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**IN THE FAMILY COURT
AT BLENHEIM**

**I TE KŌTI WHĀNAU
KI TE WAIHARA KEKE**

**FAM-2023-006-000018
[2024] NZFC 7294**

IN THE MATTER OF THE CARE OF CHILDREN ACT 2004

BETWEEN [GORDON KINGSLEY]
 Applicant

AND [BRIGITTE STURM]
 Respondent

Hearing: 7 June 2024

Appearances: S Jessop for the Applicant
 M Huang for the Respondent
 L Murdoch as Lawyer for the Children

Judgment: 27 June 2024

RESERVED JUDGMENT OF JUDGE R J RUSSELL
**[as to an international relocation of the child under s 46R and for a parenting
order under s 47 of the Care of Children Act 2004]**

Introduction

[1] [Brigitte Sturm] (“Ms [Sturm]”) and [Gordon Kingsley] (“Mr [Kingsley]”) are the parents of [Haylie] aged [four] years and [Jeannie] aged three years.

[2] Ms [Sturm] seeks a guardianship direction under s 46R of the Care of Children Act 2004 (“the Act”) seeking permission to relocate the children back to her home country of Germany. The future of the temporary s 77 order preventing the removal of the children from New Zealand will be determined by the outcome of the relocation application.

[3] Ms [Sturm] filed an application under s 46R for permission for the children to obtain German passports. This issue was resolved by consent during the course of the hearing and directions have been made that their passports can be obtained.

[4] Each parent seeks a parenting order setting out their care of, or contact with, the children under s 47 of the Act. The terms of the parenting order are dependent on the outcome of the relocation application.

Background

[5] Ms [Sturm] is of German ethnicity. Mr [Kingsley] is of Māori ethnicity. They met in New Zealand in early 2018 and commenced their relationship during which their two children, [Haylie] and [Jeannie], were born. Ms [Sturm] is shortly able to apply for permanent residency in New Zealand. Mr [Kingsley] is a New Zealand citizen by birth. There were difficulties in their relationship, family violence occurred, and they separated in [February 2023].

[6] On 3 February 2023, Mr [Kingsley] applied without notice for parenting and other orders. An order preventing the removal of the children from New Zealand and for the surrender of any flight tickets and passports was made by an eDuty judge. The remaining applications were placed on notice to Ms [Sturm].

[7] On 8 February 2023, Ms [Sturm] applied for a protection order. A temporary protection order was made on 8 February 2023. This order has since been made final on 11 April 2024. Ms [Sturm] and the two children were named as protected persons in the order which remains in force.

[8] Defences were filed to the parenting proceedings. Ms Murdoch has been appointed as lawyer to represent the interests of the two children. Interim parenting

orders were made in which Ms [Sturm] has the primary day-to-day care of the children. Mr [Kingsley] has supervised contact with the children through an approved provider funded by s 60 of the Act.

[9] Specialist reports have been obtained including a social work report under s 132 of the Act. German and Māori cultural reports were directed and have been completed. Timetabling directions were made for the filing of affidavits and hearing directions were made towards this one-day hearing.

The evidence

[10] Each of the parties has filed several affidavits setting out their respective positions on the issues in dispute. Supporting evidence has been filed by Ms [Sturm]'s parents who live in Germany. Ms [Sturm]'s psychologist, Ms van Velzen, also filed an affidavit annexing a report relating to Ms [Sturm]'s mental health.

[11] On the eve of the hearing Mr [Kingsley] provided a report from Health New Zealand about his mental health status and treatment which became evidence as an agreed exhibit.

[12] Supervised contact provider reports have been provided relating to Mr [Kingsley]'s contact with the children in the period leading up to the hearing.

[13] Information under the Criminal Procedure (Transfer of Information) Regulations 2013 has been obtained about Mr [Kingsley]'s criminal history and about charges of breaching the protection order which he has faced in the criminal jurisdiction.

[14] Ms Murdoch has filed reports on behalf of the children and counsel have made submissions both orally and in writing about legal and factual issues. The agreed booklet of documents filed for this hearing containing the affidavit evidence, various exhibits, the reports and court documents, totals 340 pages.

[15] At the hearing, it was only the parents who were required for cross-examination during the full day of hearing time which was required to hear their evidence.

The case for Ms [Sturm]

[16] Ms [Sturm] was born in Germany and came to New Zealand in 2017. She has a residency Visa and is entitled to stay here. Her plan is to obtain permanent residency in New Zealand shortly so she can travel freely between New Zealand and Germany. She is aged 26 years. She grew up in a town called [deleted] in the federal state of [deleted] which has a population of around [detail deleted] and is located [north of Frankfurt]. Her parents are in their late fifties and are separated, and both continue to live in [Germany]. The German cultural report indicates residential buildings in Germany are of a good standard, well insulated and are warm, dry and comfortable.

[17] Ms [Sturm]'s evidence is that she wishes to go back to Germany with the children and live with her father for the foreseeable future. He would financially support them, meeting the costs of their food, utilities and other bills. She is able to receive a benefit in Germany to assist her and said she would also look for employment opportunities.

[18] Ms [Sturm]'s principle reason for wanting to relocate is that she has been unable to establish any close friendships in [town 1] and there is no one here whom she can rely upon to help and support her. She has no family support in New Zealand. Her entire family reside in Germany within 30 minutes' drive from each other. Her familial support in Germany includes her parents, an aunt and uncle, cousins and grandmothers.

