

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

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**IN THE FAMILY COURT
AT INVERCARGILL**

**I TE KŌTI WHĀNAU
KI WAIHŌPAI**

**FAM-2023-017-000020
[2024] NZFC 16194**

IN THE MATTER OF	THE FAMILY VIOLENCE ACT 2018
BETWEEN	[RICHARD NICHOLS] [KATHY NICHOLS] As representatives Applicants
AND	[ROSS CONWAY] Respondent

Hearing: 25 November 2024

Appearances: R Adams for the Applicants
Respondent is self-represented

Judgment: 13 December 2024

**RESERVED JUDGMENT OF JUDGE C M DOYLE
[as to reasons]**

Introduction

[1] Mr [Nichols] and Ms [Nichols] are the parents of [Corey]. The respondent, [Ross], is the former boyfriend of [Corey]. On 22 May 2023, Mr [Nichols] and Ms [Nichols] applied without notice for a protection order as representatives of [Corey],

born [date deleted] 2007 (making her 15 years old at the time). A temporary protection order was made.

[2] On 24 May 2023, as a result of a further without notice application by Ms [Nichols], the temporary protection order was varied to include a special condition appointing Ms [Nichols] to give or refuse contact of any kind between [Corey] and [Ross].

[3] On 21 August 2023, one day before the temporary protection order would have become final by operation of law, [Ross] filed a notice of intention to appear, seeking to be heard. In his affidavit in support, he advised the Court that he did not oppose a final protection order being made, but wanted the order to be varied to enable him to attend [sports] competitions and tournaments. Under the standard terms of a protection order, he was not permitted to do so if [Corey] was present or competing unless Ms [Nichols] consented. Essentially, [Ross] sought the insertion of a special condition that it would not be a breach of the protection order for him to be at [sports] tournaments and competitions that [Corey] and her family might also be attending. This would enable him to continue to play and compete on the basis that he would stay away from [Corey] and not have contact with or speak to her.

[4] The proposed variation was not agreed to by Mr [Nichols] and Ms [Nichols] on behalf of [Corey].

[5] A hearing was unable to be allocated within the 42-day time period required under the Family Violence Act 2018 (FVA) and was eventually heard on 25 November 2024.¹ At the conclusion of the evidence, I gave an oral decision confirming the making of a final protection order without the special condition sought by [Ross]. I reserved my reasons due to time constraints. My reasons, and the process that was undertaken to get to the point of determining the application, are set out in full below.

¹ A number of prehearing conferences occurred on 21 November 2023 and 29 April 2024 to address procedural issues which were complicated by the application being made by representatives and [Ross] being self-represented. An earlier hearing date of 23 July 2024 was adjourned due to Mr [Nichols] and Ms [Nichols] being unavailable.

This decision should be read in conjunction with my oral decision of 25 November 2024 as to the outcome.²

Background

[6] [Details deleted].

[7] Members of Mr [Nichols] and Ms [Nichols]’s family, including [Corey], also play [the sport]. That is where [Ross] met [Corey] when she was around 12 years old and he was around 15 years old.

[8] [Corey] and [Ross] began a boyfriend/girlfriend relationship in October 2022. [Corey] was 14 years old at the time. [Ross] was aged 17 years. A sexual relationship developed, which Mr [Nichols] and Ms [Nichols] did not become aware of until some time later. When they became aware of what they thought was a non-sexual relationship between the pair, Mr [Nichols] specifically spoke with [Ross] and sought an assurance that he would not engage in sexual activity with [Corey]. [Ross] gave that assurance to Mr [Nichols], but did not disclose that they had already been having sex.

[9] When Mr [Nichols] and Ms [Nichols] learned about the sexual aspect of the relationship, they were extremely upset and told [Ross] that what he was doing was illegal due to [Corey]’s age. They informed [Ross] that it needed to stop, causing their relationship with him to deteriorate significantly. Their relationship with their daughter also deteriorated as they took steps to limit her ability to continue to see [Ross]. Mr [Nichols] and Ms [Nichols] say that, as a result of the steps they took to protect [Corey] from [Ross], [Ross] called Mr [Nichols]’s employer to make a complaint about him and ask how he could get Mr [Nichols] fired. They say he then telephoned Mr [Nichols] and recorded the conversation with a view to manipulating Mr [Nichols] into saying something [Ross] could use to get him fired. They claim he goaded Mr [Nichols] about the sexual relationship and, when Mr [Nichols] threatened [Ross], this was reported to the police, with [Ross] requesting information from police

² [Nichols] v [Conway] [2024] NZFC 15679.

about how he could use that to make a complaint to [Mr Nichols' employer] about Mr [Nichols].

[10] Mr [Nichols] and Ms [Nichols]'s efforts to protect their daughter from [Ross] were unsuccessful, with [Corey] running away from home and truanting from school in order to spend time with him. Around [date 1 – early 2023], [Ross] collected [Corey] from outside of her school and took her from [location A] to [location B] without Mr [Nichols] or Ms [Nichols]'s knowledge or consent. The only way they were able to locate [Corey] was by tracking [Ross] to a motel in [location B] through the Snapchat app. Mr [Nichols], Ms [Nichols] and their two adult daughters drove to [location B] to collect [Corey] and bring her home.

[11] [Date 2 – two weeks after date 1], [Corey] left school again. She was collected by [Ross] and taken away for several days to [location C] before then hiding out at [Ross]'s mother's home in [location D]. [Corey] was eventually brought home at the insistence of [Ross]'s mother.

[12] [Date 3 – several days after date 2], [Corey] ran away from home again. She contacted [Ross] using a computer at the public library. He collected her and spent the evening with her. Together, they called Ms [Nichols] to discuss how they could continue their relationship. [Ross] was due to turn 18 years old on [date deleted] and he was worried that he would be liable to prosecution if he continued to have a sexual relationship with [Corey] after that time, as she was still only 15 years old. Unsurprisingly, Mr [Nichols] and Ms [Nichols] were not supportive of the relationship continuing.

[13] [Ross] and [Corey] sat in his car in a car park, still talking about this, until well after midnight. When [Ross] said he could not see how the relationship could continue if [Corey]'s parents were going to report him to the police, [Corey] became upset, got out of the car and walked away. [Ross] contacted [Corey]'s parents and advised them that she had jumped out of his car in the middle of town. He then went home. Mr [Nichols] and Ms [Nichols] contacted police and other family members, who went out looking for [Corey]. She was eventually located at around 3 am.

