph 59 p145; paragraph 122 p162.

<sup>54</sup> Bundle of documents paragraph 65 p147.

<sup>55</sup> Bundle of documents paragraph 134 p167.

<sup>56</sup> Paragraph 25 of Ms Nannayakkara’s submissions dated 16 September 2022.



increasing signs of alienation”<sup>57</sup> but is “at a less severe stage of the alienation process than [Binyamin].”<sup>58</sup>

[36] One of the submissions made today on behalf of Ms [Avidan] is that specific dates are recorded for contact arrangements. In the course of updating her evidence by way of cross examination Ms [Avidan] confirmed that agreement has been reached about arrangements in 2024 for a trip to Israel during Ms [Avidan] will spend time with the boys, and [Yuval] in particular in relation to his bar mitzvah and Passover. In essence there is agreement that the April holiday will be spent there.

***What are the views of [Binyamin] and [Yuval]?***

[37] I have the benefit the boys’ views through their lawyer, their parents, their step-mother and having met [Yuval] in the presence of his lawyer today.

[38] Mr Cooke knows the boys because he acted for all three boys at the 2018 hearing. In relation to the current proceedings Mr Cooke had separate “extensive discussions” with [Binyamin] and [Yuval] on 22 February 2022. He filed a memorandum dated 26 April 2022 and advised that:

- (a) the boys were “well aware of the dynamics/conflict between their parents” and very clear about what their parents want them to do
- (b) [Yuval] is very clear about wanting to live in [Australia] and the advantages of doing so including
  - (i) education for a religious Jew like him is better in Australia. [School 1] is not the “greatest” and there is no secondary school in NZ for Jews.
  - (ii) he feels the community is “antagonistic” towards his family

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<sup>57</sup> Paragraph 23 of Ms Nannayakkara’s submissions dated 16 September 2022.

<sup>58</sup> Paragraph 24 of Ms Nannayakkara’s submissions dated 16 September 2022.

- (iii) it is important to him that he is eating in accordance with Kosher practices and does not believe he is.
  - (iv) he has a better relationship with his father. His mother does not tell the truth. “He does not like her decision making and, in particular, her refusal, to let him live in [Australia].”<sup>59</sup>
  - (v) [Yuval] was very clear he did not want to live in Israel.<sup>60</sup>
  - (vi) “he thought that if his mother moved to [Australia] then the current care arrangements could continue.”<sup>61</sup>
- (c) [Binyamin] very clearly wanted to go to [Australia] “because that is where his family and community are.”<sup>62</sup> He instructed his lawyer that he loves his mother but has no respect for her and his perception is that “she does not care.”<sup>63</sup> He wants to maintain a relationship with her but did not want to live in Israel. He referred to his mother breaking lockdown rules and the boys being left alone for up to seven hours a day “when she does her sport.” He said he moved to live with his father in August 2021 and stayed there until 27 December visiting his mother “half a dozen times” over that period.
- (d) Mr Cooke submitted that the “views expressed by the children are more likely to reflect their own experiences of their parents as opposed to anything else.”<sup>64</sup>

[39] In Mr Cooke’s 7 September 2022 memorandum it is clear that [Yuval]’s views remain firm. He wanted to live with his father and his father’s family in Australia. He rated that option as 10 out of 10 and although he would miss his mother he did not

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<sup>59</sup> Bundle of documents paragraph 15 p246.

<sup>60</sup> See also bundle of documents paragraph 18 p248.

<sup>61</sup> Bundle of documents paragraph 15 p247.

<sup>62</sup> Bundle of documents paragraph 16 p247.

<sup>63</sup> Bundle of documents paragraph 16 p248.

<sup>64</sup> Bundle of documents paragraph 21 p248.

think he would miss her as much as his father.<sup>65</sup> [Yuval] said his life with his mother “had not been the best” because he was “lonely, just Mum and me”.<sup>66</sup> He rated living with her 4 out of 10.<sup>67</sup> [Yuval] did not want to go to a secular high school and did not rate [school 1] as Jewish enough.<sup>68</sup> [Yuval]’s preference was to share the Christmas school holidays by spending the first half with the contact parent.<sup>69</sup> If he lived with his mother in Auckland he wanted to spend each term school holiday with his father.<sup>70</sup> If he lives with his father he wants to spend two term school holidays with his father and one with his mother.<sup>71</sup> [Yuval] was very clear he wanted to spend all religious holidays and festivals with his father and while he was open to sharing those with his mother, he noted that he currently spends these times at someone else’s home.<sup>72</sup>

