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**IN THE FAMILY COURT
AT AUCKLAND**

**FAM-2012-004-002600
[2016] NZFC 2488**

IN THE MATTER OF THE CARE OF CHILDREN ACT 2004

BETWEEN HALLE MICHAUD
 First Applicant
 Maternal Grandmother

AND FLEUR MICHAUD
 Second Applicant
 Mother

AND GRIER MICHAUD
 First Respondent
 Parent

AND OSCAR HORNICK
 Second Respondent
 Father

Hearing: 4-8 May 2015
 7 September 2015

Appearances: First Applicant in Person
 Second Applicant in Person
 C Mullord for the First Respondent
 Second Respondent in Person
 C Bielby for the Child

Judgment: 24 March 2016

RESERVED JUDGMENT OF JUDGE T H DRUCE
(Re: Care, Contact, and Guardianship Directions)

Introduction

[1] Felix Hornick-Michaud born [date deleted] 2010 is now aged five years, [age details deleted]. His then 18 year old parents were unable to adequately care for him on his birth. He was initially cared for by his maternal grandmother, Halle, for his first 16 months of life and he has since been cared for by his grandmother's brother, known as Geoff, in accordance with final parenting and additional guardianship orders made on 9 November 2011.

[2] The present proceedings were commenced in 2012 as a result of Halle and Fleur developing concerns about Felix's care. In April, Fleur sought frequent regular contact with Felix (with her mother to act initially as supervisor). In August, Halle applied for the return of Felix's day-to-day care to her with the plan that Felix would, over time, move into his mother's day-to-day care.

[3] At the conclusion of five days of evidence on 8 May 2015, the evidence overwhelming established that Felix was flourishing in his great uncle, Geoff's, day-to-day care and I confirmed to the parties that there would be no change in Felix's day-to-day care. It was also clear by the conclusion of the evidence that all parties (other than Geoff), together with other members of the extended families, were deeply suspicious of Geoff and aggrieved about their loss of care and contact with Felix. These feelings were accompanied by anger and blaming of Geoff (and others) for "taking Felix away" from them. While professionally supervised contact continued for more than two years from mid-2012 through to October 2014, it had ceased as a result of Barnardos cancelling the contract and expressing concern that they were unable to offer sufficient safety. The strength of negative feelings and views have also resulted in Geoff focusing on keeping Felix safe from exposure to those negative views and feelings.

[4] All family members reached agreement on 8 May 2015 to enter into a mediated whanau process with Tim Tipene, a maternal great uncle with a

professional background mediating with whanau where trauma has occurred. Despite all the goodwill that the parties took into this “out of Court” private process, no significant shift in the relationships was achieved.

[5] Accordingly, the Court heard submissions on 7 September 2015 in order to finalise future contact terms and to make guardianship directions appropriate to Felix’s safety, welfare and best interests.

[6] The Court is faced with an irreconcilable divide between the positions taken, and proposals made, by Geoff, on the one hand, and the other family parties on the other hand. Expert witnesses and lawyer for child urged the Court to give the closest consideration as to how to protect Felix from the negative consequences of the adult family conflict (in particular the likely undermining of Felix’s relationships with his day-to-day caregiver, Geoff) while doing what it can to sustain some meaningful relationship between Felix and his other family members.

[7] Sadly, on the balance of probabilities, it is unlikely that this judgment will produce much constructive change in the chronically troubled whanau relationships. The only beacon of light for all family members to focus on is that Felix is a happy and well-adjusted boy who is developing remarkably well despite having experienced a traumatic birth with the loss of oxygen for a significant period of time and significant brain injury.

The Applications and Proposals

[8] Fleur Michaud applies for regular and frequent contact with Felix managed under the control of her mother, Halle. To better ensure this occurs, she seeks continuation of orders made on 13 April 2012 preventing Felix’s residence from being removed from the greater Auckland area and preventing his removal from New Zealand. Both those orders were made on without notice application, and in accordance with natural justice, were subject to review in this hearing.

[9] Halle applies for day-to-day care and appointment as an additional guardian. Her concerns have always focused on the quality and safety of Felix’s care with

Geoff, her perception that Geoff has gradually isolated Felix from his other family, her concern that Geoff does not consult adequately with Felix's parents and, finally, her abiding belief that none of the family ever agreed to Geoff having permanent care of Felix. At the end of the five days of evidence, she expressed an acceptance that it was now best for Felix to remain in Geoff's day-to-day care. She supported the "out of Court" mediation process offered by Tim Tipene as being a means of the family having professional assistance to achieve a united family approach. She continued to seek family-based contact and continued to oppose any further supervised contact at a contact centre.

[10] In her oral submissions made on 7 September 2015, she presented clear proposals for the staged development of contact towards the goal of 48 hours, alternate weekend, contact based at her home with herself managing Felix's parents' contact in her home during these periods.

[11] While she opposed any discharge of the s 77 order preventing removal of Felix from New Zealand, she indicated consent to Felix and Geoff being able to relocate within New Zealand provided any increase in distance did not become a barrier to the continuation of regular contact.

Geoff's response

[12] Geoff gives priority to Felix's psychological safety. His greatest concern is having Felix's relationship with him undermined by the views and behaviours of the other family members. He feels distrusted and improperly blamed for the decision-making process that led to Felix being placed in his permanent care. He has made various proposals for contact, but is consistent that contact be professionally supervised at an accredited centre somewhere between monthly and quarterly. He sees this as striking the best practicable means of striking a balance between safety and Felix having some continuing links with his other family members.

