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**IN THE FAMILY COURT
AT WHANGAREI**

**FAM-2014-088-000351
[2016] NZFC 1872**

IN THE MATTER OF THE CARE OF CHILDREN ACT 2004

BETWEEN ISIAH KELSEY
 Applicant

AND JENESSA ATTWOOD
 Respondent

Hearing: 9 and 10 December 2015
 and 24 February 2016

Appearances: S Woods for the Applicant
 L O'Boyle for the Respondent
 T Manuel-Belz as Lawyer for Children

Judgment: 14 April 2016

RESERVED JUDGMENT OF JUDGE S M R LINDSAY

[1] The parties are the parents of Rachel, born [date deleted] 2007 and Izzy, born [date deleted] 2009.

[2] In July 2014 the children's father, Isiah Kelsey applied without notice and obtained an interim parenting order. The interim parenting order reflected a reversal of the children's care arrangement. Since the interim parenting order, the children

have been primarily cared for by their father but Jenessa Attwood, the children's mother's contact has increased over time.

[3] Ms Attwood seeks the shared care of Rachel and Izzy on an equal basis. Mr Kelsey supports an increase in Ms Attwood's care of the children but is opposed to an equal shared care arrangement.

[4] The Court is asked to determine Rachel and Izzy's final care arrangements – should the children remain in the day-to-day care of Mr Kelsey and if so, how should they spend time with Ms Attwood? Or, should the parents share equally in the care of the children.

Background

[5] The parties met in Australia and shortly after meeting came to New Zealand. The relationship was already strained but while in New Zealand they learnt Ms Attwood was pregnant and together they returned to Australia. Their daughter Rachel was born in Australia but at seven months of age the family returned to live in New Zealand. The family settled in Northland and [occupation details deleted]. The parties' son Izzy was born on [date deleted] 2009.

[6] In December 2012 there was an argument between the parties that proved the catalyst for separation. Previously I had made findings that during the argument Ms Attwood was physically violent towards Mr Kelsey. The parties briefly reconciled but both accept final separation occurred 13 January 2013.

[7] The parties' relationship and the separation that followed was at times volatile and conflicted. During the hearing in late 2015 and early 2016 there remained a high level of acrimony.

[8] On 17 July 2014, Mr Kelsey applied without notice for an interim parenting order.

[9] An interim order issued in favour of Mr Kelsey. The concerns levelled against Ms Attwood being:

- (a) Ms Attwood's physically and psychologically abusive behaviour within the relationship.
- (b) Concerns over her excessive alcohol consumption.
- (c) Ms Attwood's relationship with her new partner; known to be involved in methamphetamine and also domestic violence within their relationship.
- (d) The impact of the domestic violence on the children who reported being scared of Ms Attwood's partner.
- (e) Past acts of self-harm, but also Ms Attwood's emotional stability and well being on separation from her partner.
- (f) Although Ms Attwood was initially prepared to apply, she resiled from applying for a protection order which Mr Kelsey viewed as necessary to protect the children.

[10] Ms Attwood denied the concerns raised by Mr Kelsey. Ms Attwood's evidence being during the relationship she had been the children's primary caregiver whereas Mr Kelsey focussed on his work around the farm. She also maintained post-separation she was the children's primary caregiver and Mr Kelsey's contact had been irregular and minimal.

[11] Upon the issue of the interim parenting order the children transferred to Mr Kelsey's day-to-day care with fairly limited and supervised contact with Ms Attwood.

[12] At a short cause fixture in November 2014 I directed the children remain in Mr Kelsey's care. However Ms Attwood, upon completing anger management counselling was permitted to have contact extended and unsupervised over weekend days. By December 2014, overnight weekend contact commenced. Contact between Ms Attwood has been extended and has occurred on the basis of every second Friday

from after school until Monday morning. Also the children see Ms Attwood on the alternate week from after school on a Wednesday for a mealtime visit.

[13] There is no escaping the fact the proceedings have been intensely difficult for both parents and have been underscored by ill feeling and a high level of conflict.

[14] The emotional fallout of the parties' relationship was such that Mr Kelsey undertook counselling over a period of two years. In November 2014 the Court imposed a condition that Ms Attwood attend counselling with a view to this occurring before her contact be extended. In addition, Ms Attwood has sought and continues with counselling.

[15] Contact arrangements have not always gone smoothly. Ms Attwood acknowledges the feelings of grief she suffered with the children being placed in Mr Kelsey's care. There is a sense of an unrelenting intensity over the Family Court litigation but, in particular, Ms Attwood's heightened concerns over the children's safety and her tendency to look for, and attribute fault over any disputed parenting issue to Mr Kelsey or his wife.

[16] The Court directed the children transition between parents to and from school so as to reduce contact between the parties. In turn this reduced the level of tension or conflict that played out before the children. An important aspect of this transition in care being best encapsulated in the evidence of Ms Clough¹.

“There's less conflict for the children and also school gives them a time of normality before they have to face the other parent. So hopefully there's less of that gathering of stories, less holding onto them, because they haven't got to talk about their experience as soon as they get out of the car, yes.”