[19] Ms [Sturm] has not been back to Germany since her arrival in New Zealand in 2017. She wants to reconnect with her family, to have the children develop and grow connections with the maternal side of their family, and to develop a better understanding of their German ethnicity and culture. Her German citizenship means the children become German citizens automatically. Both children will retain their New Zealand citizenship, meaning the children will have dual citizenship.

[20] Ms [Sturm]'s evidence is she and her children will be fully supported by her family in what she describes as a "loving family environment". As they grow older they will be able to receive the benefit of free university education which would be available to them.

[21] Ms [Sturm] is willing to contribute to the costs of Mr [Kingsley] visiting Germany. She is prepared to contribute up to \$1,500, or one-third of the airfare costs, whichever is the lesser figure. She is willing to consider travelling to New Zealand with the children every three or four years if Mr [Kingsley] is prepared to contribute half of the airfare costs.

[22] Currently Ms [Sturm] lives in rented accommodation in [town 1] on a sole parent support benefit with Working For Family tax credits. She receives child support from Mr [Kingsley] fluctuating between \$3 – \$30.60 per month. She is just meeting her regular weekly expenses including rent, groceries, power, food and petrol from the monies she receives.

[23] Ms [Sturm]'s evidence is she understands the importance of promoting the children's Māori culture and heritage. She has undertaken te reo courses, says a karakia when they eat and is teaching the children te reo with the assistance of TV programmes, songs, Bilingual Box and other publicly available Māori resources. Her evidence is if relocation occurred she would continue to promote in the children their Māori heritage and language.

[24] Ms [Sturm] filed an affidavit from her psychologist, Ms van Velzen which attached her psychological report. In her evidence, Ms van Velzen, traverses the background and addresses the state of Ms [Sturm]'s mental health. She is currently taking antidepressant medication from her GP. Moderate depression has been diagnosed. The prospect of not being able to relocate with the children back to Germany produces feelings of powerlessness and suicidal thoughts. The lack of family support available to Ms [Sturm] in New Zealand and the difficulties with what is seen as Mr [Kingsley]'s unreliable and emotionally manipulative behaviour, as well as difficulties with the supervised contact visits, have all adversely impacted on Ms [Sturm] and the state of her mental health.

[25] It is also noted in Ms van Velzen's evidence that Ms [Sturm] does not believe she and Mr [Kingsley] could co-parent the children and she does not feel safe because of the history of family violence during their relationship together. Ms [Sturm]'s poor mental health has, at times, been noted by the children.

[26] In the conclusion of her evidence, Ms van Velzen assesses Ms [Sturm] has been trying to make the most of living in New Zealand, has accessed early childhood education services and mental health supports. She feels isolated from her family, is taking antidepressants and is receiving counselling support for her mental health issues. If she is not able to relocate with the children to Germany, the psychologist suggests Ms [Sturm]'s risks of suicide would have to be monitored and managed.

[27] If her relocation application is declined, Ms [Sturm] seeks a parenting order having the children placed in her primary day-to-day care. Given the difficulties with supervised contact visits, she contends these contact arrangements would have to continue for the foreseeable future. She cannot envisage unsupervised contact or any co-parenting type of arrangements for the children to see Mr [Kingsley].

The case for Mr [Kingsley]

[28] Mr [Kingsley] is of Māori ethnicity. His iwi is [iwi A] on his father's side and [iwi B] on his mother's side. The children have been registered with his iwi. His marae is in [town 3], although he accepted it has been some time since he has been there and the children never have been to his marae. Mr [Kingsley] is bilingual, speaks fluent te reo and says his Māori culture and heritage is very important to him. He wants the children to learn te reo and to be involved with kapa haka and other cultural events as they grow up. He queries Ms [Sturm]'s ability to be able to teach the children about their Māori culture and heritage.

[29] Mr [Kingsley] has no real connections with his whānau. He has an uncle in [town 1] and an aunt in [town 3] with whom he says he has contact, although it is noteworthy that Ms [Sturm]'s evidence is she has never met either of these persons.

[30] From the time of the parties' separation Mr [Kingsley] has been concerned that Ms [Sturm] would take the children back to Germany. He has never been to Germany

and does not accept he has ever said to Ms [Sturm] he was interested in relocating with her to that country. He has worked in the forestry industry for most of his working life. He was working five days per week but is now working four days each week and says there is now flexibility in his working hours. Mr [Kingsley] is aged 39 and is now living on the outskirts of [town 2] in a four bedroom home. He occupies this by himself. The home is owned by a former work colleague and there is no formal tenancy arrangement between them.

[31] Mr [Kingsley] accepts Ms [Sturm] misses her family but strongly disagrees it would be in the children's best interests and welfare to relocate permanently with her to Germany. He would agree to the children and their mother visiting Germany for holidays for up to six weeks at a time. He contends Ms [Sturm] can still have support from her family while living in [town 1] including phone and video calls, have her family visit them in New Zealand, and can make holiday arrangements for the children to visit Germany.

[32] Mr [Kingsley] has three children of an earlier relationship aged 16, 14 and 11 with whom he has had no contact since 2011. He has another child, [Adrienne], aged 11 with whom he has just resumed contact after several years.

[33] Mr [Kingsley] accepts family violence occurred during the period of his relationship with Ms [Sturm] and agreed to the making of a final protection order. There is another protection order made against him which remains in force from an earlier relationship. His criminal conviction history shows two convictions for breaches of protection order in 2023, one in respect of Ms [Sturm] and the other in respect of his former partner. A supervision sentence of 10 months with special conditions to attend Stopping Violence programmes was ordered on 11 December 2023 and this sentence remains in force. There are earlier convictions for breaching the first protection order and for family violence offending between 2009 and 2012 in respect of his previous partner.

