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**IN THE FAMILY COURT
AT HAMILTON**

**FAM-2010-019-001175
[2016] NZFC 2126**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	JAMES LEAVITT Applicant
AND	LEEANN POU Respondent

Hearing: 10 March 2016

Appearances: Applicant Appears in Person
Respondent Appears in Person
J Naidoo as Lawyer for the Children

Judgment: 10 March 2016

ORAL JUDGMENT OF JUDGE G S COLLIN

Introduction

[1] These are proceedings between James Leavitt and Leeann Pou and relate to their two children Jayden Leavitt born on [date deleted] 2003 now aged 12 and Brooke Leavitt born on [date deleted] 2008 now aged eight.

[2] The current applications before the Court were filed by Ms Pou and comprised initially an application for the issuing of a warrant to enforce contact in relation to Brooke with this application having been filed on 28 April 2015 and secondly, an application for a variation of the Court order in relation to Brooke filed on 25 February 2016. Also before the Court is an application in respect of Jayden.

[3] The background to this is that the Court made a final parenting order on 3 October 2014 following a defended hearing. The order granted to Mr Leavitt day-to-day care of both Jayden and Brooke and reserved contact to Ms Pou on what is essentially every second weekend. On the same day that the order was issued, namely 3 October 2014, a confrontation occurred at the home of Ms Pou which involved Jayden, Ms Pou and Ms Pou's mother Lorelle Pou. I have not heard a great deal of evidence as to how the incident occurred but from reading the affidavits I am aware that there is some conflict in respect of the various accounts. What is apparent however is that Jayden suffered some scratch marks to his neck and disclosed to his father that these existed and that there had been a confrontation.

[4] Mr Leavitt immediately made a without notice application to suspend the parenting order in respect of Jayden that had been made on 3 October 2014. An order was made by the Court as a consequence of which the contact order in relation to Jayden was suspended effective from 17 October 2014. It is apparent that from 3 October 2014 there has been no further weekend contact between Jayden and his mother and that there has been only limited contact between the two of them. This has comprised some contact at the time of Brooke's changeovers together with some electronic contact by means of text, telephone and email.

[5] In relation to Jayden there is a live application before the Court on the basis of the variation order of 17 October 2014 which reads "that the contact order in

respect of Jayden Leavitt born on [date deleted] 2003 is suspended until further order made by the Court.”

[6] Both parties appear today and are self represented. As a consequence of that the hearing has proceeded today by way of a combination of evidence, cross-examination, questions from Ms Naidoo and myself and discussions between the parties. It would be fair to say that the evidence has not necessarily been given at all times in a formal way but this is as a consequence of the way in which the parties have chosen to represent themselves.

[7] The other general comment I make is that the parties commenced living together in October 2002 and separated on 15 June 2009. At the time of their separation Brooke was only about one and a half years old. The proceedings entered the Court arena not a long time after the parties’ separation and have remained consistently before the Court since that time. The files now comprise a box full of documents contained on numerous files and addressing issues of dispute that have occurred over the years. I have tried today to impress upon the parties the damage that they have done to themselves and their children as a consequence of their complete inability to deal with their own affairs or to have regard to the welfare and best interests of their children. This has been commented on by other people who have been involved in this case and in particular Judges who have previously made comments in judgments issued by the Court.

[8] I have no doubt that the parties are doing their children irreparable harm by the way in which they treat each other and the way in which they continue to involve their children in Court proceedings. It is a credit to neither of them that they are back here again having failed to resolve the issues between themselves. Constant involvement in Court proceedings is not good for children and is well known to cause them long-term harm. I have raised with both parents whether or not they are capable of parenting responsibly and whether or not a third party now needs to become involved with additional guardianship orders being made to provide someone else the right to make decisions for their children. Neither support that idea with both continuing to believe that they are capable of parenting properly and

making decisions in the interests of their children. Only time will tell. Sadly the confidence that has been expressed by them is not something that I necessarily share.

[9] It is my assessment that Mr Leavitt fails to accept responsibility for a lot of what has happened. In the course of Mr Leavitt's evidence he has done his best to blame Ms Pou for the way in which matters have progressed. He has refused to accept his share of responsibility for the continual breakdown of the relationships between the two of them and in respect of the care and contact arrangements involving the mother and the children. Mr Leavitt constantly had excuses which appear to have no evidential foundation.

