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**IN THE FAMILY COURT
AT NEW PLYMOUTH**

**FAM-2010-043-000147
[2016] NZFC 1536**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	PIPI KINGI Applicant
AND	MAATA RATA First Respondent
AND	WARAKI RATA Second Respondent

Hearing: 22, 23, 24 June 2015 and 17 February 2016

Appearances: S Gifford for the Applicant
E J Connole and L Morris for the First Respondent
A Laurenson as Lawyer for the Child

Judgment: 1 March 2016

RESERVED JUDGMENT OF JUDGE C D SYGROVE

Introduction

[1] This case is about a seven year old boy, Puta Rata born on [date deleted] 2008. In short Puta's mother, the applicant, Pipi Kingi (Pipi/the mother) seeks full-time care of him and, the first respondent, his paternal aunt, Maata Rata (Maata) requests that the current status quo whereby the mother and she have week about care of Puta remain.

[2] The other significant adults in Puta's life are:

- (a) His father, the second respondent, Waraki Rata (Waraki) who is Maata's brother and who has taken little, if any, part in these proceedings although to his credit he was present throughout the hearing.
- (b) Tony Mira (Tony) who is Maata's partner.
- (c) Blake Watkins (Blake) who is the mother's partner.

[3] A parenting order was made in the Family Court at New Plymouth on 1 September 2010 granting Maata day-to-day care of Puta following a formal proof hearing on the same day. The mother and Waraki had been having a torrid relationship involving drugs, alcohol and domestic violence and the Child, Youth and Family services were involved.

[4] Puta continued to live with Maata, Tony and her six children on a full-time basis having contact with his mother every second weekend from Friday through until Sunday or Monday morning. On or about 21 July 2014 following a meeting convened by lawyer for the child, Mr Laurensen, agreement was reached to move to a 50/50 care arrangement and this is the current status quo. Puta changes from his mother's house to Maata's house on Friday after school.

[5] At the commencement of the hearing on 22 June 2015 Mr Gifford, the mother's lawyer advised the Court that the mother would be relocating to Rotorua in

the near future with Blake and the two children in their care whatever the outcome of this hearing.

Initial Hearing (22-24 June 2015)

Issues

[6] The sole issue before the Court was whether or not the status quo should remain or should Puta be in the full-time care of his mother but it is now also about whether the mother, if she is granted full-time care of Puta, she can relocate to Rotorua.

Background

[7] Puta was born on [date deleted] 2008 when his mother and his father, Waraki were living together. In about mid-2010 as a result of domestic violence issues the mother obtained a temporary protection order against Waraki and Child, Youth and Family services were involved which led to Puta being placed with Maata and Tony in around 23 June 2010 and he has lived with them on a semi-permanent basis ever since. The mother reconciled with Waraki after obtaining the protection order (which was made a final order on 26 May 2010) but matters did not settle down between them and they separated shortly thereafter. Waraki has a significant criminal history and the only contact he has with Puta is on a supervised basis with Maata being present.

[8] The mother subsequently had a relationship in 2010 with another partner, Rickey Vipond and as a result of that relationship she gave birth to her second son, Italus Kingi (Italus) on [date deleted] 2012. This relationship ended during the mother's pregnancy and Rickey Vipond has never contacted the mother since and plays no part in their son's life.

[9] The "tipping point", if I can describe it in that way, for the mother initiating these proceedings was that Tony visited the mother on the evening of Wednesday 2 October 2013 to inform her that Puta had been pulled out of the Aquatic Centre in

New Plymouth and was in hospital. He informed the mother that Puta did not have to be resuscitated but that he had thrown up water and bread and has been in hospital for two nights. The mother was subsequently told by Puta's doctor that he had fluid in his lungs and had an irregular heartbeat. The reason he was in hospital was to keep him under observation to make sure that he was on the way to a full recovery. Needless to say, this was an extremely upsetting occasion for the mother to deal with and understandably raised her concerns about Maata's ability to adequately care for Puta.

