

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

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**IN THE FAMILY COURT
AT TAURANGA**

**I TE KŌTI WHĀNAU
KI TAURANGA MOANA**

**FAM-2013-070-000579
[2020] NZFC 3082**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[HAZEL COLLINS] Applicant
AND	[HEATH BARRETT] Respondent

Hearing: 8 May 2020

Appearances: Applicant appears in Person (via telephone)
Respondent appears in Person (via telephone)
R Adams as Lawyer for the Child (via telephone)

Judgment: 8 May 2020

ORAL JUDGMENT OF JUDGE S J COYLE

[1] [Lola Barrett] was born on [date deleted] 2010. Since 2013 her parents have from time to time been at war between each other about the care and contact arrangements for [Lola] and the matter is back before the Court today because there is no agreement as to how the final parenting order dated 5 February 2015 should apply in relation to international travel.

[2] In broad terms [Lola]'s mother, Ms [Collins], is wanting the order to be amended to allow her to travel with [Lola] overseas, particularly to [North America] where she has family. The current order provides that any international travel for [Lola] requires the consent of both parties but that any consent will not be unreasonably withheld. The current order also provides that over the summer school holiday periods [Lola] is in the care of her mother and her father on an alternating week about arrangement but an option to extend that to a period of 10 days in January by either parent provided appropriate notice is given. For Ms [Collins] therefore to travel to [North America] under the current order she either needs to do so within a week or at the most 10 days. She argues that that period of time is insufficient to take [Lola] to [North America] factoring in the time for travel and the need to spend significant time with her family in [North America].

[3] There is a sense in which the argument is at present academic because of COVID-19 and the death of international travel by and large, particularly from New Zealand at present. Indeed, it may well be that there is no international travel from New Zealand apart perhaps from a restricted bubble with Australia and some Pacific Islands until such time as a vaccine is developed and that it is a vaccine that it can be said with a high degree of certainty would ensure that those who have the vaccine will not pick up COVID-19. It may be that international travel globally is limited only to those who have had the vaccine and can prove that this is the case. When that vaccine or if indeed if that vaccine is developed is of course unknown at this point in time and certainly there is nothing to indicate at present that any such vaccine's development is imminent.

[4] The merit in dealing with the matter today is that the application is before the Court and secondly, and more importantly, that it does not apply to any proposed travel until the Christmas holidays at the end of 2021/start of 2022 thus there is a possibility that some form of international travel might be available at the end of next year.

[5] Subsequent to the conference earlier this week Ms [Collins] has amended her position and she is now proposing that there be arrangements on an alternating basis whereby [Lola] is with one parent for the first week of the summer holiday period and the other parent for three weeks and then returning to the parent who had the first week

for another two week period before reverting back to the care arrangements in terms of the existing order. The suggestion is that that alternates so that in each alternate year both of them have a block three week period, thus enabling for her travel overseas, particularly to [North America], but also for Mr [Barrett] a three week block to travel either domestically or internationally if he wishes to do so.

[6] Mr [Barrett]'s view is that the current order is sufficient in that it provides for any variation by agreement. He has set out in his submissions that he has never unreasonably withheld his consent to any international travel. His objection earlier this week was that a straight three week/three week alternating basis as initially proposed by Ms [Collins] would preclude [Lola]'s ability to have contact with her maternal and her paternal family around Christmas Day. Ms [Collins]'s most recent proposal has taken into account those concerns, hence her one week/three week/two week proposal. But fundamentally Mr [Barrett] believes the current order is sufficient, although he could live with the proposal of Ms [Collins].

[7] For [Lola] Ms Adams wants an outcome which removes from the parties any discretion or requirement to agree or consent because in her submission the history of this matter indicates that consent is often difficult to reach, often necessitates applications to the Court and thus involves [Lola] in what in her submission is parental conflict. I agree with Ms Adams entirely. It seems to me that the discretion that is in the current order would work perfectly well if these were parents who were able to communicate constructively and positively but the longitudinal history indicates that that goal remains purely aspirational at this point in time. [Lola] deserves clear and unambiguous care arrangements because that protects her from the ability for her parents to continue their war and for her to subsequently be involved in that process.

