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**IN THE FAMILY COURT
AT HAMILTON**

**FAM2013-019-001507
[2016] NZFC 3654**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	RONAN JANSEN Applicant
AND	DARINA ROCHE Respondent

Hearing: 18-22 and 27,29 April 2016

Appearances: J Walker for the Applicant
C Simes for the Respondent
D Bogers as Lawyer for child

Judgment: 6 May 2016 at 11:00am

**RESERVED JUDGEMENT OF JUDGE S D OTENE
[Applications for Parenting Orders]**

[1] This case is about a young boy named Blake Roche-Jansen born on [date deleted] 2013 so now aged 2 ½ years.

[2] Blake is the only child of his parents, Ronan Jansen and Darina Roche. They each want day-to-day care of Blake.

[3] The hearing of evidence occupied six days followed by a part day of oral submissions from counsel. There has been substantial written evidence filed. I heard oral evidence during the course of the hearing from the parties, Blake's paternal grandparents, Katrin and Arthur Jansen, Blake's maternal grandparents, Karl and Pauline Roche, Seth Ericson and Fiona Brant who are friends of Ms Roche, a psychologist, Kathy Orr, engaged by Mr Jansen and a psychologist, Helen Norman, and a counsellor, Lyn Coker, engaged by Ms Roche. I have also had the benefit of a report pursuant to s 133 of the Care of Children Act 2004 from the Court appointed psychologist, Dr April Trenberth and dated 25 July 2015. Dr Trenberth also gave oral evidence at the hearing.

Background

[4] The parties have been in dispute about Blake for most of his young life resulting in various applications to the Court. I therefore set out the relevant factual and procedural history in some detail.

[5] Mr Jansen and Ms Roche met in September/October 2012 when both were residing in Auckland. They began living together soon after meeting and separated in February 2013 during the early stages of Ms Roche's pregnancy.

[6] After separation Mr Jansen moved to his parents' home in Red Beach, north of Auckland and Ms Roche moved to the home of her parents in Hamilton. She was residing there at the time of Blake's birth. Mr Jansen requested counselling via the Family Court but it did not proceed.

[7] Mr Jansen was advised of Blake's birth some days after the event. His contact with Blake was initially arranged directly with Ms Roche. It involved

Mr Jansen visiting Blake at Ms Roche's home approximately weekly. Those arrangements were fraught and eventually Mr Jansen was trespassed from Ms Roche's home.

[8] On 27 November 2013 Mr Jansen applied for a parenting order for contact with Blake.

[9] On 5 March 2014 following a defended hearing Judge Riddell made a final parenting order for contact between Mr Jansen and Blake, anticipating a graduated increase to overnight contact commencing in April 2015. The order was silent as to day to day care. The Judge also determined a dispute as to Blake's name by directing that he be called "Blake Roche-Jansen".

[10] During the course of that hearing Judge Riddell considered various allegations and concerns about Mr Jansen that had been raised by Ms Roche. They were specifically that when Blake was 15 days old Mr Jansen told Blake to "shut up" when Blake cried; that when Blake was grizzling he put three fingers over Blake's mouth; that he paid inappropriate attention to Blake's genitals, had been obsessed about circumcision and when changing nappies inspected Blake in a strange manner and left his nappy off for some time; that he told Blake to urinate on him; that he was loud, aggressive and overbearing; and that before Blake's birth he had consumed a lot of alcohol, taken drugs and that drinking was part of his family's culture. Judge Riddell did not give any weight to those concerns and allegations. She accepted Mr Jansen's evidence that he had not taken drugs since Blake's birth and specifically disregarded any suggestion that Mr Jansen drinks too much, drinks while he is seeing Blake or was in any way sexually inappropriate with Blake. She reached the view that the allegations were more a reflection of Ms Roche's anxiety and said that the allegations were not founded and were discounted. Judge Riddell said that to summarise the evidence there was no reason why Mr Jansen could not have contact with Blake. She also found that Ms Roche had a "gate keeper" attitude to Blake that was preventing Mr Jansen from developing parenting skills that she complained he lacked.

[11] The contact arrangements did not proceed smoothly. The contact venue was the Hamilton home of Mr Jansen's cousin, Tom Reeves. After approximately four months Ms Roche raised a concern that Blake was exposed to cat hair, to which she alleged he was allergic, and cigarette smoke at Mr Reeve's home. There was also tension and counter-allegation regarding the role of maternal and paternal family members in the arrangements and conflict at some changeovers.

[12] On 6 May 2014 Ms Roche applied without notice to vary the order. The application was placed on notice. A settlement conference was held on 18 July 2014. The order was not changed.

[13] From June/July 2014 to October 2014 Ms Roche resided with Blake at Seth Ericson's home in Hamilton. She then returned to her parents' home.

[14] In September 2014 Mr Jansen contacted Ms Orr for parenting guidance and to assist with developing his attachment with Blake. She continues in this role.

[15] In October 2014 Ms Roche's parents decided to move to [location deleted] but did not inform her of that intention until December 2014. In late 2014 Ms Roche commenced a relationship with Wesley Grove who resided in [location deleted]. Ms Roche also obtained part time employment in [location deleted] over the period February 2014 to June 2014. Ms Roche and Blake spent some overnights, typically Thursday, Friday and Saturday in [location deleted] with Mr Grove. The relationship ended after about six months.

[16] On 7 January 2015 Mr Jansen applied without notice to vary the parenting order to increase contact, for enforcement orders and for orders preventing Blake's removal from Hamilton and from New Zealand. He signalled that he was in a position to assume Blake's day-to-day care should his welfare be at risk, which Mr Jansen considered it to be. An order was made preventing Blake's removal from the Hamilton jurisdiction. The other applications were placed on notice.

[17] On 23 January 2015 Ms Roche applied without notice to discharge the order preventing removal from the Hamilton jurisdiction. That application was placed on notice.

[18] Ms Roche's parents moved from Hamilton to [location deleted] in February 2015. As noted Ms Roche and Blake were spending some nights in [location deleted] with Mr Grove but otherwise in Hamilton at Mr Ericson's home.

[19] On 23 March 2015 Judge Riddell commissioned the s 133 psychological report that has now been provided by Dr Trenberth and made timetabling directions to determine whether Blake would be permitted to relocate to [location deleted] and whether Ms Roche should financially contribute to the costs of Mr Jansen's travel to contact.