[17] The dinner time meal on the Wednesday night, however, required parents or their partners to be involved and the children manoeuvring between families and this has not gone well. Despite the transition in the children's care being based, for the most part around the children's school, this only went a short way to alleviate the intensity over what have been highly strained care arrangements.

¹ Lines 16 to 20 on page 12, Notes of Evidence 24 February 2016

[18] Telephone contact has been contentious. Up until around April 2015 Ms Attwood called the children at least daily. The s 133 psychological assessment was released in April 2014 and the report writer, Ms Clough, recommended a weekly telephone call as preferable as the persistent telephone calls were intrusive. Mr Kelsey restricted the telephone calls to weekly however Ms Attwood continued to make the daily telephone calls, which other than the weekly telephone call, went unanswered. This pattern of repeated calls on a daily basis continued up until a few weeks prior to hearing in December 2015.

The law

[19] Section 4 of the Care of Children Act 2004 provides the courts enquiry must focus on Rachel and Izzy's welfare and best interests. I must also consider the children's welfare set against the principles contained at s 5 of the Act.

[20] Decisions must be made for the children and implemented within a timeframe appropriate or consistent with a child's sense of time². It is regrettable that the hearing was part heard and only concluding in late February 2016.

[21] There is no presumption that a child's welfare and best interests require or lends weight to a decision, either way, to one particular person due to gender³.

[22] In the leading decision of *Kacem v Bashir*⁴ the Supreme Court reinforced that I must hold the welfare and best interests of the children as the first and paramount consideration. My enquiry should properly focus on the particular circumstances of each individual case. It stands to reason that each child and their family or whanau being its own unique sphere or set of circumstances. This has been described the Supreme Court as "case specific" and requires an identification of the principles found at s 5 that are relevant to my predictive assessment of the terms of a final parenting order.

² S 4(2)(a)(i) Care of Children Act 2004

³ S 4(3) Care of Children Act 2004

⁴ [2010] NZSC 112

[23] Section 6 provides that I must also consider the children's views. The children have expressed their views through the lawyer for the children but the Court also hears the children's views through the social worker and the s 133 report writer. Rachel's view expressed clear support for a change from the existing care arrangement and a fair observation is her views preoccupied or provided a stronger point of focus, than the views of Izzy.

[24] The children have seen a large number of professionals. The children's appointments have proven a source of tension for the parties. The children's views were canvassed with them by lawyer for the children prior to hearing. The children did not want to further discuss their views⁵.

[25] Izzy reported he has no complaints or worries about life at his mother or father's home⁶.

[26] Rachel reported she did not want to make the decision and it was for the adults to decide⁷. Rachel, as did her brother, reported there were good things (to do or time spent associated) with the homes of both parents⁸.

The parties' evidence

Abuse

[27] Within weeks of the short cause hearing in November 2014, Ms Attwood contacted lawyer for the children concerned they were subjected to physical abuse in Mr Kelsey's home. Ms Attwood did not immediately notify her concerns to Child, Youth and Family ("CYF"). There is no suggestion that Ms Attwood was advised anything other than to raise her concerns with the authorities. By January 2015, Ms Attwood reported her concerns to CYF and followed up with further emails detailing allegations of physical abuse within Mr Kelsey's household. The allegations of physical abuse were directed at Mr Kelsey and his wife Amy Kelsey.

⁵ Paragraph 17, lawyer for child report dated 7 December 2015

⁶ Paragraph 11, lawyer for child report dated 7 December 2015

⁷ Paragraph 14, lawyer for child report dated 7 December 2015

⁸ Paragraph 15 lawyer for child report dated 7 December 2015

[28] Mr Kelsey has consistently refuted all allegations of abuse both levelled at himself and his wife. Mrs Kelsey has also denied the allegations. The Kelsey's made themselves available for interview by professionals as were Mrs Kelsey's children.

[29] The January 2015 report of concern ("ROC") was investigated by staff from the [location deleted] site. The investigating social worker did not find the allegations or concerns levelled by Ms Attwood to be substantiated.

[30] During this same period Ms Clough was in the process of her investigation and compiling her report to the Court. The children did not make statements of concern to Ms Clough. Rather she observed the children were well settled in Mr Kelsey's care. She did however hold some concerns over the children's psychological wellbeing and in particular the impact of adult conflict on the children⁹.

[31] A further ROC was investigated in May 2015. Ms Pocklington, a senior social work practitioner, investigated including speaking with the parents, interviewing the children and also Mrs Kelsey's children. Ms Pocklington also spoke with Ms Clough about her observations collated over the period she compiled the s 133 report.

[32] On the first day of hearing the children's medical notes were admitted by consent as evidence. The medical notes confirm Ms Attwood took the children to see their general practitioner and overall a pattern of attendances can be discerned as a range of relatively low level health concerns but with a common theme of Ms Attwood raising concerns about Mr Kelsey's care of the children.

[33] On 25 May 2015, Ms Attwood took the children to see their doctor and at the appointment explained her concern Mr Kelsey continued to physically discipline the children. The children were present throughout the medical appointment.