[14] On [date 4 – 10 days after date 3] 2023, [Corey] ran away from home again. Mr [Nichols] and Ms [Nichols] went to [Ross]'s house to see if she was there. He said that he had not seen her. After searching for her unsuccessfully, she was reported missing to the police. Mr [Nichols] and Ms [Nichols] went to [Ross]'s grandmother's house. She was unhelpful, denying any knowledge of [Ross] or [Corey]'s whereabouts, closing all of the curtains and locking the door. The police then contacted [Ross] by telephone and invited him to come to the [location A] Police Station on the pretext of having a family meeting to discuss how the relationship could continue. When [Corey] and [Ross] arrived at the police station, [Ross] was served with a five-day police safety order. [Corey] was returned to the care of her parents, loudly protesting and requiring the intervention of a number of police officers. Mr [Nichols] and Ms [Nichols] were advised by police to take [Corey] out of town for a week to provide some physical distance between [Corey] and [Ross], which they did.

[15] Soon after their return to [location A], at around 3 am on 6 May, [Corey] ran away again. This time, she went to the home of a family friend. The next day, between 7 am and 8 am, she ran from the friend's home to the library, where she messaged [Ross] to collect her. [Corey] then stayed with him overnight. The police visited his home the next morning. [Corey] left before the police arrived, returning to [Ross]'s home after they had left. The family friend spoke to [Corey] at [Ross]'s house and convinced her to return home, where [Corey] told her older sister that she had had sex with [Ross] the night before. [Corey] was taken to her GP, who prescribed the morning after pill and recommended she attend counselling.

[16] On 8 May, [Corey] was taken to the police station, where she disclosed everything about her relationship with [Ross]. This included the sexual relationship, which started when she was 14 years old and he was 17 years old. It is unclear why, despite this clear disclosure, the police did not take steps to prosecute [Ross].

[17] On 15 May, [Ross] collected [Corey] in accordance with a plan they had developed to run away together. Text messages and Snapchat communications between the pair show [Ross] had been encouraging [Corey] to leave [location A] and live with him elsewhere in New Zealand. [Corey] then remained with [Ross] for a week or so. Despite Mr [Nichols] and Ms [Nichols]'s efforts to have police assist in

returning [Corey] to their care, police advised they did not have legal authority to enter private property to retrieve [Corey] unless there was a protection order in force.

[18] Mr [Nichols] and Ms [Nichols] then obtained a temporary protection order on 22 May. However, police advised that they were unable to use the protection order for the purpose of uplifting [Corey], as she could consent to having contact with [Ross] in accordance with the standard terms of the order. They advised Mr [Nichols] and Ms [Nichols] to seek a special condition to prevent [Corey] from being able to consent to contact. Upon this variation to the temporary protection order, which was made on 24 May, police were able to uplift [Corey] from [Ross]’s home.

Protection order breaches

[19] Following the making of the protection order in May 2023, [Ross] breached the order on a number of occasions by contacting [Corey] through social media platforms and attempting to call her. None of these breaches were the subject of prosecution by police. In his first affidavit, [Ross] denied they had occurred, stating “I haven’t had any contact with [Corey] since the protection order was issued”.³ However, he eventually conceded the breaches when presented with copies of Snapchat and Instagram messages and a screenshot of his face taken when he called [Corey].

[20] The breaches included:

- (a) [Ross] messaging [Corey] on 2 August seeking to add her as a friend on Snapchat, as she had previously unfriended him. She added him, which enabled them to communicate via the app.
- (b) Communications between [Corey] and [Ross] on 2 August via Snapchat, including messages sent by [Ross] to [Corey] at 8.41 pm and 8.42 pm in which he acknowledged [Corey] had tried to kill herself and accused her of being “pathetic” and “so dramatic”. [Ross] then asked

³ Affidavit of [Ross], 21 August 2023.

[Corey] to leave him alone and to “sort [her] shit out” because he didn’t “want the [bullshit] and the drama”.

- (c) Further messages between [Corey] and [Ross] on 3 August, with [Corey] asking [Ross] why he had added her and [Ross] replying “[I don’t know] wanna make sure u r okay”. When he then asked [Corey] if she wanted to see him, [Corey] unfriended him.
- (d) [Ross] attempting to add [Corey] as a friend again on Snapchat.
- (e) Further Snapchat messages from [Ross] to [Corey] on 20 August 2023. The tenor of these communications was that their relationship was not all about sex and that he would have chosen her over anyone, but, when [Corey] stopped trying and gave up on the relationship, he did too. [Ross] then told [Corey] that the Court was going to allow him to return to [sports] and he intended to bring his previous girlfriend with him, as he did not have to hide the fact that he was in a relationship with her anymore. [Ross] accused [Corey] of lying to him, as she had earlier promised him that, come August, they would be allowed to see each other again, and said that he no longer had feelings for her after the three months he had been waiting. He accused [Corey] of thinking she was “so cool” with all her mates when she actually had none.
- (f) Messages from [Ross] to [Corey] on 29 August 2023, where he asked permission to use her Spotify account before implying that, if it were not for the protection order, things would be different. He repeated he would see [Corey] at [sports] once the protection order was dropped. [Ross] also apologised for going back to his previous girlfriend and for everything he had ever done to her, including “taking you away and just being a cunt in general like some of the things I have said to you weren’t very nice”. He then expressed hope they could get on with their lives and that he would see her around at [sports] one day.

- (g) On 19 September 2023, [Ross] tried adding [Corey] on Snapchat again under a different Snapchat address.
- (h) On [date deleted] October 2023, [Ross] mentioned [Corey] in a comment on a TikTok video and posted a TikTok referring to the issuing of the protection order, with a copy of the protection order included but names removed.
- (i) On 3 November 2023, [Ross] again tried to add [Corey] as a friend on Snapchat under another different address.

[21] There has been no further contact or attempts by [Ross] to contact [Corey] since 3 November 2023. [Ross] moved to [location E] on 19 December 2023 and remains living in the [location E] area. He has been in a new relationship for the past 12 months.