### ***What is this Court’s decision?***

[40] As I indicated earlier, I met with [Yuval] today in the presence of his lawyer. That discussion lasted just over an hour. [Yuval]’s views continue to essentially be the same. For him, his first priority is to live in Australia. He described that as 100%. His next priority was his schooling. He identified the important aspects to him of living in Australia as including, first, there were more family in Australia. This included his father, [Binyamin], step-siblings and step-mother. He also identified having more friends there. Those friends, he said, were made through the synagogue.

[41] The second important aspect of living in Australia included him being able to attend a Jewish high school. He preferred attending the same school as [Binyamin] even though he is aware that will involve a longer day. He also expressed an understanding that the Jewish school was not as strong academically as the closer non-Jewish school.

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<sup>65</sup> Paragraph 19 of Mr Cooke’s memorandum dated 7 September 2022.

<sup>66</sup> Paragraph 15 of Mr Cooke’s memorandum dated 7 September 2022.

<sup>67</sup> Paragraph 20 of Mr Cooke’s memorandum dated 7 September 2022.

<sup>68</sup> Paragraph 17 of Mr Cooke’s memorandum dated 7 September 2022.

<sup>69</sup> Paragraph 22 of Mr Cooke’s memorandum dated 7 September 2022.

<sup>70</sup> Paragraph 23 of Mr Cooke’s memorandum dated 7 September 2022.

<sup>71</sup> Paragraph 24 of Mr Cooke’s memorandum dated 7 September 2022.

<sup>72</sup> Paragraph 25 & 26 of Mr Cooke’s memorandum dated 7 September 2022.

[42] The third most important aspect of living in Australia was the fact that he was able to live a full Jewish life. He told me that he more strongly identified with his father because they had more in common and share similar ideals as far as his religious life is concerned.

[43] [Yuval] was very clear in his mind that each parent supports his relationship with the other parent. He gave examples of his father openly discussing and encouraging [Binyamin] to talk to his mother and spend time with her. While he identified that his mother did not encourage the relationship in such an open way, he was clear she did support his relationship by allowing contact. As to his academic studies, [Yuval] said he does not like maths but is good at it. He said he likes sciences. He is not interested in arts or sports.

[44] When we discussed [Binyamin]'s relationship with his mother, [Yuval] was very clear his relationship with his mother would not end up like [Binyamin]'s relationship with her. He says he would not shout at his mother like [Binyamin] does.

[45] When I asked [Yuval] about what changes he would like to see in his parents, he said he would like his parents to agree and for his mother to be more religious. He rated his religious observance to be 90 out of 100 in terms of importance in his life.

[46] When I discussed with [Yuval] the available options for his care he said that if he continued to live in New Zealand with his mother he would keep things pretty much the same. If he was living in Australia he would like the reverse of the current holiday arrangement. That is, every term school holiday and half the Christmas holidays. He was keen to ensure he was still able to attend and meet religious festivals and observances. He also told me that he is still leaving his mother's home on Fridays and being picked up on Saturdays to maintain his religious observance of Shabbot.

[47] When we discussed the various care options, [Yuval] told me that whatever orders are made he would like them to have effect as soon as possible. He explained that there will be practical difficulties over the next few days but in his world view "as soon as possible" was on Monday or as close to that day as possible.

[48] I note from an outstanding s 133 psychological report undertaken in respect of the 2018 proceedings that Simone Powell's opinion was that the boys were more aligned with their father for reasons that were consistent with the facts of that case rather than any negative or sinister reasons.

[49] I note from the exchange I had with Mr [Avidan] during the course of this hearing that I took him to task about some of the text messages he was sending and the message that gave to the boys. It took some effort but it appeared he gained some insight into the effect of the words he used. Mr [Avidan] made a commitment to attend therapy to assist him in that regard. He is agreeable, as I mentioned earlier, to a condition being imposed to continue family therapy. In my view it would be in the welfare and best interests of the children to make that a condition of the parenting order to ensure their therapy is continued.

[50] Although I have referred loosely to the boys, I note this hearing is focussed on [Yuval]. However, it is important the boys are dealt with in the same way by their father.