[34] Ms Attwood explained in her evidence she had prepared the children to see their doctor and talk about physical discipline. Ms Attwood went about the

⁹ Paragraph 116 Report Ms Clough dated 11 March 2015

appointment process because her perception was a non-engagement by CYF and other professionals to accept the substance of her concerns of physical abuse within Mr Kelsey's home meant that she and the children, as a united front, were not being heard or taken seriously¹⁰. Ms Attwood talked with children about her anxiety over not being listened to, and prepared them for the appointment with their doctor so the children could tell him about the abuse¹¹.

[35] Ms Attwood's notifying abuse within Mr Kelsey's care or household to professionals or authorities was a sustained process as evidenced by her complaint to lawyer for child in November 2014, CYF in early 2015, emails and telephone calls to Ms Clough in early 2015¹², communications in person, telephone and email with CYF investigating her notification, the general practitioner in May 2015 and also New Zealand Police. In truth, Ms Attwood's concerns about physical abuse in Mr Kelsey's home did not abate and her evidence at hearing resonates with at least residual concern up until the date of hearing¹³. This perhaps only lessened during the course of evidence in December 2015.

Parental conflict

[36] There has been ongoing parental conflict. Given the nature and repeated complaints levelled by Ms Attwood it seems likely Mr and Mrs Kelsey may have felt somewhat defensive. The evidence reflects a mother who was resolute with continuing to level complaints but also demonstrated a lack of courtesy to the other parent; even when the children were present.

[37] The parties' evidence highlighted that if an opportunity presented, such as time at Court or around their local town there would inevitably be conflict. On occasions when the parties arrived at school events there was at least tension and at times open conflict. Ms Attwood's interaction towards Mr and Mrs Kelsey at [event details deleted] was derogatory, hostile and played out in front of the children. Her repeated statement to Mrs Kelsey that she was not speaking to her was gratuitous

¹⁰ Lines 12-13 on page 124 Notes of Evidence 9 December 2015

¹¹ Lines 10 to 34 on page 191

¹² Line 21 on page 3 Notes of Evidence 24 February 2016

¹³ Line 24, page 127, line 14 page 128 and lines 19 to 32 on page 177, Notes of Evidence 9 December 2015

and caused Rachel distress. The evidence of both Mr Kelsey and Ms Attwood bears out that observation. Moreover, Ms Attwood's interaction towards Mr Kelsey on the [event details deleted] was also hostile and acrimonious.

[38] There are other incidental aspects of the evidence such as Ms Attwood's manner of mimicking Mr Kelsey or pulling a face or bearing a countenance of open hostility towards Mr Kelsey bears more than a ring of truth about it.

[39] Ms Attwood denies this manner of conduct but the evidence of Mr Kelsey is clear, consistent but also borne out by the wider evidence of Mrs Kelsey who has experienced similar displays of hostility best described in her experiences of Ms Attwood at the [event details deleted] but also the hostile or inflammatory behaviour towards herself and Mrs Kelsey's children at [event details deleted]. Ms Attwood's own evidence at times reflected a disregard for Mr and Mrs Kelsey and more civil conduct should be observed between separated parents.

[40] Previously I have made findings Mr Kelsey was the victim of domestic violence and may have suffered post traumatic stress because of this. The evidence of Mr Kelsey as to his reaction to Ms Attwood and how he conducts himself¹⁴ when Ms Attwood makes derogatory comments demonstrates this. Also significant is the opinion of Ms Clough¹⁵, who considered Mr Kelsey had been traumatised by the relationship. Importantly, she considered post separation Mr Kelsey has undertaken the personal therapy that he needed¹⁶.

[41] Ms Attwood has undertaken counselling but the therapeutic benefits, if any are far from clear. My assessment of Ms Attwood's evidence is she has little insight into her abuse of Mr Kelsey. This concern is borne out by her ongoing hostile behaviour towards Mr Kelsey over the course of the proceedings. Additionally the evidence of Ms Clough included a recommendation Ms Attwood see a skilled clinician able to assist with solution-focused therapy¹⁷. A concern exists whether Ms Attwood has confronted personal issues and moved beyond the issue in a more

¹⁴ Lines 30 on pages 82 and 83, Notes of Evidence 9 December 2015

¹⁵ Notes of Evidence, Line 11-26 on page 36

¹⁶ Line 25 on page 36 Notes of Evidence 24 February 2016

¹⁷ Lines 9 to 17 on page 8 Notes of Evidence 24 February 2016

constructive way. Mr Attwood's evidence being he was unaware of his wife's past threat to kill Mr Kelsey nor did he have knowledge of her history of self harm. I believe this gives rise to a reasonable conclusion Ms Attwood has a high level of denial about her actions and or the impact on others.

[42] There is basic sound sense to Ms Clough's evidence that before Ms Attwood can move on from an experience she needs to deal with it and if necessary make change¹⁸.