[10] I was left to question whether or not Mr Leavitt's parenting of the children should be further investigated. Mr Leavitt said in evidence that he had an illness but refused to disclose the details of this. Upon my insistence he indicated that he was in remission as a consequence of cancer. No further details have been provided. I am unable to understand why he was unwilling to disclose that he had cancer particularly when it was in remission and in circumstances where there is no suggestion that it would in any way affect his ability to properly engage in day-to-day care and contact arrangements in respect of the children.

[11] My other concern was Mr Leavitt's continual excuses for his inability to co-operate in proposed contact pick-up and drop-offs. His obvious financial difficulties, which he expressed a number of times, clearly interfere with his ability to provide transport. Mr Leavitt does not own a vehicle, and states that he lacks support for the care of Jayden, which means that he cannot participate properly in the picking up and dropping off of Brooke. On a number of occasions Mr Leavitt expressed his inability to afford the cost of petrol both for the purposes of contact arrangements and also expressed that he had financial difficulties or pressures even in relation to taking Brooke to and from her current school. All of these matters raise issues as to his ability to provide proper care and may at some stage require further investigation.

[12] I have a great deal of sympathy for Ms Pou's position. The order made on 3 October 2014 is reasonably clear. Contact is to occur on a fortnightly basis. I accept however that there are some potential confusions within the current order

arising particularly out of the holiday periods. Given that the parties appear to be unable to agree on anything it is unsurprising that any chink in the order has been exploited by one or other of them and that the holiday arrangements have caused problems.

[13] Mr Leavitt relied on what he said were “conditions of the order” for being unwilling to comply strictly with the terms of the order. I requested that he go back to his home to uplift the conditions he said that he had but he did not do so over the luncheon adjournment as he did not think he had the time to travel to his property in [address deleted] and return in time. What did transpire however is that he checked the documents that he had and conceded that there was no such thing as special conditions of the order, but only some correspondence that had initially been received from Ms Pou’s lawyer, Ms Hoebergen, and then from Ms Pou herself on 17 July 2015. Mr Leavitt relied on those discussions and correspondence rather than on the Court order. I have some difficulty with that. In particular the correspondence from Ms Pou of 17 July 2015 was provided well after the issues arose that led to the application for the warrant. I do not have a date for the letter that was sent by Ms Hoebergen as I only have the second page, but in all likelihood this also originated at some stage after the making of the order in October 2014.

[14] Because the parties appear to have an inability to resolve matters between them and orders need to be made which are certain. I have made it quite clear in my discussions with the parties that I intend to make an order that provides as little room for negotiation as possible. Hopefully this will ensure that there can be no mistake or attempt by either party to manipulate or interpret the order in the way that is suitable to their own view. This may mean that the flexibility that would be desirable in orders and which often applies to parties that are able to communicate properly for the sake of their children is missing in the order that I am going to make. The parties are entirely responsible for that. As a consequence Brooke will miss out on shared Christmas and birthdays.

Travel Arrangements

[15] I have discussed at some length the travel arrangements that are currently in place in respect of travel between Hamilton and Tauranga. I intend to change those arrangements. I have made it clear that I consider an arrangement where one party picks up from Hamilton and the other returns to Tauranga is the preferable one. Mr Leavitt objected to that proposal on grounds which changed during the course of the evidence. Particular excuses offered by him included:

- (a) Firstly, that the cost of travel to Tauranga would be greater than the cost of two trips to Matamata and would result in an increase of costs of both petrol, oil and transportation.
- (b) Secondly, that he did not have a car and was reliant on others.
- (c) Thirdly, that he had to have someone babysit Jayden as a consequence.
- (d) Fourthly, and at the end of our discussions, that he was incapable of driving for that period of time because of previous injuries that he had received.

[16] At each discussion Mr Leavitt seemed to find a different excuse for his inability to comply with transportation requirements. I am not willing to accept any of his excuses and I am going to order a change in the transport arrangements to ensure that there is a simplicity about the order and also to ensure that Ms Pou has the opportunity of being in Hamilton for the purposes of exercising contact with Jayden. This will ensure that any excuse that Jayden is unable to see his mother because of transportation issues to Matamata are removed.

[17] In the end I hope Mr Leavitt will accept the changes I am making. Mr Leavitt has expressed a desire for the relationship between Jayden and his mother to be normal and for contact to occur. I am certain that on reflection Mr Leavitt will recognise that bringing Ms Pou into Hamilton and providing her with a chance to have short brief visits with Jayden on a fortnightly basis will be a significant benefit.