Mr [Nichols] and Ms [Nichols]’s position

[22] Mr [Nichols] and Ms [Nichols] say they initially obtained a protection order at the insistence of the police, who told them they would not be able to assist in having [Corey] removed from [Ross] and returned to their home without it. Mr [Nichols] and Ms [Nichols] acknowledge [Corey] was initially upset about the steps they took to bring the relationship to an end, but say she is now pleased they did and wants the protection order to be made final.

[23] They say [Corey] was the victim of sexual abuse, manipulation, grooming and psychologically abusive behaviour by [Ross], using coercion and control, isolating [Corey] from family, verbally abusing her and diminishing her self-esteem. Specifically, they allege that [Ross]:

- (a) Groomed [Corey] for a period of time before the relationship began and became sexual, which could have begun when [Corey] was only 12 years old. The sexual relationship began when she was aged 14 years.
- (b) Psychologically abused [Corey] by:

- (i) Saying that he is a sex addict and putting pressure on her to have sex with him, including telling her that it would be her fault if he cheated on her with other women.
- (ii) Calling her names including “nigger”, “monkey” and “fat”.
- (iii) Emotionally manipulating [Corey] by withdrawing from her, blocking her on social media and threatening to end the relationship if she did not make herself available to him.
- (iv) Speaking negatively about [Corey]’s family members and isolating her from them.
- (v) Taking [Corey] away from school and her parents’ home, and taking her away from the Southland area without her parents’ knowledge or consent.
- (vi) Attempting to coerce [Corey] into running away from [location A] to live with him so their relationship could continue after he turned 18 years old. In doing so, [Ross] sought to avoid complaints being made to police by Mr [Nichols] and Ms [Nichols].

[24] Mr [Nichols] and Ms [Nichols] contend that, even with the temporary protection order in place, [Ross] has continued to try to emotionally manipulate [Corey] into resuming contact with him, and to get her to drop the protection order so that he can return to [the sport].

[25] They say [Corey] now has a good understanding of the unhealthy dynamics within her relationship with [Ross] but that she is still recovering from the effects of his abusive behaviour towards her. Mr [Nichols] and Ms [Nichols] are concerned that, if the protection order is varied as sought by [Ross], this will provide an opportunity for him to have contact with her, which will be emotionally distressing for [Corey].

[26] They observed that [Corey] was a young and vulnerable 16 year old. She is just beginning to recover from the grooming and abusive behaviour, which she has been assisted in resolving through counselling. Mr [Nichols] and Ms [Nichols] say that [Corey] needs to be protected from any further interactions with [Ross] in order to enable her to properly recover.

[27] They worry that, as [Ross] does not accept the illegal and abusive relationship and has been wholly unable to recognise the significance of the psychological damage he has caused [Corey], he cannot understand or be truly remorseful about his behaviour and its impact on her. This means that there is a likelihood he will repeat this behaviour in the future. [Ross]'s inability to understand the abusive nature of the relationship means it is unlikely he will have sufficient insight to change his behaviours.

[28] [Ross] admitted to entering into a sexual relationship with [Corey] when she was aged 14 years, but apparently had no concerns about that until he was due to turn 18 years old, at which time he became concerned that he may be liable for criminal prosecution. There is a recording of him telling [Corey] to lie to the police if she was asked whether she had had sexual intercourse with him.

[29] Their concern is that, without the protection order, there remains a real risk that he will continue to behave towards [Corey] as he has in the past, which Mr [Nichols] and Ms [Nichols] have been unable to prevent even with the assistance of police. It is only the presence of the protection order which has provided an effective legal mechanism to prevent [Corey] from having unwanted contact with [Ross].

[30] They do not support the protection order being varied to enable [Ross] to attend [sports] tournaments, as that will give him access to [Corey] and her family. Just knowing [Ross] may be present at the tournament will cause extreme distress for [Corey].

[31] Mr [Nichols] and Ms [Nichols] are also concerned that, due to the difficulties within their relationship with [Ross], including the threats and allegations made to police and attempts to have Mr [Nichols] fired from his workplace, there is a risk that,

if he is at [sports] tournaments, [Corey] may witness [Ross] behaving badly towards Mr [Nichols]. This would cause her emotional distress.

[Ross]’s position

[32] [Ross] does not wish to have any future contact with [Corey], Mr [Nichols] or Ms [Nichols]. He is unconcerned about the existence of the protection order, but is extremely concerned about it preventing him from returning to [the sport]. The protection order has stopped him from attending many tournaments over the past year, and he wants to continue to play and compete. The significant delays in having this matter get to a hearing has put his [sports] career on hold. One of the reasons he moved to [location E] was to play in more tournaments, but he has been unable to do so due to the protection order.

[33] [Ross] states that he has received many medals and trophies and has excelled in competitions all over New Zealand. In 2022, he was [details deleted]. He says that he has worked very hard and put in many of hours of practice to get where he is. [The sport] means a lot to him, and not being able to play is impacting his life in a negative way.

[34] He does not wish to attend events at the [Sports Association], where [Corey] may be present. Rather, he seeks to attend ranking tournaments held by [three sporting bodies].

[35] [Ross] accepts that, although he and [Corey] were both very young, as he was older and more mature, he should have made better decisions and led by example. He says that, until he was required to participate in the Living Without Violence programme, he had no understanding that family harm comprises more than physical abuse. He now understands that family harm includes verbally abusive behaviour. He regrets calling [Corey] names, even if he meant them in a joking way.

[36] He denies grooming [Corey]. He acknowledges that they entered into a relationship in October 2022 after they had been friends for a while. He says the relationship was normal, involving them hanging out, playing [sports], watching movies, and doing things that most teenage couples engage in, including having sex.

He also denies ever pressuring [Corey] into having sex, saying she wanted to and that she initiated it. He initially denied having sex with [Corey] after he turned 18 years old, but has since acknowledged the sex continued after his 18th birthday. He did not think it was a problem for them to be having sex before that point, because, when Mr [Nichols] and Ms [Nichols] tried to get him charged with statutory rape, he was interviewed by police and made a statement, but was never charged.

[37] He agrees that there were occasions where he collected [Corey], at her request, from outside her parents' home or school. He did not ever try to stop her from having contact with her family. On the occasion he took her to [location B], she had no phone and her family had changed all her passwords and put up a missing post on Facebook. He says that [Corey] simply wanted to be with him, and, because she was unhappy at home and complaining about the way her parents were behaving towards him, he accepted that.

