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

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IN THE FAMILY COURT
AT WELLINGTON

I TE KŌTI WHĀNAU
KI TE WHANGANUI-A-TARA

FAM 2021-085-084
[2023] NZFC 14790

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[AMY MURPHY] Applicant
AND	[SHANE HARDING] Respondent

Hearing:	3, 4, 5 and 30 October 2023
Appearances:	J Wademan for Applicant S Stevenson for Respondent L McWilliam as Lawyer for Child
Judgment:	2 February 2024

RESERVED JUDGMENT OF JUDGE T M BLACK
[relocation, parenting arrangements]

Introduction

[1] The parties are the parents of [Flynn] aged 5 and [Rowan] aged 3.

[2] Ms [Murphy] is British. Mr [Harding] is a New Zealander.

[3] Ms [Murphy] wishes to relocate with the children and live close to her family in [city name deleted], England. She says Mr [Harding] should relocate too and the parties should share the care of the children in England.

[4] Mr [Harding] is opposed to relocation.

[5] The issues that I have to determine in this case are:

(a) Should relocation be permitted?

(b) What the terms of a final parenting order should be.

[6] That is what this case is about. What this case is not about is whether the parties love their children or whether the children love their parents. It is not about whether either parent is capable of meeting the children's needs. These are well loved children with capable parents.

[7] The structure of this decision is as follows:

(a) Background;

(b) Hearing process;

(c) Positions/submissions;

(d) Legal issues;

(e) Analysis;

(f) Result.

Background

[8] Ms [Murphy] was born and raised in the [detail deleted] of England. Her parents, siblings and wider family still live there. She qualified as a [occupation deleted] and worked in London for [a number of] years after she graduated.

[9] In 2016 Ms [Murphy] travelled to New Zealand to work as a [occupation deleted]. That was with a view to gaining overseas work experience in order to be able to secure more senior [occupation] roles upon her return to England.

[10] Ms [Murphy] met Mr [Harding] in late 2016. They began living together in early 2017.

[11] [Flynn] was born in [2018]. There is a dispute about what discussions or arrangements had taken place about a move to England prior to [Rowan]'s birth. I will return to that issue later in this judgment.

[12] When the parties began their relationship Mr [Harding] was working as a [occupation deleted]. In late 2018 he moved jobs into [detail deleted]. He committed to completing some qualifications in relation to that role.

[13] The parties had had discussions about moving to England. There is quite a lot of dispute about the exact nature of those discussions which I will refer to later in this judgment.

[14] In any event there is agreement that by the end of 2019 the parties had agreed that as a family they would move to England once Mr [Harding] had completed his [qualifications] and the parties would be in a position to satisfy the financial requirements for Mr [Harding] to obtain a partnership visa allowing him to live and work in England.

[15] At the end of 2019 Ms [Murphy] was pregnant with [Rowan].

[16] In early 2020 Ms [Murphy] and [Flynn] travelled to England to visit her family. The plan was that Ms [Murphy] and [Flynn] would return to New Zealand sometime before Mr [Harding]'s birthday on [date deleted] 2020.[1]

[17] There is a dispute as to whether the move to England was to be permanent or time limited.

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[1] See for example judgment of Justice Abuthnot dated 5 February 2021, bundle 1, page 53 paragraph 9.

[18] While Ms [Murphy] and [Flynn] were in England, the global COVID-19 pandemic took hold and both the UK and New Zealand were subject to significant lockdown restrictions.

[19] In March 2020 Ms [Murphy] advised Mr [Harding] that the UK government advice was that pregnant women should not fly unless travel was essential and she told Mr [Harding] that she would not be returning at that time because of the risks posed by COVID-19.

[20] There were various communications between the parties over the following months and it is clear that their relationship was unravelling during those months.

[21] [Rowan] was born on [date deleted] 2020.

[22] Mr [Harding] declined a suggestion by Ms [Murphy] that he quit his job and move to the UK without a visa enabling him to work.

[23] In light of the position adopted by Mr [Harding], Ms [Murphy] communicated to him on 30 August 2020 that she considered the relationship to be at an end.