[10] The mother's current partner is Blake whom she commenced flatting with, initially, in about April 2013. Their flatmate relationship turned into a committed partnership relationship in about March 2014 and they have one child of their relationship, Zander who was born on [date deleted] 2014 and he has [health details deleted] – as the mother says in paragraph 25 of her fourth affidavit of 25 March 2015:

No-one can really tell Blake and I what is ahead of us because his (Zander's) diagnosis falls within a wide spectrum. Our son has [health details deleted].”

[11] Blake gave up work to be at home with their children. Clearly Zander's care will have a significant impact on their day-to-day lives. For example he is tube fed and is continually monitored while in bed. As well he needs regular visits to New Plymouth hospital and also regular visits from a speech and language therapist, physiotherapist as well as appointments with a dietician, paediatrician and endocrinologist.

[12] Maata and her partner Tony have been together for 18 years and have six of their own children as well as Puta ranging in age as at the June 2015 hearing from seven years to 17 years old. Tony works at [name of employer deleted] as a meat worker and Maata works at a childcare centre. Puta shares a room with two of their other male children and Puta and the younger children go to bed and are asleep before the older ones do. Their 16 year old son Paulai is [details deleted] at [name of school deleted]. The children all get along well and Maata and Tony's children treat Puta like a sibling. Puta is well settled in their household and has a strong

relationship with their own children. Maata and Tony treat him and love him as if he were their own child.

Specialist report – s 133

[13] Mr Coyle is an experienced psychologist who has prepared a number of reports for the Court over the years. In his report dated 18 December 2014 he reviewed the background of the parties. He addressed in particular Puta's exposure to domestic violence and noted that Puta's parents separated at a very young age for Puta, that is [details of age deleted] and the prelude to separation has been acknowledged as being affected by domestic violence. The implication is that Puta would have been exposed to some of that domestic violence during a crucial zero to three years of age development period. Negative effects on his attachment with his key carers at that time, both his mother and father, as well as his overall sense of security are to be expected. This early involvement by Puta in domestic violence appears to have shaped his future behaviour. It appears that Puta may have been either directly or indirectly exposed to further domestic violence involving Maata's family members who consume too much alcohol and become argumentative and sometimes violent towards each other. Certainly Maata and Tony do not tolerate domestic violence in their household. Due to Puta's exposure to domestic violence Mr Coyle reports that he has been involved in the Dove programme which has been successful and has correlated with a distinct improvement in his behaviour.

[14] Puta's sense of vulnerability and threat can often be the trigger to reactive behaviour that is seen as aggressive by others because it seems to "come out of nowhere". Mr Coyle had been asked by the Court to comment on whether it is appropriate to transition Puta into the day-to-day care of his mother and if so what (if anything) needs to happen, including an appropriate timeframe which meets Puta's needs. Mr Coyle points out that Pipi wishes to fulfil the natural role of mother and let others "step back" but he goes on to say:

However, additional stressors have recently been introduced into Pipi's household following the birth of her third child, born with special needs. Blake has also reportedly recently terminated his employment. Other parties, and past reports, point to the risks involved in Pipi's behaviour when under stress.

[15] Mr Coyle goes on to say:

However, in the writer's opinion a phase of heightened stress is not a good time for increased day-to-day care responsibilities. Pipi and Blake may need some time to identify, understand and adjust to the additional challenges in raising a child with a disability.

[16] Mr Coyle points out that whilst Puta is in the care of Maata and Tony he has had a period of relative stability in his life notwithstanding some incidents of concern that have punctuated that time. He is unable to provide a clear direction for the Court but states:

The best care for Puta will be achieved by an alertness to both positive and negative factors, and honest appreciation of any developing trends and a preparedness to take that evidence into account as parties continue to explore transition of care.

[17] Mr Coyle does however say that:

The transition is taking a very long time from Pipi's perspective. On balance, and especially given recent developments, progress is probably about right.

[18] So far as the new factor in Pipi's life being her move to Rotorua is concerned which Mr Coyle felt there were positives and negatives in such a move. The negatives being the change of school and loss of contact with Maata and her family and the positives being a change for him which could be beneficial provided he has his mother's continued support.