[38] He accepts that he did contact [Corey] after the protection order was made, but says this was reciprocated, with [Corey] adding him and getting her friends to add him. He claims she had made multiple TikTok accounts and was always looking at his profile. He added her back one night and she told him she had been to the hospital, having tried to commit suicide by taking many pills, which made him worried for [Corey].

[39] [Ross] denies ever posting about [Corey] online. His TikTok about the protection order had nothing to do with [Corey], because she was not the one who applied for it.

[Corey]'s views

[40] [Corey]'s views have been obtained directly and reported by the lawyer appointed to represent her,⁴ the social worker from Oranga Tamariki, who completed a report directed by the Court pursuant to s 64 of the FVA,⁵ and via a judicial interview, with those views reported in my minute of 25 November 2024.⁶

⁴ Lawyer for child reports 9 February 2024 and 26 April 2024.

⁵ Social worker report, 6 March 2024.

⁶ *[Nichols] v [Conway]* FC Invercargill FAM-2023-012-20, 25 November 2024, Minute of Judge

[41] Her views are clear and have been consistent throughout these proceedings: she wants the protection order to be made final and does not want there to be a special condition permitting [Ross] to attend [sports] events. She wants nothing further to do with him and does not want worry that she might run into him at events in which she is competing or supporting family members who are competing.

[42] [Corey] is also an accomplished [sports] player [details deleted]. She wants to be able to continue to play [the sport] without fear of having contact with [Ross].

The law regarding applications for protection orders by children

[43] Section 60(2) sets out the limited circumstances in which a child, defined as a person under 18 years old,⁷ may make an application for a protection order:

60 Application for protection order

- (1) A person (**A**) may apply to the court for a protection order against another person (**B**) with whom A is or has been in a family relationship.
- (2) If A is a child, the child may under section 62(2) make the application only—
 - (a) by a representative (for example, an approved organisation that is authorised by section 74 to take proceedings under this Act on behalf of the child); or
 - (b) if aged 16 years old or over (in which case section 62(2)(b) authorises the child to take proceedings without a representative); or
 - (c) if authorised under rules of court to do so without a representative.
- (3) If A is a person lacking capacity to whom section 67 applies, the application must be made under that section by a representative.
- (4) If A is aged 16 years old or over but is unable, in the circumstances specified in section 69(1)(c), to make the application personally, an application may be made on A's behalf by a representative appointed under section 69.

CM Doyle.

⁷ Family Violence Act 2018, s 8 definition of “child”.

Representatives

[44] Pursuant to s 60(2)(a), the application for a protection order was made by Mr [Nichols] and Ms [Nichols] on behalf of [Corey], who was 15 years old at the time. She was aged 16 years at the date of the hearing on 25 November, due to turn 17 years old in [several] weeks' time.

[45] Although [Corey] was 16 years old at the time of the hearing, there was no suggestion that she no longer required a representative to continue the litigation or conduct the hearing. Had that been raised, I would have had no difficulty in determining that there was sufficient cause for her to continue to have a representative pursuant to s 62(3)(b), given the particular facts of the case, [Corey]'s previous emotional distress having led to a suicide attempt and [Ross] being self-represented.⁸

[46] Where an application is made on a child's behalf by a representative that is an approved organisation (AO),⁹ there are specific requirements which must be undertaken before an application is made.¹⁰ These include a requirement for the AO to file an application for the order sought on behalf of the child showing that:

- (a) reasonable steps have been taken to ascertain the child's views in relation to the organisation acting as a representative for the child;¹¹ and
- (b) if the views of the child have been ascertained:
 - (i) the child does not object to the organisation acting as a representative for the child; or
 - (ii) that the child's objection is not freely made;

⁸ Section 62(3)(b): a child aged 16–18 years can have a representative make applications on their behalf if prevented from applying personally by way of physical incapacity, fear of harm, or another sufficient cause

⁹ Section 71.

¹⁰ Section 74

¹¹ Unless the child wholly lacks the capacity to communicate decisions in respect of matters relating to the child's personal care and welfare.

- (c) it is in the child's best interest for the organisation to act as a representative for the child;
- (d) there is unlikely to be any conflict between the interests of the organisation and the child's interest; and
- (e) there is an undertaking to be responsible for any costs awarded against the child from the proceedings.

[47] When Mr [Nichols] and Ms [Nichols] made their application for a protection order on behalf of [Corey], they did not make a specific application for the Court's approval to be appointed as representatives, as this was not required; nor did they specifically address the issue of [Corey]'s views as to the application or their appointment as her representatives. Even if required to do so by law, they could not realistically have ascertained [Corey]'s views, as [Corey] had been out of their care with [Ross] for over a week before the application was made. If they had been able to discuss their intentions with her at the time, she would likely have been strongly opposed to the steps they proposed to take on her behalf.

[48] Section 63 permits a child to be heard in "any matters related to the proceedings" and requires the Court to take into account any views expressed. By definition, any matters related to an application made by a representative on behalf of a child must include who is making the application on the child's behalf, and whether an order (even on a temporary basis) should be sought. Whilst it is not mandatory for a child's views to be obtained in any FVA proceedings I consider they should be where the application is being made on their behalf whether by a family member or an AO¹². It cannot have been parliament's intention that different rights to be heard exist for children depending on who acts as their representative in making an application for protection. The right to express views in all matters affecting the child and to be heard in proceedings affecting them is a universal right of all children, as confirmed in Article 12 United Nations Convention on the Rights of Children.

¹² See [46] above as to the requirements of an AO to ascertain a child's views

[49] The Judge who dealt with this matter on the e-Duty platform did not seek to ascertain [Corey]'s views about the appointment or the making of the temporary protection order. I consider that to have been entirely appropriate in the circumstances known to the Judge at that time, and given the need to act urgently to protect [Corey] and remove her from an abusive situation.

[50] Mr [Nichols] and Ms [Nichols]'s application clearly indicated that they were making the application in their representative capacity,¹³ and, from the evidence filed, the Judge would have been able to appreciate that the application was being made without [Corey]'s agreement or the chance for any discussion with [Corey] about it. Even if this issue had been raised directly, I consider the Judge was entitled to determine that reasonable steps had been taken to ascertain [Corey]'s views and that it was unnecessary to appoint a lawyer to represent [Corey] and ascertain her views before the temporary protection order was made, due to the urgency in having the order made to enable police to remove her from [Ross]'s home and consequent exposure to ongoing family harm.¹⁴

[51] The Court did not need a report from lawyer for the child to reasonably predict that [Corey] was likely to oppose the application and her parents making on it on her behalf. The evidence about [Corey]'s opposition to the steps her parents had taken to try to end the relationship and protect her from [Ross] was clear. At that stage, she was actively running away to be with [Ross], researching her legal rights to live with him without her parents' consent and objecting strongly and loudly when returned to her parents' care by police after the police safety order was served on [Ross].