The communication concerns

[43] The conflict and mistrust between the parties has driven strained communication. On one level this has placed a strain on the parent's relationship however sadly I conclude there has been an adverse impact on the children. Significant examples of the poor or nonexistent communication include:

- (a) The Court directed a notebook pass between parents containing information about the children¹⁹. Ms Attwood's affidavit evidence reflects she saw the introduction of the notebook by Mr Kelsey as unilaterally imposed and controlling²⁰. More correctly it was a direction of the Court. Regardless of the Court's direction and the subsequent support from Ms Clough that a notebook may be a useful means of communication between the parents over the children Ms Attwood maintained criticism it had been unilaterally imposed by Mr Kelsey. In reality the notebook was to be short lived and regrettably the parents relied on the children to pass the notebook between parents.
- (b) At one contact changeover Mr Kelsey described Ms Attwood flicking the book at him and although she remonstrates this was not an intentional or hostile act, I prefer Mr Kelsey's evidence as more reliable. Ms Attwood was resistant to the notebook and regarded

¹⁸ Lines 25 to 33 on page 9 Notes of Evidence 24 February 2016

¹⁹ Lines 31 to 35 on page 9 Notes of Evidence 24 February 2016

²⁰ Affidavit of Ms Attwood dated 15 July 2015 at paragraphs 5, 6 and 7

Mr Kelsey as somehow responsible for it. Moreover Mr Kelsey's account is consistent with Ms Attwood's tendency to display menacing behaviour when she cites Mr Kelsey.

- (c) Ms Attwood's continued derogatory language towards Mr Kelsey which was described outside a Court hearing and on another occasion when she came across him in town. On both occasions Mr Kelsey was alone and I accept his evidence that the manner in which Ms Attwood spoke to him and the words used were derogatory and abusive.
- (d) [Event details deleted] – Ms Attwood's insistence that the children collect their bags circumventing them from showing Mr and Mrs Kelsey the displays in their classroom. Also Ms Attwood was hostile and had aggressive dialogue towards Mrs Kelsey when they tried to resolve what was to happen next. This scene played out in front of the children and in particular Rachel was clearly affected by Ms Attwood's behaviour.
- (e) [Event details deleted] – Ms Attwood took control of one of the children at the end of the day and when Mr Kelsey intervened she was dismissive and hostile. Regretfully there was a likelihood the children overheard and/or observed Ms Attwood.
- (f) Ms Attwood's communication with the children – Ms Attwood's focus with the children (over a sustained period of many months) on the allegation of physical abuse was drawn out and involved repetitive questioning about physical abuse.
- (g) Ms Attwood may have put in the children's mind a link between her giving up smoking contingent on their return to her day to day care²¹.

[44] The evidential picture also depicts a mother who has grieved the loss of her children from her primary care and the tension between how she views herself (and

²¹ S 133 report at paragraph 31, Notes of Evidence, pages 132 and 133

as a parent) set against Mr Kelsey. There is a complex dynamic at play with Ms Attwood almost scrambling to assert her parenting role and casting blame on an intense negativity towards Mr Kelsey for the changes in the children's care. Yet, there must be an acceptance by Mr Kelsey of the depth of Ms Attwood's love for and commitment to the children.

Concerns about parenting ability

[45] Where the parties are most at odds is their respective views on the others ability to parent the children.

[46] The areas of greatest concern about Ms Attwood's care of the children is her inability to keep from the children her intense focus on what she perceives to be negative aspects of Mr Kelsey's care. Over the course of Ms Attwood's evidence at hearing she was able to articulate strengths in Mr Kelsey's parenting of the children. However these concessions were drawn out over a period of cross examination in the courtroom. Those concessions did not reflect Ms Attwood's behaviour and her actions over the year which did not reflect any ringing endorsement of Mr Kelsey's parenting, nor any trust in him to safely parent the children.

[47] The conclusions drawn by a witness at hearing could be regarded as a positive indicator as to the future however the stronger evidence must be the actions over a period of time and this being the evidence available to the Court at the date of hearing.

[48] The suggestion through the evidence, and in particular the cross examination of Counsel, of the lack of any problems over parenting between the parties from the date of hearing in December 2015 until hearing in February 2016 served as a positive indicator. Although positive, this period of calm between hearing dates might be expected and as such not strong evidence per se of change. Also Ms Clough's evidence is highly relevant that there remains a need for Ms Attwood to undergo specialist solution focused therapy. I also come back to Mr Attwood's evidence and the shortfall between his understanding of the issues as opposed to the full range of concerns held about Mrs Attwood.

[49] From November 2014 until the final day of hearing in 2015, Ms Attwood had viewed Mr Kelsey's parenting of the children as unsafe (through a disproportionately negative lens) and lacked objectivity when evaluating his ability to provide safe and appropriate care within his household. Additionally Ms Attwood was unable to communicate in an appropriate manner with Mr Kelsey or resist using antagonistic or derogatory language. Ms Attwood lacked an ability to keep distinct from the children a mixture of her grief and anxiety over the change in their care to Mr Kelsey. Ms Attwood drew the children in to ongoing allegations of physical abuse and this is best demonstrated by her preparation of the children for the medical appointment on 25 May 2015 together with her encouragement of the children during a medical appointment to report allegations of abuse.

[50] There are two concerns, the first being the effect on the children and the pressure to act in a manner, best described by Ms Clough as "hunters and gatherers" of information but it also gives rise to a real risk for the children that they may later be viewed as unreliable complainants should any notification of substance need to be made. As put by Ms Clough²²:

"It doesn't surprise me Ma'am. These are children who are in the middle of a very conflicted situation and they've had a lot of training, so to speak. Not directly but children in these situations learn very quickly to, what I call, hunter-gather. Gather up any little slight and take it to appease the other parent. So it's not always the parents' fault but this is what children learn very quickly."