[13] He also seeks various s 44R guardianship directions to better avoid ongoing disputes in relation to important guardianship matters for Felix. In particular, while he remains willing to communicate and provide information about important matters

such as schooling and medical and other therapeutic treatment, he anticipates such decisions not being able to be reached by agreement because of the general opposition he faces from other family members and accordingly, he seeks the right to solely determine important educational and health matters for Felix without schools and medical/health providers requiring the consent of the birth parents.

The father's position

[14] Oscar has taken no active part in the proceedings, but did choose to be present for all but the first day of the five days of hearing. He did file an affidavit, sworn 31 July 2014, in support of Halle's applications. In this affidavit he conveys his trauma at events around Felix's birth. In a straightforward fashion he expresses his shock of dealing with Fleur's serious illness with eclampsia, diagnosed just prior to Felix's birth, which resulted in her being urgently hospitalised and Felix's birth induced. He then suffered the shock of learning that Felix had suffered injury during birth and he speaks of Fleur's subsequent health issues which included her being re-hospitalised. On top of all this, his mother was terminally ill. She died on 05 February 2011.

[15] His straightforward account of his experience helps give the Court some insight into the trauma that all family members must have felt at the time. He was not required for cross-examination and made no submissions. He and Fleur continue some form of ongoing relationship but Fleur declined to give details when cross-examined.

Background

[16] Fleur Michaud, born [date deleted], was 17 when she became pregnant with Felix. From the early social work evidence available, she is reported to have had a history of "behavioural relationship difficulties," was living a transient lifestyle, and was in an unstable, and at times violent, relationship with Oscar Hornick. Oscar is of the same age, born [date deleted] 1992.

[17] Fleur's offending history is recorded in a social work report dated 11 October 2011 as including four charges of aggravated robbery (two of which resulted in the informations being withdrawn by leave in the Youth Court, and two resulting in being convicted and sentenced in the Youth Court), two charges of robbery by assault, one charge of assault with intent to rob, and three other convictions with sentences on which details were not known. There is also a record of her presenting at hospital on 23 December 2009 when 12 weeks pregnant with abdominal pains after being punched in the stomach by Oscar Hornick's brother who was subsequently arrested and charged.

[18] She did not seek antenatal care until late in her pregnancy. There is no medical evidence of her health issues in relation to pre-eclampsia or eclampsia. It is likely she had a prolonged period of compromised physical health following Felix's birth. Fleur says she still periodically continues to see her GP. Her mother says Fleur did not really start to recover her health until a year after Felix's birth. If this is correct, it would be highly relevant to understanding Fleur's subsequent disengagement from the decision-making process about Felix's care following the intervention of Child Youth & Family (supported initially by a s 39 place of safety warrant), three subsequent family group conferences, and the Care of Children Act proceedings which resulted in the final orders being made in favour of Geoff in November 2011. It also helps to explain the high level of Halle Michaud's involvement in the decision-making as Felix's maternal grandmother during the same period. In other words, it is understandable that she stepped into the "vacuum" left due to Fleur's incapacity to engage in the process.

[19] Felix's father, Oscar, also had a youth offending history albeit not as serious as Fleur's and he was identified as the offender in two family violence incidents in December 2009 where Fleur was identified as the victim. He has another wilful damage family violence incident recorded against him, as the offender, in April 2011. There is very little in the evidence about him and his family. His mother's illness and death precluded her involvement in Felix's life. His father, Eric Hornick, has provided an affidavit in support of Halle Michaud's applications but he did not participate in any of the three family group conferences that followed Felix's birth and on which Felix's placement was based.

[20] Felix was born following an emergency caesarean procedure. He is described in a social work report as having presented as “flat” and it taking two minutes to resuscitate him. A multidisciplinary meeting was held on 20 July 2010 and he was then discharged with the plan that he and his mother would live with the maternal grandmother. On 26 August 2010 a referral was made for a family group conference. Shortly after this it was reported that Fleur and Oscar had moved out of Halle’s home, taking Felix with them to live at the paternal grandparents’ home. The precise living arrangements for the parents are not clear to me from the evidence. Halle Michaud says that Felix only stayed alone with his parents on one night, that being the night of 8 September. What is more certain is that she received a distressed phone call from Fleur at 2.00 am on or about 9 September, with Fleur telling her mother that Felix had either been slapped by Oscar or that he “may have been” slapped by Oscar. Fleur’s distress was sufficient for Halle to immediately go and uplift Felix and Fleur. Fleur acknowledges that she and Oscar had been arguing during the day prior, but otherwise denies any physical family violence between them.

[21] This event crystallised the care and protection concerns that had already been identified from the time of Felix’s birth and led directly to Child Youth & Family (CYF) applying for, and obtaining, a s 39 place of safety warrant on 10 September 2010 and Felix being placed with his maternal grandmother. A temporary care agreement was signed by both parents on the same day and the agreement records 17 family members from both sides of the family having participated in the making of the plan. The plan provided for Felix to be in the primary care of his maternal grandmother, for Fleur to live with her mother, and for the parents to have weekly contact. It also provided for the parents to do various courses and attend to other matters to better prepare them for the possibility of resuming responsibility for Felix’s care.

[22] The first family group conference was held on 16 December 2010. Surprisingly Fleur and her mother were the only family members present. Fleur agreed to attend a parenting assessment with the view of her being suitable to attend the Grainger Grove residential programme. Various other sensible plans were settled including a concurrent plan that provided for the social workers to continue

investigating all possible family members as prospective long term caregivers in the event of Fleur being unable to “raise her son”.