[34] Mr [Kingsley] queries whether these convictions would prohibit him from visiting Germany. Ms [Sturm]'s response is they would not. Regardless, Mr

[Kingsley] queries his ability to fund the necessary travel, although at the hearing his position changed to say he would be able to solely meet the travel costs.

[35] It is clear Mr [Kingsley] struggles with his mental health. He works with a psychiatrist at Witherlea and is prescribed medication for depression and to help him sleep.

[36] In the mental health update report provided into evidence at the hearing Mr [Kingsley] is noted as having been a chronic risk of suicide, having a history of suicidal thoughts, with these risks being heightened due to parenting issues, antisocial personality traits and a history of trauma. Personality disorders have been diagnosed. There have been recent periods of his admission into a mental health unit. Medication has been, and continues to be, prescribed to assist. He has told mental health staff he misses his children.

[37] Mr [Kingsley] is described by his psychiatrist as having been well-known to mental health services, having a history of significant trauma and previous history of illicit substance use, including methamphetamine, although he has not used illicit drugs recently. It is noted there are also clear antisocial aspects to his personality. These proceedings result in increased levels of suicidal ideation and agitation. It is noted he is non-compliant with prescribed medications, has no family support, and is at a chronic risk of suicide which may not be modified by medication or periods of inpatient care.

[38] The outcome Mr [Kingsley] seeks from these proceedings is for the relocation direction for the children to be able to go to Germany to be declined and for there to be contact for him to see the children to increase progressively as follows:

- Stage 1 – daytime contact on Saturdays and Sundays from 9 am to 4 pm each second weekend for the next two months.
- Stage 2 – for weekend contact from Fridays 4 pm to Sundays 4 pm each second weekend for the following two-month period.

- Stage 3 – for there to be a fortnightly shared-care arrangement on a 2:2:5:5 day basis.

[39] He promotes video calls with the children and communication with Ms [Sturm] can occur by text or email, and phone calls in the case of an emergency. He also seeks for there to be contact for the non-caregiving parent on special days for the children for a maximum period of three hours.

The reports

[40] Ms Gail Hamilton, a senior and experienced social worker in [town 1], wrote a report under s 132 of the Act. In her report she reviewed Oranga Tamariki's history for the parents and the children. A significant history is held for Mr [Kingsley] and the four children of his previous relationship. Four family harm reports were recorded in respect of Mr [Kingsley]'s relationship with Ms [Sturm] and his criminal history was noted. There are no recorded concerns for Ms [Sturm].

[41] Ms Hamilton assesses the parties' mental health and confirms what I have already summarised in this decision. In terms of the parties' ability to provide safe parenting and basic care, Ms Hamilton notes the family violence allegations made by Ms [Sturm]. It is reported she was manhandled at times but accepts Mr [Kingsley] was not seriously physically violent towards her. The psychological violence experienced by Ms [Sturm], including power and controlling activities by Mr [Kingsley], are outlined in the report.

[42] The parties' living environments are assessed. Mr [Kingsley]'s home which was assessed by Ms Hamilton has now changed. Ms [Sturm]'s residence is assessed as being small but adequate and warm, cosy, clean and tidy. Positive interactions were observed between the children and their mother. Ms Hamilton did not observe the children with their father. Whānau history and cultural matters are assessed. The children are described as being healthy, active children with no identified issues who are meeting their developmental milestones.

[43] No care and protection issues are identified for the children, although Ms Hamilton records the extent to which Mr [Kingsley] has apparently gone to entrap

Ms [Sturm] through false information and stalking behaviour from the beginning of their relationship. In particular, it is said he lied to her about his age, indicated he wanted to relocate to Germany with her, and took money from her so that she was unable to travel freely. This led to Ms [Sturm] becoming socially isolated and having no friends or family which increased her susceptibility to pressure from Mr [Kingsley] to continue their relationship. Ms Hamilton recorded that around the time of separation Mr [Kingsley] had threatened Ms [Sturm] with deportation without her being able to take the children with her. This threat was acknowledged and accepted by Mr [Kingsley] in cross-examination at the hearing.

[44] Ms Anne Blumentha provided an eight-page German cultural report. Of particular relevance is the German living circumstances and educational system which would be available to the children if they were to relocate there. The education system costs are either modest or free. Extra-curricular activities include hiking, climbing, biking and swimming. There are traditional festivals at various times of the year. The report writer concludes by saying that while German culture is more easily accessible in New Zealand than Māori culture would be accessible in Germany, culture is best taught to children first-hand by the parent who is immersed and connected with it.

[45] Ms Natalia Taurima-Hilton provided a seven-page Māori cultural report which focused on the whakapapa of Mr [Kingsley] and the children and considered the importance of whakapapa and its connection to the whenua and whānau. As noted, Mr [Kingsley] is descended from [iwi A] which is noted to be very conservative and reluctant to make change but having a strong adherence to Māori identity. [Iwi A] values are noted at some length in the report. The importance of concepts of whakapapa, wairuatanga (spirituality), tapu, mana, mauri and wairua are noted and addressed in the report. The report concludes by saying the parents have responsibilities to ensure their tamariki grow up knowledgeable and comfortable in their whakapapa as tangata whenua, tangata [iwi A] and grow up understanding mana wāhine.

Supervised contact provider reports

[46] Forty-four sessions of supervised contact through Aotearoa Care Services have been funded for Mr [Kingsley] to have contact with the children in the period leading up to this hearing. In her cross-examination of Mr [Kingsley] at the hearing, Ms Huang closely questioned him about the number and quality of the visits he had attended. Of the 46 visits, 20 were cancelled by Mr [Kingsley] and eight were cancelled by Ms [Sturm]. Of the visits Mr [Kingsley] did attend, 12 sessions ended early when he left. There were only four visits where Mr [Kingsley] remained for the entire two-hour period of the visit.