[51] The parental mistrust is a vicious circle. From at least November 2014 Ms Attwood was critical of Mr Kelsey's ability to provide safe care. Despite professional intervention by social workers and Ms Clough, Ms Attwood did not desist with making complaints. Even during this period there is evidence of repeated emails, telephone calls, a high level of anxiety and personal attendances between Ms Attwood and other professionals. Once the notification proved unsuccessful and the report of Ms Clough did not affirm Ms Attwood's concerns, Ms Attwood then took a different tact. Ms Attwood continued to raise concerns about physical abuse and in essence neglectful parenting by Mr Kelsey by moving out of the CYFs or Family

²² Lines 27 to line 32 on page 3 Notes of Evidence 24 February 2016

Court context and then reporting to the GP with the children at medical appointments and ultimately New Zealand Police.

[52] Ms Attwood engaged the children in her concerns. Despite Izzy's explanation of bites or bruises, Ms Attwood photographed the same. Ms Attwood discussed with the children the alleged abuse by Mr Kelsey and Mrs Kelsey prior to a medical appointment and then discussed it further with the GP with the children present. It is a fair assumption that the children were aware of Ms Attwood's anxiety over their physical health and safety.

[53] The notes from the children's medical appointments show a pattern of fairly regular attendance by Ms Attwood with the children to see the GP. Over the period August 2014 until 17 July 2015 there are seven visits but between the period March 2015 and July 2015 (the same period Ms Attwood's concerns were maintained with CYF and Ms Clough) there are six visits on more or less a monthly basis. Some of those concerns are relatively low level such as flea bites but they show a pattern of complaints about Mr Kelsey's neglectful care.

[54] On 23 May 2015, Rachel is presented to the surgery and is described as having a rash which is said to occur more easily with Mr Kelsey and the reference to the child consuming sugar. Ms Attwood is recorded as asking the surgery to write to Mr Kelsey and advise the child not eat and drink sugar as often. The nurse consult records confirm Ms Attwood suspects Rachel may have an itchy bottom and smelly vagina. Also noted by the surgery were ongoing issues in the Family Court.

[55] This attendance followed at a date subsequent to the children's attendance on the GP when Ms Attwood had prepared the children to talk to the doctor about being smacked by Mr Kelsey and his wife. This could be interpreted as an escalation of medical concerns being reported by Ms Attwood to the doctor but some reassurance may be drawn from a levelling off from August 2015 of these fairly regular medical appointments.

[56] In essence, both parties are good parents however there is a clear sense from Ms Attwood's evidence that she has an intense negative focus on Mr Kelsey's

parenting (and to a degree on Mrs Kelsey). Mr Kelsey lacks an ability to spontaneously speak in a positive way about Ms Attwood but he does not project negativity about Ms Attwood and he demonstrates an awareness of Ms Attwood's importance to the children which is reflected in small but important ways, the children are encouraged to display photos of Ms Attwood but also importantly agreeing to more expansive contact over the 2015 summer holiday period.

The Care of Children Act

[57] The provisions of s 5 most relevant to my analysis include:

- (a) Section 5(a) the need to protect the children from all forms of violence
- (b) Consideration of s 5(c) and ongoing parental consultation and cooperation and whether this is effective and realistic for the parties,
- (c) s 5(d) the continuity in the children's care, development and upbringing but also
- (d) s 5(e) – the children's relationship with their parents and family group.

[58] There has not been a strong focus by the parties in respect of s 5(b) as they both accept the need for them, as the children's parents, to be primarily responsible for the children's care, development and upbringing. Also there has been no focus by the parties on the provisions of s 5(f) and the requirement to preserve and strengthen the children's identity, culture and language.

[59] I believe there is an acceptance on the part of both parents that they expect to continue in the role of being primarily responsible for their children's care, development and upbringing and inherent is the parents shall preserve and strengthen the children's identity, culture and language.

Section 5(a) - the need to protect the children from all forms of violence

[60] The allegations of domestic violence have been previously dealt with in the course of these proceedings and I have previously made findings the children will be safe in Ms Attwood's unsupervised care. In essence there has been a transition in the children's care arrangements extending contact from supervised to more relaxed weekend contact and significant was the extension of contact over the Christmas 2015 and New Year 2016 school holidays. I have also made findings that I accept the children are safe in Mr Kelsey's care, and further the children are safe in the care of their stepmother.

Section 5(c) – ongoing parental consultation and cooperation

[61] This is an area the parties need to work on and as to date consultation has been undermined by a lack of effective communication. Mr Kelsey's evidence is that he has resisted enrolling the children in extracurricular activities because Ms Attwood had taken steps to enrol both children in afterschool activities without consultation and has drawn the children into activities not supported in both households. Moreover Ms Clough's evidence draws attention to Ms Attwood's tendency to offer a variety of high intensity activities. The children have not always had an opportunity to rest or guide their own participation and play activities. This is borne out by Ms Attwood's evidence that although Izzy was attending [activity deleted], he was not enrolled in the team but still went along regularly to observe and joining in with the other team members before the match and at half time. Likewise, Ms Attwood delivers Izzy to observe [activity deleted] as this aligned with his friend Cody's interest in [activity deleted]. Also Izzy was attending [activity deleted] but not participating. Rachel was enrolled in the junior [activity deleted] programme. Likewise Rachel's attendance at [activity deleted] was without consideration to both children being available to attend church or how it would impact for the children when they could not attend every Sunday due to spending time with Mr Kelsey and attending church.

