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**IN THE FAMILY COURT
AT PORIRUA**

**FAM-2015-091-000335
FAM-2015-091-000336
[2016] NZFC 2363**

IN THE MATTER OF THE DOMESTIC VIOLENCE ACT 1995

AND

THE CARE OF CHILDREN ACT 2004

BETWEEN

SHELLY SUMMERS
Applicant

AND

JERRY GARDNER
Respondent

Hearing: 21 March 2016

Appearances: C M Leech for the Applicant
 M C More for the Respondent
 R D Dean as Lawyer for the Children

Judgment: 21 March 2016

ORAL JUDGMENT OF JUDGE J A BINNS

[1] A fixture was allocated for today in relation to the Domestic Violence Act 1995 proceedings between Shelly Summers and Jerry Gardner.

[2] The background is that an interim parenting order was made on 15 October last year in favour of Ms Summers who also was granted a temporary protection order.

[3] The hearing today was allocated to determine whether or not the temporary protection order would be made final and to make determinations about safety issues for the children. The proceedings had been previously adjourned to allow Mr Gardner to engage in living without violence counselling and attend a residential programme to address drug addiction issues. I have read that Mr Gardner completed the residential programme in February 2016. He has since moved from the residential programme back into the former family home.

[4] The current position is that he attends weekly sessions for the Kapiti Living Without Violence programme and attends weekly meetings on a Friday with Narcotics Anonymous. He sees a Care New Zealand counsellor on a Wednesday.

[5] Notwithstanding his bail conditions, which include a non-association condition preventing direct or indirect contact with Ms Summers and three children, I am told that the parties have agreed between them to unsupervised contact, which has been occurring since Mr Gardner left the residential programme in February. I am also told that Mr Gardner has made representations to the police to have that bail condition varied and that has not yet happened. It is intended that he will appear in Court today at 2.00 pm in relation to the criminal matters to seek that bail variation.

[6] I have read all the evidence. The history sets out that the parties were in a de facto relationship for nine years. In November 2013, there was a concern in relation to Mr Gardner using methamphetamine. It is clear from the evidence of Ms Summers that when Mr Gardner was affected by methamphetamine use, he was aggressive and threatening. Ms Summers was concerned by his violent behaviour

when he was “coming down” from methamphetamine. He attended a Salvation Army three month detox programme and returned home clean on 28 March 2014. There were then further concerns which led to these current proceedings and the application for the temporary protection order.

[7] It is clear that what happened in relation to Mr Gardner’s methamphetamine use, involved breaches of trust between the parties and dishonesty by Mr Gardner. Ms Summer’s main concern was Mr Gardner’s unpredictability. It is clear from her evidence that when his behaviour was completely out of control, no further party could manage his behaviour, for example his father. So, there is no doubt that there is a clear risk issue when Mr Gardner has been using methamphetamine.

[8] As against that, Ms Summers described their de facto relationship, which I have noted was for a number of years, as amazing, and it is clear that she sees a number of positive attributes for Mr Gardner. She tells me today that she has seen a positive change since he has completed the programme with PACT. It is clear that she is supportive of him having good contact with the children, including unsupervised contact.

[9] When Mr Gardner filed evidence he said that he did not agree with all statements made by Ms Summers. However, he did not identify the statements he did not agree with or give an explanation, but he did accept that he was addicted to methamphetamine and that he was psychologically abusive. From my reading of his evidence that related to being psychologically abusive of the children and Ms Summers.

[10] The parties are the parents of two children, Tyler and Jazz, but it is clear that Ms Summer’s child Celeste, from an earlier relationship, views Mr Gardner as her father. It is clear that these parties do not differentiate in terms of the children and the arrangements for their care.

[11] I am told that Ms Summers does shift work. She is confident that she and Mr Gardner can negotiate the care arrangements for the children. She is currently living with the children at her parent’s home. Mr Gardner will continue living in the

parties former home, so that is clearly a familiar place for the children. I understand he just needs to attend to some practical matters relating to furniture and the like. It is then intended that he will have the children for overnight contact in the home, as agreed with Ms Summers.

[12] For my part, the key issue was the addiction and use of methamphetamine which clearly changed Mr Gardner's behaviour. I am satisfied that he has addressed those issues. I have not heard evidence from him. I can only convey to him the importance of maintaining all the supports and not thinking that everything is fine. I am sure he is aware of that, but given what happened which led to these proceedings, which was in the light of earlier counselling and treatment, there must still be an ongoing potential risk issue in relation to use of methamphetamine.

[13] It is clear that the children are safe with him when he is not using methamphetamine. It is clear that he is a good father and that the children and their mother want to return to normality and good contact with Mr Gardner.

[14] The parties have discussed a consent which they have signed. That addresses a number of conditions to the orders. While I was initially concerned that the care arrangements provided for a shared role in providing the care of the children and that contact is not specified, counsel have confirmed to me that these parties do need to negotiate in terms of care, because of their individual commitments. In particular, the fact that Ms Summers works shift work. That of course is consistent with the principles in the Act and the needs for these parents to communicate, negotiate and work together. I am satisfied that they will do that.

[15] Accordingly today I make the following orders:

- (a) The interim parenting order dated 15 October 2015 is discharged.
- (b) I make a final parenting order in the terms that are set out in the handwritten consent signed by the parties, their lawyers, and the children's lawyer.

- (c) The temporary protection order dated 15 October 2015 is discharged.
- (d) The application for a final protection order is withdrawn by Ms Summers. She has elected not to proceed based on the positive changes that I have identified and also the fact that she has received a formal written undertaking from Mr Gardner.

[16] I hope things can go well for you and you can put these matters behind you and look forward rather than back. It will be good for your children.

[17] You will be aware, Mr Gardner, that the order is subject to your bail conditions being amended or discharged, so obviously that will need to happen first. Hopefully that can happen today at 2pm.

J A Binns
Family Court Judge