

EDITORIAL NOTE: NAMES AND/OR DETAILS IN THIS JUDGMENT HAVE BEEN ANONYMISED.

NOTE: PURSUANT TO S 139 OF THE CARE OF CHILDREN ACT 2004, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE [HTTP://WWW.JUSTICE.GOVT.NZ/COURTS/FAMILY-COURT/LEGISLATION/RESTRICTIONS-ON-PUBLICATIONS](http://www.justice.govt.nz/courts/family-court/legislation/restrictions-on-publications).

**IN THE FAMILY COURT
AT ROTORUA**

**FAM-2015-063-000231
[2016] NZFC 3424**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	FRIDA CORRA Applicant
AND	JAMIE THORNE Respondent

Hearing: 28 April 2016 (On the Papers in Chambers)

Appearances: T Braithwaite for the Applicant
D Douthwaite for the Respondent
N Utting as Lawyer for the Child

Judgment: 28 April 2016

**JUDGMENT OF JUDGE J F MUNRO
[Re application to remove lawyer for the child]**

[1] Ms Corra and Mr Thorne are the parents of Heidi, born [date deleted] 2015. There are currently proceedings before the Court under the Care of Children Act 2004 relating to Mr Thorne's contact with Heidi.

[2] An interim hearing took place on 9 March 2016. A substantive hearing is awaiting allocation.

[3] On 21 January 2016, Ms Corra filed a document requesting a change of lawyer for child. Ms Utting was appointed as lawyer for Heidi on 20 July 2015 when Heidi was six months old.

[4] The matter has been referred to me as I have familiarity with this file, having heard the interim hearing in February 2016.

The concerns

[5] The concerns raised by Ms Corra were threefold:

- (a) That Ms Utting displayed extreme prejudice against her;
- (b) Ms Utting had a conflict of interest in relation to a proposed supervisor for contact;
- (c) Ms Utting made a safety assessment in relation to Heidi's contact with her father, Mr Thorne.

[6] The letter was referred to Ms Utting for her comment. Her response has been received and forwarded to Mr Braithwaite, as counsel for Ms Corra.

[7] On 24 March 2016, counsel for Ms Corra filed detailed submissions in response to Ms Utting's reply, making particular reference to the relevant provisions of s 9B Family Courts Act 1980, the Lawyer for Child Best Practice Guidelines, as set out by the Family Law section of the New Zealand Law Society, April 2015, and the Family Court Practice Note from the Principal Family Court Judge's Chambers, dated 26 March 2015.

[8] The relevant part of s 9B Family Courts Act is as follows:

“(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) [Not relevant]
- (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.”

[9] The role of lawyer for child is described in the Best Practice Guidelines at paragraph 5.1 as follows:

“The lawyer is to provide independent representation and advice to the child in a manner that the lawyer considers promotes the welfare and best interests of the child.”

[10] Of particular relevance in this situation are the guidelines regarding safety assessments. Clause 9.2 provides:

“The lawyer should not accept any brief that requires an assessment of the safety of the child.”

[11] Further, at clause 12.3, it states:

“It is the role of the Court and not of the lawyer to make findings on safety and the assessment of risk. If issues are disputed the Court will need to make findings of fact. The lawyer must not compromise, for the sake of expediency, on issues where a finding of fact must be made.”

[12] Whilst it is clear that it is not the role of lawyer for child to make findings regarding safety, clause 12.2 provides that:

“The lawyer should consider whether safety issues would prevent a negotiated outcome.”

[13] Clearly, safety issues must be considered by lawyer for child, but it is beyond the scope of lawyer for child to make an assessment of safety or any findings as to safety.

[14] I have read the submissions on behalf of Ms Corra and Ms Utting's response to the first submission of Ms Corra. I have perused the reports filed by Ms Utting in this matter and the emails that are on the Court file, which Ms Corra submits demonstrate that Ms Utting exhibits prejudice against her and makes an assessment as to safety. I have re-read my decision of 9 March 2016. I deal with each allegation in turn:

Extreme prejudice

[15] Ms Utting's role as lawyer for child is to provide independent representation for the child, as outlined in the Best Practice Guidelines. That representation is to be undertaken in a way that the lawyer considers promotes the welfare and best interests of the child. There is no requirement that lawyer for child should be impartial as between parents. It is appropriate that lawyer for child considers the views, the actions and the attitudes of each parent in the light of her assessment of the welfare and best interests of the child. The fact that lawyer for child does not agree with a parent's perception does not indicate prejudice. Lawyer for child owes no obligation to either parent. Her only obligation is to the child.