[62] It was unclear why Ms Attwood enrolled the children in so many activities and without any consultation with Mr Kelsey. The number of activities creates a

strain on finances but also the children's time and energy in attending, some activities which they were not actually team members or enrolled.

[63] Another area of concern over parental consultation and cooperation is in the school environment. Areas of conflict quickly escalated between the parties in and around school activities.

[64] Mr Kelsey gave evidence of the children appearing conflicted about Ms Attwood's attendance at [event details deleted] and this escalating to the children describing or having physical symptoms which were attributed to stress reactions.

[65] A clear example of Ms Attwood's lack of cooperation was [details deleted] despite the children still being in Mr Kelsey's care.

Section 5(d) – continuity in the children's care, development and upbringing

[66] The children have now been in Mr Kelsey's care since July 2014. There has been appropriate extensions to care either negotiated or at the Court's direction. At the conclusion of the hearing in December 2015 by agreement the parties sought the Court's approval for a shared care arrangement over the Christmas summer holiday period. I believe a clear inference for the parties was that this extension of contact also reflected continuity in the children's care development and upbringing. School holiday time is quite different for children than the time they spend during school term. There is a change in routines and often a relaxation of the normal structured household environment required during the school week. This general proposition was borne out in the evidence of Ms Clough²³.

[67] Although Ms Attwood has been critical of the care provided by Mr Kelsey the evidence supports he has been able to provide quality care of the children. I say this referring to his evidence as to focusing on and providing for the children's practical needs but also their emotional needs. Other corroborating evidence is provided by Mrs Kelsey. Mr Kelsey's evidence was careful and measured as he explained decisions he had made over the period the children had been in his

²³ Notes of Evidence, Line 5 to 11 on page 46

primary care. There was a clarity to his evidence that his focus was appropriately on the children's needs.

[68] Mr Kelsey's evidence conveyed a strong sense of a person who had gained insight through the counselling process and was careful and constructive in trying to achieve a balance for the children and also safe care.

Section 5(e) – the children's relationship with their parents and family group

[69] There is evidence that the Kelsey's extended family have been supportive of the children throughout their lives. The maternal family live at a distance and spent time with the children in February 2016. I am unaware of any criticism by either parent about the wider family and overall the evidential picture is parents who accept and acknowledge the children as spending time in the care of not only their parents but also grandparents.

[70] For the children their family is of course their step parents but has also very much come to include family members of Mrs Kelsey.

Section 6 – the children's views

[71] The children express a desire and as I have already referred, particularly Rachel, expresses a desire to spend more time in the care of Ms Attwood. Ms Clough accepted Rachel may be happier if she were able to spend more time in Ms Attwood's care. Notwithstanding the children's views the psychologist's evidence is that at this time she could not support a change in care that equated to an increase in Ms Attwood's care to a shared care arrangement.

[72] Ms Attwood places a reliance on the children, particularly Rachel's views. In some respects Izzy's views echo those of his older sister. For Mr Kelsey he reminds the Court that Izzy and Rachel are still young. Mr Kelsey also raises the children's views being "linked in" with that of their mother. One example being if the children lived with Ms Attwood then she would give up smoking. Moreover Mr Kelsey urges caution as the children's views are within the context of the children "hunters and

gatherers” and caught up in Ms Attwood’s heightened emotion or anxiety over their care. The latter point signals a higher level of caution for the Court.

[73] Ms Clough recorded that Rachel wanted more time with Ms Attwood and further that Rachel felt happier in Ms Attwood’s home²⁴, however the psychologist remained concerned about the level of discussion the children had been subjected to in Ms Attwood’s home and the psychological impact on the children should that continue. Ms Clough’s evidence was that continued or extended contact between children and Ms Attwood needed to be carefully managed²⁵.

[74] The opinion of Ms Clough was that the children need good contact with both parents²⁶. When questioned further about an extension of care including Ms Attwood’s proposal for week about, the psychologist maintained her position that she had reservations.

[75] Also significant is Ms Clough’s opinion that it is not in the children’s best interest to be re-interviewed²⁷.

“I don’t believe it would be in these children’s best interests to be re-interviewed Ma’am. They [referring to the children] had been interviewed many times, and I am aware that Rachel is probably going to be and should be cognitively assessed. That is another professional in her life.”

[76] Rachel and Izzy have been interviewed by lawyer for child, social workers, Ms Clough, their doctor and almost certainly Ms Attwood.

