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**IN THE FAMILY COURT
AT DUNEDIN**

**FAM-2015-012-000111
FAM-2015-012-000131
[2016] NZFC 860**

IN THE MATTER OF THE DOMESTIC VIOLENCE ACT 1995

AND

IN THE MATTER OF THE CARE OF CHILDREN ACT 2004

BETWEEN JULIAN COLEMAN
 Applicant

AND JOLANDA TODARO
 Respondent

Hearing: 17 & 18 November 2015 and 1 February 2016

Appearances: C I Elder for the Applicant
 S C Rose for the Respondent
 J E Westgate as Lawyer for the Children

Judgment: 18 March 2016 at 12:45 PM

JUDGMENT OF JUDGE D FLATLEY

Introduction

[1] On 10 April 2015 Mr Coleman made a without notice application for a temporary protection order under the Domestic Violence Act 1995 (the Act) which was dealt with on the electronic platform (eDuty) by a Judge in another part of New Zealand. A temporary protection order was made against Ms Jolanda Todaro. Also named as persons protected in the temporary protection order are the parties' two children, Ben Coleman born [date deleted] 2010 and Natasha Coleman born [date deleted] 2013.

[2] Mr Coleman seeks a final protection order in the same terms and this is opposed by Ms Todaro. Mr Coleman also seeks to include his three older children of a former relationship, Truman, Mac and Eliza as protected persons.¹

Background

[3] Mr Coleman is an [occupation details deleted]. Ms Todaro is a [occupation details deleted]. She was working in the same buildings as Mr Coleman and the two first met in the staffroom. Ms Todaro was around 25 years old and Mr Coleman 47. Their relationship started not long after they met.

[4] Mr Coleman was unsure of how old Ms Todaro was when their relationship commenced but realised he was some years older than her, particularly when she invited him out to dinner with her friends where, as he put it, he felt old. Despite this the relationship continued because, according to Mr Coleman, he felt close to Ms Todaro and was flattered that a younger woman would be interested in him.

[5] Mr Coleman had previously been married but that relationship had come to an end and he had been involved in litigation in relation to his four children as well as property matters for a number of years which had been stressful.

[6] At the time Mr Coleman's marriage came to an end he was experiencing a serious depressive episode. He was off work for a period and was admitted to a

¹ Section 2 Domestic Violence Act 1995 (Definition of child of the applicant's family) and s 16(1A) and s 16(1B) (Protection of persons other than applicant).

psychiatric hospital ([name of clinic deleted]) for approximately three to four months. During his illness Mr Coleman was physically and psychologically abusive towards his former wife and family and acted in ways that constituted domestic violence. His former wife obtained a final protection order against him in 2008 which was discharged by consent in 2011. Mr Coleman was prescribed medication and his depression resolved. This was a difficult and distressing period of Mr Coleman's life and he met Ms Todaro towards the end of it.

[7] It is relevant that Mr Coleman has found the breakdown of his relationship with Ms Todaro and the associated proceedings extremely stressful and he has resumed the medication previously prescribed for depression.

[8] Ms Todaro fell pregnant only a few months after the relationship commenced and Mr Coleman made a commitment to the relationship. The couple remained together and Ms Todaro again fell pregnant approximately 20 months later.

[9] Sadly, Mr Coleman said in evidence that he regretted the liaison despite the relationship enduring for in excess of six years, the parties finally parting shortly after the temporary protection order was obtained in April 2015.

[10] Mr Coleman claims that during the course of the relationship, Ms Todaro behaved in a manner which constitutes domestic violence and that he and the children require protection from her.

[11] Ms Todaro also made an application for a protection order against Mr Coleman which was directed to proceed on notice.

[12] Proceedings under the Care of Children Act are also before the Court, each party seeking the day-to-day care of the children. Having said that there has been agreement between the parties that some form of shared care arrangement would be suitable and appropriate for the future care of the children. Unfortunately the parties have not been able to agree on that arrangement.

[13] On 27 May 2015 His Honour Judge Coyle made an order determining the shared care arrangements for the children on an interim basis. This provides for Ms Todaro to have the care of the children for four nights per week and Mr Coleman three nights per week, largely across the weekend.²

[14] This arrangement has continued and, as acknowledged by all concerned, has worked well for both the children and the parties. Indeed, the children's lawyer Ms Westgate has reported that independent persons for example, staff at the preschool facilities the children attend have advised that the children are happy, settled and progressing well. No issues for them have been identified. She has also reported that the children appear to be comfortable with the shared care arrangement.

[15] A considerable amount of evidence, to which I shall refer subsequently, has been filed in the proceedings before the Court and there have been a number of judicial conferences convened. The Judges who have presided over these conferences have made minutes, some of which are relatively lengthy. Those minutes should be read in conjunction with this decision. I do not propose to traverse them in detail but they are particularly relevant as they set out the progression of each of the proceedings which are obviously linked.

[16] I particularly refer to my minute of 11 August 2015 in which I set out background and progress. At the time of making that minute, at the conclusion of a judicial conference, I was led to understand that the parties wished to focus on the Care of Children Act matters and resolve domestic violence proceedings by agreements and avoid a hearing.

[17] Ms Rose indicated that Ms Todaro would consider discontinuing her application for a protection order. Ms Elder indicated that Mr Coleman was of the same mind. In that minute I recorded (verbatim):

... Mr Coleman acknowledges that Ms Todaro does have capacity to appropriately parent the children and Ms Elder has indicated that Mr Coleman can foresee an outcome with no protection orders in place. He seeks to deescalate the proceedings and work towards a shared parenting outcome. He seeks a settlement conference for that purpose. Ms Todaro has

² Interim order of 27 May 2015.

made no decision with regard to her application for final protection order and needs further time to consider this and discuss matters with her counsel Ms Rose. She has indicated a willingness to attend a settlement conference and I can only take from that that she is willing to consider working towards an agreement with Mr Coleman relating to the care of the children. In short it may well be that the parties may 'retract' some of the concerns they have raised in evidence.

[18] The proposition that the parties work towards resolving domestic violence proceedings short of lengthy and counterproductive litigation was, at that time, largely driven by Mr Coleman. He said that despite making applications for a protection order and parenting order and filing extensive evidence it had never been his intention to engage in protracted litigation which he acknowledged was likely to be upsetting and potentially destructive and that he had hoped that the parties could resolve matters between themselves. Further, that he had not gathered evidence primarily for the purpose of litigation but that he had considered that gathering evidence might be beneficial should he ultimately decide to pursue an application and that he had received advice from the lawyer he had instructed at that time to do so.

[19] Having read the proceedings including the affidavit evidence and consulted with Ms Westgate, I accepted that progression towards a possible resolved outcome was not unreasonable or inappropriate here. Having said that, obvious concerns remained for me in relation to allegations made by both parties against the other. Considerations relevant to s 5(a) Care of Children Act 2004³ remained firmly at the forefront of my mind and clearly the minds of lawyer for the children and counsel for both parties.

[20] Accordingly I determined that relevant reports pursuant to ss 132 and 133 of the Care of Children Act should be commissioned in relation to proceedings under that Act and those reports are to hand.⁴

³ A child's safety must be protected and, in particular, a child must be protected from all forms of violence (as defined in section 3(2) to (5) of the Domestic Violence Act 1995) from all persons, including members of the child's family, family group, whānau, hapū, and iwi.

⁴ Section 133 Report, Dr Sarah Calvert dated 23 September 2015 and s 132 Report, Judith Williams, social worker dated 5 November 2015.

[21] In summary, the report pursuant to s 133 of the Care of Children Act concludes that each of the parties is capable of caring for the children and very much wishes to do so. No real impediments to either of them doing so are reported and a shared care arrangement is promoted.

[22] As a result it was agreed that a settlement conference could be convened in an attempt to resolve all matters. Unfortunately at that conference, despite what had previously been indicated to the Court, Mr Coleman said that he had not decided whether he would seek for the temporary protection order to be discharged and discontinue his application for a final order.

[23] Ms Todaro discontinued her application for a protection order.

