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ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO
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**IN THE FAMILY COURT
AT TAURANGA**

**FAM-2015-070-000568
FAM-2010-070-000629
[2016] NZFC 2386**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	MONICA HARDY Applicant
AND	GEMMA ZOWICK (HARDY) First Respondent
AND	NIGEL ZOWICK Second Respondent
AND	PATRICK STANTON Third Respondent

Hearing: 18 March 2016

Appearances: H Senior on behalf of G Keystone for the Applicant
T Bartlett for the First Respondent
D Van Hout for the Second Respondent
Third Respondent appears in Person
P Bromiley as Lawyer for the Children

Judgment: 18 March 2016

ORAL JUDGMENT OF JUDGE S J COYLE

[1] This is a submissions-only hearing set down by agreement following a judicial settlement conference before me on 11 March last.

[2] I asked lawyer for the children, Ms Bromiley, to file a memorandum setting out her understanding of the orders that could be made following the settlement conference. I am, of course, precluded at law from discussing or referring to any matters that were discussed at the settlement conference, but what I can record is that the children's mother, Ms Zowick, left the judicial settlement conference storming out when there were issues discussed that she was not happy with.

[3] Ms Bromiley has now filed a memorandum setting out the orders that she would seek on behalf of the three children Theo Hardy, born [date deleted] 2007, Kendall Hardy, born [date deleted] and Darby Hardy, born [date deleted] 2013.

[4] Mr Stanton is the father of Theo. It is proposed that he have regular and flexible contact with Theo, at times agreed between himself and Ms Hardy.

[5] Mrs Monica Hardy is the maternal grandmother of all three children and it is proposed that Theo be in her care.

[6] Additionally, it is proposed that Ms Gemma Zowick (Hardy), the children's mother, have contact with Theo on a supervised basis. Supervised either by an aunt, Nicola Carpenter, Mr Stanton or other person as agreed.

[7] For Kendall and Darby they too are to be in the day-to-day care of Mrs Hardy, except when they are in the care of Mr Zowick, their father. It is proposed that Mr Zowick will have Kendall and Darby in his care, from Saturday afternoon until Tuesday morning every alternate weekend. The other weekend he would have either Kendall or Darby, from Friday afternoon until Monday morning. Any other times as agreed.

[8] For Ms Hardy, it is again proposed that she have supervised contact with Kendall and Darby, supervised by her aunt or such other person as agreed.

Ms Bromiley suggests a number of conditions, which is set out in paragraph 7 of her memorandum.

[9] In broad terms there is agreement by Mr Zowick and Monica Hardy to the terms proposed by Ms Bromiley, although Monica Hardy is now incredibly anxious to avoid any direct communication between herself and her daughter. To that end, Mr Senior submits that any contact or arrangements should be made as between Gemma and Monica not directly, but through the aunt, Nicola Carpenter.

[10] Gemma Zowick (Hardy) accepts that she should have supervised contact and accepts the contact as suggested by Ms Bromiley. Her issue as filed in the submissions of her counsel Ms Bartlett, is around Mr Zowick's contact/care with the children. The basis of Ms Hardy's concerns are set in Ms Bartlett's memorandum. Although as has been submitted, Gemma has not put forward an evidential foundation for her concerns. She was to have been here today I am told by Ms Bartlett, but has failed to appear. Her concerns are that the arrangements equate to an almost equal shared care arrangement.

[11] Ms Hardy is concerned about those proposals because of the fact that both children have just started attending [name of kindergarten deleted] and that they will no longer be based in a single home. She is concerned at the disruption in a settled environment, which is familiar to them. She is concerned at part of the proposal as suggested in relation to Mr Zowick's contact would necessitate the children being cared for by the paternal grandparents, rather than their father. Although quite why that is such an issue is not adequately spelt out.

[12] An objection to the children spending time with their father is certainly contrary to the principles in s 5 (d) and (e) Care of Children Act 2004.

[13] She asserts that the proposed changes are not child focused, but are focused on reducing Mr Zowick's child support liability. Again, I note there is no evidential foundation for that view and she asserts that Mr Zowick does not seem invested in the care of the children. In response, I would say the fact that he can be bothered turning up today notwithstanding that he is working, and Ms Hardy cannot be

bothered turning up notwithstanding the fact that she could have been here, is really evidence as to who is the most committed of these parents to the welfare and best interests of these children.

[14] I acknowledge that, as Ms Bartlett has highlighted, there was a direction of Her Honour Judge Somerville that both parties file an affidavit attaching hair follicle drug test results. Neither party has done so.

[15] Mr Van Hout, counsel for Mr Zowick, tells me that as part of his employment he has to undertake regular random drug testing. It is my view I can take judicial notice of that fact, in that if he was regular user of illegal drugs then he would no longer be employed. It is regrettable however that he has not completed those tests.

[16] It is noteworthy too as submitted by Ms Bartlett, that Child, Youth and Family have been involved making enquiries. Whilst they have raised concerns around Gemma's use of drugs, they have not in relation to Mr Zowick's use of drugs.