[47] A perusal of the supervised contact provider reports shows that when Mr [Kingsley] did attend the supervised contact session, he sometimes expressed feelings of tiredness. At other times he was noted to be smiling, energetic and engaging with the children. The children were noted to enjoy their time with their father when he was there and when he appropriately participated with them.

[48] In the summary to the reports the supervised contact provider coordinator Ms May said this:

- Sessions when attended go well with the children engaging readily with their father.
- Father readily changes and feeds the children. Lots of interaction with these bright happy kiddies who play readily with him.
- [Haylie] often demands time and [Jeannie] will play quietly, but dad will give her attention and include her as soon as possible.
- Happy chatty children with dad.
- Dad has been offered to go to parks and other venues but prefers to stay in the room. We believe he finds this more manageable. He looks to be anxious at times when we have gone outdoors and has asked to return to the room.

The children

[49] Ms Murdoch is a senior and experienced lawyer for children in this registry. She has filed a total of four reports setting out the children's position. Given their

young age, the children have no views which need to be considered in this decision. In her most recent report Ms Murdoch identifies the issues which need to be determined and addresses safety considerations under s 5(a) of the Act. She notes the children have a loving relationship with their mother and spoke about other members of their maternal family. They spoke about seeing their father at supervised contact. Ms Murdoch concludes the children are delightful children who deserve a healthy relationship with both parents.

[50] In her reports Ms Murdoch assesses the options surrounding relocation and how this might occur and what it would cost. She addresses matters relating to the children's cultural heritage both in Germany and New Zealand. She promotes contact occurring by video and in-person. She accepts both parents have fragile mental health and need support.

[51] Ms Murdoch reserved her position on the outcome of these proceedings until she had heard the oral evidence of the parties at the hearing. At the conclusion of the hearing Ms Murdoch made oral submissions in which she supported the children remaining in the day-to-day care of Ms [Sturm]. She considered there were too many concerns about Mr [Kingsley]'s mental health to support the shared-care type of arrangement he proposed. She submitted the factors favouring relocation outweigh the factors favouring the children remaining in New Zealand, providing appropriate contact between the children and Mr [Kingsley] could be maintained using video/virtual or electronic means and face-to-face visits could occur both in Germany and New Zealand to the extent this is financially possible.

The law

[52] I must and do have regard for the provisions of ss 4, 5 and 6 of the Act.

[53] Section 4 requires me to consider the welfare and best interests of the children as the first and paramount consideration in their individual circumstances. I need to make decisions appropriate to their sense of time. The gender of the parent is not a relevant consideration, and the conduct of the parent does not need to be considered unless it is relevant to the welfare and best interests of the child.

[54] I must also have regard to the specific provisions in s 5 when considering what is in the best interests and welfare of the children. In particular, that their needs to be protected from all forms of violence including psychological harm (s 5(a)), that their parents have the primary responsibility for them (s 5(b)), that there should be ongoing consultation and co-operation between them (s 5(c)), that there should be continuity in their care arrangements and there is the right to have a continuing relationship with their parents (s 5(d)), that familial relationships should be preserved and strengthened (s 5(e)), and that their individual identity as a person (including matters of culture, language and religion) needs to be preserved and strengthened (s 5(f)); and a child must be given reasonable opportunities to participate in any decision affecting them (s 5(g)).

[55] Section 5A of the Act provides that I must have regard to whether there is or has been a final protection order against one or more of the parties. If so, I need to have regard to whether the protection order is still in force, the circumstances in which it was made and any written reasons given by a Judge for the making of the order. In this case there is a protection order which has been in force although there are no written reasons because the order was made with Mr [Kingsley]'s consent.

[56] I must have regard to the children's views under s 6, if any. This does not mean that these views are determinative of what the Court orders should be. I need to have regard to children's age, level of maturity and awareness of all of the relevant factors, and also have regard to the extent that those views might have been subject to manipulation or improper influence. In this case the children are too young to express any views which need factored into this decision.

[57] The Supreme Court in *Kacem v Bashir* considered the application of the principles in s 5.¹ The statements of principle set out by the Court have a general application to all cases being considered under the Act. The following principles emerged:

- (a) The welfare and best interests of the children are the first and paramount consideration.

¹ *Kacem v Bashir* [2010] NZSC 112, [2011] 2 NZLR 1.

- (b) The Court must take into account, in a case-specific way, which of the principles specified in s 5 are relevant.
- (c) The focus must be on the particular child or children in his or her particular circumstances with no presumption of what the welfare and best interests of the child may require or what influence the s 5 principles may have on that question.
- (d) The s 5 principles are not an exhaustive list of the matters that may be relevant to the welfare and best interests of the children involved.
- (e) The ultimate objective is to determine what outcome will best serve the welfare and best interests of the particular child or children in his or her or their particular circumstances. In making that determination, the s 5 principles must each be examined to see if they are relevant and, if they are, must be taken into account along with any other relevant matters.

[58] The principles applicable to the relocation of children have been addressed in a number of cases. The leading authority in the area remains the Court of Appeal decision in *D v S*.² The principles applicable in the relocation context were summarised by Richardson J at [30]-[38] as follows:

- (a) Freedom of movement is an important value in a mobile community, but subject to the paramountcy principle;
- (b) The approach mandated by s 23 (now s 4 of the new Act) and the emphasis on parental responsibility for the well-being of a child is consistent with the relevant provisions of the United Nations Convention on the Rights of the Child;
- (c) All aspects of the child's welfare must be taken into account;

² *D v S* [2002] NZFLR 116 (CA), (2001) 21 FRNZ 331 (CA).