[24] Mr [Harding] initiated return proceedings – under the Hague Convention in relation to [Flynn], and under the High Court of England and Wales' ("EWHC") inherent jurisdiction in relation to [Rowan].

[25] Those proceedings were defended by Ms [Murphy].

[26] Following a hearing on 4 and 5 February 2021 EWHC made return orders.[2]

[27] In March 2021 Ms [Murphy] applied to this court for interim orders effectively allowing her and the children to remain in England while a substantive application for relocation was determined.

[2] The judgment is annexed to Ms [Murphy]'s affidavit sworn 12 March 2021, bundle 1, page 51 and the return orders appear at bundle 3, page 486.

[28] Mr [Harding] responded by applying to stay those proceedings as an abuse of process.

[29] Following a conference arranged before me on 23 March 2021 I made timetabling directions for submissions on the basis that I would determine the stay application on a chambers' basis.

[30] By decision dated 2 May 2021 I granted the stay application.[3]

[31] On [date deleted] 2021 Ms [Murphy] and the children arrived in New Zealand from England.

[32] In July 2021 a s 133 report was directed (and subsequently updated).

[33] Various timetabling directions were made to track the matter towards a substantive fixture.

Hearing process

[34] The matter was heard over three days on 3, 4 and 5 October and then adjourned to 30 October to enable the evidence of Dr Ferguson, a witness for Ms [Murphy], to be heard.

[35] Counsel provided comprehensive opening submissions.

[36] At the hearing I had a series of bundles of documents running to approximately 530 pages.

[37] I heard evidence from:

(a) Ms [Murphy];

(b) Ms [Margie];

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[3] Chambers decision of Judge TM Black, 2 May 2021, [2021] NZFC 3920.

(c) Dr Ferguson;

(d) Mr [Harding];

(e) [Eugenie Spring], Mr [Harding]'s stepmother.

[38] I also had affidavits from Mr [Harding]'s partner, Ms [Brinley], and Mr Armstrong, a psychologist consulted by Mr [Harding]. Neither of those witnesses was required for the purposes of cross examination.

[39] As I have said, the hearing was adjourned part heard to 30 October to enable Dr Ferguson's evidence to be given.

[40] During the course of the first 3 days of the hearing, it became apparent that the future ability of Mr [Harding] to obtain a visa allowing him to live and work in England was an issue. I accepted a suggestion from Ms McWilliam that she should obtain a legal opinion from an immigration specialist in the UK. That material was subsequently provided.

[41] On 30 October 2023 I was dismayed to find that Ms [Murphy] had attempted to file further affidavit evidence from family members as to support offered to Mr [Harding], and Mr [Harding] had sought to file evidence from his doctor. Counsel for each of the parties objected to the evidence filed by the other. I indicated my view that the evidence had closed apart from the evidence from Dr Ferguson. Counsel then indicated that they would work together to come to a consent position in relation to the "new" evidence.

[42] Following the hearing of Dr Ferguson's evidence I timetabled closing submissions. Counsel filed a joint memorandum on 16 November consenting to the following documents coming in as evidence:

(a) Affidavit of [Travis Murphy] (Ms [Murphy]'s father) sworn 24 October 2023;

(b) Affidavit of [Morris Clayton] (Ms [Murphy]'s brother) sworn 24 October 2023;

(c) Affidavit of Mr [Harding] sworn 16 November 2023;

(d) Report of Mr Sheik (the immigration specialist) dated 23 October 2023.

[43] The consent memorandum also recorded clarification of a point that had arisen during the course of the cross examination of Mr [Harding] in relation to whether or not he had previously asserted that the move to England was intended to be time limited.

[44] Closing submissions were filed on 17 November 2023.

[45] I have carefully considered the evidence and submissions filed in reaching my decision.

Positions/submissions

[46] As I have noted, counsel for the parties and lawyer for child have each filed comprehensive opening and closing submissions. I do not intend to traverse those submissions in detail but summarise them.

Ms [Murphy]

[47] Ms [Murphy] submits that her mental health position is perilous. She submits that the potential consequences of requiring her to remain in New Zealand with the children are so significant that they permeate every other aspect of the decision that I am required to make.