[8] Another issue that has arisen today is whether the arrangements for the school term holidays need to be varied as well. The current order provides in essence a week about arrangement. Mr [Barrett] has suggested, as had Ms [Collins] I am told on an earlier occasion, that that be changed so that for example Mr [Barrett] has [Lola] in his care for all of the holidays at the end of term 1. The holidays at the end of term 2 are shared equally and Ms [Collins] has [Lola] in her care for all of the holidays at the end of term 3. Mr [Barrett]'s rationale is that the current seven day period is

insufficient to travel either domestically or internationally. I disagree with that. There are many families within New Zealand who travel in a week's period either to the Pacific, to Australia or within New Zealand. My concern of either parent having a block two week period with [Lola] is that it is a significant time for her to be away from either parent, recognising that the type of care and quality of care is quite different over holidays to that of term time. I do not intend to make any change to the current term holiday arrangements as I believe a change from what is in the current order is in [Lola]'s best interests and welfare.

[9] There is also an agreement that the passport for [Lola] can be held by a neutral person and there seems to be agreement today that that can be the registrar of the Court, although Mr [Barrett] has indicated he is happy for Ms [Collins] to hold [Lola]'s passport. I prefer that someone neutral hold the passport because if the passport is required by either parent from the other, again that increases the potential for conflict.

[10] The proposal of Ms [Collins] for an amendment to the Christmas holiday periods is one that I am satisfied is in [Lola]'s best interests and welfare and I intend to make those changes accordingly. Against that background therefore I vary the terms of the current parenting order as follows. Under the heading "Summer School Holidays" it is to read as follows:

[11] In even numbered years [Lola]'s care arrangements over the summer school holiday period are to be as follows:

- (a) From [dates deleted – a one-week period] December [Lola] is to be in the care of Ms [Collins].
- (b) From [a three-and-a-half-week period] [Lola] is to be in the care of Mr [Barrett].
- (c) From [a two-week period] January [Lola] is to be in the care of Ms [Collins].

[12] In odd numbered years the arrangements are to alternate, that is:

- (a) From [dates deleted – a one-week period] December [Lola] is to be in the care of Mr [Barrett].
- (b) From [a three-and-a-half-week period] January [Lola] is to be in the care of Ms [Collins].
- (c) From [a two-week period] January [Lola] is to be in the care of Mr [Barrett].

[13] Thereafter those arrangements continue on an alternating basis.

[14] At the conclusion of those periods of care [Lola]’s care arrangements will revert to that set out in the current parenting order.

[15] As a consequence of that variation under the special occasions relating to Christmas Day the clause in the existing order is deleted as [Lola] will effectively be in the care of each of her parents on an alternating basis on Christmas Day.

[16] Under the heading “International Travel” the existing clauses are to be deleted and replaced with the following:

- (a) [Lola] shall be entitled to travel internationally when in the care of either of her parents, and similarly shall be entitled to travel domestically.
- (b) [Lola]’s passport is to be held by the registrar of the Tauranga Family Court.
- (c) A party who is intending to travel overseas is to provide the other party, not less than 28 days prior to any intended travel, details of the flights and itinerary for the travel, details of any overseas accommodation and contact details for [Lola] while [Lola] is overseas.
- (d) Upon proof of a booked and paid for return ticket for [Lola] the registrar of the Tauranga Family Court is authorised to release to the travelling

parent [Lola]’s passport not less than 14 days prior to any proposed travel. The parent who is taking [Lola] overseas is to return the passport to the registrar of the Tauranga Family Court no later than three working days after returning to New Zealand.

- (e) [Lola] will have reasonable Skype or phone contact with the non-travelling parent during any overseas travel.
- (f) In all other respects the current parenting order, subject to these variations, is to remain identical to that set out in the 5 February 2015 order.

[17] Finally, as all outstanding matters have now been resolved, Ms Adams’ appointment as lawyer for [Lola] is terminated with the thanks of the Court.

Judge SJ Coyle
Family Court Judge

Date of authentication: 12/05/2020

In an electronic form, authenticated pursuant to Rule 206A Family Court Rules 2002.