- (d) The decision-maker must weigh all relevant factors in the balance in order to make the predictive assessment of what will be in the best interests of the child, there being no room for a priori assumptions;
- (e) Section 23(1A) (now s 4(4)) was designed to dispel any gender-based assumptions as to which parent's care would best promote the welfare of a child;
- (f) With reference to relocation, the nature and duration of existing custodial arrangements and the degree of change proposed may require greater weight to be accorded to the status quo;
- (g) Decisions of courts beyond New Zealand are likely to be of limited assistance; and
- (h) In the end, difficult relocation disputes may result in "differing assessments" by different judges. Each case must be dealt with in a personalised assessment within the principles enshrined in s 4 of the Act.

[59] In the decision of *S v O (Relocation)* Wild J considered the following factors to be of relevance:³

- (a) The relocating parent's ability to value the input of the other parent and the ability to encourage and facilitate contact;
- (b) The non-moving parent's capacity to demonstrate an ongoing interest in the child after relocation;
- (c) Conflict between the parents, be it underlying or as a result of the decision to relocate, including the extent and nature of the conflict;
- (d) Practical consequences of relocation or from relocation being declined;

³ *S v O (Relocation)* [2006] NZFLR 1 (HC), (2005) 25 FRNZ 259 (HC).

- (e) The distance between the parents' home both now and post relocation;
- (f) The impact of granting or declining relocation on the child's family and social support networks;
- (g) Cultural and spiritual issues;
- (h) The child's previous living arrangements and proposed new arrangements;
- (i) The merit and reasonableness of the parent's wish to relocate;
- (j) The nature and quality of the child's relationship with each parent and how that may be affected by relocation;
- (k) The wishes and needs of the child; and
- (l) The effect on the child of granting or declining the application.

[60] In *S v L (Relocation)* Harrison J affirmed the principles to be applied as follows:⁴

[26] The inquiry will be multifaceted, but the factors to be weighed in the balance are only those which are actually relevant to the particular circumstances. Among those which have been authoritatively recognised are that the decision of the custodial parent on where to live is an important incident of a day to day parenting order; the nature of the relationship between the child and the contact parent; and the closer the latter relationship, and the more dependent the child is upon it for her emotional wellbeing and development, the more likely will be an injury resulting from removal. The reason for the move is important. So, too, is its physical distance. The child's views are relevant where they can be ascertained (*Stadniczenko v Stadniczenko* [1995] NZFLR 493 (CA) per McKay J at 500-501 (see also s 6)).

[27] There is no presumptive weight given to one or more factors. Providing the Judge's decision is based on the welfare of the children and takes account of all material factors, including the need of a particular child for a continuing relationship with a mother or father, there will be no error of law: *D v S* [2002] NZLFR 116 per Richardson J at para [47].

⁴ *S v L (Relocation)* [2008] NZFLR 237 (HC).

Discussion

[61] A useful starting point for determining the outcome of this case is to consider the various issues or factors identified as being potentially relevant for relocation cases by Wild J in *S v O*:⁵

(a) The relocating parent's ability to value the input of the other parent and the ability to encourage and facilitate contact

[62] On the evidence I have heard, I am satisfied Ms [Sturm] will try and ensure the children continue to have contact with their father and understands the importance of the children maintaining a healthy relationship with him. While she has, undoubtedly, been the subject of family violence and is experiencing her own mental health issues which I have summarised in this decision, she has ensured the children have turned up to supervised contact visits and accepts these visits have mostly gone well when Mr [Kingsley] has chosen to attend.

[63] I am satisfied Ms [Sturm] will continue to promote the children having ongoing contact with their father.

(b) The non-moving parent's capacity to demonstrate an ongoing interest in the child after relocation

[64] Mr [Kingsley]'s ability to have regular and frequent contact with these children has to be called into question. For his elder children there has been little or no contact for most of their lives. His attendance record at supervised contact for [Haylie] and [Jeannie] is poor. I accept, at times, there are valid reasons for his non-attendance at the supervised contact visits, in particular because of the need to get help for his mental health issues where he was, at times, an inpatient. There are, however, other times where his non-attendance at supervised contact visits is not readily explainable. At other times, when he does attend, he is sometimes tired and/or the visits do not last for the full two hours of the scheduled visit.

⁵ *S v O*, above n 3, at [25].

[65] His capacity to demonstrate an ongoing interest in these children is therefore questionable, even if the application for relocation was declined and the children were required to remain in New Zealand.

(c) Conflict between the parents, be it underlying or as a result of the decision to relocate, including the extent and nature of the conflict

[66] There is undoubtedly conflict between Ms [Sturm] and Mr [Kingsley]. There is no ability for them to directly communicate with each other and the protection order prevents this in any event, unless this is specifically provided for in a parenting order. The evidence shows Mr [Kingsley] has been concerned about the prospect of [Haylie] and [Jeannie] relocating to Germany since the time of separation. This is demonstrated by his immediately applying for an order preventing removal of the children from New Zealand and his concerns are also shown in the medical reports which have been provided, parts of which I have summarised in this decision.

