

**NOTE: PURSUANT TO S 125 OF THE DOMESTIC VIOLENCE ACT 1995
AND S 139 OF THE CARE OF CHILDREN ACT 2004, ANY REPORT OF
THIS PROCEEDING MUST COMPLY WITH SS 11B TO 11D OF THE
FAMILY COURTS ACT 1980. FOR FURTHER INFORMATION, PLEASE
SEE [HTTP://WWW.JUSTICE.GOVT.NZ/COURTS/FAMILY-
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**IN THE FAMILY COURT
AT TAURANGA**

**FAM-2015-070-000523
FAM-2015-070-000222
[2016] NZFC 2078**

IN THE MATTER OF	THE DOMESTIC VIOLENCE ACT 1995
AND	THE CARE OF CHILDREN ACT 2004
BETWEEN	JEANETTE NESS Applicant
AND	JOEL NESS Respondent

Hearing: 10 March 2016

Appearances: S Tyrrell for the Applicant
S Whitehead on behalf of R Webby for the Respondent
F Mackenzie as Lawyer for the Children

Judgment: 10 March 2016

ORAL JUDGMENT OF JUDGE S J COYLE

[1] This matter is before the Court in relation to proceedings between Mr and Mrs Ness concerning four of their five children.

[2] The situation is that there is a temporary protection order in force at present. That was made on 14 October 2015. That application had been opposed but the situation today is that Ms Tyrrell, who appears for Mrs Ness, has instructions to seek the discharge of that temporary order and she has confirmed that her client does not seek the making of a final protection order on the basis of undertakings that have been filed.

[3] Mr Ness is currently facing charges in the Criminal jurisdiction of this Court of male assaults female and threatening to kill but I am told by his counsel, Mr Whitehead who is present today, that following discussions with the police those two charging documents are to be withdrawn and replaced with a charge of assault under s 196 Crimes Act 1961. Additionally, Mr Whitehead tells me that there is to be a new agreed summary of facts which contains far less serious violence than that which was previously before the Court.

[4] Mr Whitehead has quite properly raised a concern from his client's perspective as to the discharge of the protection order as it appears that Mrs Ness has, on an earlier occasion in terms of her involvement with the police, indicated a desire for a protection order and, thus, the police prosecutor has indicated to Mr Whitehead they will be seeking a s 123B protection order as an adjunct to sentencing.

[5] Quite clearly, given how matters have progressed in this Court, Mrs Ness no longer requires a protection order and does not seek the making of a final order. It is implicit, therefore, that she has resiled from her earlier advice to the police and, as a consequence, I would have thought the police would now have some extreme difficulty in convincing a Judge in the Criminal jurisdiction of this Court that Mrs Ness does not object to a protection order being made when, quite clearly, she has indicated a contrary view. If that becomes an issue in the Criminal jurisdiction of this Court then I authorise Mr Whitehead to give a copy of this minute to the Judge in the Criminal jurisdiction of this Court to assist in resolution of that matter.

[6] There is, in effect, agreement between the parties as to the day-to-day care and contact arrangements. What is required is a safety hearing, however, given the progression of matters it seems to me that this is an appropriate matter whereby a memorandum can be filed in Court setting out the agreed violence and then the reasons why the parties believe contact can now be unsupervised. I have suggested to counsel they use the now repealed provisions of s 61 Care of Children Act 2004 as, in effect, it is that type of safety assessment that is envisaged by the Court of Appeal in *M v Y*, CA171/93, 26 August 1993 that needs to be undertaken by the Court. That memorandum can then be referred to me in chambers for a determination on the papers.

[7] Ms Mackenzie is supportive of that course of action. She does, quite properly, have some underlying concerns about the long-term stability for these children, given her knowledge and the history of this matter. Indeed, as she has reminded me, her concerns were such when she was first appointed that she made a s 19 referral. However, it seems matters have moved on and have settled down at present and certainly the Ministry do not intend to invoke any care and protection inquiries in relation to these children.

[8] Against that background:

- (a) By consent, the temporary protection order dated 14 October 2015 is discharged.
- (b) By consent, Mrs Ness' application for a final protection order is discontinued.

[9] In relation to Care of Children Act proceedings:

- (a) I direct counsel file a memorandum addressing the agreed care and contact arrangements and the factors going to the children's safety and Mr Ness' unsupervised care, with that memorandum to be filed by 8 April 2016 and I would ask that accompanying that memorandum is a

draft order. Ms Mackenzie, of course, needs to be party to that memorandum as lawyer for the children.

- (b) Upon the filing of that memorandum, I would ask the file be referred to me in chambers for a chambers determination in relation to the safety issues.
- (c) Finally, by consent I refer the parties, pursuant to s 46G, to communication counselling. The purpose of that counselling is to assist them better in communicating with each other and in their role as parents, albeit separated parents, of these children I would recommend that 10 sessions are allocated for the parties.

S J Coyle
Family Court Judge