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**IN THE FAMILY COURT
AT NORTH SHORE**

**FAM 2012-044-001682
[2016] NZFC 1481**

IN THE MATTER OF CHILDREN, YOUNG PERSONS, AND
THEIR FAMILIES ACT 1989

BETWEEN CHIEF EXECUTIVE, MINISTRY OF
SOCIAL DEVELOPMENT, ANNA PALMER,
PRACTICE LEADER, OREWA CYFS
OFFICE
Applicant

AND ANNABELLE WARE
Respondent

TIM PIERCE
Second Respondent

Hearing: 23 March 2016

Appearances: Ms L Jones for the Applicant
First and Second Respondents Self Represented
Ms Ransfield for Caregivers
Ms De Luen Lawyer for the Child

Judgment: 24 March 2016

**ORAL JUDGMENT OF JUDGE S J MAUDE
[Discharge Children, Young Persons, and their Families Act orders
and making of Care of Children Act orders]**

[1] This decision is about Braxton aged 3.

[2] Braxton's parents are Annabelle Ware and Tim Pierce.

[3] Braxton, as a result of the uplift of him from his mother, pursuant to a Place Of Safety warrant was placed with his maternal uncle and aunt, Mr and Ms Bannerman on 5 November 2012.

[4] Braxton has remained in the care of Mr and Ms Bannerman since.

[5] Today's hearing was scheduled as a half-day submissions only hearing, directed to determine:

- (a) Mr and Ms Bannerman's application for discharge of orders made under the Children, Young Persons and Their Families Act granting them custody of Braxton (s 101 of the Act) and appointing them additional guardians of Braxton (s 110 of the Act) together with discharge of access and support orders made under that Act.
- (b) The making of orders pursuant to the Care of Children Act in favour of Mr and Ms Braxton as follows:
 - (i) Appointing them additional guardians of Braxton;
 - (ii) Making parenting orders in their favour as to day-to-day care of Braxton;
 - (iii) Provision of contact for Mr Pierce and Ms Ware with Braxton;
 - (iv) Discharge of order preventing removal of Braxton from New Zealand; and
 - (v) Application resolving dispute between guardians as to Braxton's name. Mr and Ms Bannerman seeking to replace his

existing name of Braxton Tim Graeme Joshua Ware with the names Braxton Tim Bannerman.

[6] Ms Ware has taken no steps in the proceedings.

[7] Mr Pierce, on 27 November 2015 consented to the orders sought but by judicial conference convened on 22 January 2016 withdrew his consent because of Mr and Ms Bannerman's position as to frequency of his contact with Braxton and nature of it.

[8] The Ministry of Social Development consent to the orders sought by Mr and Ms Bannerman.

[9] Braxton's lawyer, Ms De Luen supports the orders sought by Mr and Ms Bannerman.

[10] Mr Pierce's position at hearing on 23 March was that he sought monthly contact with Braxton between the hours of 10am and 5pm.

He does not believe that there exists a need for his contact to be supervised.

If his contact is to be supervised, he urged that his pastor, Geoffrey Russell and his wife or his landlord or his employer supervise contact.

[11] Mr Pierce supports permanency of placement of Braxton with Mr and Ms Bannerman, indeed at hearing before me he said that he supported their role 100%.

[12] Mr Pierce opposes the change of Braxton's name and removal of the order preventing removal of him from New Zealand.

[13] Mr and Ms Bannerman propose contact for Braxton with Mr Pierce four times per annum, supervised by approved supervisor [contact centre details deleted] for one and one-half hours in the last weekends of February, May, August and November.

[14] They propose contact for Ms Ware with Braxton at the same time that Mr Pierce exercises his contact, but only for her in the months of February and August.

Background

[15] As I have indicated above, Braxton was placed with Mr & Ms Bannerman on 5 November 2012.

[16] A declaration was made that Braxton is a child in need of care and protection in November 2013.

[17] On 27 February 2014 after a hearing involving consideration of the parties and psychologist, Dr Calvert's evidence, I ordered contact for each of Braxton's parents four times per annum for three hours, such contact to be supervised.

[18] I directed a hearing be allocated with relation to the Ministry of Social Development's plan that provided for the placement of Mr and Ms Bannerman to be a 'home for life' one.

[19] On 4 October 2014 a hearing scheduled as to the above plan was vacated by me. As it transpired a medical certificate provided by Ms Ware in support of her application for adjournment was fraudulently manipulated by her.