[23] The second family group conference was held on 1 April 2011 and attended by six family members, namely Halle, Fleur and two of her siblings Kendrick and Valorie, Geoff, and Hector Tipene, the maternal grandfather. The family group conference record includes the following record:

Family have agreed that the best decision for Felix is that he lives in the safe care of his uncle, Grier (Geoff) Michaud.

- Geoff will apply for a parenting order under the Care of Children Act.
- While Geoff is in New Zealand at least once a month for contact with Felix, he is now returning to New Zealand to live. Until Geoff is in a position to have Felix, his grandmother Halle Michaud will continue to provide day to day care.

[24] Accordingly, it is plain that a family decision was made that Felix would not be brought up by Fleur but by his maternal great uncle, Geoff. This evidence is entirely consistent with other evidence that Halle Michaud knew she was unable to make a long term commitment to parenting Felix and had expressed this to various others at the time. There is clear evidence that she was tired and struggling with her own health issues at the time. This evidence is to be contrasted with Halle and Fleur’s subsequent evidence given in these proceedings that they only agreed to Felix being in Geoff’s temporary care.

[25] A third family group conference was held on 19 October 2011. This was attended by three family members, Halle Michaud, the paternal grandfather Eric Hornick, and Geoff (along with four other professionals). This conference confirmed that Felix was making such good progress that he no longer required physiotherapy treatment or specialist support from Taikura Trust. It also noted that Geoff had applied for COCA parenting orders. It provided for the parents’ contact to be arranged in advance and “approximately every 10 days”, with Halle taking Felix with her during her visits to the parents. It recorded that the parents were not to use “loud, violent or abusive language or behaviour” during contact. In the event of the parents being unable to comply with these conditions, it provided for contact to occur at a supervised access centre to be arranged by the family or Child Youth &

Family. Otherwise, CYF's role was defined as a monitoring one for a further four months and CYF involvement to then end.

[26] In due course a formal proof hearing took place in this court on 9 November 2012. Neither parent appeared or filed evidence. The only indication of family members' views and circumstances provided at the time comes from a detailed social work report dated 11 October 2011 and Ms Bielby's, lawyer for child, reporting memorandum of 9 November. The social work report supported Geoff Michaud's applications as being "appropriate in relation to Felix's needs" and lawyer for child reported having had a conversation with Fleur Michaud on 29 August 2011 during which Fleur agreed with both the parent and guardianship orders being made in favour of Geoff provided that Felix continued to live in New Zealand, she was able to have continuing contact with Felix, Felix's name was left unchanged, and "if the circumstances were appropriate, that she and Felix's father could seek day to day care at some future time".

[27] Lawyer for child in her report went on to note that the parties intended that Felix would maintain a close bond with his maternal grandmother and that Halle would continue to provide ongoing support to Geoff and was expected to continue facilitating Felix's contact with his mother. Ms Bielby also recorded that Geoff preferred that Felix's contact with his parents be supervised due to the safety concerns. Judge McHardy, who presided on 9 November 2011, recorded in his handwriting the orders that were made but there is no record of any oral judgment being delivered with reasons for the orders made.

[28] With the benefit of hindsight there are perhaps three unfortunate aspects that arise from the Family Court process at the time:

- (i) The parents did not engage directly in the process;
- (ii) Halle Michaud, who undoubtedly had a close bond with Felix having been his primary caregiver for 16 months, was not served with the proceedings nor joined as a party;

- (iii) Contact was not defined beyond “as agreed”. This, coupled with Child Youth & Family’s effective withdrawal from any ongoing assistance to the parties, left the family to their own resources. Given the longstanding volatile relationship between Halle and Fleur, the particular personalities of the Michaud family members, and serious limitations to the effective functioning of the family, the lack of definition of contact provided a fertile ground for the rapid growth of distrust and conflict to grow. This duly occurred over the following months and sadly continues to the present day.

[29] This case provides a cautionary tale also to the risks of CYF prematurely withdrawing from care and protection cases where there is a history of family conflict and distrust. Dr Calvert, who has vast experience of such matters, also noted her surprise that CYF had withdrawn so early in the permanency placement process without retaining legal status.

[30] I return to Felix’s care history. From April 2011, Geoff travelled at least monthly from Australia for a few days at a time to support Halle and develop his relationship with Felix in preparation for his assuming Felix’s day to day care. He arrived back in New Zealand permanently on 25 September 2011. He spent the next three months living in Halle’s home, thereby providing Felix with the best possible transitioning support from his grandmother’s care to Geoff’s care. As was clearly always intended, Geoff moved out of the Halle’s home in Ponsonby just prior to Christmas 2011. He was assisted by his nephew Kendrick. He first lived in rental housing at Paremoremo, which was at an unexpected distance from Halle’s home, before moving back into an apartment within two or three blocks of Halle’s address some four months later, where he has since lived.

[31] Halle Michaud believes that only some six visits occurred over the following four months. In fact, I prefer Geoff’s more detailed evidence of the 10 contact visits where he brought Felix to Halle’s home ranging from short drop-in visits to full 24/25 hours stay-overs during the 10 week period from January through to early March 2012. As would be expected, there is evidence from Halle that Felix showed distress on leaving his grandmother, particularly early in the New Year. These

contact visits were followed by five visits at Lollipops between May and August 2012. For various reasons, including an injury that Felix suffered in March 2012, Halle and other family members had become focused on fears for Felix's safety in Geoff's care. I deal with the details later in this decision. The Lollipops contact arrangement became a victim to the escalating concerns.