[20] On 9 April 2015 Ms Roche applied without notice to vary the parenting order to delay the commencement of overnight contact (which was then due) pending receipt of the s 133 report. In support of that application she filed a report from Helen Norman which concluded that it was not in Blake's best interests to begin overnight contact at his young age and that the s 133 report should be considered before a progression plan was reviewed. That application was granted and an interim parenting order issued in the same contact terms as the earlier order save the commencement of overnight contact until further order of a Hamilton Family Court Judge. The interim order also granted Ms Roche day to day care.

[21] On 20 May 2015 following a second defended hearing Judge Riddell discharged the parenting order made on 5 March 2014, the interim parenting order made on 9 April 2015 and the order preventing removal of Blake from the Hamilton jurisdiction made on 7 January 2015 and directed that Blake may move to [location deleted]. The Judge then made an interim parenting order providing for weekly overnight contact from 9:00 am Saturday to 3:00 pm Sunday with various ancillary directions to give effect to that arrangement. To the extent that further concerns had been raised about safety issues for Blake in the care of Mr Jansen and about Mr Jansen's anger Judge Riddell noted that they had been canvassed in her decision of 5 March 2014 and were moot.

[22] Ms Roche and Blake moved to her parents' home in [location deleted] following that hearing and that is where they remain. Ms Roche has recently undertaken some correspondence study and may next year commence [occupation details deleted] studies but up to now has essentially been engaged full time with the care of Blake.

[23] Mr Jansen moved soon after the overnight visits started in May 2015 from his parents' home to rental accommodation in [name of suburb deleted] that he shares with his brother, Cam. Mr Jansen works for a family [trade details deleted] business [details deleted].

Mr Jansen's position

[24] Mr Jansen says that Ms Roche has throughout the course of Blake's life made allegations against him that have no substance, that she continues to have an unwarranted negative attitude to him and that her statements as to a change in her attitude towards him and about the value of his role to Blake's is not borne out by her behaviour. He says that Ms Roche's attitudes and perceptions are impacting negatively on Blake and will continue to do so and that there is a risk that the allegations will continue and become more serious. He asks to the Court to change of Blake's day-to-day care. He acknowledges that will present difficulties for Blake but says the difficulties are outweighed by the risks of remaining in Ms Roche's care and that there are factors to mitigate the difficulties.

[25] If Blake is placed in Mr Jansen's care he proposes a settling in period of one month in which Blake has no contact with Ms Roche. Thereafter he proposes that contact be professionally supervised until Ms Roche demonstrates that she will not undermine Blake's placement with him. He will arrange his work commitments so that he is able to care for Blake.

[26] If Blake remains in Ms Roche's care Mr Jansen proposes a shared care arrangement whereby Blake is in his care from Saturday to Tuesday.

[27] Mr Jansen is not pursuing his application for enforcement orders (admonishment and a bond). He seeks an order preventing Blake's removal from New Zealand until Blake is aged five. That is consented to by Ms Roche and lawyer for child.

Ms Roche's position

[28] Ms Roche says that Blake should remain in her day to day care with increased contact with Mr Jansen. She says that she has acted in the past in ways that she now recognises were not appropriate but that she now recognises the need for Blake to have a relationship with Mr Jansen.

[29] She proposes interim orders be made and that the Court make a referral to counselling and then in six months to family dispute resolution. If there is no agreement to final orders through family dispute resolution, she submits that an updated s 133 report and a medical report on Blake should be obtained and the situation reviewed upon receipt of that report.

Lawyer for child position

[30] Blake has throughout these proceedings been represented by Ms Bogers.

[31] Ms Bogers points to the following as being significant factors for the Court to consider:

- (a) Blake's disposition as a happy and healthy and importantly a resilient child;
- (b) That both parents provide more than adequate day to day physical care of Blake;
- (c) Ms Roche's psychological functioning;
- (d) The environment in the maternal home and the way in which the maternal family perceive and interpret matters.

[32] Ms Bogers submits that Ms Roche's psychological functioning must be given significant weight and in that regard she relies heavily on the evidence of Dr Trenberth.

[33] If the Court does reverse Blake's care Ms Bogers submits that notwithstanding the magnitude of that change it can be managed successfully. Again, she relies on the evidence of Dr Trenberth.

[34] If the Court maintains Blake's primary care with Ms Roche, Ms Bogers submits the current situation will not improve, that there is a risk that allegations against Mr Jansen will "ramp up" and that Blake will be subjected to further unwarranted investigation and inquiry.

[35] Ms Bogers vehemently opposes Court directed counselling for the parties. She says it is completely unrealistic to expect the parties to be able to agree upon matters and that it in essence sets up another forum for dispute. Aligned with this is Ms Boger's submission that the Court should make a final order rather than an interim order. She says that to make interim orders will continue to experiment with Blake which is not justified in light of the history of conflict.

[36] If Blake is placed in Mr Jansen's care Ms Bogers submits there should be no delay in that occurring. She agrees that there will need to be settling in time but does not support the month absent of contact with Ms Roche as proposed by Mr Jansen.

[37] If Blake remains in Ms Roche's care Ms Bogers supports an immediate increase of contact with Mr Jansen to two if not three nights per week.

[38] Wherever Blake resides on a day to day basis Ms Bogers submits that there should be extended holiday contact between Blake and the parent who does not have day to day care. In respect of transport, she submits that the person receiving Blake's care should be responsible for collecting him from the other parent to reduce as much as possible misunderstandings or disagreements.

The law

[39] Turning to the legal principles, the first and most important is the paramountcy principle contained in s 4 of the Care of Children Act 2004. That says the welfare and best interests of Blake in his particular circumstances must be my first and paramount consideration.

[40] When I am deciding what is in Blake's welfare and best interests, I must have regard to all matters which I think are relevant. I must take into account the principle that decisions affecting Blake should be made and implemented within a time frame appropriate to his sense of time and the principles in s 5 of the Act. None of the s 5 principles start with any greater weight than the others but the importance of each will depend on the circumstances of this case. I must however ensure that Blake's safety is protected and in particular from all forms of violence. Once I have identified the s 5 principles and any other matters which are relevant, I then have to undertake a balancing exercise to determine what arrangement will meet Blake's welfare and best interests.

[41] I now go through the section 5 principles and identify those which I consider are relevant to this case.

[42] Section 5(a) requires a child's safety to be protected in particular from all forms of violence. Ms Roche has made various allegations about Blake's safety in the care of Mr Jansen. Judge Riddell made clear findings in her decisions of 5 March 2014 and 20 May 2015 to the effect that there were no safety concerns for Blake in Mr Jansen's care. Ms Roche subsequently raised further concerns of physical injury and broader safety concerns arising out of Mr Jansen's parenting ability. At hearing she said that she now believes that Mr Jansen is doing nothing untoward towards Blake, that Blake is safe with Mr Jansen and his parents and that Mr Jansen is more than capable of providing Blake's day to day care. Despite that I will make specific findings as to Blake's safety in Mr Jansen's care because this matter has been replete with expressions of positive sentiment about Mr Jansen with on the other hand criticism of his parenting.