[52] Even if [Corey]'s views had been available via an independent lawyer, it was still open to the Court to permit her parents' application to proceed on the basis that:

- (a) [Corey]'s objection was not likely freely made, given the influence of [Ross]; and

¹³ As required by r 94 Family Court Rules 2002.

¹⁴ Family Violence Act 2018, s 166(1)(b)(i).

- (b) it was in her best interest for her parents to act as representatives for her and for the application to proceed.¹⁵

Ascertaining [Corey]'s views

[53] The mechanism by which a child's views are ascertained is by way of the appointment of a lawyer for child pursuant to s 166(1)(b), and by way of judicial interview pursuant to s 168.

[54] On 21 November 2023 I appointed a lawyer to represent [Corey] pursuant to s 166. There is no specific brief set out in the FVA. I requested a report as to [Corey]'s views, whether lawyer for the child intended to call any person as a witness or cross-examine any party at the hearing and to look at ways the proceedings might be resolved short of a hearing being required.¹⁶ The relevant section provides:

166 Court may appoint lawyer

- (1) In any proceedings under this Act (not being criminal proceedings), the court may appoint a lawyer—
- (a) to assist the court; or
 - (b) to represent a child—
 - (i) in any proceedings on an application made, on behalf of that child, under section 62(2)(a), for a protection order; or
 - (ii) in any proceedings relating to or arising out of a protection order made, under this Act, on any such application made on that child's behalf; or
 - (c) to represent a child (unless the child is, in the proceedings concerned, already represented by a lawyer)—
 - (i) in any proceedings on an application made under sections 60 and 64(1) for a protection order, or made under sections 64(2) and 89 for a direction that a protection order apply, against the child; or
 - (ii) in any proceedings relating to or arising out of a protection order or a direction made, under this Act, on any such application; or

¹⁵ Referencing the s 74 criteria to be applied when considering an AO application

¹⁶ *[Nichols] v [Conway]* FC Invercargill FAM-2023-017-20, 21 November 2023 at [5(d)–(e)].

- (d) to represent a person lacking capacity to whom section 67 applies—
 - (i) in any proceedings on an application made, on behalf of that person, under section 67(2), for any order under this Act; or
 - (ii) in any proceedings relating to or arising out of an order made, under this Act, on any such application made on that person's behalf.
- (2) A lawyer appointed under subsection (1)(c) or (d) may—
 - (a) call any person as a witness in the proceedings; and
 - (b) cross-examine witnesses called by any party to the proceedings or by the court.

[55] A lawyer appointed to represent a child under the FVA is subject to the duties and responsibilities set out in s 9B of the Family Court Act 1980, the Family Court Practice Note, and Law Society Best Practice Guidelines, as with any other appointment to represent a child under any other enactment.¹⁷ Section 9B reads:

9B Role of lawyer appointed to represent child or young person in proceedings

- (1) The role of a lawyer who is appointed to represent a child or young person in proceedings is to—
 - (a) act for the child or young person in the proceedings in a way that the lawyer considers promotes the welfare and best interests of the child or young person:
 - (b) ensure that any views expressed by the child or young person to the lawyer on matters affecting the child or young person and relevant to the proceedings are communicated to the court:
 - (c) assist the parties to reach agreement on the matters in dispute in the proceedings to the extent to which doing so is in the best interests of the child or young person:
 - (d) provide advice to the child or young person, at a level commensurate with that child's or young person's level of understanding, about—
 - (i) any right of appeal against a decision of the court; and
 - (ii) the merits of pursuing any such appeal:

¹⁷ Family Court Practice Note Lawyer for Child: Selection, Appointment and Other Matters; New Zealand Law Society Family Law Section Best Practice Guidelines 19 June 2020.

- (e) undertake any other task required by or under any other Act.
- (2) To facilitate the role set out in subsection (1)(b), the lawyer must meet with the child or young person and, if it is appropriate to do so, ascertain the child's or young person's views on matters affecting the child or young person relevant to the proceedings.
- (3) However, subsection (2) does not apply if, because of exceptional circumstances, a Judge directs that it is inappropriate for the lawyer to meet with the child or young person.
- (4) A lawyer appointed to represent a child or young person in proceedings may—
 - (a) call any person as a witness in the proceedings:
 - (b) cross-examine witnesses called by any party to the proceedings or by the court.

[56] A Judge may ascertain a child's views directly as provided in s 168 of the FVA:

168 How Judge ascertains child's views (other than at hearing)

- (1) If the court is required, or considers it necessary or desirable, to ascertain a child's views (other than at any hearing of any application), a Judge may interview the child to ascertain those views.
- (2) This section does not affect rules of court on the court ascertaining a child's views at any hearing of any application.

[57] Rule 54 of the Family Court Rules 2002 (the Rules) is also relevant, stating:

54 Ascertaining wishes or views of child or young person

If the court is required, or considers it necessary or desirable, to ascertain the wishes of a child or young person at any hearing of any application, the court may—

- (a) order that any party to the proceedings, and the lawyers or other persons representing a party or the child or young person, be excluded from the hearing for so long as may be necessary to ascertain those wishes or views; or
- (b) direct when and where the Judge will ascertain those wishes or views.

[58] I was unable to find any guidance in case law or commentary as to how s 168 has been applied so I interviewed [Corey] as I would usually interview a child in any other case. The significant difference in this case is that [Corey] was not the subject of proceedings between two competing parties, as would normally be the case in Care

of Children Act proceedings, but was essentially a party to the proceedings who was specifically seeking an outcome. The interview as to her views was unable to be tested by way of cross-examination, as is always the case in Care of Children Act proceedings.