[48] Ms [Murphy] relies on her own evidence in that regard and also the evidence of Dr Ferguson. She submits the evidence demonstrates that if she is forced to remain in New Zealand with the children, her mental health is likely to deteriorate to the point where at worst she may take her own life or at best be reduced to a shell of a person. In either scenario she says that in effect the children will lose her as a parent.

[49] Adding further context, Ms [Murphy] submits that there were longstanding discussions and agreements about the family living in England. Mr [Harding] has reneged on those agreements and this is a factor in terms of the reasonableness of her wish to relocate.

[50] Ms [Murphy] submits that Mr [Harding] can and should relocate to England also. She relies on the advice from Mr Shiek and the offers of support from her family members.

[51] She acknowledges that Mr [Harding] has suffered some mental health issues as a result of these proceedings but submits that he has been able to manage and there is no evidence to suggest that his mental health issues have impacted on his parenting and no reason to believe that if mental health issues arose in England, he would not be able to manage them equally well.

[52] She submits that if in those circumstances Mr [Harding] chooses not to relocate to England, then that choice is an unreasonable one and not in the welfare and best interests of the children.

[53] Ms [Murphy]'s ideal outcome is that both parents relocate to England with the children and then share the care of them there.

Mr [Harding]

[54] Mr [Harding] submits that at present, both parties are able to live, work and parent the children in New Zealand.

[55] The prospect of Mr [Harding] being able to successfully relocate himself to England is "at best a tenuous maybe".

[56] Mr [Harding] says that the material from Mr Shiek demonstrates a reasonable prospect of success but at significant time and financial cost. Even if successful, it is likely that he would be separated from the children for six months or more while the process is completed and he submits that that cannot be in their welfare and best interests.

[57] He says that there is also the real possibility that immigration would be declined and the adverse impact on his relationship with the children would be significantly increased.

[58] Mr [Harding] submits that he would use all of his funds if he applied for a visa obtaining that visa and he would then be without funds to set himself up in England. He submits that relying on the offers of assistance made at the last minute by Ms [Murphy]'s family members would place him in an intolerable position.

[59] Mr [Harding] submits that Ms [Murphy] maintains a negative attitude towards him and his parenting and that would be unlikely to change in England where he would be without support.

[60] Mr [Harding] has re-partnered and that relationship would end if he moved to England, depriving him of a significant source of support.

[61] Mr [Harding] submits that he has neither the funds, resources or mental capacity to make a visa application let alone appeal an unsuccessful decision.

[62] In relation to Ms [Murphy]'s mental health, he says that there is no evidence to support the proposition that Ms [Murphy]'s parenting is currently being negatively impacted by her mental health. He submits that a careful reading of the evidence establishes that Ms [Murphy] is not currently adequately treated for her mental health issues and that with proper treatment (which her family could resource) the risks identified by Dr Ferguson in terms of self harm/ suicidality could be addressed.

[63] In terms of his own mental health he relies on the (unchallenged) evidence of Dr Armstrong who concluded that Mr [Harding] would struggle to cope with high levels of anxiety, and this might well impact on his ability to parent his sons.

[64] Mr [Harding] submits that the best option at this point in time is to wrap support around Ms [Murphy] and to direct that the children remain living in New Zealand. New Zealand is a sure thing and the UK is a maybe.

Ms McWilliam

[65] Ms McWilliam does not advocate a particular outcome.

[66] Ms McWilliam emphasises that there are no current concerns for the children's current health or wellbeing in the care of either of the parents. Both parents are able parents. The best outcome for the children is to have both parents physically and mentally available to parent them.

[67] Ms McWilliam addresses the evidence in relation to Ms [Murphy]'s mental health and also the evidence in relation to Mr [Harding]'s mental health.

[68] Ms McWilliam submits that the material from Mr Shiek demonstrates that a visa application for Mr [Harding] is not necessarily straightforward and that the children would be inevitably subject to a further lengthy separation from their father should they relocate to the UK.