[32] Fortnightly supervised contact at Barnardos was agreed to on 27 July 2012 and this arrangement, supported by an interim parenting order, continued relatively consistently until October 2014 when Barnardos withdrew its services. There has been no visiting contact since. Lawyer for child reports having made efforts to re-establish fortnightly contact at another contact centre, Care for Kids, but found Halle and the parents to be "unresponsive". The last known contact occurred by way of phone call close to Felix's fifth birthday in [month deleted] 2015 as part of the mediation work facilitated by Tim Tipene after the hearing in May 2015.

[33] Sadly the breakdown of trust between Halle and Geoff has proved to be a decisive factor in the breakdown of Felix's relationship with his grandmother, his parents, and his wider whanau. The fact that this could not be rebuilt during the whanau "mediation" process with Tim Tipene leaves the Court with severely limited options for Felix's contact with his other family members.

The law

[34] No novel or unusual legal principles are argued in this case. The relevant legal principles to be applied are in accordance with ss 4, 5 and 6 of the Care of Children Act 2004. The leading case is *Kacem v Bashir* [2010] NZSC 112; [2010] NZFLR 884. Paras [18]-[24] of that judgment set out the approach to be taken.

[35] In this case s 5(a) safety concerns must be addressed, both in relation to injuries that Felix has suffered and in relation to his emotional/psychological safety from exposure to adult conflict and distrust.

[36] In addition, while Felix is settled and thriving in Geoff's care, there are obvious major shortcomings for Felix having regard to ss 5(c), (e) and (f).

[37] The provisions of s 5A are not relevant here as there is no evidence of any protection order having been in force against any party to these proceedings.

Findings

Felix

[38] Felix has been diagnosed with [name of condition deleted] as a result of his birth trauma and anoxia. He appears to have developed remarkably well despite his brain injury (confirmed by MRI). He has differences in the functioning of his two legs. [Identifying health details deleted]. He has calf muscle and ankle contractions and a “mild right hip subluxation”. He is receiving special treatment of his calf muscle tightness ([identifying health details deleted]) as a result of this Court’s guardianship directions made on 16 April last year following a hearing on 30 March. The need for this treatment was predicated on evidence that his physical disability and associated pain and discomfort would become progressively more serious as he grows older if not sooner treated.

[39] Felix has routine six-monthly paediatric reviews. The most recent paediatric report indicates that his speech is much improved and that he requires no other specialist assistance.

[40] The family raised concerns about his weight and growth, particularly during his first year in Geoff’s care. There is no adequate evidence of his weight gain or loss during that period, but there are two medical records available which record his measured weight. Reports of both Dr Greg Williams, Paediatrician, and Dr Lim, Paediatric Rehabilitation Specialist, note his weight at 21 kilograms (97th centile) and his height at 108 centimetres (50th centile) early last year.

[41] Dr Calvert in her s 133 psychological report, dated 31 March 2014, notes that Felix “is developmentally well within age norms” and that his [identifying health details deleted] “does not inhibit his motor abilities, he is a normal, quick and active child”.

[42] Dr Calvert also found Felix to display clear attachment behaviours with Geoff, not to display any indicators of ongoing anxiety which might be associated with past trauma, and to be “a well-regulated little boy” using Geoff from time to time to support his play. She concluded that Felix had a secure attachment with Geoff and that it was essential to Felix’s future welfare that his attachment relationship with Geoff be supported and protected.

[43] In 2015, prior to the May hearing, Felix was able to describe his other family members to his lawyer as being “mum, my other dad, my nan and three uncles”. He refers to Geoff as “dad”.

Parenting

[44] Dr Calvert assessed Geoff’s parenting in her report and Rita Derrick, a CYF social worker who has provided a number of reports to the Court, also carried out a social work assessment.

[45] Dr Calvert found Geoff to be an effective “authoritative” parent both in terms of the core “mechanics” of parenting (providing a home, meeting core needs and negotiating issues) and in terms of his having the more intrinsic qualities needed for good parenting (“quality, emotional core, everyday conduct”). She noted he “admits to a degree of anxiety about how well he manages Felix” in part because he feels undermined by other family members. She noted that he had done “well regarded parenting courses”, was engaged in a parent support group, and was ensuring that Felix socialises with others in as “normal” a way as possible. Finally, she noted that there was a substantial research literature on the outcomes of parenting by “gay” parents which indicated no discernible negative differences in outcomes for children raised by heterosexual or gay parents (and noted that there was some research suggesting some developmental advantages).

[46] Geoff has filed four affidavits from friends and pre-school care providers which corroborate his close engagement with friends’ families and their children and with Felix’s previous pre-school.

[47] Halle Michaud has expressed some concerns about Geoff's attentiveness with Felix, particularly during the three-month transition phase in late 2011. I am mindful of the task Geoff faced as a 46 year old man not previously responsible for the care of an infant, developing a nuanced understanding of Felix's needs and behaviours and learning how best to respond. Some "clumsiness" and learning from trial and error was, I consider, inevitable. Similarly, it was inevitable that Halle, as the previous caregiver, would be anxious about his capacity to parent appropriately. In the end, the best evidence is that provided by Dr Calvert in early 2014 which provides ample evidence of his very successfully parenting Felix some two years later.