[24] I conclude from all of the evidence which I have considered that Mr Coleman now seeks a final protection order for two reasons:

- (a) To ensure that Ms Todaro completes a stopping violence programme in its entirety; and
- (b) He considers that a protection order provides appropriate boundaries and results in Ms Todaro modifying her behaviour, such that acts that might constitute domestic violence do not occur, thus ensuring his safety and the safety of the children.

[25] When pushed, particularly given his willingness to consider a shared care arrangement, Mr Coleman indicated that his primary objective in pursuing a final protection order was to ensure Ms Todaro completed a stopping violence programme. Ms Todaro has commenced a stopping violence programme and has indicated a willingness to complete it either by way of direction of the Court or on a voluntary basis. She sees benefit in doing so.

[26] With regard to Truman, Mac and Eliza there is no evidence before the Court. In an earlier ruling His Honour Judge Coyle directed that proposed evidence from

Truman was irrelevant and inadmissible pursuant to s 7 Evidence Act 2006.⁵ In any event, it is my understanding that this evidence would have related to potential care arrangements for Ben and Natasha and not the domestic violence proceedings. From my reading, there is little or no evidence in relation to domestic violence as between Ms Todaro and Mr Coleman's three older children. Indeed there appears to be no evidence of any real contact between those children and Ms Todaro particularly, since the parties separated.

[27] Prior to the hearing I directed counsel to file a memorandum of issues. Specifically I requested counsel set out any facts that were agreed, particularly those which would result in a finding that domestic violence had occurred and evidence that remained disputed specifically, allegations of domestic violence in relation to which findings would be required.

[28] The purpose of this memorandum was to enable the Court to identify the parts of the evidence in relation to domestic violence that the parties considered to be particularly significant and narrow the issues for determination.

[29] In response counsel filed separate memoranda. Ms Todaro acknowledged that she had on occasion acted in ways that might constitute domestic violence. In Mr Coleman's memorandum he set out categories of domestic violence and referred to specific allegations of violence in each, most of which he claims are disputed and require determination.

The Law

[30] Domestic violence is defined at s 3 of the Act. It means physical abuse, sexual abuse, psychological abuse including, but not limited to, intimidation, harassment, damage to property, threats of physical abuse, sexual abuse or psychological abuse and financial or economic abuse. In relation to children they are psychologically abused if a person causes or allows the child to see or hear physical, sexual or psychological abuse or is put or is allowed to be put at real risk of seeing or hearing such abuse.

⁵ Minute of His Honour Judge Coyle dated 27 May 2015 at para [19](j).

[31] If I determine that domestic violence has occurred I then have to find that it is necessary that a protection order exists into the future for the protection of Mr Coleman and the children.

[32] The law in relation to this is quite clearly set out in the Court of Appeal decision of *Surrey*⁶ particularly in the appendix to that decision. It sets out the mandatory considerations that the Court must undertake when determining whether it is necessary to make a protection order or not. Those considerations are:

- (a) Whether past domestic violence forms part of a pattern of behaviour in respect of which the applicant or a child of the applicant's family or both need protection.
- (b) The perception of the applicant or the child of the applicant's family or both of the nature and seriousness of the behaviour in respect of which the application is made. This requires consideration of the nature and seriousness of past violence and the victim's subjective fears for the future. Such concerns about possible future violence will have been aroused because of past violence.
- (c) The effect of past domestic violence on the applicant, child of the applicant's family or both, and this may be dependent on subjective views of the nature and seriousness of violence. The effect of violence will also vary depending on vulnerability, characteristics of a particular victim and this must also be considered.

[33] Those considerations are not exhaustive, other considerations may also be relevant and taken into account.

[34] The appendix provided by the Court of Appeal does not appear to contemplate an assessment as to "reasonableness" of the applicant's fears and views of past or perhaps more importantly perceived fears and views of future violence. This might mean that where an applicant claims to be fearful for all of the reasons

⁶ *Surrey v Surrey* [2010] 2 NZLR 581; [2010] NZFLR 1; (2009) 27 FRNZ 968 (CA)

contained in the mandatory considerations set out in s 14, necessity is automatically established and an order should be made.

[35] However, as set out in s 14, the Court is required to determine necessity by considering the relevant considerations set out in that section and reconfirmed in the appendix to *Surrey* and beyond and is able to ultimately conclude that an order is necessary or, irrespective of what the applicant claims, that an order is not necessary. Indeed, it is the consideration of the s 14 factors that is mandatory, not the making of the order. On that basis, the Court must be able to consider standards of reasonableness as they relate to the applicant's perception, fears and views.

[36] Further, at para [43] of that decision, the Court of Appeal said:

In our view, an evidential burden passes to the respondent to raise countervailing factors that weigh against the need to grant a protection order once an applicant has proved the existence of past violence and his or her reasonableness subjective fear of future violence.

[37] This supports the conclusion that the standard of reasonableness is indeed to be considered when assessing what the applicant claims and adds weight to the proposition that the Court is not automatically required to make an order if the applicant appears to satisfy all of those mandatory requirements.

[38] Judge Coyle, in the decision of *LPL v TP*⁷ having interpreted *Surrey*, determined that once violence is proven, the onus passes to the respondent to raise countervailing factors that weigh against the need for granting a protection order.

[39] A better approach might be that countervailing factors be weighed and balanced at the same time as assessing the s 14 factors so that they are weighed against those factors and not against the need for granting the order. The standard of reasonableness with regard to perceived fears and views about future violence should be included in the balancing and weighing assessment, in my view. In other words the subjective views of the applicant are to be considered objectively as part of this process.

⁷ *LPL v TP* FAM-2009-012-000445, 5 May 2010

The Evidence

[40] The evidence filed by Mr Coleman in support of his application is extensive. Ms Todaro in her responding evidence, which is also significant, disputes all but a few of the allegations made against her. It is relevant to note that her evidence includes that filed in support of her discontinued application for a protection order claiming that Mr Coleman was violent towards her.

[41] I have read all of the affidavit evidence that has been filed. A lengthy hearing also occurred during which Mr Coleman was cross-examined for two full days and Ms Todaro was cross-examined for one day. Counsel have filed lengthy submissions. Despite the length of the hearing not all matters contained in the affidavit evidence were traversed so that it might be concluded that some of the evidence, particularly involving allegations of violence, is before the Court without challenge. Having said that I was able to gain a clear picture of the situation and reach a conclusive decision in relation to all the evidence.

[42] I do not sift through all of the affidavit evidence in this decision but that does not mean that I have not considered it. Rather, I make general findings with regard to the evidence in relation to reliability, credibility and weight while focussing on what might be considered to be the more serious allegations particularly those that relate to the children and evidence that was particularly referred to in the hearing.

[43] Further reasons for taking this approach include that there is a considerable amount of repetition particularly in Mr Coleman's evidence across affidavits. Many of the events that Mr Coleman claims occurred were listed by him in a way which might give the impression of them being more serious. However, when broken down and isolated many of those events appear to be relatively innocuous.

[44] Also, there are issues with regard to the obtaining of evidence for example, by way of recording to which I shall refer subsequently. Further, a proportion of the evidence submitted by Mr Coleman is not evidence in support of a claim that Ms Todaro has acted in a way that might constitute domestic violence for example,

the evidence in relation to Ms Todaro experiencing auditory and visual hallucinations.⁸

[45] While I acknowledge that Mr Coleman commenced these proceedings without the assistance of legal representation it is reasonable to conclude that he has included such information in order to bolster his application by raising other issues that might be of concern and cast Ms Todaro in a poor light. I note also that Mr Coleman frequently referred to the fact that he had received legal advice early on in the relationship, particularly in relation to the possibility of pursuing an application for a protection order and the gathering of evidence. Therefore he was not completely devoid of legal assistance.

[46] Mr Coleman confirmed the contents of several affidavits dated 9 April 2015, 22 April 2015, 28 April 2015, 19 May 2015, 9 July 2015 (re-sworn from 24 June 2015), 9 July 2015 (re-sworn from 3 July 2015) and 23 September 2015.