The psychological evidence

[77] Ms Clough identified difficulties for Ms Attwood in her parenting role. The two main issues are encapsulated at the notes of evidence²⁸. Further in the evidence Ms Clough also explained another difficulty for Ms Attwood²⁹

²⁴ Lines 18 to 20 Page 32 Notes of Evidence 24 February 2016

²⁵ Notes of Evidence, Line 28-33, page 38 dated 24 February 2016

²⁶ Notes of Evidence, Line 7, page 30 dated 24 February 2016

²⁷ Notes of Evidence, Line 24 on page 34 dated 24 February 2016

²⁸ Notes of Evidence, Line 5 to 12 at page 16 dated 24 February 2016

²⁹ Notes of Evidence, Line 31 on page 44 dated 24 February 2016

“I think that is part of what is one of the difficulties for Ms Attwood is, she tends to see even quite little things as a personal attack, sees herself as a victim. Which is why I keep reiterating the sense of she needs some skilled therapy, some skilled intervention. So that little things like these become all encompassing and she is not able to actually step back and look at it how it is.”

[78] Ms Clough in her evidence acknowledged Ms Attwood did not have to prove she was a good parent as that was apparent. However an issue remained for Ms Clough:

“Which is the core thing for Ms Attwood, is for her to be able to understand and accept the children are safe with their father”.

[79] Ms Clough also described the children as being caught up in the middle of a highly conflicted care arrangement.³⁰

“These are children who are in the middle of a very conflicted situation and they have had a lot of training, so to speak. Not directly but children in these situations learn very quickly to, what I call, hunter gather. Gather up any little slight and take it to appease the other parent. So it’s not always the parents fault but this is what children learn very quickly. And also what concerns me about this statement here is that from this I took the mother was talking to the GP in front of the children. So what it is doing there is reinforcing to the children that this is in fact happening to them. Now that is a major concern because if it isn’t, and from what they have reported to me it isn’t, then that creates a considerable conflict for these children and develops some fear around – maybe they have got it wrong, you know, they have to please Mum, maybe it is bad at Dad’s house and they don’t know, those sorts of things.”

[80] Ms Clough’s evidence by way of explanation as to her confidence the children were safe in Mr Kelsey’s care is because once they had lost their “coach” the children were not described as good at parroting stories they had heard in the presence of the person who may have instigated the commentary³¹. The children on questioning by different professionals could not maintain the narrative of abuse. In comparison Ms Clough explained children who have been hit are able to talk about it regardless of who is present. So the fact the children had been unable to describe abuse to an experienced social worker Ms Pocklington and also an experienced child interviewer in Ms Clough is relevant and significant. The issue though of allegations of physical abuse did not come to an end with Ms Clough’s report and so

³⁰ Notes of Evidence, Line 27 on page 3

³¹ Line 6 to 16, Page 4, Notes of Evidence 24 February 2016

Ms Attwood's continued persistence on seeking out allegations of abuse continued for the children. As Ms Clough explained³²:

“So they – when they are in the home where there are allegations of stuff happening, they look very hard until they find something they can report back. When they find it, it's like, yay. They put it in their kit, their anxiety lessens, they have got something to take home and share. Does that make sense? Yes, so and then they take it home and they share it and it has the dreadful impact on the parent of elevating their concerns but appeases things for the children. They don't do this deliberately, it's a subconscious behavioural response that I have observed over time in lots of children in these situations.”

[81] Ms Clough explains she suspects that this is a dynamic happening for Rachel and Izzy and Ms Attwood.

[82] The psychologist was clear that it was not appropriate for Ms Attwood to take the children to the doctor and involve the children in a further allegation of abuse. This was seen as having a negative impact on the children³³. A key difference to this interview being Ms Attwood's preparation of the children and she remained present during their account.

[83] There is no doubting Ms Attwood's love for the children and she has shown resilience, commitment and quality care for the children. The point over which Ms Attwood “stalls” on is her sense of frustration that she does not provide primary day to day care and also her negative focus on Mr Kelsey's parenting. In reality Mr Kelsey, supported by his wife, have provided quality care meeting both the children's physical and emotional needs.

[84] I share Ms Clough's concern that Ms Attwood is at times overwhelmed by her anxieties or emotional issues. Ms Clough was clear to impress she did not mean this in any derogatory or judgmental way. I readily accept the same. The concern for the specialist witness being Ms Attwood may not have the personal skills to deal with her heightened emotional state³⁴. The result being Ms Attwood's anxieties over the children have played out not only before the children but she has taken the

³² Notes of Evidence, Line 22, page 6

³³ Notes of Evidence, Line 22, page 6

³⁴ Notes of Evidence, Line 24 to 27, page 7 dated 24 February 2016

children along as willing but unsuspecting protagonists in an attempt to undermine Mr Kelsey's care and in turn, the children's relationship with Mr Kelsey.

[85] Ms Clough's evidence was unequivocal that she is concerned Ms Attwood needed in-depth work on grief issues and in particular "counselling with a solution focused therapy". The purpose of such therapy designed to help Ms Attwood move on³⁵.

[86] Despite careful questioning by Counsel for Ms Attwood and also Counsel for the children about whether there was a level of support for increased care in favour of Ms Attwood to the point of an equal shared care arrangement the psychologist's view remained she would be unable to endorse an extension of care to that extent³⁶.