[48] Geoff impressed me as being able to accurately recall historical events relating to Felix's care and as having the capacity to maintain his focus on Felix's needs in very difficult family circumstances. He had a successful career in Australia which he gave up in making his commitment to care for Felix. He is strongly motivated to bring Felix up as a successful, untroubled child. His motivation rests in part on his own less than happy experiences in his family of origin.

[49] His sexual orientation as a gay man has been the subject of abusive attack by various family members. Section 4(3) of the Act provides that the court must not presume that the welfare and best interests of a child require child placements to be with a parent of a particular gender. The same child focused approach must also apply to the sexual orientation of any caregiver. I rely on Dr Calvert's expert opinion based on her reading of the research which I have already referred to comparing children's outcomes in the care of heterosexual and gay parents. I also note that there is no evidence of any improper or exploitative element to Geoff's parenting of Felix.

[50] I turn to consider the maternal grandmother, Halle, and her application for day-to-day care. It is difficult to conceive how uprooting Felix from his high-functioning, settled parent-child relationship with Geoff could be in Felix's best interests. I also keep in mind that by the end of the fifth day of evidence, Halle made submissions accepting that she would not take her application to resume day-to-day care of Felix further.

[51] Despite Halle being the matriarch of the maternal family and deeply committed to Felix's welfare, and despite she and Felix having experienced the bonding of his first 16 months of life together, there are clear signs that her ability to resume parenting Felix now would be compromised.

[52] First, she has shown ambivalence, if not confusion, over whether to be Felix's grandmother or parent. Notwithstanding the views she has expressed in her evidence, there is overwhelming evidence that in 2011 she felt unable to parent Felix in the long term, that she preferred to take a grandparent role, and that she clearly supported Geoff in taking on Felix's day-to-day parenting. Confusion enters when she says that she expected to "co-parent" Felix along with Geoff. This inconsistency gives a clear pointer to her own ambivalence and confusion about her role in Felix's life.

[53] Secondly, there is the related difficulty that her proposal was also based on a plan to gradually transfer Felix's day-to-day parenting to his mother, Fleur, with all the potential difficulties that raised in their relationship with its history of volatility and dispute. Furthermore, from Felix's perspective, he faced the tasks of adapting to his grandmother's day-to-day care and then his further transitioning to his mother's day-to-day care.

[54] Thirdly, there is the extraordinary fact that neither Halle or Fleur was willing to engage in Dr Calvert's assessment. Halle explains that she preferred to have an assessor of her own choosing. As a consequence, the Court is without any expert evidence as to their parenting abilities in a context where there have been serious concerns about the maternal family's functioning and parenting of children.

[55] Fourthly, neither Fleur nor Halle currently accept that Felix has [health condition details deleted]. They have expressed views that his [identifying health details deleted] and other behaviours are a result of abuse or trauma living with Geoff. This is surprising because they both clearly understood when he was born that he had suffered brain injury during his birth. Their current views make their support for any professional treatment for Felix problematic. There is a consistent pattern of them not willingly trusting the professional opinions of experts working

with Felix. For a boy with Felix's particular needs, his care by either his mother or grandmother would raise real risks that his access to professionally recommended treatments would be seriously compromised.

Safety

[56] I start first with the family's concerns about Felix's physical safety in Geoff's care. They identify three particular incidents as being of concern.

[57] The first occurred on 18 March 2012. There are various sources of evidence including Geoff's self report to Starship Hospital, to the family by email, on ACC claim forms and his sworn evidence by affidavit. The ADHB Starship Hospital clinical summary report notes:

Climbed into pushchair and rolled down five concrete steps.

Thrown out onto ground.

Unwitnessed.

Cried immediately.

Remained alert since, nil vomiting.

O/E

Alert, interactive.

Obvious mouth injury.

Nil other head/neck/chest/abdo/limb injury.

Small laceration to inner aspect of lower lip.

Dental damage as below (assessed by dental house surgeon).

Dental assessment:

51 extrusion and subluxation.

61 intrusion (minimal).

62, 63 avulsed.

Other teeth intact, non-mobile.

Subluxed tooth removed by dental HS.

...

Observed in ED for four hours post injury. Discharged home with advice.

Follow-up with dental as above.

[58] The hospital notes also record a primary diagnosis of “fracture of tooth/dental injury” and secondary diagnoses of “head injury, concussion”. The other family members are particularly concerned at the possibility that Felix suffered concussion. No other medical evidence has been filed. Keeping in mind that Felix was only held for observation and that he remained alert throughout without vomiting, I conclude that there is no evidence consistent with Felix having significant concussion and that the focus was more on ensuring that he did not have concussion.

[59] Geoff has provided a fuller account of what occurred. The family have focused on the differences between the available records and the descriptions given by Geoff. This reflects their suspiciousness. Geoff sent an email the following day to Fleur advising that Felix had fallen on the porch stairs and broken some teeth and assured Fleur that Felix was “absolutely fine”. He also voiced some rather defensive comments:

Thanks for your concerns, as a parent I do know how to handle these situations, that is why I have him in my care.

[60] My judgment is that Geoff was likely feeling rather guilty as the accident arose because he had briefly gone inside to get a cleaning “handy towel” while cleaning Felix’s pram prior to going out. He acknowledges that he had inadvertently failed to secure the pram’s braking system with the outcome that Felix and the pram tumbled down five or so concrete porch steps.