[18] In relation to pick-up and drop-offs they are to occur in respect of pick-ups from the home of Mr Leavitt in Hamilton and the home of Ms Pou in Tauranga. I accept that the parties may not always be able to pick up themselves. Other persons who are fully licensed and in warranted and registered vehicles may be responsible for picking up and dropping off the children provided those parties are known to the children.

Warrant

[19] I have considered whether or not I am going to issue a warrant. I discussed this in the course of evidence with Mr Leavitt. He has indicated there is no need to issue a warrant as he is always compliant with Court orders. I generally accept that this is in fact the case despite my view that Mr Leavitt has throughout the duration of the last 18 months sought to interpret orders in a way that best suits his own view of how they should be interpreted or how Brooke's care should occur. Hopefully if the order is clear and there is no confusion there will be no need for a warrant to issue. That application is going to be discharged with no orders being made.

Holiday Arrangements

[20] The holiday arrangements have caused difficulties between the parties. This has occurred primarily as a consequence of the order that Ms Pou have contact during the first weekend of each school holiday period. This upsets the two weekly rotation. There is no doubt that on some occasions Ms Pou has had contact on the last weekend of the school term followed immediately by contact in the first weekend of the school holiday period, namely two weekends in a row. Against that at the end of the holiday contact period Ms Pou has at times gone two to three weeks without having any contact with Brooke as a consequence of the parties being unable to agree on when contact should restart. The obvious way of removing these issues is to establish a fortnightly cycle from which there is no deviation, and which will continue throughout the year irrespective of whether or not Ms Pou's normal contact is scheduled in either the first or second week of the school holiday period.

[21] Because of the parties' inability to resolve matters I intend to continue that kind of arrangement over the Christmas holiday period but provide the party who does not have care of Brooke an opportunity to see her by travelling to the location in which Brooke is at the time. I am hopeful that this will ensure that the fortnightly regime continues without a break and in a way that is predictable for everyone.

Schooling/Medical

[22] During the course of the proceedings it emerged that Mr Leavitt wanted to change Brooke's school from [name of school deleted] where she has been since the day she started school to [name of school deleted] which is in close proximity to where Mr Leavitt lives. Ms Pou only became aware of this proposal during the last week and has not had an opportunity to consider it in any detail. I have had discussions with Ms Pou about this. She does not want to agree to a change in the school but she very reluctantly accepts that a change of school can occur. Ms Pou's agreement was given while she felt under some pressure but recognises quite realistically the fact that [name of school deleted] is in close proximity to where Brooke lives, is now the local zoned school and means that she does not need to be transported to school by car. I explained carefully to Ms Pou that if the matter came before the Court it is likely that the Court would take those matters into account in making any decision notwithstanding the fact that Brooke has been at [name of school deleted] since she was five. I remind the parties however that guardianship decisions are ones that need to be shared equally. Neither party has the right to make school, medical or other decisions for a child without consultation with the other. Just because one party has predominant day-to-day care does not mean that they have any greater right than the other to make decisions in respect of a child's guardianship issues. I am somewhat disturbed that Mr Leavitt categorically stated he intended to move Brooke's school notwithstanding that he must be aware of the guardianship rights that Ms Pou enjoys in respect of Brooke.

[23] I also want to comment briefly in relation to Brooke's medical condition. There is some dispute as to whether or not Ms Pou was aware that Brooke had a medical condition, the name of which Mr Leavitt could not remember but appears to be associated with the consumption of sugar-based products and relate to a gland

contained within her neck. Mr Leavitt said that he had provided this information to Ms Pou by telephone but Ms Pou was clear that this had not occurred. Whatever the truth both parties are entitled to all information that relates to the medical care of the children. It should be shared by email so that there is no mistake that important medical information is provided.

[24] I record also that Ms Pou is at all times entitled to know the name of the children's doctor and that in fact the choice of a doctor is a guardianship decision. No change of doctor can occur without her consent. I also note that Ms Pou is entitled to uplift all medical information in respect of the children without Mr Leavitt's consent. This is her right as a guardian of the children.

Children's views

[25] Ms Naidoo acts for the children and has filed reports and in particular a report which I received yesterday. Ms Naidoo confirms Brooke's desire to maintain ongoing contact with her mother and I believe that the orders I am making will accord generally with Brooke's views.