[51] I was impressed by [Yuval]. He is a bright young boy who has insight. The reality of the situation faced by [Yuval] is that he loves both his parents. His ideal is that he live with his mother in Australia and attend a Jewish high school in Australia, that he have shared care with his father and be able to have a full relationship with [Binyamin] and half siblings. Unfortunately, in the circumstances of this case that is not an option.

[52] But above all, [Yuval] wants to lead a life of strict observance of Jewish religious practices. He has done his best to do this with his mother by staying with others in his religious community when attending religious events. But this is difficult for him in New Zealand and he is not happy with the standard of observance in his school and religious environment. In his father's environment he is exposed to Hebrew. He can understand it but only speaks a little.<sup>73</sup>

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<sup>73</sup> Notes of evidence line21 p187.

[53] [Yuval] has been brought up as a modern Orthodox Jew where strict observance of Jewish religious practices has been encouraged and supported to the extent that it is a way of life. [Yuval] is simply following in the footsteps of his father, siblings and, until his parents separated, his mother. [Moshe] is now doing five years of [details deleted]. [Binyamin] has elected to go to a Jewish school in Australia. [Yuval] wants to follow the same path.

[54] Ms [Avidan] blames the children's poor behaviour in her care on Mr [Avidan]<sup>74</sup> but it is not as simple as that. There is evidence [Yuval] has behaved poorly in his father's care sometimes as well.<sup>75</sup> Each parent has relied on counselling for support. Attempts have been made to improve communication between the parents but there has been little change despite their 2018 court appearance.

[55] I find on the balance of probabilities that [Yuval]'s views reflect his religious upbringing and the religious life his family chose together until his parents separated. The choices [Yuval] is faced with are starkly different. His father and siblings have elected to follow a strictly observant lifestyle and his mother has not. She describes herself as a "secular Jew."<sup>76</sup> This has been difficult for the boys as well as their mother. It has led to conflict and poor behaviour that Ms [Avidan] acknowledges she has been ill equipped to deal with.<sup>77</sup> Both parents have struggled at times to understand the other and communicate effectively. That was a feature of the last substantive proceedings and continues to be a feature.

[56] I can see Ms [Avidan] is a gentle soul who has done her best to support the boys but the point for them is that what is available in New Zealand is not enough. The boys have for themselves chosen a life of strict observance and they see options in Australia that are more likely to meet their emotional, religious and cultural needs than in New Zealand. In [Australia] there is a Jewish high school but in New Zealand

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<sup>74</sup> Notes of evidence line 15 to 24 p226.

<sup>75</sup> Notes of evidence lines 15 to 18 p228.

<sup>76</sup> Notes of evidence line 30 p252.

<sup>77</sup> Notes of evidence line 26 line 240 to line3 p241.

there is not.<sup>78</sup> This is important to [Yuval]<sup>79</sup> and he is influenced by [Moshe]'s secular educational experience in New Zealand which he described in negative terms.

[57] Ms [Avidan] acknowledges the importance of Judaism to the boys and recognises that she has in the past advanced this as a reason to support an application to relocate the boys to Israel.<sup>80</sup> The advantage of Australia is that it is closer to New Zealand than Israel, and the boys' father lives in Australia.

[58] I find on the balance of probabilities that [Yuval]'s long term welfare and best interests will more likely be met in Australia than in New Zealand. Ms [Avidan] has alleged alienation but there is no evidence to support this submission. Rather, there is evidence of a high level of parental conflict and past inter-family tensions that were a feature of the 2007 s 133 psychological report and 2008 Family Court proceedings.

[59] I accept the parents see that it is their responsibility to arrange for and work cooperatively about [Yuval]'s care and upbringing in terms of s 5(b) & (c). Section 5(a) is not a feature in these proceedings. I find [Yuval]'s placement in his father's care, and contact with his mother, will provide continuity in terms of s 5(d). This will also result in relationships being preserved and strengthened in terms of s 5(e) because [Yuval]'s brother and half siblings are in Australia, as well as his father, step-mother, aunts, uncles and cousins. He is unlikely to feel lonely. Most importantly, [Yuval]'s identity will be preserved and strengthened in terms of s 5(f) because [Yuval]'s views will be respected in a way that will enhance the vital aspects of his culture, language and religious practice.

[60] Giving effect to [Yuval]'s views, and acknowledging the importance of his desire to strictly observe Jewish religious practices, means it is more likely [Yuval] will thrive in all aspects of his life in Australia rather than New Zealand.