[59] Earlier, I had directed that, if [Corey] wished to meet with me, any interview was to occur at least two weeks prior to the hearing to allow sufficient time for a minute to be issued and the parties to have time to consider it before the hearing commenced. Regrettably, due to my and [Corey]'s unavailability, the earliest our meeting could occur was on 21 November, only two working days before the hearing. That did not provide sufficient time to have a minute finalised and released, so I reported her views to the parties and counsel at the beginning of the hearing. I then adjourned briefly to enable the parties to consider what I had reported before the hearing commenced, and also permitted them to provide a response at the hearing.

Social worker's report

[60] On 21 November 2023, I directed a report to be obtained from Oranga Tamariki pursuant to s 65 of the FVA, which provides:

65 Advice from chief executive or social worker

- (1) This section applies to an application under section 62 or 64 for a protection order.
- (2) For the purpose of expediting consideration of the application, a Registrar, on the Registrar's own initiative, may—
 - (a) refer the application to the chief executive; and
 - (b) request the chief executive to provide brief written advice on the nature and extent of any involvement that the department for the time being responsible for the administration of the Oranga Tamariki Act 1989 has had with the parties.
- (3) On receipt of a request to provide such brief written advice, the advice must be provided by—
 - (a) the chief executive; or
 - (b) a person employed in that department as a social worker.

- (4) The Registrar must refer advice received (from the chief executive or a social worker of that kind) to the Judge who is considering the application.

[61] The report provided by the social worker was far more comprehensive than what might have been expected on a strict interpretation of s 65(2)(b) in that it went beyond “brief written advice on the nature and extent of any involvement Oranga Tamariki has had with the parties”. In preparing the report, the social worker did more than simply provide information already held by Oranga Tamariki about [Corey], [Ross], Mr [Nichols] and Ms [Nichols]. The report writer met with [Corey] at school, spoke with Ms [Nichols] and obtained family harm reports from police.

[62] The report comprised nearly four pages and was extremely comprehensive. In summary, the social worker reported:

- (a) [Corey] was supportive of her parents’ application and believed the protection order would be beneficial in enabling her to maintain her safety.
- (b) She understood the terms of the protection order, including the order providing her mother with authority to determine whether [Corey] could speak with [Ross] or not.
- (c) [Corey] believed the protection order and her parents’ ability to determine contact to be necessary because she “just listened to whatever [[Ross]] said”.
- (d) [Corey] was able to identify the power and control dynamics that existed in her relationship with [Ross] with reference to the Loves-Me-Not power and control wheel (originally developed in Duluth, Minnesota, and as adapted by the Kansas Coalition Against Sexual and Domestic Violence). Specifically, she identified:
 - (i) Minimisation and blame – with [Corey] reporting that “nothing was ever [Ross]’s fault” and that he often blamed her or her

family for interfering in their relationship and had not accepted responsibility for his actions.

- (ii) Humiliation – commenting that [Ross] called her fat and describing [Ross] making her feel guilty for listening to her parents and not him.
 - (iii) Possessiveness – with [Corey] saying that [Ross] was controlling and jealous and did not like it when she hung out with her cousin. She said he had accused her of cheating on him when, as a matter of fact, he was cheating on her.
 - (iv) Domination – with [Corey] describing how [Ross] made all of the decisions and told her what to do. She says that, when she ran away with him, he took control of her phone, put it on mute and told her what to say to her parents. He also texted her parents on her phone as if the messages were coming from [Corey].
 - (v) Intimidation – [Corey] describing [Ross] as often getting angry with her, arguing and then giving her the silent treatment.
 - (vi) Manipulation – [Corey] identified [Ross]’s behaviour was manipulative.
- (e) [Corey] described the impact that the relationship with [Ross] had on her self-esteem and confidence, explaining that she now knows what not to do or accept in a relationship. She reported that she was feeling more confident in herself and engaging in activities which increased her confidence and self-worth since the relationship ended and the protection order had been in place.
- (f) To the social worker, [Corey] appeared to understand the relationship dynamics between her and [Ross] which had put her at risk. [Corey]

confirmed that she continues to fear contact with [Ross], especially at [sports] tournaments. [Corey] commented that she would not feel comfortable if [Ross] was at the tournaments, as he could be competing against her. She described [Ross]'s behaviour during competitions towards people who were close to her, saying that [Ross] tried to provoke them and smirked at them. [Corey] said she feared he would behave in a similar way to her.

- (g) The report writer's assessment was that [Corey] had a good understanding of the rationale for her parents' application for a protection order and supported the making of the order, understood the relationship dynamics between herself and [Ross] which put her at risk and genuinely continued to fear contact with him in the future, specifically in [sports] competitions.
- (h) Police checks revealed one family harm investigation on 12 April 2023, where the police had been advised there were concerns that [Ross] had an amount of control over [Corey] and that there were elements of manipulation in his behaviour towards [Corey] and her family.
- (i) [Ross] has been involved in 31 family harm incidents dating back to when he was five years old, most recently on 18 June 2022, with [Ross] and his mother being described as having an extensive family harm history. The family harm reports indicate [Ross] has been both the victim and the aggressor. [Ross] was described as having an extensive history with police due to his behavioural issues.
- (j) [Ross] also has three more family harm incidents relating to another young woman with whom he was in a relationship. Their relationship began when the woman was under the age of 16 years and resulted in three family harm incidents being reported.¹⁸

¹⁸ [Ross] explained in cross-examination he was in a relationship with a girlfriend the same age as him, or very close in age to him, and it was he who sought police assistance about her behaviour towards him.

Lawyer to assist the Court

[63] By a direction dated 16 February 2024, a lawyer to assist the Court was appointed to:¹⁹

- (a) discuss the report from lawyer for the child with [Ross] so that he could understand what [Corey] was saying to her lawyer and to the Court;
- (b) see if there was any way of resolving matters short of a hearing being required;
- (c) address the Court about evidential and procedural matters if a hearing was required, in particular, to address the issue of [Corey]’s participation at the hearing. I noted my initial view was that she would not be a compellable witness nor available to be cross-examined; and
- (d) noting that, as Mr [Nichols] and Ms [Nichols] were not protected under the terms of the protection order, there appeared to be no bar to them being cross-examined directly by [Ross] (as it did not appear to be a situation where s 95 of the Evidence Act 2006 applied), make recommendations as to how the hearing might proceed and any ongoing role lawyer to assist would have.²⁰

[64] Lawyer to assist’s brief was extended by direction, dated 28 March 2024, to discuss the social worker’s report with [Ross]. I directed that he was not to receive a copy of it or the reports from the lawyer for the child. I made this direction essentially applying the criteria in s 134 of the Care of Children Act which sets out the process by which s 132 social work and s 133 psychological reports are provided to self-represented litigants in Care of Children Act cases. They are generally entitled to receive a copy of such reports, unless the court determines that the information contained in the report, if provided directly to a self-represented litigant, would place a child or other person at risk of physical, sexual, or emotional abuse.