[43] Section 5(b) says a child's care development and upbringing should primarily be the responsibility of his or her parents and guardians. Blake is and will continue to be cared for primarily by his parents so this principle is of lesser significance.

[44] Section 5(c) says that a child's care development and upbringing should be facilitated by ongoing co-operation between his or her parents. The parties during the course of these proceedings have shown a distinct inability to consult and co-operate in a positive way regarding Blake. In that context the objects of s 5(c) are unlikely to be achieved unless each party, but Ms Roche particularly, develops better insight and skills in the way they communicate with the other. In the absence of those skills the arrangements for Blake need to be prescriptive rather than open to flexibility and ongoing negotiation. Unfortunately arrangements will need to involve minimal direct contact between the parents.

[45] Section 5(d) says a child should have continuity in his or her care, development and upbringing. Should Mr Jansen assume Blake's day to day care the break in continuity will obviously be significant and so needs to be very carefully weighed. Given the geographical distance between the parties there is really no practically workable intermediate position to either graduate a transfer in care or otherwise ensure contact with both parents at the very frequent intervals that would be optimal for a child of Blake's age. The reality is that Blake must be in the care of one parent for the greater part of the time and have contact with the other parent for more limited periods.

[46] Section 5(e) says that a child should continue to have a relationship with both parents and the relationship with his or her family group should be strengthened. Given the level of conflict, the attitudes of each parent and their families to the other and their respective abilities to facilitate Blake's ongoing relationship with the other parent and that parent's family are in my view pivotal.

[47] Section 5(f) says that a child's identity (including culture, language and religion) should be preserved and strengthened. Blake's mother and her family have a strong connection to their Church. Mr Jansen does not object to Blake being raised

within their faith. There are no other matters that have been raised in terms of Blake's identity. I consider that this principle is of lesser relevance.

[48] Finally in terms the s 6 requirement to give Blake an opportunity to express his views on the matters I must decide, he is, at aged 2 ½ years, too young to express views.

Discussion

[49] Having set the legal backdrop, I now discuss the evidence on the crucial issues. I will not address every issue raised, but rather those that are relevant to my decision.

Blake's Circumstances

[50] Blake has of course been in the care of Ms Roche since his birth. His time with Mr Jansen has been limited to more restricted, albeit frequent and consistent, contact visits. Blake has enjoyed the involvement of extended family throughout his life – obviously because Ms Roche and he live with her parents but also because contact with Mr Jansen has generally included his parents and siblings. Blake is still breastfed once each morning when he is with Ms Roche.

[51] Both parties described Blake in very similar terms. Mr Jansen says he is confident, curious and active. Ms Roche describes Blake as busy, intelligent, funny and active. That is consistent with evidence of other family members and Dr Trenberth. She describes Blake as psychologically resilient: a capable boy who can have things explained to him and understand those explanations; an optimistic boy.

[52] The parties' evidence and that of family members largely coincides in terms of changeovers being problematic for Blake. Ms Roche as recently in her affidavit of 24 March 2016 describes the ways in which Blake becomes upset before contact. She says that he protests about going, hides and refuses to eat or get dressed. Her parents both filed affidavits to specifically confirm that they have never observed

Blake pleased to see Mr Jansen or excited to go with him at changeovers. Karl Roche contrasted that reaction with Blake's excited reactions when he, his wife, his parents or the babysitter arrive. Both parties agree that at drop off Blake is withdrawn. Mr Jansen says that for most of the journey from Auckland to [location deleted] Blake is of his typical disposition but he starts to withdraw when they near [location deleted].

[53] Mr Jansen acknowledged that he is defensive and cautious when in the presence of Ms Roche and her family in contrast to his demeanour at other times. Ms Roche acknowledged that their home environment is not positive towards Mr Jansen. Those demeanours cannot go unnoticed by Blake and provide relevant context for his reaction at changeovers.

[54] In terms of Blake's developmental stage the uncontested evidence of Dr Trenberth is that he is at a point where he is developing cognitive ability, becoming consciously aware of the complex relationship dynamics around him, gaining more independence, learning to manage day to day interactions and cope with them and needing to sustain a sense of trust in attachment figures. It is significant then that he is at a stage where he will become more aware of discord between the important people in his life.

Blake's safety in Mr Jansen's care

[55] As I have said Ms Roche has raised further concerns about Blake's safety in Mr Jansen's care. There are allegations as to physical injury but also in a broader sense of risks to Blake's health arising from deficits in Mr Jansen's parenting knowledge and skill. These allegations are relevant in the context of Ms Roche's attitude to and perceptions of Mr Jansen and his family to which I will return but for now I make findings in respect of the relevant specific allegations.

[56] In her affidavit of 6 October 2015 Ms Roche deposed that Blake returns from contact with Mr Jansen with small bruises on his shins and in August 2015 with bruising that appeared to be the same as occurred in 2014 when she alleged he had been over vigorously held down for nappy changes. Ms Roche, concerned that she

had in the past been accused of making things up, took Blake to the doctor on 24 August 2015 for the bruises to be checked. The medical notes record two localised bruises in the pretibial region.

[57] Mr Jansen's practical parenting skills have been observed by Kathy Orr on nine occasions over a sustained period of time. She considers him to be a more than adequate parent. That opinion is shared by Dr Trenberth who has also observed Mr Jansen with Blake. Similarly too Mr Jansen's parents who of course have had even greater opportunity to observe Mr Jansen's interaction with Blake. There could be any number of explanations for the bruising especially in a child of Blake's young age. I find that Mr Jansen has not caused injury to Blake whether deliberately or inadvertently.

[58] In her affidavit of 24 March 2016 Ms Roche deposed that Blake told her on 4 March that "Nana Katrin" had smacked him. She says this is not the first time he had made such a comment. She asked Mr Jansen whether it had happened to which he responded that no one hit Blake in his home. That assurance was not accepted by Ms Roche who maintained that Blake would not make up such a comment.

[59] Katrin Jansen was also the subject of allegations that she pinned Blake's arms when his nappy was being changed in 2014 and also had him "strung up like a pig" – that being a phrase used by Mr Ericson. Mr Ericson also alleged that during contact visits in 2014 Katrin Jansen frequently forced her fingers into Blake's mouth to check for teeth which he said caused Blake to scream. It is noted the 2014 events preceded Judge Riddell's March 2015 decision when she determined that there were no concerns for Blake's safety in Mr Jansen's care. Although Mr Ericson described himself during cross-examination as a neutral observer, his strident affidavit evidence and the way which he expressed the shortcomings of Mr Jansen and Katrin Jansen lacks balance and suggests that he is anything but neutral. The impression I gained from his oral evidence was that Katrin Jansen was doing no more than checking an infant's teeth in the usual way and that Mr Ericson's had significantly overstated the matter.