[47] Ms Todaro confirmed the contents of affidavits dated 28 April 2015, 12 May 2015, 29 June 2015 and 16 September 2015.

Audio recordings

[48] As part of his evidence Mr Coleman presented a selection of audio recordings on a compact disc. Those recordings of approximately 25 minutes duration were played at the commencement of his evidence. This evidence was also transcribed and included in Mr Coleman's affidavit evidence.

[49] Mr Coleman said that while the audio recordings amounted to only 25 minutes he had, in fact, recorded hundreds, perhaps thousands, of minutes of interactions between him and Ms Todaro. He said that what he had included in his evidence amounted to a representation of what occurred in the relationship which he considered constituted domestic violence on the part of Ms Todaro and which supported his application for a protection order. Mr Coleman said that Ms Todaro was aware on some but not all occasions that he was recording events. When pushed

⁸ Paragraph 104 of Mr Coleman's affidavit dated 9 April 2015.

he said that he believed that she was aware approximately 50 percent of the time. Mr Coleman also said that he had been gathering and saving recordings since approximately early 2012, a period of in excess of three years, before he made his application for a protection order.

[50] Ms Todaro said that she had become aware that Mr Coleman was recording her at times later in 2012 but that she did not always know that he was recording.

[51] When questioned about why he had made these recordings Mr Coleman said that he had done so for several reasons including:

- (a) He had received legal advice to do so because he had claimed that he was frequently not believed by the various authorities with regard to allegations made by him that Ms Todaro had been violent towards him. He said that Ms Todaro had denied being violent in the past and that she would deny any such allegations in the future.
- (b) He had sought advice in relation to the obtaining of a protection order but decided not to pursue an application at that time. But he received advice to gather evidence by way of recording to be available should he consider it necessary to make an application at any time in the future.
- (c) He believed Ms Todaro had knowledge of him recording her which would amount to evidence of her domestic violence and he believed that this would act as a deterrent to her being violent, would result in her moderating her behaviours, provide some control of her misbehaviour and provide boundaries with regard to appropriate and inappropriate behaviours.
- (d) He wanted Ms Todaro to accept that she acted in ways that he determined to be inappropriate and this evidence would ensure this occurred.

[52] This audio evidence is perhaps the most significant in that it provides the Court with a record of what, at times, was actually occurring in the relationship between Mr Coleman and Ms Todaro.

[53] Mr Coleman submits that the evidence supports his claim that Ms Todaro was psychologically abusive by virtue of her yelling, the language used and the content of what she said as well as physically abusive, the recordings capturing incidents when it is claimed she was physically violent towards either Mr Coleman or a child.

[54] However, I find that there are some significant problems with this evidence including:

- (a) It amounts to only “sound bites” of what occurred between Mr Coleman and Ms Todaro in that the recordings are of only small parts of lengthier interactions or arguments between the parties. There is no indication of how the arguments commenced or what was said to Ms Todaro by Mr Coleman. There is little doubt that the recordings are made when Ms Todaro has become very upset but with no indication of what has occurred prior. In summary, the recordings lack context.
- (b) Despite the reasons given by Mr Coleman for making the recordings it is implicit in the fact that they were made that there was an intention to use them in litigation at some point. It is reasonable to conclude, therefore, that the evidence gathered may well have been “framed” by and for those intended purposes.
- (c) Given that Mr Coleman was in “control” of recording he was able to moderate his behaviour presenting himself in a controlled and apparently reasonable manner. Whereas the recordings of Ms Todaro are of spontaneous and unprepared comments and responses in arguments with Mr Coleman.

- (d) Mr Coleman has been able to be selective with regard to what recorded evidence was presented by him to the Court in support of his application. Out of a considerable amount of recorded evidence he has submitted only a very small amount. It is reasonable to conclude that Mr Coleman has not submitted evidence that might not support his application or paint him in a bad light.
- (e) There is no independence with regard to the evidence that he has chosen to provide. It is clear that Ms Todaro was never provided with these recordings in their entirety for her consideration, comment or response.

[55] Ms Todaro disputes that the audio evidence supports Mr Coleman's application. Rather she considers his recording her to have been abusive and controlling. In the audio evidence she can be heard to say, "I hate you, I have tried to love you so much. What you say and do is classified as abusive."

[56] During another interaction the parties' son, Ben, is involved. Ms Todaro says, "Daddy is a bad boy, greedy and selfish." This is repeated to some extent by the child. Ms Todaro then accuses Mr Coleman of holding Ben whenever challenged and saying, "Do not argue in front of the children" or that she is "having a negative influence on the child", subsequently relying on it as a form of domestic violence. Ms Todaro contends that Mr Coleman manipulated events and situations in order to be able to record her responses and enable him to make negative comments about her behaviour and the impact it might have on the children.

[57] Ms Todaro said in evidence that on another occasion Mr Coleman threw dirty nappies around the floor at a time she was attending to the children. That upset her and caused her to react. During the altercation Mr Coleman announced he was inviting friends around which upset her further. She responded that he was "not allowed to", to which Mr Coleman responded that Ms Todaro was abusing him including by acting in a way to ensure he was "socially isolated". It is Ms Todaro's evidence that her response related to her position that it was not an appropriate time

to be inviting people to the home or socialising. She considered his actions to be manipulative and abusive.

[58] It is also Ms Todaro's evidence that she did not always know that Mr Coleman was recording her or that on other occasions he would incite an argument and then tell her that he was going to record her when she responded. She also said in evidence that on some occasions she was so frustrated and upset with Mr Coleman, she responded so as to "give him what he wanted" or "make his recordings worthwhile" which supports her affidavit evidence.⁹ On other occasions she said that she thought that if she responded as she thought he wanted he would leave her alone and let her get on with her day.

[59] It is also Ms Todaro's evidence that Mr Coleman frequently became angry and yelled at her but none of the recordings include this behaviour. She said that on occasions he would record her, stop recording, leave the room then return and yell at her. It is Ms Todaro's evidence that Mr Coleman said that she could record him if she wished.

[60] Ms Westgate put to Ms Todaro that Mr Coleman believed his recording of her was not intrusive. In response she said that she did not like it at all. She said she found it disingenuous and that it made her angrier than she was. She said that Mr Coleman had told her it was his way of defusing a situation but she felt that in order to do so he should have simply left her alone.

[61] Ms Todaro's proposition that the recording of her was in itself abusive and to some extent controlling, is a proposition which I consider to be reasonable. Indeed I take a different view of the audio evidence than Mr Coleman. What I heard in Ms Todaro amounted to a very distressed, even traumatised, individual. She was clearly upset and at times angry. It is apparent to me that Ms Todaro was frequently agitated and frustrated and she, on most occasions, appeared to be responding to provocation.

⁹ Paragraphs 4 and 16w of Ms Todaro's affidavit dated 12 May 2015.

[62] Mr Coleman was questioned as to why he had gathered this evidence over such a long period of time without taking any action and before making his application. In response he said that he had been “paralysed” from acting due to his experience as a child of abuse by his stepmother. He referred to the ‘fight or flight response’ to trauma. I find this explanation somewhat difficult to accept given that Mr Coleman did, in fact, take significant action in that he made considered decisions as to when to record, stop and start recordings and managed to record on more than one device many interactions between the parties which he then must have edited and collated for the purpose of including it in his evidence. He was clearly not paralysed. His explanation lacks credibility and it is my view that his gathering of information was very much for other purposes, potentially manipulation and control.

[63] It is reasonable for me to consider that Ms Todaro was provoked to respond as she did or that Mr Coleman acted in ways in order to elicit desired responses all the while presenting as being calm, measured and reasonable. This enabled him to record incidents which he could then claim to be evidence of domestic violence. In the end I take the view that it is reasonable for me to consider Mr Coleman was an aggressor in a passive manner and that his behaviour may be described as manipulative, controlling and insidious.

[64] Further it is reasonable for me to consider that Mr Coleman’s behaviours may have been intentionally destructive so as to sabotage the relationship particularly given his evidence that he regretted the liaison with Ms Todaro. The Court must bear in mind Mr Coleman’s position with regard to the Care of Children proceedings and particularly his proposals with regard to the children’s future care when considering his actions and possible motivation.