[20] On 12 December 2014 the Ministry plan for Braxton was approved by consent. The following orders were made:

- (a) An order providing that Mr and Ms Bannerman have custody of Braxton (s 101 of the Children, Young Persons, and their Families Act);
- (b) An order appointing Mr & Ms Bannerman additional guardians of Braxton, pursuant to s 110 of the Act; and

- (c) An order granting defined access for Ms Ware and Mr Pierce to Braxton, pursuant to s 121 of the Act.

[21] On 11 June 2015 a declaration was made that Ms Ware's lawyers no longer acted for her.

[22] Ms Ware has not exercised regularly the access allocated to her.

[23] Mr and Ms Bannerman, during 2015, extended Mr Pierce's access and supervised it themselves so as to provide for Braxton a more natural setting for contact.

Rather than the ordered four quarterly supervised visits, dependant on which view is accepted, either six visits occurred (Ms Bannerman's evidence) or eight visits occurred (Mr Pierce's evidence).

[24] Difficulties arose from Mr and Ms Bannerman's perspective, Mr Pierce coming to their home uninvited and breaching what they viewed as a confidentiality agreement not to disclose the growth of contact given to him to Ms Ware.

[25] Photographs were taken by Mr Pierce during a privately supervised contact visit at the beach which appeared on Ms Ware's Facebook postings.

[26] Both parents dropped Christmas presents for Braxton on the Bannerman's driveway and Mr Pierce did so again at New Year 2016.

[27] Heated phone conversations between Ms Bannerman and Mr Pierce and then Mr Bannerman and Mr Pierce took place with relation particularly to the posting of the photographs on Facebook.

[28] Mr and Ms Bannerman's evidence was that they felt invaded. They now want to wind the contacts situation back to formally supervised contact.

[29] Mr Pierce executed a consent memorandum as to the orders sought by Mr and Ms Bannerman in November 2015 but withdrew his consent at the conference

convened in this Court in January 2016 due to Mr and Ms Bannerman's withdrawal of the more liberal contact that they had begun to allow.

[30] From Mr Pierce's perspective, his incursions into the Bannerman's private domain were in keeping with the growth in faith that he believed they had showed in him.

[31] Mr Pierce denies allegations of inappropriately taking photographs, forwarding them to Ms Ware, thereby enabling her to be able to post them on Facebook.

[32] Mr Pierce's evidence was that he supported placement of Braxton with the Bannermans and that his relationship with Ms Ware, which had been under the microscope in earlier hearings, and so troublesome for the Bannermans and indeed the Court was firmly over.

Consideration

[33] Dr Calvert's evidence, which I heard in 2014, was strongly to the effect that the security of placement for Braxton with the Bannermans was critical for him.

[34] She observed that there was no attachment for Braxton with either of his parents.

[35] I observed at paragraph [44] of my 27 February 2014 judgment the following:

There can in my view be no doubt that Braxton's placement must not be destabilised and that frequent access with these parents with their history mixed with their expectations destabilises the placement.

[36] There have been ongoing difficulties for the Bannermans with the ongoing nature of these proceedings and the parent's contact well documented in my earlier decisions that justify the firmness of home-for-life placement and contact for identity purposes only for Braxton with his parents.

Home-for-life placement is not now at issue.

[37] Home-for-life placement is hard for Braxton's parents, but Braxton's welfare and best interests is by virtue of both the Children, Young Persons, and their Families Act provisions and the Care of Children Act provisions my focus. It is Braxton's welfare and best interests that must be my first and paramount consideration.

[38] In reality as to transition from orders under the umbrella of the Children, Young Persons, and their Families Act to orders under the Care of Children Act as sought by the Bannermans there is only the issue of Mr Pierce's contact and the nature of it as an impediment.

In reality, Mr Pierce does not oppose the transition.

[39] Mr Pierce understandably finds contact for him supervised by [contact centre details deleted] a restriction on his role as a father.

[40] He said in his submission to me that he wants to be a positive part of his son's life at a meaningful level. That is understood.

[41] The above observed the reality for me looking through the lenses of both the Children, Young Persons, and their Families Act and the Care of Children Act is that it is Braxton's welfare and best interests that must be my focus.

[42] There, in reality, is no opposition to transition from Children, Young Persons, and their Families Act order to Care of Children Act orders.

[43] Dr Calvert's position in 2014 was that Braxton was not attached to either of his parents, that protection of the family unit that he knew with the Bannermans was of absolute importance and that contact should occur every six months for him with his parents.