[60] Mr Jansen excepted, Katrin Jansen is the paternal family member who has been the greatest focus of discontent from the maternal family. As Judge Riddell noted in her judgement of 5 March 2014 Ms Roche was uncomfortable with Katrin Jansen's suggestions for ways of dealing with a child being grumpy or teething. Ms Roche has raised concerns about Mr Jansen following parenting practices by his mother, specifically pulling back Blake's foreskin when bathing him. At the hearing Ms Roche's father espoused a view that Mr Jansen's motivation for taking these proceedings may be to please his mother whom he understood favoured Mr Jansen's younger brother. There is no other evidence that lends weight to the maternal family's concerns about Katrin Jansen. Like Mr Ericson's evidence there seems to be lack of balance and there is a suspicion about Mrs Jansen and her family that is not objectively reasonable.

[61] Katrin Jansen specifically denies smacking Blake. In evidence she impressed me as child focussed and whilst of course supportive of her son recognised that for Blake's sake both he and Ms Roche need to have a functional parental relationship. I accept Katrin Jansen's evidence and find that she has not smacked or otherwise physically harmed Blake whether deliberately or inadvertently.

[62] Blake's foreskin and penis health has been a matter of much contention. Ms Jansen deposes in her affidavit of 16 October 2015 that on 11 October Blake returned from contact with a sore, red penis on which the skin appeared torn and which bled slightly when she put cream on it. She said Blake said "daddy do this to me.... toilet." She took him to the doctor the following day and emailed Mr Jansen recording that the doctor had noted the redness and provided Mr Jansen with a letter from the doctor certifying that the foreskin should not be pulled back. That evidence is inconsistent with the medical record on 12 October 2015 noting on examination that the prepuce (foreskin) was not red or swollen and the medical record on 15 October 2015 noting that whilst the doctor could not retract the foreskin because Blake resisted, the penis looked healthy and was not swollen.

[63] In her affidavit of 24 March 2016 Ms Roche deposed that in January and early February Blake repeatedly spoke about what his father was doing to his penis in particular pulling the foreskin back. In an email to Mr Jansen on 11 February

2016 she described a “big sore” inside Blake’s penis, that the penis looked slightly bruised and that he was complaining that his skin had been pulled back during the previous weekend when he had contact with Mr Jansen. A video was taken of Blake making those comments and shown to his doctor on 10 February 2016 although the video was not put in evidence. The medical note of the consultation does not record any infection or sore on Blake’s penis. It does record that Blake otherwise seems fine each time the doctor sees him.

[64] To the extent that Blake’s penis has been injured by pulling back his foreskin I am not satisfied by medical evidence that the injury has been of the gravity suggested by Ms Roche. Furthermore there is evidence that Blake himself has pulled back his foreskin. Mr Jansen says that on one occasion he observed Blake to pull back his foreskin in the bath, that Blake was not distressed when he did so and that Mr Jansen dealt with it by distracting Blake. Karl Roche said when he and Blake showered together earlier this year Blake pulled back his foreskin albeit saying “Daddy do this.” This evidence raises the possibility that if Blake has suffered a foreskin injury it could be by his own action. I am not satisfied that Mr Jansen has pulled back Blake’s foreskin as alleged.

Ms Roche’s focus on Blake’s medical issues

[65] Much has been made in evidence of Ms Roche over emphasising medical matters for Blake.

[66] Blake has had a number of medical appointments throughout his life. Some of those have been at the request of Mr Jansen to provide confirmation that Blake has not been well enough to attend contact. Even taking that into account my assessment of the various medical records is that Ms Roche has a very cautious attitude to Blake’s health. The foreskin issue is illustrative of that. That caution may in part be because she is a first time mother who naturally needs reassurance however some of the notes indicate that a focus of medical matters in connection with contact arrangements is also at play.

[67] The latter is apparent in the February 2016 referral of Blake by his doctor to a paediatric specialist. He noted in that referral “His mum brings him in to see me at the drop of a hat at least every week or 2 to make sure he is all right because of the lawyer/custody battle that is going on currently”. Although Ms Roche produced a letter from the doctor obtained during the course of the hearing to confirm that he had no issue with the amount of times he is seeing Blake I take into account that letter was prepared for the purpose of the hearing whereas the referral to the paediatrician was a communication between professionals likely with little expectation that it would be disclosed to a Court.

Ms Roche’s perception /change in perspective

[68] Ms Roche says that she has made a number of mistakes in respect of the way she has conducted herself since Blake’s birth. I agree. She referred to a range of matters, including her comments about and attitude towards Mr Jansen such as reference on a parenting website to him as a “donor” (so by implication denigrating the importance of his role in Blake’s life); expecting too much of Mr Jansen as a new father; not being sufficiently flexible with contact arrangements; not agreeing to an increase in contact. She acknowledged that her actions and attitude have hindered Blake’s relationship with Mr Jansen. Again, I agree.

[69] Despite those admissions of Ms Roche’s evidence at hearing leads me to query the extent to which she genuinely takes responsibility for the failings in behaviour. For example when put to her that emails she wrote at the time of the relocation dispute demonstrated that she and Blake were living in [location deleted] she responded that was so because they were poorly worded or exaggerated. On any plain reading of those series of emails Ms Roche was saying that she and Blake were living in [location deleted] and had made their home there with her then partner, Wesley Grove. They may not have in fact been living there on a fulltime basis but I have no doubt that Ms Roche was intending to convey that Blake’s home was in [location deleted] so Mr Jansen would have to exercise contact there rather than in Hamilton. Similarly when put to her that her comment to the Family Start worker that every time Blake returned from a visit with Mr Jansen he needed antibiotics, she could accept that it was “possibly” an exaggeration. Blake did not require antibiotics

after every visit. Clearly it was an exaggeration designed to be critical of Mr Jansen's parenting. A further example is the bruising that is alleged to have been caused to Blake when Mr Jansen and his parents held him down whilst changing a nappy during a 2014 contact visit. Ms Roche says now this was not an accusation of abuse but rather a suggestion that too much pressure had been applied to Blake perhaps because of a lack of parenting experience. My assessment of all the evidence regarding that matter is that it was raised in an accusatory manner implying a callous disregard by Mr Jansen and his parents for Blake's suffering giving rise to serious concerns for his safety and the necessity for contact to be supervised. It was not presented in the more benign way as Ms Roche framed it at hearing.