[69] Ms McWilliam submits that the court will need to consider whether Ms [Murphy]'s current mental health difficulties will impact on her ability to parent the children to the extent that it justifies taking the risks inherent in relocating children who are happy and settled in their current arrangement and submits that Ms [Murphy]'s justification for relocation is grounded in her belief that this is the only way she will be able to continue to parent the children whereas Mr [Harding] is concerned that this will mean he will be either temporarily or permanently separated from the children due to visa issues, financial problems, relationship issues or his own mental health status. Those risks have to be balanced.

Legal issues

[70] The legal issues in this case are not controversial and I do not intend to dwell on them.

[71] The children's welfare and best interests in their particular circumstances are the first and paramount consideration – s 4:

4 Child's welfare and best interests to be paramount

(1) The welfare and best interests of a child in his or her particular circumstances must be the first and paramount consideration—

(a) in the administration and application of this Act, for example, in proceedings under this Act; and

(b) in any other proceedings involving the guardianship of, or the role of providing day-to-day care for, or contact with, a child.

(2) Any person considering the welfare and best interests of a child in his or her particular circumstances—

(a) must take into account—

(i) the principle that decisions affecting the child should be made and implemented within a time frame that is appropriate to the child's sense of time; and

(ii) the principles in section 5; and

(b) may take into account the conduct of the person who is seeking to have a role in the upbringing of the child to the extent that that conduct is relevant to the child's welfare and best interests.

(3) It must not be presumed that the welfare and best interests of a child (of any age) require the child to be placed in the day-to-day care of a particular person because of that person's gender.

(4) This section does not—

(a) limit section 6 or 83, or subpart 4 of Part 2; or

(b) prevent any person from taking into account other matters relevant to the child's welfare and best interests.

[72] I am required to have regard to the relevant s 5 issues when considering the children's welfare and best interests:

5 Principles relating to child's welfare and best interests

The principles relating to a child's welfare and best interests are that—

(a) a child's safety must be protected and, in particular, a child must be protected from all forms of violence (as defined in sections 9(2), 10, and 11 of the Family Violence Act 2018) from all persons, including members of the child's family, family group, whānau, hapū, and iwi:

(b) a child's care, development, and upbringing should be primarily the responsibility of his or her parents and guardians:

(c) a child's care, development, and upbringing should be facilitated by ongoing consultation and co-operation between his or her parents, guardians, and any other person having a role in his or her care under a parenting or guardianship order:

(d) a child should have continuity in his or her care, development, and upbringing:

(e) a child should continue to have a relationship with both of his or her parents, and that a child's relationship with his or her family group, whānau, hapū, or iwi should be preserved and strengthened:

(f) a child's identity (including, without limitation, his or her culture, language, and religious denomination and practice) should be preserved and strengthened:

(g) a child must be given reasonable opportunities to participate in any decision affecting them.

[73] A relocation is a fact specific inquiry. There is no presumption in favour of relocation or the status quo. No party bears an onus of proof.[4] Approaching a relocation requires looking at the relevant s 5 factors and any other relevant matters to identify the advantages of the proposed relocation, any disadvantages to the proposed relocation, and undertaking a balancing exercise.

[74] Section 6 requires children to be given an opportunity to express views and those views must be taken into account. [Rowan] is too young to express views. [Flynn] is too young to have any meaningful concept of what a relocation to England would mean. The limited views he has expressed reflect the understandable confusion of a 5 year old who wants the adults to sort the decision out for him.

Analysis

The "agreement" to live in England

[75] A significant part of the pleadings and evidence at the hearing focused on whether or not the parties had made an agreement to live in England with their children and if so on what terms.

[76] I do not consider it necessary for me to resolve the dispute in relation to that matter.

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[4] *Kacem v Bashir* [2010] NZSC 112.

[77] On any view of it, any such "agreement" was predicated on:

(a) The parties continuing to be in a relationship and living together as a family.

(b) Mr [Harding] obtaining a partnership visa allowing him to live and work in the UK.

[78] Neither of those preconditions now or can in the future exist.

[79] That distinguishes this case from the "agreement" cases referred to by counsel.

Mental health issues

[80] I deal with the issues in relation to Ms [Murphy] first.

[81] Ms [Murphy]'s distress during the course of the hearing was evident.