[44] I determined that Braxton's contact with his parents should be quarterly.

[45] In 2015 the contact for Braxton with Mr Pierce became either six visits or eight visits, dependent upon which party's view is to be believed.

[46] Mr Pierce correctly identifies that as Braxton's 2015 experience.

[47] I reject any notion that the Court should approach contact in a 'home-for-life situation' on a formulae basis with imposition of a quarterly supervised regime.

[48] What is abundantly clear for Braxton is that the integrity and stability of the only home he has known with the only persons he has psychologically attached to (the Bannermans) cannot be placed a risk.

[49] Against that background the principles contained in s 5 of the Care of Children Act, make it clear that a child should have the best possible relationship with its parents consistent with welfare and best interests.

[50] Section 5(e) reads as follows:

a child should continue to have a relationship with both of his or her parents, and that a child's relationship with his or her family group, whānau, hapū, or iwi should be preserved and strengthened:

[51] Mr Pierce does have an established relationship with Braxton.

He is called 'daddy Tim'.

[52] That relationship should be preserved and strengthened, but only to the extent possible without jeopardising his placement and security with the Bannermans.

[53] Ms Bannerman's evidence (and she was cross-examined by Braxton's lawyer with my leave as was Mr Pierce) was that the informally supervised contact that had been agreed to in 2014 had become uncomfortable.

[54] Ms Bannerman had been supervising contact at a park.

[55] Ms Bannerman said that she became uncomfortable as a result of:

- (a) Her feeling that it was unusual for her to be out in public with another man and children;

- (b) That she had been uncomfortable with Mr Pierce wanting to take photographs of Braxton while she changed his nappy (though she did not suggest anything sinister); and
- (c) That she had been uncomfortable with her 7 year old daughter being familiar with Mr Pierce and jumping all over him onto his lap.

[56] There is no doubt that the issue that most concerned Ms Bannerman was contact from a relative in England informing her that the relative had seen postings on Facebook by Ms Ware of Braxton taken by Mr Pierce.

[57] Ms Bannerman's view was that one of the photos showed Braxton having his nappy changed.

[58] Consensually, copies of the photographs were [shown] to me in Court at hearing and I observe that there was nothing offensive or objectionable or indecent in any of the photographs that I saw.

[59] Ms Bannerman is now uncomfortable with the amount of latitude she granted Mr Pierce with relation to contact.

[60] On an objective basis, the photographs uplifted to Facebook by Ms Ware were entirely unobjectionable. Indeed, they were delightful.

[61] Ms Bannerman's disquiet is around how Ms Ware came to have the photos.

[62] There was no evidence of inappropriate activity by Mr Pierce.

[63] I accept that Mr Pierce delivered presents at Christmas and New Year believing that to be acceptable.

[64] It is the background of Ms Ware and Mr Pierce's behaviour subsequent to uplift of Braxton from Ms Ware, the conduct by them of the proceedings before the Court involving mixed messages as to whether they were together or not and as to

domestic violence and the recent uplift of photographs that I have referred to, that has destabilised Mr and Ms Bannerman.

[65] Mr Pierce was adamant that he has no knowledge of how Ms Ware received the photographs to uplift to Facebook.

His new partner, he said, had made him a collage of three of the pictures he had taken and framed them, which he had placed on the floor of his bedroom which is a room with glass windows, floor to ceiling.

The inference to be gaining because Mr Pierce said that Ms Ware had not had access to his property was that it was his view that she had photographed them from outside.

[66] Given the background of the parties, Mr Pierce's explanation is a little hard to accept, though I make no finding to that effect. What is clear however is that for Mr and Ms Bannerman, it is no doubt even harder for them to accept his explanation.

[67] Mr Pierce proposes third parties to supervise contact between and Braxton and indeed I note that it was common ground that in 2014 a plan involving supervision of contact by his pastor, Mr Russell and his wife had been supported.

[68] Mr Pierce, unfortunately did not file any affidavit evidence from any of his proposed supervisors nor any plan as to how that might occur.

[69] The view I have it that contact cannot progress loosely.

[70] Ideally, trusted persons known to Braxton, outside of the formal supervised contact centre should supervise contact so as to provide a natural and relaxed atmosphere.