[70] I do not ignore that in the height of contested Court proceedings parties sometimes cast matters in ways that with the benefit of perspective and reflection gained by the passage of time they come to recognise as unfair and then regret. Having heard and observed Ms Roche give oral evidence for over a day, and considering it in context with all the other evidence before the Court, my impression is that she expresses regret now less because she recognises and accepts her behaviour as having been unreasonable and detrimental to Blake but rather more because of the pressure of the Court hearing and the spectre that she could lose the care of Blake.

[71] Nevertheless leaving aside Ms Roche's insight into her past behaviour, she says that her attitude to and perception of Mr Jansen has changed for the better. At different points in her evidence at hearing she timed this change to the commencement of overnight contact in May 2015 and receipt of Dr Trenberth's report in July 2015. Regardless of the precise timing Ms Roche suggests that for most of the previous year she has adopted a more positive attitude toward Mr Jansen. She points for example to her invitations to Mr Jansen to open communication and interaction, her engagement in counselling and reading about positive communication.

[72] Ms Roche came to a further realisation during the hearing that first of all Mr Jansen and his family truly love Blake and that secondly Katrin Jansen never smacked Blake. She says this realisation came about because during a Face Time

call between Mr Jansen and Blake the weekend before the hearing she heard Mr Jansen tell Blake directly for the first time that he loved him and because of the evidence she heard directly from Mr Jansen and Katrin Jansen during the hearing. She says she was particularly affected by Katrin Jansen's emotional presentation during cross-examination.

[73] That this was the first occasion Ms Roche heard Mr Jansen's declaration of love to Blake is questionable given Karl Roche's evidence that Mr Jansen at changeovers for most of this year, and at which Ms Roche has been present and participating in the physical transfer of Blake, says "love you" to Blake.

[74] I agree with Ms Boger's submission that Mr Jansen and his family have shown an unfailing commitment to Blake. Mr Jansen and various family members have for more than two years travelled most weeks and sometimes twice weekly to Hamilton and then [location deleted] to have contact with Blake. Mr Jansen engaged and still retains as necessary the services of Ms Orr to guide his parenting. Ms Roche received Ms Orr's file notes of her observations indicating more than adequate parenting by Mr Jansen. By her own admission Ms Roche has hindered development of Blake's relationship with Mr Jansen and so he has pursued matters through legal process for nearly 2 ½ years with the attendant financial and emotional cost. It seems extraordinary that against that background Ms Roche needed to hear Mr Jansen speak of his love to Blake and to observe Katrin Jansen's emotionally wrought reaction when giving evidence for her to believe that Mr Jansen and his family love Blake. Relevantly Ms Roche explained that her family frequently express their love to each other. It suggests that for Ms Roche to be satisfied as to Blake's wellbeing with Mr Jansen he and his family need to conduct their relationship with Blake in a way that conforms with her norms and that she needs to personally observe that conduct. The numerous requests by Ms Roche for Mr Jansen to provide video footage of Blake during contact visits, her evidence that she knows best when it comes to Blake and that she knows him better than anyone else lends weight to that conclusion. It is an attitude reflected by the evidence of Ms Roche's mother to the effect that her concerns about Mr Jansen's parenting were not allayed by the presence of Katrin Jansen because she herself had not observed his parenting.

[75] Whilst Ms Roche may be satisfied at the present time that Mr Jansen is in fact meeting Blake's needs, his needs will change over time. If, as it seems, Ms Roche requires direct observation to be satisfied that Mr Jansen meets Blake's needs it is predictable that Mr Jansen will be continually be put to proof as to how he meets Blake's changing needs over time. This goes to a risk identified by Dr Trenberth that Blake will develop an awareness that adults in his life are worried about him and that there is a concern about the way his father treats him.

[76] Other evidence indicates that Ms Roche's change in attitude is less profound than she asserts. For example: at hearing she maintained her belief that Mr Jansen had been retracting Blake's foreskin, albeit not in an ill-intentioned way but because he was ill educated about such matters; up until the hearing she still believed that Katrin Jansen smacked Blake; at hearing her evidence was that she does not trust Mr Jansen to tell her if something untoward happens while Blake is with him; her communications with Mr Jansen whilst perhaps less overtly accusatory are nevertheless on my assessment unreasonably critical of Mr Jansen and reflect views that Mr Jansen cannot adequately parent Blake at least without her direction, that it is she who best meets Blake's needs and that if there is something wrong with Blake her first consideration is that it is because something untoward has happened during his contact with Mr Jansen. That attitude was abundantly clear in Ms Roche's comments in the communication book as recently as 5 April 2016 and her action in taking a photograph of Blake's anus (in light of her concerns about anal fissures and thrush) prior to contact that weekend to establish that he was well at the commencement of contact. It is difficult to understand why Ms Roche would take a photograph if not because she anticipated that Mr Jansen may not look after Blake properly and there was a likelihood that Blake would return unwell.

[77] I consider that it is of some relevance too that Ms Roche has not disclosed or otherwise made apparent to either Mr Ericson or Ms Brant her change of attitude towards Mr Jansen. That is surprising given that both are close confidants and supporters of Ms Roche. In Mr Ericson's case he considers that Ms Roche has acted reasonably and fairly throughout and says that other than apologising for the "donor" comment she has not expressed to him that she has any regrets about her behaviour. Ms Brant says that Ms Roche knows she has to let Mr Jansen have a relationship

with Blake but has not expressed any regrets or spoken about mistakes she may have made.

[78] Highly significant in gauging Ms Roche's present attitude is that her proposal in her affidavit of 24 March 2016, so only a matter of weeks before the hearing, was to reduce Blake's physical contact with Mr Jansen (other than on holidays and special occasions) to one night per fortnight. She did not anticipate any extended contact until Blake is in his second year of school during which she proposed he spend a week of each school holiday with Mr Jansen but would otherwise continue to have contact one night per fortnight. I give little weight to her more generous contact proposal at the end of the hearing as evidencing a genuine change in attitude. I consider it a compromise in response to the pressure under which she was placed at hearing.

[79] I determine that Ms Roche does not have genuine insight into the way in which her past behaviour has been detrimental to Blake and that fundamentally her attitude is that Mr Jansen cannot be trusted to adequately parent Blake. That attitude has not been mitigated to any significant degree by the personal counselling she has undertaken or evidence that has been presented to her to the contrary such as from Ms Orr and Dr Trenberth. I do not consider that Ms Roche's parents balance her position because they too have a fundamental distrust of Mr Jansen. They both believe that Mr Jansen's motivation, in part if not wholly, is to make Ms Roche's life, in their words, a "living hell" by taking Blake from her. I am satisfied that is not Mr Jansen's motivation.