[65] Even if I were to accept the audio recordings as legitimate, the audio evidence might well amount to no more than arguments that occur in a dysfunctional, failing relationship particularly where one or perhaps both parties are emotionally distraught and under extreme pressure. What is said by parties in that context does not necessarily constitute domestic violence or perhaps more importantly result in it being necessary for there to be a protection order in place into the future.

[66] Further, whilst comments to children particularly in relation to the other party are unfortunate and cannot be condoned they are often said in the context of extreme emotional distress and do not of themselves necessarily amount to domestic violence.

[67] The evidence appears to show two different personalities. Ms Todaro is distraught and reactive, whereas Mr Coleman presents as a calm and measured individual who acts in a controlled, possibly calculated, manner. Both are potentially destructive. I do not have any expert psychological evidence to enable a full and proper assessment of this evidence or with regard to how either of these parties presented. But what I conclude is that the evidence does not, for the reasons articulated above, provide clear unequivocal evidence of domestic violence on Ms Todaro's part and does not amount to evidence to which I can attribute a great deal of weight.

Email communications

[68] On many occasions following interactions and arguments between the parties Mr Coleman sent himself an email setting out his version of what had occurred.¹⁰ There are in excess of 500 such emails in total.

[69] Again it is a question of what weight might be attached to this evidence. As elicited by Ms Westgate in cross-examination these emails amount to Mr Coleman's version of events. Ms Todaro had no knowledge that Mr Coleman was compiling evidence in this way, so that they were not shown to her and she had no opportunity to challenge what had been recorded or provide her version of events. In the end I attach very limited weight to this evidence.

Lack of independent evidence

[70] Essentially all of the evidence filed by Mr Coleman in support of his application is provided by him. Despite claiming significant physical violence resulting in injury Mr Coleman alerted the police on only two occasions and never

¹⁰ Examples – See Exhibits G and H of Mr Coleman's affidavit dated 19 May 2015.

sought medical advice. For example, Mr Coleman claims that on one occasion he was punched in the head and face at least 10 times by Ms Todaro with one punch hitting him square in the left eye, that caused him pain and blurred vision.¹¹ Despite this he did not call the police or seek medical advice. On another occasion he alleges that Ms Todaro threatened him with a large garden fork,¹² but again, he did not contact the police. It is relevant that Ms Todaro disputes this evidence.

[71] On another occasion Mr Coleman photographed Ben when he believed that he had been hurt by Ms Todaro causing red marks near his armpit.¹³ Despite taking those photographs Mr Coleman did not contact the police, a doctor or the Child, Youth and Family Service. There are other allegations of physical abuse contained in Mr Coleman's affidavit evidence particularly towards the children in relation to which he took no steps.

[72] In response to questions put by Ms Westgate Mr Coleman explained that he has a total distrust of the police who he considers were complicit in Ms Todaro breaching the protection order by removing the children and going to the Women's Refuge for approximately six weeks during which time he had no contact, a matter that I shall refer to subsequently. On one of the two occasions that he did call the police he sent them away without complaint and on the other no action was taken by them despite Mr Coleman's claims. In relation to this incident Mr Coleman believes the police showed some bias towards him as a result of the police officer who attended having been involved with him and his wife at the time of their separation. With regard to why he did not seek medical attention Mr Coleman claimed that there was no need to consult a doctor given his qualifications.

[73] Ms Westgate questioned Mr Coleman about why, given his inaction, he had bothered to collect evidence across a lengthy period of time. Mr Coleman returned to earlier answers particularly in relation to behaviour modification on the part of Ms Todaro and general protection for him but particularly the children. However, I accept Ms Westgate's proposition that collecting this evidence in and of itself simply does not provide any degree of protection at all. Further, it is reasonable for the

¹¹ Paragraph 69 Mr Coleman's affidavit dated 9 April 2015.

¹² Paragraph 75 Mr Coleman's affidavit dated 9 April 2015.

¹³ Paragraph 94 Mr Coleman's affidavit dated 9 April 2015.

Court to ponder whether simply recording and storing evidence of possible abuse of children without taking action and allowing the children to continue to endure it is in itself abusive.

[74] It is not clear why Mr Coleman merely recorded evidence without seeking any form of assistance in relation to alleged abusive behaviours. Had he done so he would have been able to provide a record and independent evidence to corroborate what he now claims and relies on in support of his application. The reality is that there is no independent evidence to corroborate what Mr Coleman claims. The inference that the Court might then draw from this is that what Mr Coleman claims occurred did not in fact occur or did not occur in the way or to the extent claimed.

Has domestic violence occurred?

[75] Mr Coleman submits that domestic violence has occurred in the following categories (verbatim):¹⁴

- (i) Directly towards Ben in the form of physical abuse, psychological abuse, damage to Ben's property and violent or dangerous acts that put him at risk.
- (ii) Directly towards Natasha by way of physical violence, psychological abuse and violent or dangerous acts that put her at risk.
- (iii) Towards Ben and Natasha via the abuse of Mr Coleman.
- (iv) Directly towards Mr Coleman by physical abuse, sexual abuse, psychological abuse, non-accidental damage to property.
- (v) Towards the family cat Fluffy.
- (vi) Specific psychological abuse by removing the children and residing at the Women's Refuge which resulted in non-contact between Mr Coleman and the children for approximately six weeks.
- (vii) Specific psychological abuse specifically by bringing an application for a protection order against Mr Coleman which he considered to be malicious and having no merit.
- (viii) Breaches of the protection order.

¹⁴ Mr Coleman's evidence and memorandum of counsel dated 9 November 2015.

Violence towards Ben (physical and psychological)

[76] I have read and heard evidence about Ms Todaro being physically violent and abusive amounting to psychological violence towards Ben. There is also an amount of evidence contained in the audio recordings. I have already referred to comments made which Ben repeated or mimicked. The recordings also include Mr Coleman questioning Ben about what might have happened to him on occasion. What is of concern to me is that this questioning of Ben involves leading questions, references to Ben being hurt by his mother or his mother having done something wrong and a degree of persistence on Mr Coleman's part. Also, he asks questions of Ben about why his mother may have acted in a particular way. By way of example, the events of 2 March 2014 described at para 93 of Mr Coleman's affidavit dated 15 April 2015:

... Ben said: "Mummy put the vacuum cleaner thing all by my ear." I said "She put the vacuum cleaner thing by your ear". He said "Yeah". I said "Why". He said "Cos she wanted to". I said "Did she touch you with it?" He said "No". I said "Did she suck it? Was it the sucker thing? Which part of the vacuum cleaner?" He said "The heads part". I said "How did you feel about that?" He said "I felt sad". I said "Did she hurt you". He said "Yes". I said "How did she hurt you?" He said "With her hands". I said "With her hands?" He said "Yeah". I asked "What did she do with her hands?" He said "She hit me!" I said "She hit you?" He said "Yes". I asked "When?"

[77] Further, the events of 11 May 2014 described at para 97:

... The same day, after I heard him screaming, Ben told me Jolanda had hurt him. I made a recording a few minutes later: I asked him '... What did Mummy do to you in the bedroom?' Ben said, in a sad and small voice: 'She threw me on the floor.' I said 'She threw you on the floor.' He said 'Yeah'. I asked 'Why?' He said 'She did'. I asked 'Are you alright?' He said, in a small and sad voice 'Yes'. I did not think that he was alright, though.

[78] In response to questions from Ms Westgate Mr Coleman acknowledged that he does not have training or skills in interviewing children. It is apparent from the evidence that processes that would usually be adopted, for example during a police evidential interview, were not utilised. Particularly the use of open-ended questions and simple language. Further, there is no exploration by Mr Coleman of what was happening generally at the time allowing the child to explain what was happening well before the event that allegedly occurred. Mr Coleman simply accepts the

information apparently given to him by the children, particularly Ben. For example at para [94] of Mr Coleman's affidavit of 15 April 2015:

... I went inside and found Ben crying profusely in the bath. I got him out, dried him, comforted him and warmed him up. Ben said to me "Mummy shouted at me and hurt me".

