

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

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**IN THE FAMILY COURT
AT WHANGAREI**

**I TE KŌTI WHĀNAU
KI WHANGĀREI-TERENGA-PARĀOA**

**FAM-2019-088-000059
[2020] NZFC 2611**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[ANGELIQUE CANN] Applicant
AND	[GIA FARLEY] [DEVON FARLEY] Respondents

Hearing: 16 April 2020

Appearances: A Patterson for the Applicant
L O’Boyle for the Respondent [G Farley]
No appearance by or for the Respondent [D Farley]
D Whitehead as Lawyer for the Child

Judgment: 16 April 2020

ORAL JUDGMENT OF JUDGE L KING

[1] It is important that a decision is delivered today, but I reserve the right to make changes once the typed decision is received back, without changing the end result. This is a high conflict case which I have managed since declaring it complex in July 2019. This is the second submissions only hearing since Aotearoa New Zealand was

placed in alert level 4 following competing without notice applications filed by each party.

[2] On 9 April 2020, I discharged an interim order I had made a week prior, on a without notice basis, after being satisfied that face to face contact between [Jaida] and her mother ought to be reinstated. That order has resulted in [Jaida] remaining in her mother's care since 10 April.

[3] Updating evidence has been filed by both parties. Mr Whitehead remains concerned about the level of conflict between Ms [Farley] and Ms [Cann] and I share those concerns. The fact that there was an incident at the end of Ms [Cann]'s driveway at the very first changeover since my decision last week is an example of the ongoing conflict.

[4] Ms [Cann]'s position remains that in the event Ms [Farley] continues to have face to face contact with [Jaida], that [Jaida] will be unable to return to her care until New Zealand moves out of alert level 4. If the government moves to reduce the alert level to that of level 3, then Ms [Cann]'s position is that ongoing face-to-face contact between [Jaida] and her mother should continue in accordance with the terms of the interim parenting order. That contact may well be increased, as Ms [Cann]'s counsel, Ms Patterson, has indicated that after this hearing there will be discussions between the parties' lawyers regarding an increase in the periods of time for [Jaida] with her mother.

[5] Mr Whitehead has represented [Jaida] since the beginning of 2019. He has met with her at Ms [Cann]'s home on at least two occasions and also at [her school] on at least five occasions. He has told me that he knows [Jaida] fairly well, that she is quite chatty, and that he is confident that [Jaida] is able to express her views and is confident that she has been able to do so. Mr Whitehead spoke to [Jaida] by telephone yesterday and provided her updated views.

[6] Section 6 of the Act requires that a child must be given a reasonable opportunity to express her views. In a nutshell, [Jaida] has enjoyed her week with her

Mum and is quite content to stay longer. However, [Jaida] does not see staying with her mother as a long-term arrangement at this stage.

[7] [Jaida] has told her lawyer that she would like to return to the [Cann] household. Mr Whitehead has submitted it is important there be some sort of contact for [Jaida] with Ms [Cann] and no doubt other members of the [Cann] household. I support the views that [Jaida] has been able to express through Mr Whitehead and I thank Mr Whitehead for his ongoing assistance, given the difficulties no doubt all counsel have encountered in being able to conduct a hearing in this manner and under these conditions.

[8] Given [Jaida]'s clear views and that Ms [Cann] has indicated that she is unable to have [Jaida] in her care during level 4 if [Jaida] is to have face-to-face contact with her mother, it is my view that [Jaida] ought to remain with her mother at this time.

[9] We remain at alert level 4 until midnight 22 April 2020. Whilst New Zealand appears to be doing extremely well, there has been no decision made by our government as to whether we will move out of alert level 4 at that time. There is to be an announcement on 20 April which will provide a level of certainty not only to these parties but to all of New Zealand.

[10] It is my view that it is in [Jaida]'s best interests that she continue in her mother's care until we come out of alert level 4 or until 23 April 2020, whichever is the earliest. At that point, the terms of the interim parenting order made in January and varied by me at last week's hearing will continue.

[11] Counsel have indicated they will enter discussions after today's hearing with a view to progressing the child's contact with her mother once we move down to level 3.

[12] I encourage Ms [Cann] and Ms [Farley] yet again to be able to focus on the big picture here for [Jaida]. It is quite clear that the parties get bogged down on little issues. In fact, I would go so far as to say there seems to be a lot of energy involved in point scoring against each other. In my view, that is a complete waste of time and

detracts from the most important issue, which is what is in the best interests and welfare of this young child, so I really do encourage the parties yet again.

[13] Accordingly, I make the following orders and directions:

- (a) The interim parenting order made on 31 January 2020, with the additional conditions imposed by me on 9 April 2020, is to continue from such time as New Zealand moves out of alert level 4 or 23 April 2020, whichever is the earliest. Until then, the child shall remain in Ms [Farley]'s care.
- (b) By consent and whilst [Jaida] is in Ms [Farley]'s care, Ms [Cann] is to initiate a Skype call each morning at 9.00 am so that [Jaida] can speak with Ms [Cann] and no doubt other members of the household. The length of the call will depend upon [Jaida] to a large extent.
- (c) By consent and whilst [Jaida] is in the care of Ms [Cann], Ms [Cann] shall again initiate a Skype call for [Jaida] to her mother, Ms [Farley], every second day at 7.00 pm so that [Jaida] will be able to speak with and see her mother.
- (d) The Skype calls in each household do not need to be monitored and [Jaida] shall be free, within reason, to move within each household for the purposes of that call.
- (e) A directions conference is to be allocated before me as soon as the s 133 report is available. I urge Mr Whitehead to remain in contact with the psychologist who has been appointed, with a view to ensuring the report will be available at the earliest opportunity.
- (f) Ms [Farley] is to file her affidavit strictly in reply to Ms [Cann]'s affidavit, dated 15 April 2020. The deadline for the filing of the affidavit is 14 days after New Zealand exits level 4 alert.

- (g) Finally, Mr Whitehead has indicated that the parties and counsel have discussed the possibility of a round table meeting following receipt of the s 133 report. Again, I encourage the parties to take that step.

[14] Given these two hearings have proceeded by way of submissions only, I set out the following facts which remain in contention:

- (a) Whether the refuge worker Ms [Boggs] was present outside Ms [Cann]'s house at the return changeover on 29 March 2020.
- (b) Clarification as to the person [Payton] who was allegedly present during lockdown, and if that person was present, i.e. not the other mother in the bubble, then the reasons why [Payton] was present and clarification about that person's role and ongoing involvement.
- (c) Whether the letter from the school, which is attached to Ms [Cann]'s affidavit, dated 15 April 2020, as exhibit B, accurately reflects the current learning for [Jaida] for the 2020 schooling year prior to lockdown.

Judge L King
Family Court Judge

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