[19] During Mr Coyle's evidence in Court he agreed that even at Puta's tender years he "maybe desensitised to violence" and that is a significant issue surrounding Puta and one that in regard to which a further and more intensive assessment is required. He was also quite clear that Puta was unlike normal children who learned to compromise and deal with interaction with each other so as to resolve issues without violence. He was quite clear that Puta needs to be protected and mitigated from further domestic violence as he is very much at risk should he be exposed in any way whatsoever to further domestic violence whether directly or indirectly.

The child

[20] Puta's interests in these proceedings were appropriately and competently represented by his counsel Mr Laurensen. Puta is aged seven years and while he has no particular health issues he has significant behavioural issues and is not keeping up with his peers at school.

[21] Puta's behaviour was described as "extreme and resulted in numerous incident reports." However, there has been some improvement during 2015 and his behaviour has settled down to a degree in the classroom but his behaviour in the playground remains unacceptable and he is regularly making poor decisions resulting in aggressive outbursts towards other children. Mr Laurensen reports Puta is very limited socially. The school is concerned that Puta has difficulty articulating himself and may have impaired language ability. This may be an explanation for his aggressive outbursts.

[22] Academically Puta is falling well behind the expected level. He is behind the expected standards in reading, writing and oral language and is only meeting expectations in maths. In a recent six year NET examination he had an extremely low score and so much so that he is receiving individualised support through a teacher programme which is ongoing.

[23] At paragraph 22 Mr Laurensen sets out what the school regard as the major challenges in Puta's life are and they are as follows:

- 22.1 His behaviour and his aggression. Some days he can come to school and it is evidence that he has an issue or something is going on. The school are now able to pick up on it early in the day. As they know that if they don't he will "unload" at school;
- 22.2 Writing, reading and oral language;
- 22.3 Transitions between households as observed by the school;
- 22.4 Social limitations and managing friendships;
- 22.5 Language limitations.

[24] Mr Laurensen met with Puta immediately prior to the hearing on Sunday 21 June 2015 and had a limited discussion with him because of Puta's limited language and communication skills. He reports that Puta does not express any

concern about either of his homes and there is nothing he dislikes when he stays with his uncle (Tony) and auntie (Maata) nor when he stays with his mum. Mr Laurenson got the clear impression that Puta believes he has two homes. When he asked Puta how he would feel if it was decided that he lives all the time at his mother's house Puta's response was that it would make him "quite sad". When he asked the same question about living all the time with his auntie and uncle he said it would be "okay and he could still see his mother in the weekends and in the holidays."

The Law

[25] Any decision as to Puta's care arrangements must be made with his welfare and best interests as the first and paramount consideration.

[26] The principles which must guide such a decision and which are relevant in this case are set out in s 5 of the Act which reads as follows:

5 Principles relating to child's welfare and best interests

The principles relating to a child's welfare and best interests are that—

- (a) 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:
- (b) a child's care, development, and upbringing should be primarily the responsibility of his or her parents and guardians:
- (c) a child's care, development, and upbringing should be facilitated by ongoing consultation and co-operation between his or her parents, guardians, and any other person having a role in his or her care under a parenting or guardianship order:
- (d) a child should have continuity in his or her care, development, and upbringing:
- (e) a child should continue to have a relationship with both of his or her parents, and that a child's relationship with his or her family group, whānau, hapū, or iwi should be preserved and strengthened:
- (f) a child's identity (including, without limitation, his or her culture, language, and religious denomination and practice) should be preserved and strengthened.

[27] In the case of *Kacem v Bashir* [2010] NZSC 112 the Supreme Court commented upon the principles set out in s 5 of the Care of Children Act 2004 being the principles relating to a child's welfare and best interests and that case requires me to note the following:

- (a) There are no presumptions in favour of or against any principles and no one presumption is more important than another.
- (b) The Court must examine each section 5 principle to see if it is relevant and if so take it into account along with any other relevant factors.
- (c) All principles must be considered with equal weight. I must make an individualised assessment regarding the particular child, in this case, Puta.

[28] Section 4(2)(b) of the Care of Children Act states that I may also take into account the conduct of the person who is seeking to have a role in the upbringing of the child to the extent that conduct is relevant to the child's welfare and best interests.