[82] Dr Ferguson conducted two assessments of Ms [Murphy]. The first took place in October 2022 in person in Dunedin, where Dr Ferguson practices.

[83] In his report following that assessment[5] he assessed Ms [Murphy] as having a major depressive order. He also assessed her as experiencing significant anxiety but not to the degree where he would diagnose her as having a separate anxiety disorder.

[84] Dr Ferguson was of the opinion that if Ms [Murphy] was allowed to return to the UK to live with the children, then her depressive disorder would be quite quickly alleviated.

[85] Significantly, Dr Ferguson set out that if the medication which had been prescribed to Ms [Murphy] did not alleviate her symptoms, there were alternative medications that could be trialled, and that it is sometimes the case that several different medications are tried before one is found that is effective. Dr Ferguson also

[5] Affidavit of Brett Ferguson affirmed 13 April 2023, bundle 1, page 191.

suggested engagement with a therapeutic process provided by a psychologist or psychotherapist.[6]

[86] In August 2023 Dr Ferguson reassessed Ms [Murphy] by Zoom appointment.[7]

[87] Dr Ferguson considered that Ms [Murphy]'s mental health had deteriorated and that her major depressive disorder was now of at least moderate severity. He considered that an adverse decision on the relocation application would likely cause Ms [Murphy] to experience greater degrees of emotional psychological distress with potential impact on parenting functions. He was also concerned about suicidality.

[88] In evidence Dr Ferguson acknowledged that he had not seen any of the evidence filed in these proceedings and that his only source of information was the two interviews with Ms [Murphy], viewing Ms [Murphy]'s medical notes from her GP, and one conversation with that GP at the time of the second assessment.

[89] Dr Ferguson acknowledged that he did not administer any specific test to assess the risk of Ms [Murphy] acting on her suicidal thoughts.[8]

[90] Dr Ferguson's view was that Ms [Murphy]'s mental health (depression) had been undertreated and that her medication should have been reviewed in that she should have been undertaking the therapeutic interventions and agreed that:[9]

> "It's no surprise when Ms [Murphy]'s major depressive disorder is left untreated for 12 months that she's experiencing the level of distress she reported to you in August."

[91] Dr Ferguson was surprised that more assertive treatment had not been put in place for Ms [Murphy].

[92] The effect of that evidence is that I accept that Ms [Murphy]'s mental health is likely to improve if she is able to move to England.

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[6] At page 198.
[7] Affidavit of Brett Ferguson sworn 5 September 2023, bundle 1, page 200.
[8] NOE, 30 October 2023, page 6 lines 1-5.
[9] NOE, page 16 line 25.

[93] I also find however that there is clear evidence that Ms [Murphy]'s mental health is likely to improve if she is properly treated.

[94] Ms Wademan referred me to *Woolf v Woolf*.[10] As it happens I was counsel for the applicant mother in *Woolf*. It was a significantly different situation than the one presenting here. In *Woolf*:

(a) Both parents were British and had emigrated to New Zealand when the mother was pregnant with the child.

(b) Neither parent had any family in New Zealand.

(c) All of the paternal and all of the maternal family lived in England.

(d) The mother's position was that if relocation were declined she would nonetheless return to England.

[95] Although there is evidence that as a result of her current mental health status Ms [Murphy] has "withdrawn" from some activities, there is also evidence from her, Ms [Margie] and indeed from Mr [Harding] that she remains involved at the children's playcentre, has friendships, and is involved in a social world.

[96] Although Dr Ferguson reported that Ms [Murphy] reported to him that her parenting was not perhaps as good as it had previously been, there is no evidence from anyone else about that. There is no evidence to suggest that Ms [Murphy] is doing anything other than providing a very good level of care to the children, despite her distress. She remains more than a "good enough" parent.

[97] To the contrary, the only independent observational expert evidence of the quality of parenting provided by Ms [Murphy], the evidence from Mr Sylvester, confirmed as recently as April this year, was that she:[11]

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[10] *Woolf v Woolf* HC Dunedin CIV 2010-412-778.
[11] Dr Sylvester's report dated 3 April 2023, bundle 3, at page 470 line 281.