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<sup>78</sup> Notes of evidence line 5 p253.

<sup>79</sup> Notes of evidence line 6 to 10 p254.

<sup>80</sup> Notes of evidence line 10 p255.

[61] The orders I make today are intended to take immediate effect. I will leave counsel and the parties to confer, with the involvement of [Yuval]'s lawyer, to make the suitable arrangements.

[62] The expectation of the orders I make are that [Yuval] will be in the care of his mother each term school holiday.

[63] There is agreement that, at the end of the term 1 school holidays, [Yuval] will observe Passover with each parent.

[64] I understand from my discussions with the parties and counsel that there are no observances in the term 2 school holidays. This will mean [Yuval] will be in the care of his mother for the whole of the term 2 school holidays.

[65] In the term 3 school holidays the expectation is that [Yuval] will be with his mother for at least half the school holiday. The other half is the Sukkot observance.

[66] At the end of the term 4 school holidays I note there are religious observances in December but not in January. The Court's expectation is that [Yuval] will spend half the Christmas school holiday with his mother. In practical terms, this is more likely to work out to be in the month of January before he returns to school. But there is no reason why that could not happen during the December part of the Christmas school holidays as well. I make this observation because [Yuval]'s needs may change and as he grows older he may develop a wish to alternate when contact occurs. At this stage I propose that [Yuval] is with his mother for the month of January before he returns to school. The main reason for this is because there will not be a need for him to attend any particular religious festivities or holidays apart from the Sabbath each week.

[67] For the avoidance of any possible confusion I note the intention of this judgment is that [Yuval] will be with his mother for half the term 1 school holidays in the off year and the whole of the term 1 school holiday when she is due to have [Yuval] for Passover. [Yuval] will be with his mother for all the term 2 school holidays. In



the term 3 school holidays [Yuval] will be with his father to observe Sukkot and otherwise in his mother's care.

[68] In terms of paragraph [71](b)(iii) of this judgment, my intention is that [Yuval] will be able to have other modes of contact with his mother such as Skype, WhatsApp or telephone calls. At the moment this happens when he is with his father. Ms [Avidan] tends to make the calls. I note also that [Yuval] has regular contact with his father by electronic means as well. There will be other occasions where, by agreement, Ms [Avidan] will be able to have contact with [Yuval] when, for example, she visits Australia. She may prefer to visit Australia in the term 3 school holidays and spend time with [Yuval] there and have contact with him during the Sukkot period if she wishes and it is practicable.

[69] I note the Court's expectation is that Rosh Hashanah and Yom Kippur are festivities that should not impact on [Yuval]'s contact with his mother. As I understand it, Rosh Hashanah would normally fall within school term time. There is a risk, depending on how the dates overlap, that Yom Kippur would fall within the school holidays. In my view this should not impact [Yuval]'s contact with his mother. It may require discussions between the parents to accommodate [Yuval]'s observance.

[70] I propose to discharge all existing parenting orders so it is clear a new order in place.

## **ORDERS & DIRECTIONS**

[71] I make the following orders and directions:

- (a) All existing parenting orders are discharged.
- (b) A final parenting order is made placing [Yuval] in the care of Mr [Avidan] reserving contact to Ms [Avidan]:
  - (i) each term school holidays in terms of this judgment.

- (ii) half the Christmas school holidays taking into account Jewish religious festivities events and holidays in terms of this judgment.
  - (iii) other times and modes of contact agreed by Mr and Ms [Avidan] in consultation with [Yuval].
- (c) The conditions of the parenting order as follows:
  - (i) neither parent will belittle, denigrate or criticise the other to [Yuval] or in front of [Yuval].
  - (ii) neither parent will question [Yuval] about the other or the other's friends, activities or way of life.
  - (iii) Mr [Avidan] is to continue to undertake family therapy as required to support [Yuval] in Australia and his relationship with Ms [Avidan].
  - (iv) these orders are to be registered in Australia.
- (d) A s 46R is made allowing [Yuval] to live and attend a Jewish school in [Australia].
- (e) Lawyer for child's appointment is terminated with the Court's thanks to take effect within 28 days.

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Judge L de Jong

Family Court Judge | Kaiwhakawā o te Kōti Whānau

Date of authentication | Rā motuhēhēnga: 09/05/2023