[67] If the relocation were refused and Ms [Sturm] and the children remained in New Zealand, this conflict would continue with no resolution in sight. If relocation were permitted and Ms [Sturm] were living in an environment where she was supported by her family, her mental health issues should reduce. The geographical distance between where she and Mr [Kingsley] will then live should provide its own safety net for her. I consider there is a good chance the ability of these parties to communicate about parenting and guardianship issues and issues around the implementation of this order by electronic means could improve, perhaps using the Our family Wizard App communication system.

(d) Practical consequences of relocation or from relocation being declined

[68] The practical consequences of the relocation being declined are that the existing parenting arrangements would continue for the foreseeable future. From the evidence I have heard, I agree with Ms Murdoch's assessment that it is difficult to see how a shared-care arrangement, such as Mr [Kingsley] proposed, is workable for the children at this time or for the foreseeable future.

[69] If the relocation is declined Ms [Sturm] would continue to live where she is and provide the primary day-to-day care of the children. Support for the children's care from Mr [Kingsley] would continue to be very limited. Ms [Sturm] would feel trapped in a country where she does not want to be. There is the potential for her mental health to further deteriorate and this would have the flow-on effect of her not being able to function properly as the sole caregiving parent of these two young and vulnerable children. I note that already, the children are at times picking up their mother's distress. If the relocation is declined it is likely that these problems would increase, with consequential and detrimental effects on the children.

(e) The distance between the parents' home both now and post relocation

[70] The geographical distance between Germany and New Zealand could not be greater. It is estimated that flight costs could be in the vicinity of \$10,500. There is no other means of travel between the two residences where the children's parents would live if the relocation were permitted. Communication by video and other electronic means can occur, but face-to-face contact either in New Zealand or in Germany would be limited by the geographical distance and the financial cost.

[71] If the children were to remain living in New Zealand, there is a relatively short distance between where the parents live, with Ms [Sturm] living in [town 1] and Mr [Kingsley] living in [town 2], which is approximately 30 minutes' drive by motor vehicle.

[72] The issue of the distance between where the children's parents currently live and would live if the relocation were permitted is, however, mitigated by Mr [Kingsley]'s minimal role in the children's upbringing and development so far, being limited to supervised contact visits, which overall have not been progressing as well as they should have.

(f) The impact of granting or declining relocation on the child's family and social support networks

[73] The granting of the relocation application will mean that the children will live in Germany and grow up in that country. They will learn about and be able to develop

connections with maternal family members who are close to Ms [Sturm] but whom the children have never met. Ms [Sturm] and the children will live with her father, being the children's maternal grandfather, and will readily get to know him. The children's grandmother lives a short distance away and the children will be able to get to know her as well. Extended maternal family members also live close by and will be able to provide assistance and support for Ms [Sturm] and the children.

[74] The declining of the relocation application will mean the children will not be able to develop relationships with their maternal family members. Neither will they be able to develop relationships with their paternal whānau because Mr [Kingsley] does not seem to have had any ongoing meaningful relationship with his whānau, hapū or iwi. As noted, his relationship with his elder children has been, and remains, poor if non-existent.

(g) Cultural and spiritual issues

[75] Cultural issues are important for any children and are particularly important for these children. They have German and Māori ethnicity. Both ethnicities are important, and neither should have any priority over the other. It is for this reason two cultural reports have been obtained and evidence about cultural and heritage issues has been put before me to help come to this decision.

[76] If the relocation were permitted, then I accept there is a risk the children will not learn as much about their Māori culture and heritage as they would if they remained in New Zealand. Having said this, Ms [Sturm]'s evidence about her willingness to learn te reo and instil it in the children in the way she outlined, did impress me. She has done and is doing as much as she possibly can in the circumstances to ensure the children learn something of their ethnicity, culture and heritage. She is fluent in German and is teaching the children the German language which they will need if relocation is permitted. She speaks English fluently and is learning te reo. She seems to be an intelligent and articulate woman.

[77] Ideally Mr [Kingsley] would be the best person to be able to instil in the children knowledge of their Māori culture and heritage. He has strong links to his language, being fluent in te reo, but he does not appear to have any strong links to his

wider whānau, hapū or iwi. His time spent with the children is limited by his other shortcomings, particularly around his mental health, which means he does not have much time spent with the children to help them with their Māori culture and heritage. I should add that I do not consider Mr [Kingsley]'s issues with his mental health are his fault in any way. It is, however, the reality for him which he must obtain professional help and address as best he can.

[78] If the children relocate with their mother to Germany, they will be exposed every day to the German culture, language and heritage and will have the support of their mother and maternal family to help them learn and adjust to it. This will undoubtedly be of positive benefit to them.

(h) The child's previous living arrangements and proposed new arrangements

[79] The children's current living arrangements are that they live in the primary day-to-day care of Ms [Sturm] and have limited supervised contact with their father. This will remain if the relocation is refused.

[80] If the relocation is granted the children will continue to live in the primary day-to-day care of Ms [Sturm] and will have video contact with their father. Occasional face-to-face visits will be able to occur at such time either he visits Germany or Ms [Sturm] and the children visit New Zealand.

(i) The merit and reasonableness of the parent's wish to relocate

[81] I accept Ms [Sturm]'s reasons for wanting to relocate are genuinely held and are completely reasonable for her to hold. She has not been able to travel back to her home country since 2017 and wishes to reconnect with members of her immediate and extended family. She also wishes to have the children grow their attachments to their maternal family and to experience something of her German language, culture, and heritage.

(j) The nature and quality of the child's relationship with each parent and how that may be affected by relocation

[82] If the relocation is permitted, the children's relationship with their mother, Ms [Sturm], will grow and develop. She will be a much happier person, having the support of her family and friends in the country of her birth and will be where she wants to be. Her ability to function as the sole caregiving parent for the children will undoubtedly improve from where it currently is.