[79] Mr Coleman accepts that he did not see all of what he claims occurred rather, he heard events and spoke to Ben subsequently. Further, at the time some of the incidents are alleged to have occurred Ben was approximately three years of age. There is no evidence before the Court about Ben's comprehension, language or general development levels or in relation to the cognitive abilities of children at that age to understand and respond to such questioning. In my experience their abilities would be limited.

[80] I acknowledge that Mr Coleman said that he knows his son extremely well and knows when he is hurt. It is clear that Mr Coleman felt that he had no reason to doubt what Ben told him. But it is difficult to obtain from children, of such a young age, credible and reliable information which might be used as evidence. This is particularly so where a child is conscious of the level of conflict and dysfunction between their parents, which was ongoing here for in excess of three years during which time Mr Coleman questioned the children and recorded evidence.

[81] Further, as I understand the evidence Mr Coleman at no point raised with Ms Todaro information that he obtained from the children or sought her explanation or information from her that might have been relevant about a particular incident or claim made by either child. She has, therefore, never been given an opportunity to give her version of events. Having said that, Mr Coleman said that any discussions that he attempted to have with Ms Todaro were unsuccessful because she would not accept any responsibility or show remorse. It appears, therefore, that the only acceptable outcome of any discussion from Mr Coleman's perspective would have been total acceptance of wrongdoing on Ms Todaro's part.

[82] In her evidence Ms Todaro said that she was never intentionally physically violent towards Ben. She said that on one occasion when she was changing him she playfully and affectionately smacked his bottom. She said that this was something

that had occurred in her family and that it followed tickling and cuddling. She had thought she had smacked in a playful and gentle manner but judged from Ben's reaction that she may have miscalculated this. She had no intention to harm or hurt him and was upset by his reaction. On another occasion Ms Todaro picked Ben up by holding him under the armpit area which caused red marks – which were photographed by Mr Coleman. Again she said that she had no intention of hurting Ben.

[83] Ms Todaro accepted that on occasions she yelled at Ben (and there was no real challenge to evidence that she had, at times, also yelled at Natasha). When giving her evidence she was clearly upset that this had happened and said she wished it had not. Ms Todaro explained that this occurred within the context of the dysfunctional relationship with Mr Coleman. She said that she was essentially at the end of her tether because of what had occurred between her and Mr Coleman both at the time and across the relationship. She said she had become “undone” or “unhemmed” and that she reached a point where she did not care because she believed Mr Coleman was “probably recording her” because she had become upset, as part of his evidence gathering.

[84] Ms Todaro described one occasion following an argument when Mr Coleman went outside. Ben wanted to follow his father and Ms Todaro felt “betrayed”. She accepts that she yelled telling Ben “be quiet, be quiet, go outside”. She said that she mishandled the situation and misdirected her emotions.

[85] On another occasion Ben locked himself in a room. In response Ms Todaro yelled at him and placed him in time out. She told Ben she would not take him swimming and sent him to his room asking him what right he had to behave in that way.

[86] Ms Todaro said she had reacted as she did because of the way Mr Coleman had acted towards her particularly locking her out of rooms in the family home (about which she gave evidence). She said that she became upset and angry because of what she had experienced within a “horrible relationship”.

[87] While such behaviour towards children and involvement in adult conflict should be avoided at all costs it is not always possible, in the context of an extremely dysfunctional and failing relationship, to achieve this. Unfortunately children get caught in the “crossfire” and parents do yell and behave in ways that are, at times, less than desirable. However, this does not necessarily amount to domestic violence or constitute a need for ongoing protection provided by the existence of an order particularly when the relationship, the context within which this behaviour occurred, no longer exists.

[88] With regard to the proposition that Ms Todaro acted dangerously towards Ben or put him at risk, it is Ms Todaro’s evidence that Mr Coleman’s reactions were disproportionate to what was actually happening. For example on one occasion she was bringing in the laundry from outside when Ben fell and hurt himself on the stones. Mr Coleman accused her of being abusive towards him. It is Ms Todaro’s evidence that Mr Coleman is hyper vigilant with regards to abuse of any of his children and that this has been a feature of his relationship with her.

Violence towards Natasha

[89] Very little evidence was raised or challenged during the course of the hearing in relation to Natasha. All of the evidence in relation to her is contained in the affidavits and is limited.

[90] Ms Todaro was referred, in evidence, to the occasion when she clapped her hands close to Natasha’s face when she was changing her and Natasha reacted by crying. Ms Todaro said that Natasha was being difficult and trying to wriggle away so that she was attempting to distract her. She had blown in her face, role played and focused on objects in the room – clapping was another tactic to distract her. I do not find anything particularly wrong with Ms Todaro’s approach here or that it constituted domestic violence.

Conclusions

[91] It is entirely possible that, on occasion, the children simply responded to what constitutes normal robust care and parenting. It is reasonable for me to accept that children will complain about aspects of direction and management for example, being hurried out of the bath about which I heard evidence. But this does not constitute domestic violence on the part of a parent.

[92] Alternatively the children may have acted, in the context of the dysfunction between their parents, according to how they believed they should act, such behaviour having been positively reinforced by Mr Coleman. A true picture of what was actually occurring on the occasions recorded by Mr Coleman cannot be obtained from the evidence that he has provided and particularly in relation to any recordings for reasons I have articulated above. Again, it would have been extremely helpful for him to have obtained independent evidence.

[93] Further, rather than act protectively and remove the children from such situations, Mr Coleman orchestrated situations where the children remained and witnessed and experienced ongoing hostility involving foul language, yelling and general aggression. It appeared to be more important to him to gather the evidence than to do so. It might also be concluded that these incidents were not considered by him to be so serious or significant to require an urgent and immediate response in order to limit the children's exposure. On no occasion involving the children did Mr Coleman seek medical intervention or contact the police.

[94] In the end, having regard to all of the evidence and the difficulties with it, I do not find that there is sufficient evidence to categorically conclude that Ms Todaro has been intentionally physically violent towards the children. While on occasion Ms Todaro may have acted robustly and particularly at times when she was upset, frustrated and even angry, I do not accept that she was intentionally violent. Rather, Ms Todaro was functioning as a parent while experiencing the trauma of an extremely dysfunctional relationship and in doing so was able to provide only basic parenting at times.

Violence towards Mr Coleman

Sexual abuse

[95] Mr Coleman claims that Ms Todaro was sexually abusive towards him for example by slapping his bottom, pinching or twisting his nipples, grabbing his crotch, poking his perineum and anal area and kicking him in the testicles.

[96] In response Ms Todaro claims that she was acting in an affectionate or provocative manner and often as a precursor to sex. Alternatively she considered her behaviours to be mildly irritating or funny. I do not consider this to be unreasonable and attach little weight to Mr Coleman's evidence about this.

Threats to kill

[97] Mr Coleman alleges that Ms Todaro made threats to kill him. In response Ms Todaro claims that any comments made by her were in response to questions put to her by Mr Coleman. For example she said that in response to a question about what she would do if he was to have an affair she said that she would "kill him".

[98] On another occasion it is alleged she said that if he ever cheated on her she would "castrate him and cut off his penis" but there appears to be some inconsistency in relation to this evidence. Mr Coleman claims that on other occasions Ms Todaro said that she would cut off his balls if he left her for a younger woman. Further, Mr Coleman claims Ms Todaro told him that if he did not return from a conference in France with "full balls" she would castrate him. Mr Coleman said that he considered these threats to be most serious and not prompted. He said that he had never been unfaithful.

[99] Ms Todaro said that she never had any intention to actually harm Mr Coleman and that any comments that she had made were in response to his questioning and provocation and that they were flippant and designed to impress upon Mr Coleman the seriousness with which she viewed infidelity. Ms Todaro's proposition is that these sorts of comments are no more than what might be made

between partners when discussing such topics. This is a reasonable proposition in my view.