[61] Halle comments that Geoff did not initially disclose his failure to secure the pram brake prior to briefly going into the house to get the towel. She is suspicious that Geoff is still not telling the truth. My finding is that the medical evidence is consistent with the explanation provided by Geoff and that while all concerned

would wish that the injury had not occurred, nevertheless it did occur and it should appropriately be treated as an accident (and not intentional abuse).

[62] The second injury occurred on 22 October 2013 at Felix's daycare centre. Felix is reported by the daycare centre to have suffered a fall, lost another upper tooth (which they did not realise at the time), and suffered a grazed upper lip. Felix completed the day at daycare and was picked up as usual by Geoff. I find that there is simply no basis on which to suggest that Geoff was responsible in any way for Felix's injury on this occasion.

[63] The third injury occurred on 11 October 2014. Felix is described as having banged into the corner of a kitchen bench at the home of Geoff's friends, resulting in bruising to an area close to his left eye. The couple have reported by email that they applied an ice pack to reduce the swelling and that Felix thereafter continued to play with his young playmate at their home. Geoff reports that his friends are both daycare teachers with their own children. Again, I find that there is simply no reasonable basis for suggesting that Geoff caused non-accidental injury to Felix. It is significant, however, that the maternal family members are unable to accept that the three incidents as described above are normal accidental injuries. This evidences their ongoing suspicions about Geoff.

[64] The other major safety concern is voiced by various persons including Dr Calvert, the social worker Rita Derrick, Geoff and Felix's lawyer. This relates to the risk of Felix's trusting relationship with his psychological dad being undermined by exposure to the other family members' overt criticisms and distrust of Geoff. This is exemplified at the simplest level by the fact that Halle has been consistent in saying that she will never refer to Geoff as "dad" when talking with, or around, Felix and that she will continue to refer to him as "Uncle Geoff". Geoff reports this being one of the reasons for his withdrawing support for the Lollipop's visits after 13 June 2012 (with the other reason being Halle's persistent videotaping of he and Felix). Geoff also reports Felix coming home after Barnardos' supervised contact visits unsettled saying that Geoff was not his "dad" and that nanny wants him to call Geoff "Uncle Geoff". It is concerning indeed that this occurred notwithstanding that there was professionally supervised contact at the time.

[65] There are many other beliefs and suspicions that will add to Felix's exposure to adult conflict if the Court was to approve "normal," family-based contact as desired by the other family members. Halle and Fleur regard Geoff as unreasonably controlling of Felix's contact with them, see Geoff as having "traumatised" Felix and having "tricked" professionals and this Court. They will likely expose Felix to their views opposing his current medical diagnosis and treatment. They will want Felix to have more time with them and there will likely be ongoing conflict about how and when contact is to occur. Felix is likely to feel torn in his loyalties and there is the real possibility that he will feel forced into having to choose either his relationship with Geoff or his mother and grandmother as the conflict intensifies around him.

[66] Already, the guardianship dispute about his medical treatment last year has required a hearing in this Court. This is likely to arise again in the future. Halle and Fleur have previously insisted on being present at a medical appointment that Geoff had taken Felix to resulting in a tense situation developing for all involved. This plainly cannot safely happen again around Felix. It is highly likely that there will be raised voices and argument should Geoff and the family be together in such circumstances again.

[67] I do acknowledge there is one area where conflict at present will not develop. Fleur does support Geoff's choice of schooling for Felix as her views do correspond comfortably with Geoff's.

[68] The depth of antagonism and distrust is demonstrated by the vitriolic content of Halle's postings on internet websites. Some of these were produced during the hearing and she acknowledged her authorship. The themes of her writings involve her sense of powerlessness and victimisation, her view that lies, cover-ups and corruption afflicts the professionals and the Court, her views that Felix needs to be protected from abuse by Geoff and social service agencies, and her projection of blame for Felix's placement with Geoff onto others such as Felix's lawyer. The emotional intensity is reflected in the use of capitals and exclamation marks and is such that others beyond the whanau have become emotionally engaged and security fears have developed for Geoff's personal safety around the Court precinct when the

matter has been called in Court and also at public events which Geoff has attended with Felix.

[69] This is corrosive stuff indeed. It reflects Halle's "convenient" distortion of the history of the decision-making around Felix's care. It is plain that she was a central decision-maker in the process, notwithstanding that she was not a party to the COCA proceedings filed by Geoff.

[70] Objectively, I find that she has no need to feel guilty about her decision-making at the time. She appears to have made a wise and reasonable decision for Felix's future. The same applies for Fleur. She was not realistically able to parent Felix at that time and she appropriately supported Geoff taking on Felix's care. It was inevitable as a young woman that she would feel ambivalent about giving up care of her child and this is reflected in the views that she expressed to lawyer for child in late August 2011 when confirming her position. She clearly held onto the hope of one day being able to parent Felix. Both mother and grandmother need to review their feelings and beliefs about what occurred at the time and to accept that their actions were reasonable and the best that they could do at the time. However, it also requires them to accept that time has moved on, that Felix needs a continuing primary relationship with Geoff, and that if they are to have an ongoing meaningful relationship with Felix, they must first accept the current circumstances of Felix's care with Geoff and stop blaming others for what has occurred. If they were to do this, the first step they would take would be for Halle to take down all of her postings on the internet about Geoff and Felix and Fleur would close the email address that she has established in Felix's name.

[71] Conversely, if they chose to continue their polarised and distorted views, there will be major obstacles to ensuring that any contact they have with Felix is psychologically safe for Felix.