¹⁹ Family Violence Act 2018, s 166(1)(a).

²⁰ *[Nichols] v [Conway]* FC Invercargill FAM-2023-017-20, 16 February 2024 at [9(a)–(d)].

[65] Although these are not Care of Children Act proceedings, I was satisfied [Corey] would be at risk of further emotional abuse from [Ross] if he was provided copies of lawyer for child's reports and the social work report because of his previous breaches of the protection order and posting the protection order on social media. I was concerned receipt of the reports would lead to further attempts to contact [Corey] or would result in [Ross] disseminating the reports to others including via social media.

[66] The lawyer to assist the Court reported by memorandum, dated 25 March, confirming:

- (a) Matters had not resolved.
- (b) She had discussed the contents of the lawyer for the child's report with [Ross] and he had sought a copy of the report. That was not agreed to by Mr [Nichols] and Ms [Nichols], and a Court direction was required.
21
- (c) There was no ability for [Corey] to be cross-examined because she was not a party to the proceedings, nor was she a witness.
- (d) The appropriate way to give effect to s 63 was via a judicial interview consistent with s 168 of the FVA and r 54 of the Rules.
- (e) There was no barrier to [Ross] cross-examining Mr [Nichols] and Ms [Nichols], although, if there was concern about the appropriateness of him doing so because of sensitivity by Mr [Nichols] and Ms [Nichols] or because of concerns that as an unrepresented litigant [Ross] may be at a disadvantage, lawyer to assist was happy to accept an extended role to put [Ross]'s cross-examination questions to Mr [Nichols] and Ms [Nichols], and to assist him to any extent necessary to ensure his cross-examination covered all matters the Court was likely to be concerned

²¹ Subsequently declined for the reasons set out in para [65].

about and to ensure he did not cover matters irrelevant or beyond the jurisdiction of the Court²².

The law regarding making a protection order

[67] In order for a final protection order to be made, I need to be satisfied on the balance of probabilities that:²³

- (a) [Corey] and [Ross] have been in a family relationship, which is not contested;
- (b) [Ross] has used family violence against [Corey]; and
- (c) The order is necessary for the ongoing protection of [Corey].

[68] Whether [Ross] has used or is using domestic violence against [Corey] is a question of fact for the Court to determine. A finding will be made if the evidence shows he has behaved in a way which meets the definition of family violence, such behaviour including physical abuse, sexual abuse and psychological abuse (which includes, but is not limited to, intimidation, harassment, damage to property, threats of physical, sexual, or psychological abuse and financial or economic abuse).²⁴

[69] Family violence includes a pattern of behaviour that constitutes physical, sexual or psychological abuse, and that has one or both of the following features:

- (a) the behaviour is coercive or controlling (because it is done to coerce or control the person, or has the effect of coercing or controlling the person);
- (b) the behaviour causes or may cause the person cumulative harm.²⁵

²² Lawyer to assist the Court's brief was not so extended. Her role was terminated after receipt of her report and she had no role at the hearing.

²³ Family Violence Act 2018, s 171(2).

²⁴ Sections 9–11.

²⁵ Section 9(3).

[70] A single act may amount to abuse or a number of acts that form part of a pattern of behaviour may amount to abuse for that purpose, even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.²⁶ There is no time limit in which the past family violence must have occurred.

[71] In determining whether an order is necessary, I must take into account [Corey]'s perception of the nature and seriousness of the behaviour in respect of which the application for a protection order is made on her behalf, and the effect of that behaviour on her. The effect of the behaviour requires specific consideration of any particular vulnerability she has. The more serious the effect, the more grounds there may be for the Court to grant a protection order so that she can feel safe in the future.²⁷

[72] The test for establishing necessity was comprehensively addressed by the Court of Appeal in *Surrey v Surrey*, a case determined under the Domestic Violence Act 1995, but which remains relevant to determinations of applications under the FVA.²⁸ The Court held that:

- (a) The assessment of necessity requires a broad-brush assessment by the Court of the need for protection in the future, having regard to the objects of the Domestic Violence Act 1995 as set out in s 5 and the statutory factors set out in s 14, as well as any other relevant factors.²⁹
- (b) The level of risk of future violence will obviously be a relevant fact when assessing necessity.³⁰ The risk assessment will be undertaken on the basis of past conduct informed by the subjective views of the applicant and any other relevant factors.³¹ The nature and seriousness of past domestic violence and a pattern of past violence are relevant to assessing necessity.³² The single most robust predictor of future violence is a history of prior multiple offences.³³

²⁶ Section 3(4)(b).

²⁷ *Surrey v Surrey* [2008] NZCA 565, [2010] 2 NZLR 581 at [120].

²⁸ At [35]–[53] and [96]–[122].

²⁹ At [38].

³⁰ At [39].

³¹ At [40].

³² At [40].

³³ At [40].

- (c) The necessity for a protection order must be assessed against the seriousness of the past domestic violence.³⁴
- (d) Once an applicant has proved the existence of past violence and their reasonable subjective fear of future violence, the evidential burden then passes to the respondent to raise countervailing factors that weigh against the need for a protection order.³⁵ Unless they meet this evidential burden, the applicant does not need to show that no countervailing factors exist.³⁶
- (e) It is mandatory for the Court to have regard to the perception of the applicant as to the nature and seriousness of the behaviour in respect of which the application is made.³⁷ This includes not only the applicant's perception of the nature and seriousness of past violence, but also the applicant's subjective fears for the future.³⁸
- (f) The purpose of a protection order is not only to ensure that those who have been subjected to domestic violence in the past are safe in the future from the risk of violence, but also that they feel safe from family violence.³⁹

[73] The question is not which party promoted a given a situation, but whether the protection order is needed. A respondent's own conduct must not be taken into consideration when determining whether there is a need for protection.⁴⁰

[74] While s 171(2) requires every question of fact to be determined on the balance of probabilities, not every alleged act needs to be proved. In *H v W*, Hinton J held that the Family Court did not need to be satisfied on the balance of probabilities that each of the various alleged acts occurred; rather, it had to review the evidence in totality to

³⁴ At [41].

