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.

IN THE FAMILY COURT
AT HAMILTON

FAM-2015-019-000622
[2016] NZFC 1385

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	JASMINE BROOKS Applicant
AND	HUATARE ROPATA Respondent

Hearing:	9 February 2016
Appearances:	G Spry for the Applicant No appearance by or for the Respondent R Gubb as Lawyer for the Child
Judgment:	9 March 2016

RESERVED JUDGMENT OF JUDGE D R BROWN
[Application for Removal of Father as Guardian]

---

[1] An uninterested father readily agrees that he should be removed as a guardian of his four year old son as the boy's mother now requests. But the law forbids the Court to do so unless doing so will "serve the welfare and best interests of the child".

Background and history

[2] The child Turi Brooks was born on [date deleted] 2011.
His mother, the applicant Jasmine Brooks and his father, the respondent Huatare Ropata had been in a relationship living together in Invercargill for two years at the date of his birth. Jasmine Brooks had moved to the Waikato by the date of her application to the Court (10 September 2015). Huatare Ropata appears to be now living in Tauranga.

[3] In the one document he has filed in these proceedings in which he agreed to the removal of his guardianship, Mr Ropata said:

> First in everything in Jasmine application was true (sic).

[4] Ms Brooks had said in her application that she and Mr Ropata had been apart for nearly two and a half years. She and her present partner had a newborn son and were living in a three bedroom house in the Waikato. Her essential case was that even when they had been living together, Mr Ropata had involved himself with Turi only in the most minimal way. He had constantly smoked marijuana (and in fact had been under its influence at the birthing centre) and had occupied himself constantly with computer gaming.

[5] When angry Mr Ropata used offensively abusive words to Ms Brooks, on two occasions punched holes in the wall (one near Ms Brook's head while she was holding Turi) and on another occasion pushed her over, causing a large bruise.

[6] Mr Ropata was resistant to looking after Turi. When Ms Brooks had to spend time away from home in her university studies, Mr Ropata refused to look after Turi and he was cared for by his grandparents.

[7] After separation Mr Ropata had five visits with Turi in about ten months. Two of those involved Mr Ropata looking after the child on his own but both ended very unsatisfactorily from Ms Brook's perspective. When he saw Turi in the presence of Ms Brooks, Mr Ropata interacted only minimally with the child and would become verbally abusive if urged to become more involved.

[8] I am satisfied that Ms Brooks sincerely invited Mr Ropata to maintain contact with Turi after she and he left Invercargill. He has made no contact however despite the fact that he came to the Waikato for a month at one stage visiting friends (and presumably is now, based on the address he has given for these proceedings, living in the Bay of Plenty.

[9] It is clear that Mr Ropata does not disclose Turi's existence to important people in his life.

[10] Served with these proceedings, Mr Ropata responded:

> I ask the Courts to remove my guardianship as I won't change my mind in the future and I don't want guardianship.

The law

[11] Section 29 of the Care of Children Act 2004 provides:

> **29 Court may remove guardians**
>
> (1) On an application for the purpose by an eligible person, the Court may make—
>
> (a) an order depriving a parent of the guardianship of his or her child; or
>
> (b) an order removing from office a testamentary guardian or Court-appointed guardian; or
>
> (c) an order revoking an appointment of an additional guardian made under section 23.
>
> (2) In this section, eligible person, in relation to a child, means any of the following persons:
>
> (a) a parent of the child:

(b) a guardian of the child:

(c) a grandparent or an aunt or an uncle of the child:

(d) a sibling (including a half-sibling) of the child:

(e) a [spouse or partner of a parent] of the child:

(f) any other person granted leave to apply by the Court.

(3) An order under subsection (1)(a) (that is, an order depriving a parent of the guardianship of his or her child) must not be made unless the Court is satisfied—

(a) that the parent is unwilling to perform or exercise the duties, powers, rights, and responsibilities of a guardian, or that the parent is for some grave reason unfit to be a guardian of the child; and

(b) that the order will serve the welfare and best interests of the child.

(4) An order under subsection (1)(b) or (c) must not be made unless the Court is satisfied that the order will serve the welfare and best interests of the child.

(5) On making an order under subsection (1), the Court may also make on its own initiative an order under section 27.

[12] I am satisfied that Mr Ropata is unwilling to perform or exercise the duties, powers, rights and responsibilities of his guardianship of Turi. He has said so and he has demonstrated it. One of the alternative tests in s 29(3) is therefore met.

[13] The issue is whether removing him as a guardian will serve Turi's welfare and best interests.

[14] Plainly Mr Ropata's consent, perhaps more accurately his request, to be removed as guardian cannot of itself satisfy this test.

[15] In *Minkov v Caldwell* [2014] NZFC 3587, Judge NA Walsh terminated the guardianship of a woman who had borne the subject child as a surrogate to provide an infertile couple with a child. The surrogate mother (and her partner) wished "to be relieved of their legal rights and responsibilities with respect to the child."

[16] In *IMB v BMA* [2007] 26 FRNZ 484 Judge Murfitt declined to remove as guardian the father of children whose mother had been the subject of violence and serious threats by him, which had resulted in his imprisonment and over four years of non-contact (a protection order was in force). The father filed an affidavit but then withdrew from active involvement in the proceedings. The Court accepted that "these may well be the actions of a man who is consciously, and to an extent selflessly stepping aside from making unwelcome overtures into the (child's) life" but found that the applicant had established that the father was unwilling to exercise the role of guardian. The Court found that the presenting issue (change of the child's name) could be dealt with adequately without removing the father as a guardian and declined to do so.

Discussion and decision

[17] I assume that Ms Brooks is, or at least has been, exasperated by the Court's cautiousness to remove as guardian a parent who by anybody's standards has failed and is refusing to be a father to Turi.

[18] The reality is however that removal, whether so intended or not, is a societal label of profound disqualification. There are two consequences. The first is that it is "a decision which effectively condemns one of (the child's) parents, from whom he or she has received some genetic blueprint, as unworthy and untrustable…it is now well known that a child's own sense of self worth is shaped, at least in part, by his or her knowledge and understanding of where he or she comes from": *IMB v BMA* (supra). The second is that it legally rules off one formal legal role in the child's life and can provide an excuse or disincentive for later change of heart. These things should be neither under nor overstated.

[19] Neither should the issues which can infuriate the parent who has the sole responsibility for the child. Should such a parent need to struggle, as she did in one of the reported decision with a bank that required signatures of both guardians for the opening of a bank account? Should such a parent be required to worry about the theoretical automatic legal right of the uninvolved parent to the care of the child if

the former dies (although in the present case the situation is even less straightforward than that because Ms Brooks has had her present partner appointed with Mr Ropata's consent an additional guardian.

[20] The fact remains that, regrettably, there are thousands of sole parents in New Zealand who successfully manage their children's lives without input from absent or irresponsible joint guardians.

[21] I am not dismissive of Ms Brook's position and her complaints and I think she has been genuine, honest and reasonable throughout. It is a difficult decision but I cannot say on balance that I think that removal of Turi's father as a guardian has more advantages for him than disadvantages and I decline to do so.

[22] I record however that Mr Ropata's clear statement in these proceedings is such that it is not required of her in her joint guardianship with him that she consult with him on any major issues unless and until he actively signals a change of position.

D R Brown
Family Court Judge