NOTE: PURSUANT TO 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-COURT/LEGISLATION/RESTRICTIONS-ON-PUBLICATIONS.

IN THE FAMILY COURT
AT HUTT VALLEY

FAM-2012-032-000948
[2016] NZFC 2357

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	DONNA HORSFALL Applicant
AND	ALEXANDER ALBANI Respondent

Hearing:	17 March 2016
Appearances:	J Nelson for the Applicant No appearance by or for the Respondent S Hughes as Lawyer for the Child
Judgment:	17 March 2016

ORAL JUDGMENT OF JUDGE J A BINNS

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[1] These proceedings relate to Zoey Albani, born [date deleted] 2011. Zoey is four but will be five on [date deleted].

[2] A final parenting order is in force dated 30 May 2013. There is also a final protection order in force against Mr Albani dated 20 March 2013.

[3] The matter has had a history which I will not repeat, but it is set out in the memorandum filed by Ms Nelson who appears today for Zoey's mother. This is a formal proof hearing. There are three applications to deal with. First of all, Mr Albani's application under s 77 Care of Children Act 2004 for an order preventing removal of the child from New Zealand, and two applications by Zoey's mother, first seeking a variation to the parenting order which was made on 30 May 2013 and an order under s 46R Care of Children Act relating to the issue of the child's relocation to Brisbane, Australia.

[4] In a number of respects, the parenting order which is currently in force would potentially meet Zoey's needs because the provision for the father's contact is essentially as agreed between the parties, but because Ms Horsfall wishes to relocate with Zoey to live in Australia. It is important that the parenting order for contact is more specific.

[5] It is clear that Ms Horsfall is the primary caregiver for Zoey, that she meets Zoey's day-to-day needs and has legitimate reasons for wishing to relocate to Australia. The parties had an opportunity to discuss issues at a settlement conference last year, but Mr Albani did not attend. It appears that he has essentially opted out of these proceedings.

[6] It is appropriate that matters be finalised today and also formalised by way of Court order.

[7] I have read the recent evidence of Ms Horsfall. It is clear that she is able and willing to promote a relationship for Zoey, with not only her father but the paternal family. I am satisfied that she will continue to do so, notwithstanding that she will be living in Australia.

[8] The orders I make today on a formal proof basis are as follows:

(a) Firstly, Mr Albani's application for an order preventing removal of Zoey from New Zealand is dismissed.

(b) I make an order under s 46R Care of Children Act that the child, Zoey Albani, born [date deleted] 2011 is able to leave New Zealand to reside permanently in Brisbane, Australia.

(c) I discharge the parenting order dated 30 May 2013 and I make new parenting orders providing:

(i) that Ms Horsfall is to have the role of providing the day-to-day care for the child, Zoey

(ii) Mr Albani have contact with Zoey as follows:

- Contact in New Zealand not less than two times per year for at least one full day on each occasion, on dates and times as agreed between the parties.

- Reasonable Skype and/or telephone contact. Such contact may be initiated by each of the parties.

  (Although not part of the orders I record that Ms Horsfall is happy for contact to be weekly but it will be important for Mr Albani to ensure that that happens. Clearly Ms Horsfall will need to set up Skype and confirm phone details once she gets to Australia.)

- Any other contact in New Zealand, as may be agreed between the parties from time to time.

[9] In making these orders as a matter of law I have had to have regard to the fact that there is a final protection order in force made on 20 March 2013. There are

specific matters in the legislation that I must have regard to and I have considered those matters. The order remains in place. The file is before me. It is clear from reading the pleadings, that in terms of assessing the child's safety, Ms Horsfall is happy for there to be daytime contact but she does not agree and I find, that it is not appropriate for there to be overnight contact. That relates to the fact that, one, there is a final protection order still in force and I observe that. Certainly historically, and I note that the order was made in 2013, there were risk factors for Ms Horsfall. Secondly, it does seem that the father's contact has been somewhat sporadic and there is certainly no ability for me today to make any assessment in relation to more extensive contact. I note that Ms Horsfall is clearly protective of Zoey and she does have the ability to arrange for other contact as agreed. I accept that she will make appropriate arrangements.

[10] I refer to the minute of Judge Ellis dated 3 September 2015. In paragraph [8] there is an addendum which records:

> I will add to the record that on the recommendation of lawyer for the child I will make an interim order that the child is not to be taken out of New Zealand by any person without the agreement in writing of both her parents or an order of the Court and that is to continue until further order.

[11] Clearly, the orders that I have made permit the child to be taken out of New Zealand. I also note that no interim order preventing removal has ever been issued, but for the avoidance of doubt the interim order as made, is discharged.

[12] Lawyer for child's appointment is terminated with thanks of the Court.

[13] That then leaves an issue of cost contribution. In terms of process I understand that once lawyer for child's final account is forwarded to the Court the final calculations are made and the Court staff record the prescribed proportion in terms of s 135A. I am aware that some Judges take the view that as a matter of process that calculation needs to happen and there needs to be a formal calculation of what is the one-third share of those costs in relation to each party.

[14] In this case, Ms Horsfall is legally aided. She has been legally aided throughout the proceedings. In my view there are no extraordinary circumstances

that would justify an order that Ms Horsfall pay a cost contribution order. I also note that because of her financial circumstances, I am satisfied that to make an order, would cause her serious hardship. I am therefore happy to deal with the matter today based on the information before me because whatever the assessed prescribed proportion is, whether it was $10,000 or $10, I am satisfied that no order should be made because of the issue of serious hardship.

[15] Accordingly, I decline to make a costs contribution order against Ms Horsfall. The issue of costs contribution for Mr Albani will need to be assessed later because I have no information before me today about his circumstances.

J A Binns
Family Court Judge