[83] The children's relationship with their father will reduce in quality because the frequency of face-to-face contact will reduce. Mr [Kingsley]'s mental health may suffer as a consequence of the relocation which would lessen his ability to have input into the children's upbringing and development. This is tempered by the nature and quality of the contact visits which have occurred, which are less than satisfactory from the children's perspective.

[84] If the relocation is refused and the children remain in New Zealand, then there is the risk Ms [Sturm]'s mental health will deteriorate and her ability to continue to function as the children's sole caregiving parent will reduce. The risk to Ms [Sturm]'s mental health has been identified in her psychologist report and is of particular concern to me, particularly because she has no family support in New Zealand and no support from Mr [Kingsley] or his whānau. It seems to me that if Ms [Sturm] were not able to provide for the care of the children then care and protection issues would arise and Oranga Tamariki would need to become involved.

(k) The wishes and needs of the children

[85] There are no wishes or views of the children that need to be considered. The children's physical needs will be met whether the children relocate to Germany or remain in New Zealand. Their emotional and psychological needs, however, will be linked to their mother and her health and well-being given their ages and vulnerabilities. It concerns me that the children have already picked up on their mother's distress over this relocation issue and the potential impact on her should it be declined.

(l) *The effect on the children of granting or declining the application*

[86] Granting the relocation application will mean a completely new experience for the children in a country which they are completely unfamiliar with. Undoubtedly Ms [Sturm] will prepare them as best she can for the transition, including learning the language. She will have the support of her other family members to assist. The children will lose contact with their existing connections, with their preschool and their friends. They will also not have the regular face-to-face time with their father, which notwithstanding its limitations, has meant the children have been able to spend time with him.

[87] Declining the relocation application will mean the status quo will continue for the children, with the risks which have already been identified. It will also mean the children will not learn directly of their German ethnicity, culture and heritage.

[88] Consideration of the factors in *S v O* sits comfortably alongside addressing the s 5 principles which the Supreme Court in *K v B* requires me to do.

(a) a child's safety must be protected and, in particular, a child must be protected from all forms of violence (as defined in section 3(2) to (5) of the Domestic Violence Act 1995) from all persons, including members of the child's family, family group, whanau, hapū, and iwi

[89] Safety issues have been raised in these proceedings. A protection order has been made. Ms [Sturm] has been subject to family violence. Supervised contact has been required to ensure the safety of the children. This will not change as a result of this decision.

[90] Ms [Sturm] acknowledges physically disciplining the children on two occasions by smacking them. She denies there were any further occasions. Smacking the children for disciplinary purposes is against the law in New Zealand. I will address this issue by including in the parenting order a specific condition that neither parent is to physically discipline the children.

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

[91] This principle has limited relevance given the parties' inability to communicate effectively about parenting and guardianship issues. The primary responsibility for the children's care, development and upbringing has been and will continue for Ms [Sturm] to provide.

(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

[92] This principle is difficult to achieve in this order. I will invite the parents to consider using the Our Family Wizard App. Communication in this way will not breach the protection order. The system attempts to screen out abusive communications. Communications which do occur are permanently recorded and cannot be altered. Video communication can occur using this App.

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

[93] This principle will be met by my continuing the primary day-to-day care order in favour of Ms [Sturm]. While I understand her evidence that she feels trapped in New Zealand and wants to go home to Germany, and notwithstanding the mental health stresses she has been under because of this, she still has been doing her best to provide for the children's physical, psychological educational and developmental needs. I have confidence she will continue to do so.

(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, whanau, hapū, or iwi should be preserved and strengthened:

[94] This principle will be met by my continuing with the existing contact arrangements. While I accept the staged contact regime proposed by Mr [Kingsley] could develop his relationship with the children, he needs to demonstrate he can provide for the children's physical and psychological needs during the times he proposes to have the care of them. A degree of consistency and routine of contact is required for children of this age. At the present time, Mr [Kingsley] is not able to demonstrate this as shown in the supervised contact provider statistics which I have

recorded earlier in this judgment. Consistency of supervised contact visits for the full duration of the visits and positive reports from the supervised contact provider about the visits would assist in Mr [Kingsley] moving to the first stages of the parenting order which he had proposed.

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

[95] I have already recorded earlier in this judgment, the evidence about cultural and language issues and the importance of the children learning about their culture language and heritage. Ms [Sturm] will need to take the lead on ensuring the children learn about their German and Māori heritage. Mr [Kingsley] will also be able to help with the children learning about Māori heritage, should he be able to address the other issues of concern about which I have recorded in this judgment.

Relocation – conclusion

[96] I have carefully considered all the written and oral evidence which has been provided for this hearing, much of which I have summarised in this judgment. If I have not mentioned other aspects of the evidence, this should not be interpreted as being that I have not considered it. I have noted the outcomes proposed by each party, including Ms Murdoch on behalf of the children. I must make orders which are in the welfare and best interests of the children having regard to their circumstances and needs. The circumstances and needs of the children's respective parents, while important, come second to this primary consideration.

[97] I agree with Ms Murdoch's assessment that the factors favouring relocation outweigh the factors against the relocation. As I observed at the hearing, relocation cases for children generally mean they lose out whichever way the decision goes. If the relocation is granted, then the remaining parent is unhappy and often is unable to participate in the children's upbringing and development as he or she otherwise would. If the relocation is refused and the children are required to remain with their primary caregiving parent who wanted to relocate, then that parent is unhappy and is forced to stay in a place where they do not want to be. This means that parent's ability to provide for the children's day-to-day care and future needs can diminish and the children consequently suffer.