[29] In competing applications for parenting orders a useful list of matters to be considered was set out by Fisher J in *D v W* [1995] 13 FRNZ 336. Priestley J in *Brown v Argyll* [2006] NZFLR 705 makes it clear that this is a useful, but is not an exhaustive, checklist. The relevant criteria referred to in *D v W* are:

- (a) The strength of existing and future bonding
- (b) Parenting attitudes and ability
- (c) Availability for an commitment to quality of time with the child
- (d) Support for continued relationship with the other parent
- (e) Security and availability of home environment

- (f) Availability and suitability of role models and positive and/or negative effects of wider family
- (g) Provision for physical care and help and the material wealth of the parents
- (h) Stimulation and new experiences
- (i) Educational opportunities
- (j) Wishes of the child

[30] I consider an examination of these criteria in *D v W* sit comfortably alongside the issues to be considered under s 5 when determining what is in the best interests and welfare of a child.

The evidence

[31] The mother has filed four affidavits, the most recent of which is dated 25 March 2015. This affidavit makes no mention of her decision to move to Rotorua. Her evidence commenced by her lawyer, Mr Gifford leading her in regard to her decision to move to Rotorua and she said the reasons for moving were:

1. Family support regarding their child who has [name of syndrome deleted] and they will get family support there from Blake's family.
2. Blake, who is currently unemployed, can return back to working as an [occupation deleted].
3. Financially they will be better off because Taranaki is much more expensive to live in than Rotorua.
4. Puta will be able to make a fresh start at a new school in Rotorua.

[32] The mother said that Maata would be able to see Puta for half of the school holidays as well as long weekends when they would come over for the weekend and that she would pay for all of the travel between Rotorua and New Plymouth. She had not raised the decision by her and Blake to move to Rotorua with Maata, who later in the evidence said she had only heard shortly before the hearing about the Rotorua move from Puta. Contact between Puta and his father she wanted to be supervised by Barnardos in future and she would pay the cost of that also.

[33] When she was cross-examined by Ms Connole she said that Zander had been in hospital three times in the last month and they currently live too far away from the hospital and the rentals in New Plymouth are quite expensive so they cannot afford to live in New Plymouth closer to the hospital. She said that she could not see any point in raising the possibility of relocation with Maata and would do so “when the time comes”. She accepted that all of her family live in Taranaki, [relationship details deleted], all of whom support her and Puta. Puta’s grandparents on both sides of family also live in Taranaki. She agreed that Puta moving school could have a negative impact on him but that where he is at present he is not doing very well at all and that putting him in a new classroom and new school “will do wonders for him” but she agreed there was no guarantee this would happen. She repeated in cross-examination what she has said in her affidavit evidence that there are different rules at her house and at Maata’s house and that his is not good for Puta as he needs a constant set of rules that are the same.

[34] The question of her consuming cannabis came up towards the end of Ms Connole’s cross-examination. When Mr Laurenson commenced cross-examination he took up her consumption of marijuana and it turns out that she consumes marijuana on a daily basis after the children have gone to bed and she uses it for stress relief. However, she is not involved in obtaining it as she leaves that to her partner Blake. She prefers marijuana to having a bottle of wine. She said that if something happened to Zander she would ring the ambulance rather than drive as she is a paid up member of St Johns.

[35] When it was put to her that Mr Laurenson got the impression that between the two households, Puta’s preference is Maata’s household she said that “I’m very

hurt by that but in saying that you did visit him while he had been in their care so I think there is a wee bit of a bias.” She acknowledged that Maata’s home and environment is an important environment for Puta and that she and Waraki chose it for him four or five years ago when they could not cope with looking after Puta. She thought that Puta would cope with the change to Rotorua and repeated that he needs a fresh start. However, she did agree that Puta is not able to handle life’s challenges to the same extent as most people.

[36] When asked about what his views of his father were she replied “He loves his father, he does. He holds him in high regards. That’s his dad and I will never take that away from him. That’s his dad and he should always look in high regards to his father.” She was asked if she thought Puta was desensitised and replied “Yes” in regard to domestic violence that may have occurred at Maata’s home.