³⁵ At [43].

³⁶ At [43].

³⁷ At [101].

³⁸ At [101].

³⁹ At [102].

⁴⁰ *Takiari v Colmer* [1997] NZFLR 538 (HC) at 542.

determine whether family violence was used and the nature and extent of the violence.⁴¹

[75] Intention is not a necessary ingredient of family violence.⁴² The behaviour of the respondent does not need to be intentionally abusive for it to be found to be abusive. What must be considered is the effect of that behaviour on the applicant, and what could reasonably be expected to be the effect on them.

[76] The more serious the allegation, the better the evidence needs to be for the Court to safely making a finding on the balance of probabilities. In *K v G*, Priestley J held that “evidence of a cogent nature must be required to satisfy the normal civil standard.”⁴³ His Honour confirmed that the civil standard has a built-in flexibility, referring to the Supreme Court’s decision in *Z v Dental Complaints Assessment Committee*,⁴⁴ and observed:⁴⁵

That flexibility, however, as I understand the Supreme Court’s judgment, does not authorise a shifting standard of proof or intermediate standard of proof. Rather, it alerts courts to the quality of evidence which is required to discharge the onus. As the majority stated in the Supreme Court, *the more serious the allegations, the more tendency to require stronger evidence before the balance of probabilities is satisfied.*

Determination

[77] As already confirmed in my oral decision of 25 November, I am satisfied on the balance of probabilities that a final protection order is required on the same terms as the current order but with the special condition requiring Ms [Nichols] to give consent to any contact between [Corey] and [Ross] to apply only until [Corey] turns 18 years old.

Qualifying relationship

[78] [Corey] and [Ross] were in a qualifying relationship in the nature of a girlfriend/boyfriend relationship from around 23 October 2022 until the protection

⁴¹ *H v W* [2019] NZHC 616, [2018] NZFLR 1015 at [37].

⁴² *A v B* [1998] NZFLR 783 (HC) at 788–789.

⁴³ *K v G* [2009] NZFLR 253 (HC) at [28].

⁴⁴ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1.

⁴⁵ *K v G*, above n 40, at [25] (emphasis added).

order was made on 22 May 2023. I consider the relationship may have gone on longer than that, or at least there were communications between the two of them, through until October 2023, where there was a possibility that their relationship may continue. There has been no contact between them since 3 November 2023, and the relationship is now at an end.

Family violence

[79] During the course of the relationship, and immediately following the making of the protection order, [Ross] used family harm against [Corey], including sexual, emotional and psychological abuse. [Corey] could not legally consent to have sexual relations with [Ross] and he knew that. He was psychologically abusive to her by verbally abusing and emotionally manipulating her, using coercion and control to keep her in the relationship and isolate her from her family.

[Corey]'s subjective perception

[80] [Corey]'s subjective perception is that she needs a final protection order on the same terms as the current order and with no variation to permit [Ross] to attend [sports] tournaments. She has made that clear to her lawyer and the report writer from Oranga Tamariki, as well as directly to me.

Objective assessment

[81] [Corey]'s subjective perception about the need for her to continue to have a protection order is objectively reasonably held. She is still very young and recovering from the relationship. She has attended counselling to educate her and assist her to rebuild her self-esteem, but remains vulnerable. Since these proceedings have been before the Court, she has attempted suicide, requiring hospitalisation and treatment, due to feeling overwhelmed and desperate. Her parents remain concerned for her and her recovery.

Countervailing factors

[82] [Ross] is in a new relationship and has been for 12 months, and I accept he has no interest in rekindling his relationship with [Corey]. He has lived away from

[location A] in the [location E] area since 19 December 2023, with no intention to return to [location A], although he does still have reason to be in [location A] to visit family. He has completed the Living Without Violence programme, and he tells me that, as a result of the conversations he had with the Living Without Violence programme provider during his final one-on-one session, and also the warnings he has had from police about their intention to charge him if there are further breaches of the order, he has had no contact with [Corey] for a full year. He also does not oppose a final protection order being made. He accepts [Corey] feels that she needs one and does not want to challenge her getting what she thinks she needs. However, he considers the variation to the standard conditions to be reasonable to meet her needs for protection and his desire to continue his involvement with [the sport], which has been and continues to be a very important part of his life.

[83] While [Ross] has gained some insight into the abusive nature of the things he said to [Corey] and the inappropriateness of encouraging her to run away from her family to be with him, he does not understand or accept that his behaviour was sexually abusive or that he exercised coercion and control over [Corey]. Because of his lack of understanding and persistent breaches of the temporary protection order, I am not confident that he will be able to respect [Corey]'s wishes to have no further contact with him. I have even less confidence that he could manage his behaviour around [Corey] and her family if they were attending the same [sports] tournaments. His previous behaviour towards Mr [Nichols] in particular, and his inability to comply with the terms of the temporary protection order, are highly suggestive of an ongoing risk if there is future contact. That remains a high probability even with geographical distance, given their shared interest in [the sport].

Result

[84] As I explained to [Ross] at the hearing, at its most basic, this is a case about a young woman who was sexually and emotionally abused from the age of 14 years old until her parents took legal steps to remove her from her abuser. Her abuser is now seeking permission to attend events where he will have access to her and the family who he threatened when they took steps to protect her. [Corey]'s abuser was a young man himself at the time the abuse occurred and did not appreciate his behaviour was

abusive. His knowledge and intentions do not change the fact that he abused [Corey] and caused her harm. Now he asks to be free to participate in an activity which is important to him. However, [Corey] remains a very vulnerable young woman and her need for protection is the Court's primary concern. She is entitled to be safe and to feel safe from having further contact with [Ross].

[85] A final protection order is made but with the two amendments directed as to intituling to clearly record Mr and Ms [Nichols] are applicants in a representative capacity for [Corey] and a time limit on the special condition which will expire when [Corey] turns 18 years old.

[86] Lawyer for the child's role is terminated with the thanks of the Court.

Judge C M Doyle

Family Court Judge | Kaiwhakawā o te Kōti Whānau

Date of authentication | Rā motuhēhēnga: 13/12/2024