[17] Any decision I make needs to be in the best interests and welfare of the children. Pursuant to s 4 Care of Children Act I am required to consider the relevant principles in s 5. In my view, the principles in s 5(a) to (e) inclusive are relevant. There is no evidence before me to justify consideration of s 5(f), which relates to a child's sense of identity.

[18] What is proposed in my view provides a stable and secure care arrangement for the children. It enables them to have a relationship with both of their parents, a relationship with their maternal and paternal families and is an arrangement which ensures the children's lives are enriched through exposure to their wider family.

[19] There is clearly a good relationship between Mr Stanton, Mr Zowick and Mrs Hardy.

[20] I do need to consider s 5(a). Ms Hardy accepts that she needs supervision. The evidence is quite clear that she has a major issue with her abuse of illegal drugs.

Until she is able to provide longitudinal evidence of abstinence, she is unlikely to ever get unsupervised care of these children.

[21] I note that Ms Bromiley the Court appointed counsel for the children has no concerns for the safety of the children in Mr Zowick's care. While I acknowledge there was a physical altercation on November last year, Mr Zowick in his evidence accepts responsibility for his part and is remorseful. There is no evidence of any further violence that has occurred as between the parties.

[22] I am satisfied, on the evidence before me, that the children are safe in the unsupervised care of Mr Zowick. While I have considered the objections raised by Ms Hardy, I do not consider that those objections have any significant value in that they need to be afforded any great weight by me. It seems to me that her objections are really centred in her anger and mistrust of Mr Zowick, rather than a genuine focus on the welfare of the children.

[23] Whilst it does involve a change in the care arrangements of the children by way of a formal order, it is nevertheless a stable and predictable routine for the children, it is for the reasons I have set out an arrangement which enables them to have a meaningful relationship with their father and their paternal grandparents. There is absolutely no logical reason why these children should not be cared for by their paternal grandparents once a fortnight.

[24] I am satisfied therefore that the proposals set out by Ms Bromiley and, by and large, supported by Mr Zowick and Mrs Hardy, are in the best interests and welfare of the children.

[25] I do agree, as Mr Senior has submitted, that there needs to be a buffer between Gemma and her mother. That should be the aunt, Nicola Carpenter. I do not agree, as submitted by Mr Senior, that if there is to be any change to the variation that that needs to be agreed to by Nicola. She has no legal status in relation to the children and, in my view, it should be the adults who are caring for the children who make decisions. I accept entirely that Mrs Hardy should not have to deal directly with Gemma.

[26] Against that background, I therefore make the following orders and directions:

- (a) The interim parenting order dated 19 February 2016 is discharged.
- (b) I make a final parenting order in relation to Theo Hardy, born [date deleted] 2007, on the following terms:
 - (i) Theo is to be in the day-to-day care of Monica Hardy.
 - (ii) Theo is to have contact with Patrick Stanton, at such times and places as agreed from time to time between Mr Stanton and Mrs Hardy.
 - (iii) Theo is to have supervised contact with his mother, Gemma Hardy, supervised by either Nicola Carpenter or Patrick Stanton or such other person as agreed between the proposed supervisor, Gemma Hardy and Monica Hardy, but subject to the condition as to contact between and Monica and Gemma set out below.
- (c) In relation to Kendall Hardy, born [date deleted] 2012 and Darby Hardy, born [date deleted] 2013, I make a final parenting order in the following terms:
 - (i) Kendall and Darby are to be in the day-to-day care of Nigel Zowick every second weekend, from Saturday afternoon until Tuesday morning. In the alternate weekend either Kendall or Darby, from Friday afternoon until Monday morning and at such other times as can be agreed from time to time between Mr Zowick and Mrs Hardy.
 - (ii) Kendall and Darby are to be in the day-to-day care of Monica Hardy at all other times.

- (iii) Kendall and Darby are to have supervised contact with their mother, Gemma Zowick (Hardy), supervised by Nicola Carpenter or such other person as agreed between Gemma Hardy and Monica Hardy, at times and places as agreed between the supervisor Monica Hardy and Gemma Hardy but subject to the limitations on contact set out below.

- (d) Both parenting orders are conditional upon the following:
 - (i) No person having the care of or contact with Theo, Kendall or Darby shall at any time be under the influence of any illegal or non-prescription drug.
 - (ii) No person having the care of or contact with Theo, Kendall or Darby shall expose the children to any person who is under the influence of any illegal or non-prescription drug.
 - (iii) Gemma Hardy will not take any other person to contact without the express consent of the supervisor and/or Monica Hardy.
 - (iv) Gemma Hardy shall not go to the home of Monica Hardy without the express consent of Monica Hardy and shall leave immediately should she be asked to do so.
 - (v) In relation to any clauses of the conditions or terms of the parenting order which provide for communication between Gemma Hardy and Monica Hardy, such contact shall not occur directly as between Gemma Hardy and Monica Hardy, but shall be through Nicola Carpenter or if she is not available by such other person as nominated by Ms Carpenter.

- (e) This being the end of the proceedings Ms Bromiley's appointed as lawyer for the children is terminated with the thanks of the Court.

S J Coyle
Family Court Judge