[100] Ms Todaro said in evidence that on occasion, when she had been very upset, she muttered negative things about Mr Coleman and what she wished for him to herself. She said this was a strategy to redirect her emotions and avoid yelling and an argument.

[101] It is not uncommon for partners in a dysfunctional relationship marred by conflict to say negative and destructive things to each other or to wish upon the other, even to themselves, bad tidings. This occurred as a result of the very poor and dysfunctional relationship between the parties which was marred by much conflict. Again I attach little weight to Mr Coleman's claims that Ms Todaro threatened to kill him.

Allegations of dangerous driving

[102] Ms Todaro disputes that she ever drove dangerously with the children in the car but Mr Coleman remains firm in his view that this occurred. It is Ms Todaro's position that Mr Coleman has confused events that occurred during the course of the relationship. She also challenges his version of some events claiming that on occasion he was the person who caused the vehicle to be driven in a dangerous manner. In response Mr Coleman claims that Ms Todaro's comments are lies. It is difficult to make any conclusive findings about these claims.

Physical violence and injuries

[103] Mr Coleman claims that Ms Todaro was physically violent towards him and inflicted injuries on him. For example, he claims that Ms Todaro threw a lamp at him a corner of which hit him on the heel, caused a graze and bruising.¹⁵ Mr Coleman also claims that at this time that Ms Todaro hit him numerous times with a pillow and pushed him against the wall. Despite this Mr Coleman did not seek any medical attention.

¹⁵ Paragraph 49 Mr Coleman's affidavit dated 9 April 2015.

[104] Ms Todaro accepts that she did throw a lamp but that this occurred within the context of an argument and that she was provoked. Mr Coleman was questioned in relation to this evidence particularly about his ability to collate the number of times in which he was hit with the pillow. In response he said that he had a mathematical mind and was counting. The police were called and a family violence report was created. No charges followed. Despite claiming to have been injured Mr Coleman did not show the police his injuries which he subsequently photographed and included in his evidence. Asked why he had not done so he said that in fact he could not recall whether he had done so or not despite the fact that he appeared to have a very good recollection of everything else that occurred on that occasion.

[105] On another occasion Ms Todaro claims that she was attempting to close a door and that Mr Coleman deliberately put his foot in the door to prevent her from doing so. It is his evidence that she deliberately shut the door on his foot.¹⁶

[106] Other examples of allegations of violence include Ms Todaro pulling Mr Coleman out of bed, trying to smother him, forcing a dirty dishcloth into his mouth, all of which Ms Todaro has denied but Mr Coleman has insisted occurred.¹⁷ On another occasion when Natasha was unwell in the night Ms Todaro prodded Mr Coleman to wake him in order to assist her, “woke me by elbowing me hard in the back and pushing me hard.”¹⁸ He claims that she was being violent towards him in doing so. Further examples of violence claimed by Mr Coleman include that Ms Todaro threw a muffin, a book, medicines and cups of water at him.¹⁹

[107] The majority of the allegations made by Mr Coleman are denied by Ms Todaro but, in any event, can be described as insignificant and non serious.

[108] Ms Todaro has accepted a limited number of the allegations of physical violence towards Mr Coleman to which I shall refer subsequently. However, Ms Todaro claims that many of her actions towards Mr Coleman were in response to his behaviours towards her and were a reaction on her part to what was occurring

¹⁶ Paragraph 47 Mr Coleman’s affidavit dated 9 April 2015.

¹⁷ Paragraphs 52, 56 Mr Coleman’s affidavit dated 9 April 2015.

¹⁸ Paragraph 64 Mr Coleman’s affidavit dated 9 April 2015.

¹⁹ Paragraph 44 Mr Coleman’s affidavit dated 9 April 2015.

between them in their relationship. I have real difficulty in determining that what Mr Coleman has claimed reaches the threshold to be defined as physical domestic violence.

Damage to property

[109] I heard evidence about occasions when Ms Todaro allegedly damaged property. For example Mr Coleman alleges that Ms Todaro threw a plate with some rice on it at Mr Coleman when he was sitting in Ben's bedroom.²⁰ Ms Todaro accepts that she threw a cup. Mr Coleman managed to photograph the room. Those photographs depict broken crockery and a small amount of rice. The photographs were taken from both inside and outside of the room and prior to Mr Coleman removing the children from what he considered to be a serious situation. There is no indication as to when the photographs were taken.

[110] Ms Todaro alleges that Mr Coleman returned to the room some time later in order to "stage" the room including books being strewn around and a damaged toy belonging to Ben. Mr Coleman claims that these items were broken when Ms Todaro was in a rage but it is her evidence that the toy was accidentally broken when she reached to close the curtains to prevent Mr Coleman from taking photographs from outside.

[111] It is Mr Coleman's evidence that Ms Todaro, at different times, damaged his property including his mobile phone, laptop, glasses, two of his cups, a baby monitor he had purchased and caused minor damage to areas of the house which he owned.

[112] In response Ms Todaro denied the claims or explained that she was extremely upset and frustrated and, at times, provoked into responding to Mr Coleman's behaviours towards him.

[113] I gained the distinct impression in relation to the evidence about alleged property damage that incidents occurred in which both parties were involved and

²⁰ Paragraph 122 Mr Coleman's affidavit dated 9 April 2015.

that there was a certain degree of goading and provocation on the part of both parties.

[114] Again, it is difficult to determine exactly what occurred or that, what appears to amount to relatively petty disputes, within the context of a failing and dysfunctional relationship, equates to qualifying domestic violence on the part of Ms Todaro only.

Violence towards Fluffy

[115] I also heard evidence about Mr Coleman's cat Fluffy which he claims was kicked like a soccer ball and thrown against the wall. Despite this the animal was not taken to a vet to be checked. It is Ms Todaro's evidence that she shooed the cat away from the chickens using the side of her foot and that on another occasion she was dancing with the cat and accidentally let it go. This evidence does not support a finding that Ms Todaro has perpetrated domestic violence.

Verbal Abuse

[116] Mr Coleman has submitted an extremely large amount of evidence, to which I have referred, of what he claims constitutes psychological violence in the form of Ms Todaro yelling, screaming, using foul and abusive language towards him and the children. There is no doubt that Ms Todaro did behave in these ways as is clear from the audio and associated affidavit evidence. However, the comments that I have made in relation to the obtaining and provision of the audio evidence are particularly relevant here. The context within which these outbursts occurred is not clear. What happened prior and whether Ms Todaro was provoked in any way cannot be determined.

[117] While the Court does not condone this behaviour, particularly the use of foul and abusive language, it is not entirely uncommon in relationships particularly those that are dysfunctional and failing.

[118] What must be remembered here, as I have already articulated, is that this relationship was in an extremely poor state. Ms Todaro felt controlled, manipulated and trapped. She was considerably younger than Mr Coleman and I gained the impression that she relied on him for support and direction, particularly earlier in the relationship. As it deteriorated Ms Todaro became more and more vulnerable to a point where she has essentially broken down.

[119] I also gained the impression that Ms Todaro was traumatised and that this manifested itself in her responses to Mr Coleman and her behaviours generally including in relation to the children. This is precisely the response referred to by Mr Coleman in his own evidence – the fight or flight response to trauma. Any evidence about verbal or emotional abuse constituting psychological violence must be considered in this context.

Specific psychological abuse by removing the children and residing at the Women's Refuge

[120] In the end Ms Todaro could see no way out of the situation she was in other than to seek the assistance of the Courts and Women's Refuge. The situation between Mr Coleman and Ms Todaro was negatively impacting on the children it could not endure and Ms Todaro had no other supports in Dunedin. Ms Todaro made applications to the Court and left the family home. She took the only action that she saw was available to her. It was not unreasonable.

[121] Mr Coleman referred her actions and the position generally to the police as a breach of his protection order. He also contacted the Child, Youth and Family Service raising care and protection concerns with regard to the children being exclusively in their mother's care. Neither agency saw fit to take any action against Ms Todaro. Mr Coleman was clearly unhappy about this, but his dissatisfaction is a separate matter in relation to which he is able to take action and does not amount to psychological violence in support of his application for a final protection order. For reasons that I have traversed in this decision Ms Todaro felt that she too was the subject of violence in the form of psychological abuse, specifically control,

manipulation and passive aggression. She was entitled to seek support and protection as she did and do not find that her actions constitute domestic violence.