[72] In summary, there are major s 5(a) psychological safety concerns for Felix while the current family dynamics and beliefs continue. Felix's safety must be protected by this Court in this decision.

Future contact

[73] How then to best structure Felix's ongoing links with his parents, his maternal grandmother and other members of his wider whanau?

[74] As is clear from my findings to this point, Halle is not a "neutral" grandparent able to mediate and facilitate contact arrangements. No other family person known to the Court appears to be suitable as having the necessary child focus and authority. Tim Tipene appears to be respected by all, but has his own family and professional commitments and no party has indicated that he could assist beyond the efforts that he made last year. The paternal grandfather, Eric Hornick, might ordinarily be someone to consider, but he has not presented himself or been proposed by any party as being suitable.

[75] Rita Derrick considered that Geoff should be present during any such supervised contact, but I find this not to be manageable for any of the key adults involved. The current feelings and attitudes are just too overwhelming. She also considered that Felix's present circumstances are equivalent to children who require a "home for life" placement, having been removed from family care. Adopting this model, her opinion was that the most appropriate contact frequency would be between two and four times each year and that it should be professionally supervised.

[76] Dr Calvert's opinion was that any contact should be as "normalised" as possible, preferably linking to important family events rather than being strictly run on a three or six-monthly basis and that the Court would need to be careful in its consideration of the contact arrangements. She was hampered in giving a more detailed opinion because neither the mother nor grandmother was willing to meet with her. She was firmly opposed to the suggestion of Geoff being present during contact and thought that if he was to be present then at the most this should involve Halle and not other family members. It has to be kept in mind that Halle and Geoff did maintain an important and mutually supportive relationship as adults prior to Felix's birth. Fleur herself considered that they had been close for at least four years prior to Felix's birth. This contrasts with Geoff's relationship with Fleur which both

appear to accept as not being close. Fleur regards Geoff as being a rather bossy and controlling uncle. It seems that Geoff took on the role as the family disciplinarian as he worked to support Halle's parenting of her children.

[77] I put aside any realistic possibility of family "reconciliation". If any change is ever to occur, it would probably flow from Halle broadly accepting the findings of this judgment and deciding to place her grandmother role ahead of all else for Felix's benefit. It would take time for Geoff to be satisfied that his sister had made such a real change in her approach. This would require their mutual engagement preferably with a professional counsellor such as David Stebbing whose involvement was supported by Halle more than two years ago. Further, as Dr Calvert has noted, Halle would need to develop some real insight into past events and Felix's current needs before she would be likely to bring a real change to her approach. Nevertheless, I acknowledge the possibility. If such a "beach-head" was established between Halle and Geoff, their relationship would likely become the key to a gradual relaxation of Felix's contact with his maternal grandmother, his parents and other family members.

[78] Geoff has wavered between offering monthly supervised contact and three-monthly supervised contact. Subject to his safety concerns for Felix being satisfied, I am satisfied that he retains an ability to responsively support Felix having greater contact with his other family members.

[79] I also keep in mind that Felix had the important early experience during his first 16 months of having all his needs met by his grandmother and his subsequent experience of regular fortnightly contact with her and to a lesser extent with his mother and father. It is clear from his discussions with his lawyer that his grandmother and parents remain meaningful persons to him.

[80] Keeping in mind Dr Calvert's opinion that contact would be more meaningful for all concerned if it related to important family dates/events, I note that Felix has his birthday on [date deleted], Halle has her birthday on [date deleted], Fleur on [date deleted] and Oscar has his birthday on [date deleted]. In addition, there is the important time of Christmas. I am unable to identify other important occasions as I

do not have the any submissions from the parties building on Dr Calvert's opinion that important family dates and events should be included in the contact planning.

[81] Pulling together all of the principles and factors relevant to Felix's particular circumstances, I find that broadly quarterly supervised contact is in Felix's best interests for the foreseeable future. In coming to this conclusion, I am aware that both mother and grandmother firmly oppose continuation of any supervised contact. That will be their decision, but it would be unconscionable for this Court to permit anything less than strictly professionally supervised contact given current attitudes and beliefs. Quarterly contact provides a minimum level of continuity of relationship for Felix with his parents and grandmother (and on occasion with other family members). There is only one accredited supervised contact centre which the parties consider is conveniently available to them and that is [contact centre details deleted]. The orders that follow, along with the carefully defined conditions around contact, are focused on supporting meaningful, safe contact that Felix will enjoy.

[82] My judgment is that the maternal family members are unable to sustain fortnightly contact at a supervised centre and even monthly contact seems doubtful. They chose not to exercise supervised contact at all after October 2014. They have already spent more than two years with such arrangements in the hope of winning back Felix's care. This decision brings those hopes to an end. Limiting the frequency to approximately every three months will mean that it is less traumatic and painful for them and accordingly, it is more likely that they will be able to sustain such contact. Working around the key birthdays and Christmas, the orders that are made at the end of this judgment are designed to foster gift-giving and meaningful exchanges between Felix and his other family members, notwithstanding the restricted circumstances in which they will be meeting.

[83] In the event that the [name of contact centre deleted] service ceases or is withdrawn, then it shall be Geoff's responsibility to engage with CYF and have them provide assistance with some other form of supervised contact. CYF can reasonably be expected to assist given its history of engagement with Felix and the FGC record of 19 October 2011 which specifically provides for CYF to assist in this manner in the event of breakdown of contact.

Guardianship issues

[84] Geoff remains committed to providing quarterly guardianship reports to the parents and this is to continue. Sensibly, this should also include Halle, although she is technically not Felix's guardian.