[71] Given however the collapse of confidence that Mr and Ms Bannerman have in Mr Pierce, and the background of the confused relationship between Mr Pierce and Ms Ware with therefore some doubt as to whether that relationship can be

sustained as over, the time is not yet right for contact to develop outside of a formal supervised contact centre.

[72] My simple caution to the parties is that they should consider the development consensually of contact for Braxton with his father, supervised by persons such as Mr and Ms Russell in the future. They may be able to achieve that consensually or it may be that when Mr Pierce is next able to make an application for contact orders, after the expiration of two years from this judgment, that further development can be considered.

[73] I therefore conclude that contact must be at [contact centre details deleted].

[74] As to the frequency of contact, as I have indicated, Braxton has become accustomed to contact more frequently [than] quarterly.

[75] The contact must be infrequent enough not to be and inappropriate intrusion into Mr Pierce's life, but frequent enough to meet Braxton's needs.

[76] In my view, contact should occur on a two monthly basis.

[77] It is clear that the time has come for the Ministry's engagement to end.

Orders Made

[78] The orders made under the Children, Young Persons, and their Families Act are discharged.

[79] For the avoidance of doubt, the orders discharged are the orders made pursuant to s 101,110, 121 and 91 of the Act.

[80] Orders are made under the Care of Children Act as follows:

- (a) Mr and Ms Bannerman are appointed additional guardians of Braxton;

- (b) A parenting order is made granting Mr and Ms Bannerman day-to-day care of Braxton;
- (c) Contact is reserved to Mr Pierce on a Saturday or Sunday in the last weekend of every second month, the first being in April 2016;
- (d) The above contact is to occur at [contact centre details deleted] and is to be for up to three hours per visit, but not longer than [contact centre details deleted] are prepared to offer supervisor for; and
- (e) Contact is reserved to Ms Ware with Braxton to be at the same time as Mr Pierce's contact with him, but only for the contact visits in June and December of each year.

[81] The above orders are final, without therefore the ability for an application to be made to vary the orders before the expiration of two years.

Order Preventing Removal of Braxton from New Zealand

[82] Mr and Ms Bannerman seek discharge of the order preventing removal of Braxton from New Zealand.

[83] They wish to be able to travel with their children and Braxton as a family.

[84] Braxton's maternal grandparents live in England.

[85] No suggestion is made that there is any concern that Braxton would be removed from New Zealand by the Bannermans.

[86] Concern has been raised in the past by the Bannermans as to Mr Pierce's flight risk, however from their perspective, so long as contact is supervised, the risk is contained.

[87] I have little difficulty concluding that it is appropriate for the order preventing removal Braxton from New Zealand to be discharged and so order.

Name Change

[88] Mr and Ms Bannerman propose that Braxton's name be amended to be Braxton Tim Bannerman.

[89] Section 5(f) of the Care of Children Act prescribes that the Court must pay attention to Braxton's identity needs in making decisions relating to him.

[90] Section 5(f) of the Act reads:

a child's identity (including, without limitation, his or her culture, language, and religious denomination and practice) should be preserved and strengthened.

[91] Identity for Braxton with both his parents is plainly important.

[92] Identity with his placement family is also important but in my view different names from brother and sister figures in a placement family are capable of responsible explanation and understanding.

[93] Ms Ware is Mr Bannerman's sister and relationship remains for Braxton with their parents in England.

[94] Connection for Braxton with maternal family is not broken by the placement with Mr and Ms Bannerman.

[95] There is no suggestion that relationship for Bannerman with his father should be broken for identity purposes and change of Braxton's surname from Ware to Bannerman has no impact on his ability to identify with Mr Pierce.

[96] There is little doubt that for Braxton, aged three, being brought up in the Bannerman household, knowing only Mr and Ms Bannerman in a parenting role and their children as, in effect, his siblings, having a different surname when attending school and when travelling will have an impact on Braxton.

[97] Mr and Ms Bannerman propose to keep Mr Pierce alive in Braxton's name by retaining the name Tim, as a Christian name.

[98] If Braxton's surname had been in effect 'Pierce' I would have had some concern as to the removal of his name. The reality however is that it is Ms Ware's name that it is proposed be removed and there will always remain identity connection for Braxton with his maternal family through both Mr Bannerman and Braxton's maternal grandparents.

[99] In the circumstances I view it as in Braxton's welfare and best interests that his name be changed as proposed and accordingly I resolve the dispute between guardian's by changing his name so that from now on it will be Braxton Tim Bannerman.

S J Maude
Family Court Judge

Signed 24 March 2016 at pm