[80] Criticism has been levelled at Mr Jansen for his unwillingness to engage in a therapeutic process and to communicate and interact more openly with Ms Roche. Mr Jansen's reason for his reluctance is that to do so would risk further criticism or allegation about his parenting conduct. Given my findings as to Ms Roche's perceptions and attitude towards Mr Jansen I have little confidence that a therapeutic process would progress matters. In my view Mr Jansen's reservations about engaging in such process or having greater interaction with Ms Roche and her family are reasonably held. I am satisfied that he communicates appropriately and in a sufficiently timely way that ensures Blake's needs are addressed. That

communication may not address Ms Roche's needs but that is a separate matter about conforming to standards she sets rather what Blake needs.

Mr Jansen's attitude to Ms Roche

[81] Mr Jansen is by his own admission wary and defensive in relation to Ms Roche and her family. It appears this is having an effect on Blake at changeovers.

[82] However, I do not perceive in any of the evidence or from my observations of Mr Jansen and his parents as they gave evidence at hearing that they are dismissive of the role of Ms Roche and her family and the importance of that to Blake. They are certainly aggrieved at the unfair way they perceive they have been treated by maternal family but there is no evidence to suggest that grievance would prevail over respecting Blake's relationship with Ms Roche and her family.

Hair pulling – aggression to dog

[83] I address this issue because it has received significant focus.

[84] Ms Roche says that after the third overnight contact visit Blake started pulling out his hair in chunks and that she was finding chunks of hair on his pillow. She says also that Blake had become abusive to their dogs and described his behaviour in quite extreme terms. Fiona Brant says that when Blake was travelling in her care in June 2015 she observed chunks of hair on his car seat. Helen Norman advised Ms Roche to seek a referral to Child and Adolescent Mental Health Services. Ms Roche says that Blake's doctor referred him to a paediatrician. I have not been able to identify any documentary evidence as to the outcome of that referral other than a letter dated 3 December 2015 from paediatrician Dr Eleanor Carmichael wherein she noted "His mum also reports that he has been having hair-pulling and this happens when he is sitting in his car-seat. He does not seem to enjoy his car-seat very much."

[85] Neither Mr Jansen nor his family members observed the hair-pulling or aggression in Blake as described by Ms Roche. Karl Roche says he has seen Blake pull out his hair two or three times this year which he relates to Blake being stressed about travel for contact and separation from Ms Roche. Pauline Roche says she has seen Blake pulling out his hair earlier this year. She described him doing so in a random manner as he played although not in a way that suggested he was particularly distressed.

[86] The photographs provided of Blake's hair on the car seat do not show a significant amount of hair loss. There is no photographic evidence of Blake's scalp at any time when he has said to have pulled out clumps of hair.

[87] Despite the focus on this issue, I am unable on the evidence to reach any conclusions as to the gravity of the behaviour, let alone likely reasons for it. I observe that it is entirely inconsistent with other evidence of Blake's development and presentation which is almost entirely positive. I therefore do not place significant weight on these behaviours.

Psychological Evidence

[88] Ms Roche challenges Dr Trenberth's conclusions as to her psychological functioning in four respects: that she exhibited confirmatory bias; that in light of *K v K* [2005] NZFLR 28, to the extent that her opinion is based on evidence not before the Court such opinion should not be relied upon; that she failed to observe the requirements of natural justice; that she failed to comply with certain aspects of the Code of Conduct for Expert Witnesses contained in Schedule 4 to the High Court Rules; that she gave opinion outside her area of expertise.

[89] In respect of confirmatory bias the contention is that Dr Trenberth had a pre-existing expectation of deficits in Ms Roche's psychological functioning and gathered evidence tending to support that expectation whilst dismissing or failing to seek contradictory evidence. Dr Trenberth was cross-examined at length by Mrs Simes and Ms Bogers about this issue. Her responses satisfy me that her methodology and collection of data was sound and that no bias was present.

[90] The challenge for reliance upon evidence not before the Court relates to information obtained from Wesley Grove and from Agnes Smith, Ms Roche's maternal grandmother, information from Ms Roche's medical notes and information provided to Dr Trenberth by Mr Jansen not expressly put to Ms Roche for verification or contradiction.

[91] The information from Mr Grove and Mrs Smith formed conclusions in Dr Trenberth's report on matters such as Ms Roche's anxiety, her misattribution of issues of concern to Blake's contact with Mr Jansen and her inability or unwillingness to take advice on matters regarding Blake. That was not the only data upon which Dr Trenberth relied in reaching conclusions about Ms Roche's psychological functioning. It appears that Ms Roche's responses to Dr Trenberth measured against all the other available information was a more critical factor. I therefore do not discount Dr Trenberth's conclusions on the basis that direct evidence from Mr Grove and Mrs Smith was not before the Court.

[92] Ms Roche's medical notes formed Dr Trenberth's conclusions about a concerning longer term pattern of psychological functioning and what Dr Trenberth described as a pattern of confusion and medical focus. Ms Roche takes issue with Dr Trenberth's interpretation of her medical history and provides some of her medical notes. Given that the totality of the medical notes are not in evidence it is difficult to reach a conclusion on the points of difference. I therefore place limited weight on Dr Trenberth's conclusion as to Ms Roche's long term pattern of psychological functioning. I observe however that I have made a finding that Ms Roche has a very cautious attitude to Blake's health and also that various concerning aspects of Ms Roche's psychological functioning have been a feature throughout these proceedings and the course of Blake's young life and continue to operate.

[93] The objection that Mr Jansen provided Dr Trenberth with information that was not expressly put to Ms Roche as I understand it relates an exchange of emails between the parties regarding Christmas contact arrangements and a text exchange regarding Blake being unwell and missing contact. Report writers routinely gather information (whether from direct responses on interview or provision of documents)

from one party contrary to the interests of the other party – that is the nature of contested matters. It is a matter for the report writer to determine whether the information warrants further inquiry of the other party. Sometimes failure to inquire may go to the validity of a report writer’s conclusions or the weight attached to conclusions, for example if the information raises entirely new matters. In this case the information went to the communication and negotiation dynamic between the parties. That was an issue already well and truly before the Court and Dr Trenberth. In my view nothing turns upon the fact that Dr Trenberth did not specifically put that information to Ms Roche for comment.