[16] In this case, it is very clear that Ms Utting considers that it is in the welfare and best interests of Heidi to have the opportunity to develop a meaningful relationship with her father. Ms Corra has not agreed with the approach taken by Ms Utting. That does not demonstrate prejudice. I do not find that Ms Utting has acted in any way that is prejudicial to Ms Corra. Clearly, she has attempted to assist the parties to make appropriate arrangements for Mr Thorne's contact with Heidi and Ms Corra has not always agreed with the approach taken.

Conflict of interest

[17] Ms Corra suggested a person by the name of Howard Landon as a potential supervisor for contact. Mr Thorne did not agree. Ms Utting conveyed this to Ms Corra and the matter was taken no further. Subsequently, Ms Corra alleged that the reason that Ms Utting did not promote Howard Landon as a supervisor was because in 2008, Howard Landon made a complaint with the Police Complaints

Authority against Bryan Newcombe, police officer, who is now married to Ms Utting.

[18] Ms Utting has responded that the incident complained of by Mr Landon allegedly occurred before Ms Utting met Mr Newcombe, that she had heard of the matter but knew very little about it, and had never met Mr Landon. Further, Ms Utting clarified that because Mr Thorne did not agree with Mr Landon being a supervisor, she was not in a position to undertake any assessment of whether he would be suitable, but left the matter on the basis that without agreement from both parties, the matter would not be pursued.

[19] In this situation, there was no conflict of interest.

Assessment of risk

[20] On 3 December 2015, Ms Utting filed a memorandum in preparation for an interim hearing on 7 December 2015 before Judge Wills. At paragraph 24, she stated:

“In my submission, there are no safety issues that require Mr Thorne’s contact to be supervised. There have been issues at contact when Ms Corra chose to be present. Those issues can be avoided with a clear contact arrangement being ordered. Any order will need to be specific as to how changeover should occur. I suggest perhaps that the two grandmothers attend changeover so that the parties are not in contact.”

[21] On perusal of the file, the issue before the Court for determination on 7 December was not a safety risk relating to Mr Thorne, but rather the fact that Mr Thorne had very little parenting experience, he had had little contact with Heidi and given her age and the distress that she had demonstrated at contact, what form of oversight or supervision would be required to address that distress. Ms Utting’s memorandum goes on to address the requirement for another person to be present at contact to provide some oversight and perhaps advise Mr Thorne on parenting issues.

[22] It is quite clear from the decision of Judge Wills of 11 December 2015 that the requirement for supervision was to address these issues rather than any safety risk opposed by Mr Thorne. Her Honour Judge Wills stated at paragraph [9]:

“[Ms Corra’s] primary concern is that Heidi will become distressed by her absence or the absence of a person with whom Heidi is close and that Mr Thorne will not be able to comfort her.”

[23] The orders that were made did not provide for direct supervision, but rather for supervision of contact “which is to ensure that Mr Thorne is supported in his parenting and care of Heidi and to enable an independent assessment to be made of Heidi’s level of distress and determine whether contact should continue or stop early.”

[24] In the context of these proceedings, the statement made by Ms Utting in her memorandum cannot be taken as an assessment of risk, but rather in the context of narrowing the issues for the Court’s determination.

[25] Ms Utting provided a further memorandum on 16 February 2016. In that memorandum, she addresses the safety requirement of s 5(a) Care of Children Act. It is clear from that memorandum that Ms Utting is well aware of the Best Practice Guidelines in relation to safety assessments. At paragraph 8 she states:

“That leaves s 5(a) for the Court to consider.”

[26] She summarises the allegations made by the applicant in relation to the respondent’s violence towards her and then states:

“The Court will need to determine if such a threat was made and, if so, whether it justifies on-going supervision.”

[27] Further, at paragraph 9, she states:

“I understand that the applicant’s position is also that the respondent’s contact should be supervised because Heidi is distressed in the care of the respondent. The respondent has filed evidence to suggest otherwise. That will be a matter for the Court to determine.”

Decision

[28] After careful consideration of the various issues raised by Ms Corra, the response filed by Ms Utting, the pleadings and the hearing over which I presided on 9 March 2016, I find that Ms Corra's allegations of prejudice, conflict of interest and safety assessment are without merit. There are no grounds for Ms Utting to be removed as lawyer for child. She has complied with the relevant portions of s 9B Family Courts Act, the Lawyer for Child Best Practice Guidelines and the Practice Note, and has acted professionally and competently in her role as lawyer for Heidi. She is to continue in that role.

J F Munro
Family Court Judge