[87] Ms Clough supported the existing care arrangement but recommended an extension to the intervening midweek contact to include an overnight stay of one or two nights. A condition being Ms Attwood obtained solution focussed therapy³⁷ with a suitably qualified clinician. On the basis I accept Ms Attwood wants the best for her children she shall self refer to one of the clinicians as recommended by Ms Clough without imposing this as a condition. I accept for the children and parties there is a need for finality.

Findings

[88] There can be no doubting the parties are committed and loving parents. They both only want what is best for their children and ideally their children should enjoy and benefit from the parties different parenting styles.

[89] If the children were in any way supported to continue the "hunter gather" style of information gathering and sharing this must create self doubt, confusion and interrupts their ability to relax and enjoy the comfort and security of their parent's care.

³⁵ Notes of Evidence, Line 9 to 18 on page 8 dated 24 February 2016

³⁶ Notes of Evidence, Lines 17 to 26 and lines 1 to 2 on page 47 dated 24 February 2016

³⁷ Page 54, Notes of Evidence at lines 4 and 5 dated 24 February 2016

[90] At the conclusion of Ms Attwood's evidence there was a strong sense of moving forward but I do not have the confidence to rely on insights obtained during the course of evidence at a fixture to provide a secure framework for the future. The insights obtained or acknowledged by Ms Attwood at hearing are a first step but the children require certainty and consistency in their care arrangements. There is an established and stable care arrangement which has now been in place since July 2014 which has successfully met the children's care needs. That care arrangement has been centred around the children in Mr Kelsey's primary care with quality contact occurring with Ms Attwood. The quality of that contact has been enhanced by the extension to Ms Attwood's contact and an extension of contact is supported by the psychologist but only up to a point.

[91] Ms Clough has been clear in her evidence as to what is required for Ms Attwood to deal with issues and move forward with her parenting. Ms Clough's brief is extended to consider specialists in the area with the requisite skill or expertise to offer such counselling and make those names available to Ms Attwood and her Counsel.

[92] Ms Clough encourages the Court to be highly prescriptive of the terms of the children's care (including school related activities) to reduce parental disagreement. I intend to do so to ensure certainty for the children, but also to alleviate any anxiety for the children over their parent's conflict.

[93] On the evidence before me I am satisfied that an extension to Ms Attwood's care does meet the children's needs but I stop short of accepting Ms Attwood's proposal for equal shared care as I am concerned that this would tip the balance for the children and detract from the stability of their existing care arrangements that have more than adequately supported their care, development and upbringing.

[94] I make the following orders:

- (a) I discharge the interim parenting order.

- (b) I make a final parenting order as to day to day care in favour of Mr Kelsey with provision for contact and care by Ms Attwood as follows:
- (i) From Friday after school until Monday morning prior to the commencement of school. The frequency of such contact to occur on a fortnightly basis.
 - (ii) On the intervening week from after school on a Wednesday until Friday morning up until the commencement of the school day.
- (c) Mid-term holidays are to be shared equally but if parties do not agree on how the holidays are shared then Mr Kelsey is to nominate the week of his preference.
- (d) The extended Christmas school holiday period over the month of January is to be shared on a week about basis commencing noon on Boxing Day.
- (e) The parents are to alternate the care of the children on Christmas Day with a visit commencing Christmas Eve until noon Boxing Day. The parent with the care of the children in 2016 shall be the parent who did not have the children in their care at Christmas 2015.
- (f) The children are to spend time with both parents on their birthdays. The children are to spend no less than two hours with the parent who does not have the primary care of the children on the birthday.

Conditions

- (g) Both parents are to make their own separate appointments for parent teacher interviews and to arrange this through the school and to be booked on different days.
- (h) The parents are to alternate school events (with the exception of [event details deleted]) so as not to both attend the same event. The next scheduled school event shall fall to Ms Attwood.
- (i) [Event details deleted] shall fall to Mr Kelsey given the children are able to [details deleted] with Mr Kelsey. That being the case, Mr Kelsey shall be required to assist with [details deleted] up until the school event and on the day provide transportation.
- (j) Ms Attwood shall attend school assembly on the basis of no more than once a month.
- (k) Any school production shall be attended on different days/nights by the parents.
- (l) Mr Kelsey is to advise Ms Attwood in writing as to the school production performance he and his family shall attend so as Ms Attwood can arrange tickets for a different session.
- (m) Final end of year school assemblies shall be alternated between the parents with the parent who does not have the children on Christmas Day 2016 to have the option of attending the final school assembly in December 2016.
- (n) The parties are to liaise with the school and put in place a system for any issue for the children to be advised to both parents.
- (o) Mr Kelsey to lead the appointment process with Rachel with her eye/cognitive testing but all information to be shared and made

available to Ms Attwood. This recognises the reality there needs to be consistency in parental support and guidance through the appointment process so as to ensure there is no break in the clinical advice to the parent with the day to day care. The reality is the parent with the day to day care should ideally lead the process however if Ms Attwood is accepted between the parents to be the person most able to arrange appointments and follow through with parental support than this should be considered by Mr Kelsey and the first option made available to Ms Attwood. This shall be the position unless Mr Kelsey offers the option of leading the appointment process over to Ms Attwood.

S M R Lindsay
Family Court Judge