[94] Ms Roche’s submission in respect of how Dr Trenberth’s report offended principles of natural justice is first that she did not provide Ms Roche with an opportunity to respond to the medical notes. In respect of Blake’s medical notes I treat this objection as I did the objection that Dr Trenberth did not put emails and texts received from Mr Jansen to Ms Roche. Nothing turns on it. In respect of Ms Roche’s medical notes I have dealt with this and give only limited weight to the conclusions arising from interpretation of them.

[95] As I understand the other objection on a natural justice basis is that Dr Trenberth raised concerns about Ms Roche’s cognitive functioning and thereby strayed into reporting on the parent rather than the child. It is said that the proper course would have been to put the concern about cognitive functioning to the Court to consider whether a separate report should be obtained or to give Ms Roche an opportunity to obtain her own specialised assessment. It is correct that the task of a psychologist appointed under s 133 is not to carry out an assessment on the parents but clearly if there is evidence of parental psychological issues impacting upon a child, then that falls to consideration by a report writer. As I have already identified, Ms Roche’s insights and perceptions, which are matters of cognition, are of significant relevance for Blake. I do not accept this objection.

[96] The specific obligations of the expert witness Code of Conduct which it is contended Dr Trenberth failed to observe are:

- (d) If an expert witness believes that his or her evidence might be incomplete or inaccurate without some qualification, that qualification must be stated;
- (e) The facts, matters and assumptions on which opinions are expressed must be stated explicitly;
- (f) The reasons for opinions given must be stated explicitly;
- (g) Any literature or other material relied upon to support opinions must be referred to by the expert.

[97] The specific criticisms are that Dr Trenberth:

- (a) Recorded incorrectly in background chronology that Ms Roche returned to the home of her parents in [location deleted] February 2015. I do not consider that is significant because as I have found Ms Roche was holding herself out at that time as living in [location deleted] and the overall context is that the relocation was matter of dispute around that time and which is acknowledged by Dr Trenberth in the background chronology.
- (b) Did not explicitly state the facts, matters and assumptions on which opinions were based. This objection is too generic to assess.
- (c) Disclosed in cross-examination but failed to explicitly state in her report that she believed that the allegations regarding Blake's hair pulling lacked credibility because of a perceived discrepancy between Ms Roche's demonstration during interview and her affidavit account. Whilst that specific matter was not mentioned in the report Dr Trenberth articulated a range of reasons that lead to her conclusion on this issue. A psychological report must by necessity summarise data collected. Given the breadth inquiries a report writer cannot put every piece of data before the Court. If they were required to do so there

would be little difference between a report and a psychologist simply submitting all his or her notes to the Court. Whilst the absence of comment in the report as to the discrepancy between Ms Roche's demonstration of the hair pulling and her affidavit description does not strictly comply with the code of conduct it does not undermine entirely the conclusion reached.

- (d) Did not refer to the literature or other material relied upon to support her opinion that the hair pulling and associated behaviours were only likely to have occurred in a child who had suffered quite serious abuse, neglect, medical or mental ill health. It is correct that no literature was expressly referenced in support of that opinion. However I think it is more a matter of Dr Trenberth's comment being awkwardly articulated. Her evidence at hearing made it clear that she was not addressing whether Blake suffered serious abuse or the like but rather the extreme manner in which the behaviour in an otherwise healthy and normal child was described by Ms Roche. The inconsistency of the described behaviour with all the other evidence is an observation upon which I have already made comment. Dr Trenberth did refer to other information and data which she considered inconsistent with the described behaviour. I do not consider this objection to be made out.

[98] The inexpert opinion that Dr Trenberth is said to have offered is that Blake was being taken to the doctor too often. As I understand the argument it is that Dr Trenberth is not a medical doctor so cannot give an opinion as to whether Blake's health was such to merit the number of medical appointments to which he was taken. I think that argument is misconstrued. Ms Roche's attribution (or misattribution) of Blake's ill health to contact visits with Mr Jansen is relevant to Blake's welfare. It was this, by consideration of the number of times which she had taken him to the doctor for the reasons disclosed in the medical records, upon which Dr Trenberth offered her opinion.

[99] In my view in relation to Dr Trenberth's report and evidence I can safely rely on her opinion that:

- (a) Both parents have a high level of parental competence;
- (b) Ms Roche's psychological functioning particularly in relation to the way she perceives and attributes matters carries significant potential risk for Blake in terms of his individual development and his relationship with his father. The risk for his individual development being that he becomes a person with insecurity at his core which may then affect all aspects of his life including his ability to have and sustain intimate relationships and his ability to choose a prosocial view of the world. The risk in respect of his relationship with his father being the potential to become alienated from him and his paternal family.
- (c) Mr Jansen in contrast to Ms Roche is establishing a healthier parent-child dynamic with Blake;
- (d) Blake is at a developmental point at which he will become consciously aware of the complex dynamics around him.
- (e) Blake has a psychological resilience that will assist him to manage a change of care notwithstanding his attachment to Ms Roche.

[100] I do not need to deal in great detail with the evidence of Ms Orr and Ms Norman. Both acknowledge that they had limited input from the party who had not engaged their services.

[101] Ms Orr has observed Mr Jansen's interaction with Blake on nine occasions between September 2014 and April 2015 and has continued to provide advice to Mr Jansen on an "as and when needed" basis. I therefore place weight on her positive endorsement of Mr Jansen's parenting ability.

[102] Ms Norman's report of 6 April 2015 (incorrectly dated 6 March 2015) was primarily a literature review. She did not observe Blake. It was directed as to whether overnight contact should commence at that time or be delayed pending receipt of the s 133 report. Any utility from that report has been largely displaced by the reinstatement of the overnight contact and the passage of time. Ms Norman's report of 17 November 2015 was commissioned in response to the s 133 report. I accept it as evidence that Ms Norman found no evidence of anxiety or personality disorder or deficit in social perception in Ms Roche. I prefer however the evidence of Dr Trenberth as to Ms Roche's actual psychological functioning and the manner in which that is relevant to Blake given the broader information available to her and her independence.

Decision

[103] Having weighed all the evidence, the relevant s 5 principles, and the submissions of counsel, I have reached the decision that the welfare and best interests of Blake would be served in the day to day care of Mr Jansen with contact with Ms Roche in place immediately, rather than after a period of suspension. I have done so for the following reasons:

- (a) Given Ms Roche's attitude towards Mr Jansen and her perception of matters concerning Blake with Mr Jansen there is real risk that the quality of Blake's relationship with his father and paternal family will be undermined, diminished and alienated. Aligned with that is a real risk to Blake's healthy psychological development.
- (b) If Blake remains in Ms Roche's care there are no factors that significantly mitigate those risks because her parents share a similar attitude and perception.
- (c) Given the critical stage of Blake's development and the further consideration that he will be starting school in 18 months and so needs to have settled arrangements, it is not acceptable to provide

further time in the hope that Ms Roche will successfully address the matters of concern.