[26] The situation in respect of Jayden is a great deal more complicated. When Ms Naidoo reported in July last year Jayden expressed a desire to see his mother. He provided a detailed proposal as to how that contact might resume. Unfortunately with the delays that have occurred in this matter coming before the Court Jayden's views have change and he has now expressed to his lawyer that he wants no contact with his mother. Mr Leavitt did not necessarily agree with this and thinks Ms Naidoo's interpretation of that may be wrong. His view is that Jayden wants contact with his mother but does not want to travel to Tauranga for the purposes of contact. I hope that Mr Leavitt is correct about this. I am sure that if he is, and he supports the contact between Jayden and his mother, Mr Leavitt will encourage it to occur. I intend to adjourn the proceedings in relation to Jayden part-heard to see him on Monday. I will then issue a decision at 4 pm on Monday as to how contact between Jayden and his mother might occur. In relation to Jayden I accept that his views must be given weight but also note that they are only one part of the factors

that I need to consider as his welfare and best interests must be paramount and views should not trump welfare and best interests if contact needs to occur.

Principles of the Act

[27] I take into account particularly s 4 and 5 Care of Children Act 2004 and have regard to the welfare and best interests for the children, which are served in this case by clear orders which provide little room for interpretation. I take into account the need for the parents to make their own arrangements but also their failure to do so despite the significant resources the Court have provided to them to enable this occur. I am conscious of the need for stability and continuity, which in Brooke's case means an ongoing relationship with both parents supported by an order that is interpretable and understandable by her and is not subject to the whims of her parents or their inability to agree.

Orders

[28] Against all of that background in relation to Brooke therefore:

- (a) The current parenting order is discharged.
- (b) I make a new parenting order placing Brooke in the day-to-day care of her father James Leavitt.
- (c) Leeann Pou is to have contact with Brooke as follows:
 - (i) Commencing on 18 March 2016 every second weekend from 5.00 pm on Friday until 6.00 pm on Sunday.
 - (ii) If Ms Pou's contact falls on a long weekend then her contact will be extended to commence at 5.00 pm on the last day of school before the long weekend commences and conclude at 6.00 pm on the day before school recommences.

- (iii) School holidays. During each school holiday period Ms Pou will have Brooke for one week commencing on her normal Friday weekend and continuing for one week thereafter concluding at 6.00 pm on the Friday.
 - (iv) Christmas holidays. The parties will have alternating weeks. Ms Pou's week is to commence on her normal fortnightly contact on a Friday at 5.00 pm and continue for one week concluding at 6.00 pm one week later. For the avoidance of doubt Ms Pou's first full week of Christmas contact is to start on the first Friday after the commencement of the holiday that would be her normal Friday weekend. If school finishes on a Friday which would be Ms Pou's normal Friday, weekend contact is to start on that day.
 - (v) During the Christmas period Ms Pou will have three full weeks of contact after which the normal contact arrangements are to resume.
- (d) Christmas Day, Brooke is to be in the care of the party who has her during the Christmas Day week. If the other party chooses to have contact with Brooke on Christmas Day that party may uplift her from the other party at 3.00 pm on Christmas Day returning her to the other party at 3.00 pm on Boxing Day.
- (e) Brooke's birthday. In relation to Brooke's birthday Brooke will remain in the care of the parent whose care she is in during that week but if the non-caregiving parent wants to have contact with Brooke on her birthday contact is to occur from 3.00 pm on her birthday until 3.00 pm the next day. The party wanting contact will be responsible for both uplifting and returning Brooke at the beginning and end of the contact period.

- (f) There will be such other contact as agreed between the parties from time to time.
- (g) Ms Pou is to have contact with Brooke on not less than one occasion each week by telephone, Skype or other electronic means at a time to be agreed but failing agreement on a Wednesday at 7.00 pm. Additional electronic contact is to occur on special days. When Brooke is in Ms Pou's care for holiday periods Mr Leavitt is to have contact by telephone, Skype or other electronic means with Brooke at 7.00 pm on Wednesday and on other special days that occur during that period of time.
- (h) Unless otherwise specified, Ms Pou will uplift Brooke from the home of her father in Hamilton at the commencement of all contact visits and Mr Leavitt will uplift Brooke from the home of her mother in Tauranga at the end of each contact visit.
- (i) The parties are to provide each other with phone numbers and emails so that they can communicate with each other directly.

[29] The application for the warrant is not granted and the application is struck out. I note particularly however that if the arrangements are not complied with an application should be remade. It is highly likely that a Judge will issue a warrant to enforce the contact arrangements that I have now made.

[30] I reserve the right to amend my judgment and the orders to ensure that any ambiguities that are contained or any mistakes I have made are corrected. I note that this will not amend the basis of the orders that I have now made.

G S Collin
Family Court Judge