[37] When I questioned her about going to Rotorua and asked her if she was going whatever the result of the proceedings was she said “Yes, whatever happens we’ll be going” and she said she would still go if Maata was granted full-time care of Puta. She would expect to see him for half of the school holidays and during long weekends. Again that she would pay for the travel arrangements.

[38] The next witness was Blake Watkins (Blake). Blake is Pipi’s partner and he has sworn two affidavits. He is currently unemployed and on a benefit but at the time he swore his affidavits he was an assistant farm manager and currently describes himself as a full-time father. He resigned his employment firstly to look after their son Zander and secondly because of issues in coping with his father’s death.

[39] Blake is very keen to move to Rotorua where his family reside so that he, Pipi and the children have a fresh start and also where he believes he will obtain employment by reopening a business he had there some years ago doing automotive engineering. He believes he has his own anxiety issues under control now and will be able to return to paid work. In addition he will have the support of his family and in particular his sister has basically offered to buy him and Pipi a house. He did not think the cost of Puta’s travel between Rotorua and New Plymouth would be a

problem. He also admitted to being a regular user of marijuana but does not smoke himself into a stupor and uses it basically for stress relief and self medication.

[40] He has a good rapport with Puta and does not think there would be any negative effects on Puta if they were to move with him to Rotorua. He also believes that their son Zander who has [name of syndrome deleted] and the challenges that he and Pipi face in that regard have brought them closer together rather than having a detrimental effect on their relationship.

[41] He believes that the most important thing for Puta is his education and that Maata attempts to “stonewall” Pipi when she suggests how Puta’s education and general welfare is to progress and, in short, they do not end up with a compromise. In answer to a question by Mr Laurensen about what would happen to Puta in a situation where he is seeing very little of Maata, Tony and his cousins he admitted that it was “unchartered territory” and that he could not really give his opinion on how Puta will handle it.

[42] The next witness was the first respondent Maata, Puta’s auntie who has sworn four affidavits in this case.

[43] Maata agreed in cross-examination that initially her position was that she and her husband Tony were looking after Puta on a temporary basis until Pipi was in a better position to look after him and agreed that it was until Pipi demonstrated greater stability. As Maata pointed out she has worked with Pipi to the point that they are now at where they have equal week about care of Puta whereas previously Pipi had only weekend care.

[44] Maata is concerned about the time Pipi needs to spend with Zander because of his 24/7 care requirements and is quite clear in her evidence that she is happy to have Puta on a full-time care basis with Pipi having him during school holidays and long weekends if Pipi is intending to go to Rotorua.

[45] Like Pipi, Maata uses marijuana on a regular basis although they are careful not to use it in front of the children and although her husband Tony did grow

marijuana at one stage and was convicted for cultivating it that was prior to them having Puta's care.

[46] Maata was cross-examined about the home situation whereby she, Tony and their six children live in a three-bedroom house together with Puta. The youngest child is almost the same age as Puta and their eldest is 17 years old. It is a busy household because not only do Tony and she both work but she is doing part-time study for a degree in childhood education. However, because Tony works nightshifts and Maata finishes work at half past three on at least two days a week the household runs fairly smoothly and there is almost always an adult present in the household when the children are there. In fact, their household is regarded as somewhat of a hub for other members of the family as they live only 500 m from the school and her sister and mother-in-law live close-by. She agreed that Puta had been late for school on a number of occasions but was not particularly concerned about this as the school had not shown any particular concern about it.

[47] Maata confirmed that Puta had struggled with behaviour issues since he came into her care and he had been up and down the whole way through his schooling. His behaviour issues are of concern to her and she has discussed them with his teacher. However, his disruption due to the week-about changeover has reduced since the changeover commenced on a Friday. It appears his aggression is mainly in the playground and that it is under control during class-time. She has tried and continues to tell Puta that he should resolve matters by using words rather than his hands and she believes that Puta's behaviour is generally improving as a result of his teachers, the Dove programme and her intervention as well as Pipi's.

Interim decision

[48] On 26 June 2015 I issued a minute in which I advised the parties that my view at that point in time was that there should be (refer [4] of my minute):

... an interim order continuing the status quo for say six months ... to enable Mr Coyle to advise the Court as to what specialist psychological and other assistance could be obtained for Puta to help him with his particular difficulties relating to learning and behavioural/violence in the playground and classroom problems.