Specific psychological abuse by applying for a protection order

[122] Mr Coleman has submitted that by Ms Todaro making an application for a protection order against him she has acted in an abusive manner constituting psychological violence. Such a proposition requires a finding that Ms Todaro had absolutely no basis to make such an application and that all of her allegations were misconstrued or based on untruths. Mr Coleman is, therefore, requiring the Court to determine that only he has told the truth and is in the right and that Ms Todaro has lied and is in the wrong. I have some serious concerns about this proposition and expectation. Mr Coleman appears to be intent on maligning and labelling Ms Todaro as the wrongdoer which, as articulated, I do not accept. I cannot conclude that Ms Todaro's application for a protection order even remotely constitutes any form of psychological abuse.

Breaches of protection order

[123] Mr Coleman claims that Ms Todaro has breached the protection order on more than one occasion since it has been in force, which he claims supports his conclusion that Ms Todaro has been violent towards him. The accepted breaches include:

- (a) Physical contact when changeovers occur at the children's play centre. Mr Coleman claims that despite the order directing no physical contact Ms Todaro remains for excessive periods of time when care is changed over handing back to him personal items belonging to the children. It is his evidence that on those occasions Ms Todaro glares at him and that this is designed to upset him.
- (b) On occasions Ms Todaro has interacted with Mr Coleman at his car, particularly at changeovers. Generally she has wanted to discuss

matters relating to the children but Mr Coleman considers that she has acted in a challenging matter.

- (c) Mr Coleman claims that Ms Todaro continues to challenge him with regard to his care of the children and that she has forwarded emails to him seeking funds in relation to the care of the children. Mr Coleman also referred to communications received from Ms Todaro with regard to division of relationship property.

[124] Despite Mr Coleman's claims Ms Todaro has not been charged with any breach of the protection order. Despite this Mr Coleman maintains that Ms Todaro has breached the order on numerous occasions.

[125] It is difficult to conclude that there has been any breach of the protection order in these circumstances. It is not unreasonable for parents to have contact with each other particularly with regard to the care of children when a protection order exists particularly where such contact is agreed and takes place at a 'neutral' venue as was the case here.

[126] On one occasion when Natasha was admitted to hospital Mr Coleman contacted Ms Todaro and they spent a considerable amount of time together with Natasha. Despite Mr Coleman's submission that this amounted to an unusual circumstance that required the parties to have contact, it is difficult to understand how it is any different from when the children are transferring from one parent to another at the play centre. Also, it is not unreasonable for a parent who is entitled to financial support to seek such support, if required, via direct communication particularly where such communication is accepted by the protected person. There is no doubt that Mr Coleman's application of the protection order appears to be inconsistent and may well have caused confusion for Ms Todaro.

[127] In summary I cannot conclude that there has been any serious breach of the protection order or that the breaches claimed by Mr Coleman support his submission that Ms Todaro has acted in a way that constitutes domestic violence.

Conclusions

[128] It is difficult to determine the allegations made given that what Mr Coleman claims is simply disputed by Ms Todaro or alternative explanations are provided. Further, having regard to the difficulties that I have identified with the evidence provided by Mr Coleman, it is difficult to reach definitive conclusions that Ms Todaro was violent towards Mr Coleman in ways that he has claimed on each occasion.

[129] On my assessment of the evidence I cannot conclusively find that Ms Todaro has perpetrated domestic violence in any of its forms. Rather, I consider that her behaviours to be her reactions to an extremely dysfunctional and failing relationship which has caused her considerable stress to the point of trauma. Ms Todaro has experienced pressure, control and manipulation without adequate support or ability to properly manage the situation and she has responded in the ways described.

[130] However, Ms Todaro has acknowledged being violent towards Mr Coleman in the following ways:

- (a) Slapped Mr Coleman on one occasion.²¹
- (b) Called Mr Coleman names including in the presence of the children.²²
- (c) Made negative statements to the children about Mr Coleman.²³
- (d) Shouted at Ben inappropriately.²⁴

[131] Therefore, on a strict interpretation of the definition of domestic violence and a conservative assessment of the evidence the Court may conclude that Ms Todaro has acted in ways towards Mr Coleman and the children that constitutes domestic violence. Having said that such findings must be considered within the context of what occurred in this relationship, as I have articulated.

²¹ Paragraph 17(1) of Ms Todaro's affidavit dated 12 May 2015.

²² Paragraph 4 of Ms Todaro's affidavit dated 12 May 2015.

²³ Paragraph 27 of Ms Todaro's affidavit dated 12 May 2015.

²⁴ Paragraph 27 of Ms Todaro's affidavit dated 12 May 2015.

Necessity

[132] Having determined that Ms Todaro may have acted in a manner that constitutes domestic violence on occasion, I must determine whether it is necessary for a final protection order to be made providing protection for Mr Coleman and the children into the future.

Countervailing factors

[133] There are numerous countervailing factors that impact on the question of necessity as follows:

- (a) The incidents and behaviours of Ms Todaro occurred within the context of a destructive, volatile and failing relationship. That context no longer exists. The parties are separated, Ms Todaro has gathered support around her and both she and Mr Coleman now wish to get on with their lives free from interference by the other.
- (b) The protection order was obtained in April 2015. There have been no breaches of that protection order. I do not accept Mr Coleman's evidence in this regard.
- (c) Ms Todaro and Mr Coleman have successfully shared the care of the children and wish to continue to do so. It is difficult to conclude that Mr Coleman considers there to be any real safety risk for the children in the care of Ms Todaro if he is prepared for them to be in her care for blocks of time (on his proposal up to five days).
- (d) The specialist report writer (s 133) Mr Sarah Calvert identifies no impediment to either party caring for the children and proposes a shared care arrangement.
- (e) The children are progressing well and no issues of concern have been raised through independent sources, particularly education facilities.

- (f) The parties have undertaken the parenting through separation programme and Ms Todaro has engaged with ACC in relation to injury prevention and programmes via the Presbyterian Support Service and Women's Refuge through which she has support workers. She has also engaged with Plunket and in parenting programmes and is confident in her parenting of the children.
- (g) Ms Todaro is now much happier. She is no longer socially isolated and is enjoying life without stress given that the relationship has ended. She also now practices meditation.
- (h) Ms Todaro commenced the stopping violence programme, but unfortunately for administrative reasons it ceased. She is willing to complete a programme.

[134] It is also relevant to note that Mr Coleman has agreed for Ms Todaro to have extended care of the children at times since the protection order has been in force particularly when he went on a conference to France for a period of several weeks. Ms Todaro took the children with her to visit her parents in Australia. While Mr Coleman claims that he would not have gone to France had Ms Todaro been alone and that he was relying on her mother to provide oversight and support, the reality is that this was not in any way a formal arrangement and Ms Todaro was left with the responsibility of travelling with and caring for the children alone for a lengthy period of time. There are other occasions when Ms Todaro has cared for the children for longer periods of time with the agreement of Mr Coleman.

Mr Coleman's fears and views

[135] It is necessary to objectively assess the subjective fears and views as expressed by Mr Coleman. Mr Coleman claims that he continues to be fearful of Ms Todaro including at times fearing for his life particularly having regard to his views in relation to past alleged violence. In all of the circumstances, having regard to all of the evidence, it is difficult to accept Mr Coleman's claims.

[136] It is particularly relevant that Mr Coleman consents to a shared care arrangement. If he was so fearful and so concerned about any risks for the children he would not agree to this.

[137] It is also relevant that Mr Coleman clearly indicated to me in previous conferences that he wished to resolve matters between he and Ms Todaro by agreement and short of lengthy litigation. He sought to “deescalate” proceedings and indicated a willingness to stand back from seeking a final protection order.