[85] With regard to Geoff's request that the present order restricting Felix's residence to the greater Auckland area be discharged, again I am faced with a balancing exercise between the priority that must be afforded to Felix's safety and, on the other hand, the other welfare factors and principles. This includes the important factor that any shift in residence should not compromise the quarterly contact arrangements and there is the importance of continuity in his schooling and relationships with others in his local community which have been carefully fostered by Geoff to date. I also keep in mind that Geoff has limited financial resources and there is research that indicates that distance becomes a significant barrier for continuing contact due to increased costs and time demands on caregivers if travel time becomes greater than one and a half hours or so. In practical terms that is the driving distance between Hamilton and Auckland (close to 130 kilometres). Air flight costs from further afield in New Zealand (or Australia) are likely to be a very significant financial barrier to contact as Geoff would need to accompany Felix during such travel and would then have to get from Auckland airport to the access centre.

[86] On the other hand, Geoff will be anxious for his own, and Felix's, safety following delivery of this judgment. The reality is that there will be easy opportunity for family members to informally and/or secretly contact Felix in his community.

[87] Doing the best I can, I determine that Felix's residence shall remain within 150 kilometres of central Auckland.

[88] Turning to important (non-routine) guardianship matters, it is plain that some directions are required to avoid Felix's schooling and medical/therapeutic treatment becoming unnecessarily compromised and/or delayed due to the high probability of

disagreement between his three guardians. The directions made and the orders that follow are designed to foster the flow of information and understanding between the three guardians and the maternal grandmother, but are also designed to enable Geoff to solely decide important schooling, medical and other therapeutic treatments. Furthermore, I have decided that he should be able to holiday with Felix outside New Zealand during school holiday periods. This requires the current order preventing removal from New Zealand to be discharged.

Orders

[89] The final parenting order made 9 November 2011 is varied to provide for Felix to have supervised contact with his mother, father, and maternal grandmother (“the visiting parties”) on the following terms:

- (1) Contact is to occur for up to one and a half hours on four occasions per year.
- (2) A contact visit shall occur during the first weekend of each of the months of March, July, October and December (or nearest available weekend in the event of the service provider being unable to meet this requirement).
- (3) Contact will commence on the weekend of 2-3 July 2016 on whichever day the contact service provide can provide the service.
- (4) Contact shall occur at [contact centre details deleted], for as long as that service is willing and able to provide the service.
- (5) Commencing with the December 2016 visit, the visiting parties may bring one other family member to any one contact visit (subject to that family member completing the supervised contact centre’s usual requirements).
- (6) The costs of this service are to be met under s 60 of COCA until discharge of this condition by this Court.

- (7) The parties are to complete all contract requirements with [name of contact centre deleted] no later than 30 May 2016 in readiness for contact.
- (8) The visiting parties are permitted to give Felix birthday gifts at the [month deleted] contact and Christmas gifts at the December visit.
- (9) The visiting parties may arrange with the contact service to have up to three photos and/or two minutes of video taken at any one contact visit provided that this is taken by a supervisor or under the supervisor's direct control.
- (10) The contact parties may bring and share food with Felix provided the food complies with any reasonable restrictions imposed by Geoff.
- (11) Geoff will ensure that Felix takes a birthday card and gift for each of his parents when attending his [month deleted] contact visit and for his grandmother when attending his [month deleted] visit.
- (12) Geoff shall encourage Felix to take some form of drawing, creative "production" or photo with him to each visit to share with, or gift to, those visiting him.
- (13) Terms (8)-(12) are subject to approval by the contact service.

[90] Geoff and Halle are directed to attend counselling pursuant to s 46G for the purposes of both ss 46G(2)(a) and (b). The Family Court coordinator is to refer these parties to David Stebbing if he is willing to accept the referral. If he is not available, then the referral should be made to some other specialist counsellor who is available such as Sue Mafi. The Court is to meet the costs of up to six counselling appointments. The first counselling session is expected to occur within one month following the July 2016 contact visit. Subsequent appointments may occur over such timeframe as the counsellor determines suitable. The Family Court coordinator is directed to provide the counsellor with a copy of this judgment.

[91] The following guardianship directions are made pursuant to s 46R:

- (1) Geoff Michaud shall continue to provide all other parties with detailed quarterly guardianship reports covering Felix's development and activities, including his educational progress, his medical or other therapeutic treatment and health, and any proposed holiday travel outside New Zealand.
- (2) In addition to (1) above, Geoff Michaud is to promptly email the other parties with information sufficient to enable the other parties to understand the details of any proposed change of school or change of medical or other therapeutic treatment.
- (3) Subject to (4) below, the other parties may ask for any further clarifying information from Geoff Michaud or from the proposed provider of the educational, medical or other therapeutic service, and shall retain their rights to express preferences or other proposals to Geoff Michaud for his consideration.
- (4) Geoff Michaud shall be solely responsible for assessing all the views of the other parties as communicated to him by email and he shall be solely responsible for determining Felix's medical and therapeutic treatments and where and how Felix is to be educated. To this extent, the parents' guardianship rights and responsibilities are restricted.
- (5) The order made 13 April 2012 restricting Felix's residence to the greater Auckland area is varied to restrict his residence to remaining within 150 kilometres of central Auckland.
- (6) Felix is permitted to travel overseas during school holiday periods.
- (7) The order made 13 April 2012 preventing Felix's removal from New Zealand is discharged.

T H Druce
Family Court Judge