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 HAMILTON

FAM-2013-019-000206
[2016] NZFC 2173

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	TANYA MORRIS Applicant
AND	ORA NOPERA Respondent

Hearing:	15 March 2016
Appearances:	S Hoebergen for the Applicant F amarasekera for the Respondent M Roots as Lawyer for the Child
Judgment:	15 March 2016

ORAL JUDGMENT OF JUDGE G S COLLIN

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[1] These are proceedings between Tanya Morris and Ora Nopera. The proceedings relate to their three children, Hone Nopera born on [date deleted] 2001, Barrie Nopera born on [date deleted] 2004 and Maaka Nopera born on [date deleted] 2010.

[2] On 16 September 2013 a parenting order was made by consent between the parties. This order granted day-to-day care of all three children to Ms Morris and reserved contact to Mr Nopera essentially every second weekend. Following the making of that order the parties reconciled and continued to live together until June 2015 at which point they again separated. The separation has been final since that time. Following the separation the children lived for a period of time, possibly two to three months, predominantly with their father although Hone appears to have spent a greater period of time than his brothers with his mother.

[3] On 24 September 2015 following a domestic incident which is alleged to have occurred on 11 September 2015, Ms Morris applied for a protection order and for day-to-day care of all children. The applications were made without notice and orders were granted on the same day as the applications were made.

[4] The next formal step was that the matter came before the Court on 2 November 2015. Various directions were made by the Judge Malosi and also, and relevantly, the protection order was made final. Although it is not entirely clear from the minute it seems obvious that the protection order was made final by consent because the statutory period for the making of the temporary protection order into a final protection order had not elapsed. What is clear is that on the same day a consent memorandum was filed in respect of the parties' proposals for final orders in respect of the day-to-day care of their children. What was proposed was that the existing order be discharged and that an order be made for shared care on a week about basis.

[5] Mr Roots had some reservations regarding the making of a final order on those terms because of the s 5(a) issues, and the s 5A issues which existed as a consequence of the making of a final protection order. Mr Roots' concerns were

justified and as a consequence the Court set these proceedings down for determination.

[6] The matter comes before me today. Prior to commencing the hearing I enquired of each of the parties as to whether or not they continued to seek orders in terms of the consent that had been signed by them. Each confirms their agreement to final parenting orders on those terms subject only to what are now agreed variations in respect of conditions that will attach to the order.

[7] Mr Roots' position remained similar to that adopted by him in November last year. He rightly points out that it is up to the Court to make a safety assessment before orders are made, particularly where there is substantial care proposed in favour of both parties in circumstances where there are allegations of violence.

[8] In determining day-to-day care of children the Court is required to have regard to the welfare and best interests of children which are in all Court decisions to be paramount. In determining welfare and best interests the Court is required to take into account the principles contained in s 5 of the Act. In this particular case the most important and dominating principle is that contained in principle 5(a) which reads, "A child's safety must be protected and in particular a child must be protected from all forms of violence from all persons including members of the child's family, family group, whānau, hapū and iwi." Although there is no expressive definition in the Act as to what constitutes violence what is clear is that any violence which would justify the making of a protection order is violence. Clearly violence includes physical violence and psychological violence including yelling or abuse between parties. I have no hesitation in finding that these three children have been exposed to violence whilst in the care of their parents. To the credit of them both this is acknowledged.

[9] Ms Morris on her part acknowledges that she has been violent in the relationship and has hit Mr Nopera and that the children have been subject to and overheard loud verbal arguments between them.

[10] Mr Nopera also acknowledges that there has been violence in the relationship which has been perpetrated by him. He acknowledges both physical and psychological violence during the course of his relationship with Ms Morris.

[11] Without detailing the incidences of violence I note for example Mr Nopera's affidavit in which he states, "I consider that although my behaviour has been inappropriate at times Tanya has also equally engaged in violent behaviour. I do not say this in any way whatsoever to excuse myself from my own behaviours which have been inappropriate upon recollection." There is no doubt that Mr Nopera's behaviours have been inappropriate and that he has exposed the children and his former partner to violent behaviours as defined in s 5(a).

[12] I take into account that a final protection order has been made. I acknowledge that it has been made ultimately by consent and for that reason I conclude again Mr Nopera's acceptance of the violent behaviours that have been alleged by Ms Morris.

[13] In considering whether or not the children are safe in the care of both parents the following matters are I consider relevant:

(a) Mr Nopera accepts that violence has occurred and has today in his evidence made no attempt to minimise that violence. Mr Nopera did give evidence that Ms Morris had likewise been violent but I am unconcerned about this when her own violent behaviour has been acknowledged by Ms Morris.

(b) There is no doubt that Mr Nopera has taken significant steps to help himself and to improve himself. The steps that he has taken are set out in some detail in his updated affidavit of 4 March 2016 and comprises so far:

(i) Attendance at the HAIP Programme. It appears as if he has attended all the sessions he is required to attend to date but he

still has some to complete before the programme has been completed.

(ii) Attendance at an Overcoming Anger programme. This was a six week programme which ran between 28 October and 2 December 2016.

(iii) Attendance at Parenting Through Separation programme run by both Barnardos and also through the Destiny Family Parenting Centre.