> "continues to provide a high quality home environment which is child focussed and demonstrates high quality parenting. I would describe her dedication and commitment to the needs of the boys as exceptional."

[98] Mr Sylvester's evidence in that regard was not challenged at the fixture.

[99] In summary, the evidence establishes that Ms [Murphy] is suffering from depression. That major depressive order would likely resolve itself if she were able to move to England. It would also likely resolve itself if she were properly treated. There is no evidence to support the proposition that her mental health currently is significantly adversely affecting her parenting of the children.

[100] Turning to Mr [Harding]'s mental health, I note the evidence of Dr Armstrong, a psychologist.[12]

[101] Dr Armstrong was not required for the purposes of cross examination.

[102] I have no reason not to accept his evidence.

[103] Dr Armstrong considers Mr [Harding] (as assessed in March 2023) suffered from adjustment disorder. He assessed Mr [Harding] as struggling with high levels of anxiety when interacting with Ms [Murphy]. He recognised that employment, accommodation and social support are not automatically available to Mr [Harding] should he be required to move to the UK and opined that:[13]

> "Under those circumstances I think Mr [Harding] would struggle to cope with high levels of anxiety and this might well impact on his ability to parent his sons. It is impossible to say what the extent of that difficulty would be and how it would impact [Rowan] and [Flynn], however it is likely that there would be a significant deterioration from the current situation with Mr [Harding]'s mental health."

[104] Mr Sylvester assessed Mr [Harding] as providing a high quality child focussed home environment and did not identify any issues of concern in relation to Mr [Harding]'s parenting skills. There is no evidence that the mental health issues affecting Mr [Harding] are adversely affecting his parenting.

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[12] Affidavit of Caleb Armstrong, bundle 2, page 382.
[13] Bundle 2, page 390.

[105] In summary, in relation to mental health issues for Mr [Harding], they are not currently impacting his parenting but requiring him to relocate to the UK carries some risk that his mental health would deteriorate to the point where parenting would be impacted.

Should Mr [Harding] relocate to England?

[106] The proposition that Mr [Harding] could or should move to England needs to be addressed.

[107] The proposition rests on these assertions:

(a) Mr [Harding] can obtain a visa allowing him to live and work in England.

(b) Mr [Harding] can obtain employment in England.

(c) Mr [Harding] can afford to move to England and establish himself.

(d) It would be reasonable for Mr [Harding] to move to England so that the children and Ms [Murphy] can also move there, thus alleviating Ms [Murphy]'s distress.

[108] In relation to the immigration issue, I note that Mr Shiek assesses Mr [Harding]'s prospect of success as "reasonable". I interpret that to mean that there is an at least even chance that his application for an appropriate visa would not succeed leaving him to fund an appeal.

[109] I accept the submission that it would cost Mr [Harding] something in the region of $40,000 to obtain a visa (assuming success). There is no evidence to allow me to conclude that Mr [Harding] has sufficient means to meet those costs even if it were possible (which I doubt) to withdraw his Kiwisaver.

[110] The visa process would take at least six months and assuming Ms [Murphy] and the children move that would mean a break of six months in the relationship or in

direct contact between the children and their father. Mr Sylvester considered this would be damaging to the relationship.

[111] I accept that Mr [Harding], if he got a visa, would likely obtain employment in his chosen field in England.

[112] There are considerable issues around the lack of support available to Mr [Harding] in England. I agree with his submission that relying on support from Ms [Murphy]'s family would put him in an intolerable position. That is particularly problematic where Ms [Murphy] proposes to live amongst her family and in circumstances where two of the most important people in Ms [Murphy]'s life, her mother and her partner, have expressed incredibly negative sentiments about Mr [Harding] to Mr Sylvester.[14]

[113] I note the evidence that Mr [Harding] would likely have to cease his relationship with Ms [Brinley] if he were to relocate to England. That relationship is an important source of support for him.

[114] In summary, I agree with the submission that Mr [Harding] in the UK is tenuous at best. There is no certainty of outcome and he would be in a very difficult position even if he could put himself in a position to make the application in the first place.

[115] I find that it is reasonable for Mr [Harding] to decline to move to England.