- (d) Whilst the disruption to Blake's attachment with Ms Roche (and to a lesser extent his wider maternal family) will be significant it is balanced by Blake's psychological resilience, his attachment to Mr Jansen and other paternal family members, the quality of care Mr Jansen can provide and the willingness and ability of Mr Jansen to obtain professional assistance as necessary.
- (e) I am satisfied that Mr Jansen and his family are capable of fostering a positive relationship with Ms Roche and her family in a way that Ms Roche and her family have been unable to and are unlikely to reciprocate.
- (f) Blake's attachment to Ms Roche requires there to be ongoing contact and I am satisfied that should be on an unsupervised basis. The identified risks are balanced by the greater period time he will be in Mr Jansen's care.

[104] I have contemplated whether orders should be interim, not to review day-to-day care, but rather to consider whether the contact arrangements are working in Blake's best interests and welfare. I have elected not to do so because I consider that the greater interest lies in establishing settled arrangements that remove from Blake the prospect of change and exposure to potential further dispute that has accompanied him for all his life. I have stated my confidence in Mr Jansen's ability to foster a positive relationship between Blake and Ms Roche. It is my expectation that if Blake needs to spend more time with Ms Roche, Mr Jansen will facilitate that without either party making Blake the subject of further Court proceedings.

[105] For the reason I decline to make interim orders, I also decline to refer the parties to counselling or mediation. I have little confidence a dispute resolution or therapeutic process will be successful. Blake requires arrangements to be settled

now. I encourage both parties to pursue whatever assistance will foster their personal development but I do not consider that should be to prolong proceedings.

[106] I decline Ms Roche's request for release of Ms Trenberth's notes and materials. Access is sought pursuant to paragraph 9.5 of the practice note for specialist report writers. The practice note is directed to release of notes and materials generally for the purpose of challenging a report by obtaining a critique, second opinion or assisting counsel with preparation of the case. As I understand Ms Roche's submission she is seeking the notes for therapeutic purposes. They were not prepared with that as a potential context for their use. Given all the matters traversed in this decision I am concerned that to release them may set up another area for conflict and so is not in Blake's best interests and welfare. Lack of access to the psychologist's raw data does not stop Ms Roche engaging in a therapeutic process.

Orders

[107] In order to give effect to this judgment I make the following orders and directions:

- (a) Mr Jansen's application for admonishment and a bond is discontinued.
- (b) There is by consent an order preventing Blake's removal from New Zealand. This order shall expire upon Blake attaining the age of five years, that is on [date deleted] 2018.
- (c) The interim parenting order made on 20 May 2015 is discharged.
- (d) A final parenting order in relation to Blake Roche-Jansen born [date deleted] 2013 on the following terms:
 - (i) From 12:00 pm on 14 May 2016 Blake is to be in the day of day care of Mr Jansen.
 - (ii) Ms Roche is to have contact with Blake as follows:

1. During school term time up until Blake commences school every second weekend commencing from 12:00pm Friday to 4:00pm on Sunday. Such contact will commence on Friday, 27 May 2016.
2. During school term time from when Blake commences school every second weekend commencing from 10:00am Saturday to 4:00pm Sunday.
3. During school term holidays for the first week commencing 12:00pm on the first Saturday until 12:00pm on the second Saturday (such holiday contact to commence from the next school term holiday).
4. For the school Christmas/New Year holiday period until such time as Blake is aged 5 from 10:00am on the first Saturday to 10:00am on the second Saturday and then alternate weeks during that period. This shall be suspended in 2016 when Blake shall be in the care of Mr Jansen from 12:00pm on Christmas Eve until 12:00pm on Boxing Day (if Blake is not otherwise in his care) and in 2017 when Blake shall have contact with Ms Roche from 12:00pm on Christmas Eve until 12:00pm on Boxing Day (if she is not otherwise having contact with Blake).
5. For the school Christmas/New Year holiday period from when Blake is aged 5 in odd numbered years for the first 3 weeks of that holiday period commencing at 12:00pm on the first Saturday to 12:00pm on the third Saturday and in even numbered years for the second 3 weeks of that holiday period commencing at 12:00pm on the third Saturday to 12:00pm on the sixth Saturday. This shall be suspended in even numbered years when Blake shall be in the care of Mr Jansen from 12:00pm on Christmas Eve

until 12:00pm on Boxing Day (if Blake is not otherwise in his care) and in odd numbered years when Blake shall have contact with Ms Roche from 12:00pm on Christmas Eve until 12:00pm on Boxing Day (if she is not otherwise having contact with Blake).

6. By a telephone, SKYPE or video call each Wednesday at 6:00pm and on Blake's birthday and Christmas Day if she is not otherwise having contact with Blake. If Blake is having contact with Ms Roche on his birthday or Christmas Day, Mr Jansen shall have a telephone, SKYPE or video call with Blake at 6:00pm.

(iii) The parenting order is subject to the following conditions:

1. The party receiving Blake into his or her care shall collect Blake from the other party's home.
2. If necessary contact weekends will be substituted so that Blake is with Ms Roche each Mother's Day and is with Mr Jansen each Father's Day.

[108] For the sake of clarity I do not provide for Blake to be in the care of each parent on Christmas Day, birthdays or other special occasions except Mother's Day and Father's Day. Those occasions shall lie where care or contact falls. The parent who does not have the care of or contact with Blake on that day may celebrate with him at the next proximate day when they do have care or contact.

[109] In terms of contribution to the costs of lawyer for child and the psychologist I am satisfied that the making of applications by Mr Jansen was the only way in which matters could be resolved in Blake's best interests and welfare. His conduct has been responsible. I am satisfied that it would be inappropriate in those circumstances to require him to pay any of the prescribed proportion. I decline to make a cost contribution order against him.

[110] As Ms Roche is in receipt of civil legal aid, in light of *Re Karaka* [2016] NZHC 183 no cost contribution order can be made against her unless there are exceptional circumstances. Although I have findings unfavourable to Ms Roche I do not consider that exceptional in the context of defended proceedings of this nature. Accordingly I decline to make an order.

[111] Costs between the parties are reserved. If there is an issue as to costs counsel are to file memoranda within 14 days of release of this decision. I would however urge the parties to take heed of my comments regarding the need for matters to be settled for Blake and to reflect upon the wisdom of contesting further matters.

S D Otene
Family Court Judge