In his affidavit Mr Nopera states that, "The courses have provided me with an insight into how the boys feel when me and Tanya argue in front of them. I do not want them to see us acting in this way and will just leave the situation if I find myself being confronted by Tanya."

(c) It is Mr Nopera's evidence that he was in another relationship for an eight month period following the ending of his relationship with Ms Morris and that there were no issues of violence in that relationship. That evidence is unchallenged.

(d) There was an alleged incident of violence on 11 September 2015 but there was no evidence of any further incidences since that time.

(e) There is no suggestion that there has been any breach of the protection order. Ms Morris confirmed that no such breached had occurred.

(f) Ms Morris's own evidence is that she has no concerns regarding the safety of the children with Mr Nopera. She has consented to a shared parenting order and has confirmed in evidence again today that she supports the making of that order and has no concerns for the safety of the children in the care of their father.

(g) It is apparent from the evidence that the parties have no current contact with each other, other than for the purposes of dealing with issues pertaining to their children and only then in what appears to be mainly in electronic communication form.

(h) There appears to be an acceptance that the relationship is over. This is a factor which reduces the likelihood of future violence between the parties.

(i) The children have expressed clear views to their lawyer Mr Roots over a period of time. Mr Roots has interviewed the children on two occasions since the proposed consent memorandum was completed. On both occasions they reported to Mr Roots that they were happy for the arrangements, as proposed by the parents, to be in place. I think it is important to note that there has been a passage of time between Mr Roots' first enquiry which occurred in November last year and his most recent enquiries which occurred only in the last week. The boy's views have remained largely unchanged despite the passage of now some four months since his last report. Mr Roots' only caveat in relation to the boy's views was in respect of Hone who gave a conditional agreement based on a view held by him that he may go at the end of this year to live with [details deleted]. It appears that this is not a view shared by either parent but may only be the hope of a 14 year old boy who has reached his own view without discussing it with his parents.

(j) There has clearly been violence in the relationship some of which is serious in nature. But for the positive steps taken by Mr Nopera the risks in my assessment would be real and would probably require a more careful and perhaps staged approach to increased care or contact. Certainly Mr Nopera cannot place himself in a position again where the boys are subject to violent behaviours or are subject to the inappropriate use of drugs or alcohol. Although Ms Morris accepts that she also has used violence in the relationship and has in the past

abused either alcohol or drugs, in my assessment the more serious violence appears to have been perpetrated by Mr Nopera. I do not think that he disagrees with that assessment.

[14] I include this paragraph in my judgment as a warning to Mr Nopera, particularly, but also to Ms Morris. Their children are entitled to live in homes that are free of violence and in which they are not exposed to the use of drugs or the inappropriate use of alcohol. If further events occur there is a risk that the arrangement that they have made, and with which I am going to agree, will be changed. To reinforce that position I intend to incorporate some protective clauses into the consent. This will ensure that if there are further incidences they become known to the other party, or if they are not made known, and become known that the other party can take steps to have the parenting arrangements altered.

[15] Overall I am satisfied that as matters currently exist the safety concerns that exist for the children should not impact on the making of a final parenting order which provides shared care of the children to them both. On that basis therefore I now make the following orders:

(a) Tanya Morris and Ora Nopera are to have the shared day-to-day care of Hone Nopera born on [date deleted] 2001, Barrie Nopera born on [date deleted] 2004 and Maaka Nopera born on [date deleted] 2010. The shared care is to be on a week about basis from Friday after school until the following Friday after school.

(b) The arrangement is to continue throughout the school term and Christmas holiday period with the exception of contact on Christmas Day. In odd numbered years the children will be with Mr Nopera from 10.00 am on 24 December until 10.00 am on 25 December and with Ms Morris from 10.00 am on 25 December until 10.00 am on 26 December. In even numbed years the children are to be in the care of Ms Morris from 10.00 am on 24 December until 10.00 am on 25 December and with Mr Nopera from 10.00 am

on 25 December until 10.00 am on 26 December. There will be such other contact between the parties as agreed between them.

(c) It will not be a breach of the protection order if Mr Nopera has additional contact with the children in the context to events such as sports events, cultural events, school events either during or after school, church/youth group events, special occasions or important family events.

(d) It will not be a breach of the protection order if Mr Nopera contacts Ms Morris in a reasonable and respectful fashion regarding issues concerning the care of the children.

(e) It will be a condition of the parenting orders:

(i) That neither party will at any time consume illegal drugs whilst the children are in his or her care.

(ii) That neither party will abuse alcohol whilst the children are in his or her care.

(iii) That both parties will within a 24-hour period of one of the following events occurring advise the other:

1. He or she is at any time issued with a police safety order.

2. He or she is at any time the respondent in an interim protection order issued against him or her by any other person.

3. He or she is charged with any criminal offence including any alcohol offence relating to driving.

4. He or she is at any time investigated by Child, Youth and Family Services in respect of their care of any the children.

[16] I am advised that both parties are legally aided in these proceedings. On that basis I direct that neither party be required to make any cost contribution toward the costs of lawyer for the children.

G S Collin
Family Court Judge