Relationships

[116] Having made the finding about Mr [Harding] moving to England, I then need to consider how s 5(e) relationship principles would be affected if relocation were to occur.

[117] Mr [Harding]'s family live in New Zealand. Ms [Murphy]'s family live in England. A move to England would see a strengthening of relationships with maternal

[14] Bundle 3, pages 445-447.

family at the probable expense of relationships with paternal family. Wider family relationships are therefore neutral.

[118] In terms of the relationship between the children and Mr [Harding], that needs to be analysed at two levels:

(a) How the relationship between the children and their father could be maintained and strengthened.

(b) The ability of Ms [Murphy] (and her family) to foster the relationship between the children and Mr [Harding].

[119] The reality is that one trip a year is what is possible given the parties' financial circumstances. Face to face contact once a year, or even twice a year, is insufficient to maintain attachment relationships for children of these ages. Indirect contact such as Zoom etc is inadequate to maintain that attachment relationship. Attachment relationships for children of these ages require actual physical presence and care.

[120] There would be a significant risk that the children's relationship with their father would be lost if they moved to England.

[121] I am also concerned about Ms [Murphy]'s ability to foster the relationship between the children and their father. She strongly believes that he has reneged on an arrangement previously agreed to. She described him to Mr Sylvester as a "controlling narcissist".[15] Her reports to Dr Ferguson during both assessment processes were littered with complaints about poor behaviour and poor parenting on the part of Mr [Harding].

[122] Mr [Harding] has struggled to get to a shared care regime. While I acknowledge that that position has been reached by consent, it has required a number of court hearings to get to that point. I also refer to the incident in January 2022 when [Rowan] was to spend a first overnight but Ms [Murphy] decided to withdraw her agreement to that position (notwithstanding it having been embodied in a court order).

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[15] Bundle 3, page 468.

I note the evidence of Ms [Spring], Mr [Harding]'s stepmother, in that regard. I accept that evidence.

[123] I have real concerns about Ms [Murphy]'s ability to foster the relationship between the children and their father if she was living in England with them and he was in New Zealand.

[124] In effect, I am asked to choose between the children almost certainly losing the relationship with their father if relocation is allowed, and the possibility of their relationship with their mother being compromised (or the even slimmer possibility of it being lost), if relocation is declined.

[125] The combination of the above factors means that, by a large margin, I am not satisfied that allowing relocation would be in the children's welfare and best interests. The relocation application must be declined.

Parenting order

[126] In circumstances where both parents will be living in New Zealand, Ms [Murphy] suggests a slight variation of the current arrangements whereas Mr [Harding] suggests to move to a 2:2:5:5 arrangement.

[127] I consider the arrangement proposed by Ms [Murphy] overly complicated in terms of the number of changeovers and the way the fortnightly arrangement is structured. I agree with Mr Sylvester that simple is better. I prefer the 2:2:5:5 arrangement identified by Mr [Harding].

[128] The arrangements proposed by Ms [Murphy] at paragraphs 3,4,5 and conditions 1 to 7 of the draft order appearing at page 181 of bundle 1 are appropriate. It is also appropriate to provide for overseas travel for Mr [Harding] in terms of page 312, paragraph 11, and sub para (d) page 313.

Result

[129] The application for a guardianship direction that the children may reside in England is dismissed.

[130] The interim parenting order is replaced by a final parenting order as set out above. Ms McWilliam is requested to file an order for sealing.

[131] Counsel for the parties may not advise their client of the outcome or release this decision to their clients before 9am Wednesday 7 February 2024. That is to enable counsel to put in place whatever practical mental health support measures are appropriate in the circumstances.

[132] Once the final order has been sealed and issued Ms McWilliam's appointment is terminated with the court's thanks.

[133] Both parties are legally aided. No issue as to costs between the parties arises. There are no exceptional circumstances arguable and no costs contribution orders are made.

[134] I thank counsel for their assistance in this difficult matter.

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Judge T M Black
Family Court Judge | Kaiwhakawā o te Kōti Whānau
Date of authentication | Rā motuhēhēnga: 02/02/2024

This judgment was authenticated by me at 4.50pm on 2 February 2024.