[98] I must make assessments in accordance with the provisions of ss 4 and 5 of the Act. I have reached the view that the children's welfare and best interests are best met by granting Ms [Sturm]'s application for the children to relocate to Germany. This will enable her and the children to get on with their lives with their maternal family support in that country and for the children to be able to come to know and experience their German heritage, language and culture. Contact with Mr [Kingsley] will need to continue with regular video links and with visits by him to Germany, as and when this can be arranged. It can also occur when Ms [Sturm] and the children return to New Zealand to visit and contact with Mr [Kingsley] can be arranged.

[99] These issues will be addressed in the orders I am about to make. The contact times and terms reflect what has been proposed by the parties in their evidence.

Outcome and orders

[100] I make the following orders and directions:

Relocation

- (a) Under s 46R of the Act, Ms [Sturm]'s application to relocate the children to Germany at a time of her choosing after September 2024 is granted.
- (b) The order preventing their removal of the children from New Zealand and for the surrender of any tickets or travel documents is now discharged.

Parenting

- (c) I make a final parenting order as follows:

Day-to-day care

- (i) Ms [Sturm] shall have the primary day-to-day care of [Haylie] and [Jeannie]

Contact

- (ii) Mr [Kingsley] shall have contact with the children in two stages as follows:

Stage 1 – prior to the children leaving New Zealand

1. Mr [Kingsley] shall continue to have contact at times and on terms arranged by the supervised contact provider. Funding for this will continue under s 60 of the Act until the date the children leave for Germany. He is to provide a minimum of 12 hours' notice if he intends to cancel contact visits.
2. Unsupervised contact shall be able to occur at times and on terms agreed between the parties providing the following conditions are met by Mr [Kingsley].
 - a. He is to complete the Stopping Violence assessment and programme and provide evidence from the Stopping Violence programme provider to Ms [Sturm]'s satisfaction.
 - b. He is to provide an update on his mental health from a psychiatrist confirming his mental health is stable and that he would have the mental capacity to provide for and meet the physical and emotional needs of the children to Ms [Sturm]'s satisfaction.
 - c. No further breaches of the protection order are reported to the police and no further convictions of breaching the protection order or for any other family violence offence are recorded against him.

- d. He completes a parenting programme and provides a certificate of completion of the programme to Ms [Sturm].
3. The times and terms of contact are to be agreed upon between the parties. Regard is to be had to the times of contact sought by Mr [Kingsley] summarised in this decision. As a minimum this should include dinner on a week night between 3:30 pm and 5:30 pm and lunch on Saturday between 12 pm and 3 pm.

Stage 3 – after the children leave New Zealand and reside in Germany

- (iii) Mr [Kingsley] shall have contact with the children as follows:
 1. If Mr [Kingsley] is able to fund 100 per cent of the cost of air travel for Ms [Sturm] and the children to visit New Zealand, then this shall occur for a minimum period of three weeks and is to occur at a time of Ms [Sturm]'s choosing to coincide with school holiday periods when the children will not be at school, and if Ms [Sturm] obtains employment during leave periods when she would not be required to work.
 2. Ms [Sturm] will travel to New Zealand every three – four years with the children for holidays providing that Mr [Kingsley] contributes 50 per cent of the return airfare costs between Germany and New Zealand for Ms [Sturm] in the children.
 3. When back the children are back in New Zealand contact shall occur in accordance with the provisions of stage 1 this order. To the extent supervised contact through an approved provider is still required, then funding for this remains

authorised under s 60 of the Act and may be uplifted from the registrar.

- (iv) Contact may occur for Mr [Kingsley] to see the children in Germany as follows:
1. Ms [Sturm] shall contribute once every two years up to one-third or up to \$1,500 including GST whichever cost is the lower for Mr [Kingsley]'s return economy plane tickets between Germany and New Zealand
 2. Ms [Sturm] will fund and arrange Mr [Kingsley]'s accommodation when he travels to visit the children in Germany.
 3. When in Germany contact between Mr [Kingsley] and the children is to occur at such times and on such terms as the parties may from time to time agree upon.

Other conditions

- (v) Neither parent shall smack or use any other form of physical discipline on the children when they are in their care.
- (vi) When contact becomes unsupervised then any changeovers shall occur in a public place, preferably where there is CCTV camera coverage.

Variation

- (vii) There shall be such other times in terms of contact as the parties may from time to time agree upon by exchange of electronic message.

Communication

- (viii) The parties shall communicate by use of the Our family Wizard App. Each is to take steps to download the app and provide the other party with their contact details.
- (ix) Ms [Sturm] shall provide a monthly update to Mr [Kingsley] setting out any important information regarding the children's health, well-being, and general progress.
- (x) Upon the relocation occurring video calls for the children to have contact with Mr [Kingsley] shall occur each Sunday between 6 – 6.30 pm in the country in which the children are living. Ms [Sturm] shall place the call.

Costs

- (xi) Given the outcome and the parties' circumstances which I have heard about, there will be no order for interparty costs and neither party should be liable for a CCO in respect of Ms Murdoch's costs.

Lawyer for child

- (xii) Ms Murdoch's appointment is extended for a period of one month from the date this decision is received. Her brief is extended to ensure the parties have the resources available and do connect with the Our Family Wizard communication app system. At the end of this one month her appointment is discontinued with the thanks of the Court.

Judge RJ Russell

Family Court Judge | Kaiwhakawā o te Kōti Whānau

Date of authentication | Rā motuhēhēnga: 27/06/2024 at 10 am