[138] It is difficult to understand from the evidence what prompted Mr Coleman to ultimately make the application for protection order as he did. Mr Coleman has listed numerous events which he claims constitute domestic violence on the part of Ms Todaro. None appear to be more significant than the other and there does not appear to have been any catalyst to his application. The last incident of alleged violence appears to have occurred on 21 February 2015 where Mr Coleman alleges Ms Todaro punched him in the right breast.²⁵ This incident appears to be yet another recording of the types of incidents included in Mr Coleman’s affidavit. There is no indication as to the “if” or “why” Mr Coleman’s level of fear had escalated at that time to the point of making an application.

[139] Further, Ms Todaro gave evidence about being totally surprised when she was served with the temporary protection order. She said that things had been relatively calm in the relationship and that the parties had been getting on reasonably well.

[140] Despite amassing and collating evidence of alleged violence over a period of in excess of three years Mr Coleman had not seen fit to make an application for a protection order. Rather he had continued to remain in the relationship. It is difficult to conclude therefore that Mr Coleman was truly fearful during that time or that his fear was particularly alleviated at the time that he ultimately made the application. Indeed, there was significant delay in him applying.

[141] Mr Coleman has submitted that the reasons for his delay in applying relate to his response to trauma which I do not particularly accept as I have already

²⁵ Paragraph 71 of Mr Coleman’s affidavit dated 9 April 2015.

articulated. Mr Coleman also said that he was simply not sure about what to do about the situation but again given Mr Coleman's level of intelligence and experience I find that very difficult to accept.

[142] It is also relevant that Mr Coleman and Ms Todaro continued to have a sexual relationship up to approximately two weeks prior to Mr Coleman obtaining a protection order. In response to questions about that Mr Coleman said that he did not feel fearful of Ms Todaro every minute of every day. He said that would not be possible of any human being. I do not accept this. If an individual is truly fearful of another they will seek to have absolutely no contact to the extent of not wanting that person to know of their whereabouts.

[143] Despite claiming to be fearful of Ms Todaro at times, Mr Coleman was able to gather and collate his evidence by way of recordings, taking photographs and emailing himself. This was planned and coordinated by Mr Coleman and in my view does not amount to the behaviour of somebody truly fearful. Further, Mr Coleman remains calm throughout all of the recorded incidents and this does not in itself constitute the response or behaviour of somebody who was truly fearful.

[144] On numerous occasions in those recordings Mr Coleman was asked by Ms Todaro to leave her alone and go away but he did not. He could have removed himself from the situation. By not doing so he does not present as a person truly fearful.

[145] Mr Coleman rarely removes the children from the situations of conflict. Rather he remains to record incidents to be used as evidence and in doing so allows the children to continue to be exposed and experience the conflict occurring. Again, this does not constitute the behaviour of somebody truly fearful and may well be considered, of itself, to be abusive behaviour. Further, despite claiming that Ms Todaro was violent directly towards Ben he did not apply for a protection order for some six or so months later and did not contact the police. Again, this is not the behaviour of somebody who is truly fearful.

Control claimed by Ms Todaro

[146] Ms Todaro gave evidence about the level of control on the part of Mr Coleman during the relationship. She spoke about the total lack of support from Mr Coleman leading to her having no coping skills and, at times, behaving as has been described.

[147] Ms Todaro spoke about Mr Coleman determining what was allowed to be in the house, where everything in the house should be placed and changing placement on a regular basis. She said that if she touched anything she should not or moved it Mr Coleman would react negatively towards her.

[148] Ms Todaro explained that she had no ownership of the home in which the parties lived, it having been transferred to a trust by Mr Coleman, or any of the chattels. Ms Todaro said that she was required to also sign a contracting out agreement and that she has been unable to access any property after separation including her personal property that she owned prior to meeting Mr Coleman. Further, she understands Mr Coleman's Will was structured in such a way that had he died during the course of their relationship she would have received only approximately 10 percent of his estate; his older children receiving the majority of it.

[149] Ms Todaro said that she had limited finances during the relationship particularly in relation to the children's care. She explained that Mr Coleman initially gave her a credit card but then took it away. Ms Todaro said that on one occasion she bought vegetables rather than taking them from the garden and Mr Coleman told her he would instruct his lawyer to recover the money used from her. Ms Todaro explained that she was not permitted to do the grocery shopping for the family. She said that initially, if she acted in ways that Mr Coleman did not like she would be prevented from doing so and ultimately he did all of the shopping. Further, Mr Coleman refused to buy any personal items for her, for example shampoos or deodorants, rather she was required to buy these herself even when she was not in employment when she was caring for the children.

[150] Ms Todaro explained that Mr Coleman made all the decisions around what groceries to purchase and what food would be prepared, taking over all of the cooking in the home. She said that if he went away he took the key to the shed housing the freezer so that she had no access to the food in it. He left no money so that Ms Todaro and the children had no financial resources and limited food.

[151] In relation to holidays Ms Todaro explained that generally she was required to meet her own, and at times, Ben's expenses. She said that she had utilised savings but could not go on one international family holiday because she could not afford to do so. On another occasion in relation to a holiday at Mount Cook she was required to pay her proportion of petrol and accommodation.

[152] Ms Todaro said that she had a vehicle to drive but that it was owned by Mr Coleman. She was required to maintain and upkeep it and spent thousands doing so.

[153] Ms Todaro explained that she believes that Mr Coleman used the temporary protection order as a means of control. She said that she believed she had to do as Mr Coleman wanted in his home or she would have to leave. She said that if she did not do as was required Mr Coleman would threaten to utilise the protection order and ring the police. Ms Todaro described feeling like a slave in the home. She was fearful of Mr Coleman ringing the police, being charged, getting a criminal record and losing her job. She said she did not know what to do, that she had no money and nowhere to go.

[154] It is Ms Todaro's position that Mr Coleman obtained the protection order to make her submissive. For example, the day that Ms Todaro gave evidence in February 2016 Ben was due to start school. Ms Todaro, understandably, would have liked to have been there, but Mr Coleman would not agree. She received an email saying that he did not want her or her mother to be present. So as not to antagonise him Ms Todaro did not attend. Ms Todaro said that she also avoids other events the children are involved in for fear of being accused of breaching the order.

[155] It is apparent from Mr Coleman's evidence that he relied on the existence of the protection order in sending his advice to Ms Todaro. He said that the protection order prevented any contact. But this makes little sense given the evidence that the parties have met on many occasions particularly at changeovers at preschool facilities, the public library and community police station, all of which are similar public venues.

[156] It is a real concern to me that Mr Coleman would not allow Ms Todaro to attend Ben's first day of school, particularly given other meetings and the fact that there would have been many other people present. The first day of school for a child is a significant milestone for not only the child but their parents. It is an important event that most parents endeavour to attend and mark. Ms Todaro was obviously very sad when giving her evidence about not being able to attend and I find Mr Coleman's attitude about this to be particularly harsh.

[157] In the end I gained the impression that Ms Todaro felt totally confined and completely disempowered by Mr Coleman. She was simply unable to respond in an effective or appropriate way and, as a result, at times behaved in ways described.

[158] Mr Coleman has gone to great lengths to convince the Court that Ms Todaro has perpetrated domestic violence and that a final protection order should be made. He has attempted to present every perceived occasion of domestic violence and every deviation from what he considers to be normal or rational behaviour. It is not clear why, given the parties have been separated now for such a lengthy period of time and share the care of the children, Mr Coleman pursues the making of a final order with such fervour. It is conceivable that this is part of ongoing dominant and controlling behaviour.

Conclusions

[159] In the end I cannot conclude that Mr Coleman's expressed fear in all of the circumstances is reasonable. When viewed objectively his actions are not those of a person truly fearful of another. I do not conclude that it is necessary for Mr Coleman or the children's protection to make a final protection order.

[160] What occurred here involves a relationship that was characterised by extreme conflict and dysfunction. It is very difficult to unravel the cause and effect and the problems within the relationship were and continue to be complex and systemic. But for all of the reasons I have articulated I do not find that the threshold is met for the making of a final protection order. The application is declined and the temporary protection order is discharged.

D Flatley
Family Court Judge

Signed on: _____ at _____ am/pm