That was the position that continued until a resumed hearing of this matter on 17 February 2016.

Resumed hearing on 17 February 2016

[49] Following my minutes 26 June 2016 and 4 November 2015 the hearing of this matter recommenced on Wednesday 17 February 2016. As directed by me in my minute of 4 November 2015 Pipi filed an application for relocation and Maata filed an application for guardianship. Both Pipi and Maata filed affidavits in response to each other's November affidavits. I subsequently received Mr Laurenson's report on 16 February 2016 which updated me in regard to Puta's current situation. Mr Coyle, the psychologist in this matter also updated his report following his further investigations and that report was dated 28 January 2016.

[50] The fact that almost eight months has elapsed between the initial hearing in late June 2015 and the current hearing date has been helpful in resolving this matter.

[51] Mr Coyle's report of 28 January recorded the existing background to this matter which in short is that Puta was placed with Maata following the breakdown of Pipi's relationship with Waraki and she has effectively looked after Puta for the past five years. However, as referred to earlier in this judgment Pipi and her now half a 50/50 care arrangement. Pipi's current personal circumstances are that she and Blake intend to marry and have the two other children, Italus and Zander whom they look after and have the sole care of. They are to relocate to Rotorua in the near future and have the support from members of Blake's family and indeed Blake's sister has purchased a house at [address deleted], Rotorua for them to move into.

[52] Mr Coyle recorded that "Maata holds concerns for Puta in that she feels he is too young to leave Taranaki." In addition she is concerned about decreasing connections between him and her side of the family. Mr Coyle records that the concerns voiced in the earlier evidence I received remain in that so far as Puta is concerned they involve the following:

- Cognitive functioning is a background factor

- Behaviour can be severely disordered
- Emotional dis-regulation is of concern
- Social skills and communication skills impact on relationships with others
- His academic progress may be being compromised by his placement in a bilingual unit where this placement is not accompanied by bilingual homes. I note that Pipi's house is not a bilingual home and Maata's is

[53] The factors relating to the parents are:

- A continuation of elevated blaming of the other party
- There is very little communication or cooperation for Puta's best interests
- Parties are able to "be civil"
- There is lack of valid information shared regarding his behaviour
- Both homes comprise some positives and negatives for Puta

[54] He referred in his report on page 5 at the final bullet point that "aspects of the adult lack of full cooperation and a lack of information generated by the school make it more difficult to accurately identify, understand and address the precise nature of Puta's needs in a coherent fashion." In an endeavour to resolve the pros and cons of Puta's either remaining in Taranaki or relocating to Rotorua Mr Coyle set out a useful table at page 6 of his report. Importantly amongst these pros and cons, particularly if he relocates to Rotorua is that "a "reset" that could occur with a move to a new school." Puta's academic progress is basically below the normal and his mother believes that in part this is due to the fact that he is having trouble coping

with a bilingual school and would benefit from a straightforward mainstream school. The type of school she proposes in Rotorua is a main stream school.

[55] Pipi's signed a brief of evidence dated 17 February 2016 in which she sets out the fact that she, Blake and the two children in their care would be moving to Rotorua and she also sets out, on the basis that Puta moves there with her, the contact arrangements between Puta and Maata. Effectively this contact comprises one-half of all school holidays including the Christmas holidays and her proposal is that she and Blake would be responsible for all transport arrangements to make the contact work for Puta. As well Puta has his own cellphone and she proposes that there be telephone and text contact between Maata, Waraki and Puta. She also proposes that there be Skype contact if that can be arranged and they can afford it. She proposes enrolling Puta at [name of school deleted] in Rotorua.

[56] In Pipi's evidence there is a troubling reference again to exposure to domestic violence at Maata's house and she reports that Puta told her that his father (Waraki) was taken away by the police because his father punched Uncle Tame. Further Puta said that Uncle Tame rang the police who had taken away his dad and that his dad was in jail for a while. Whether or not this incident took place is another matter although Maata gave it some credence in her evidence. However, the fact that Puta reported it is of real concern. Attached to Pipi's brief of evidence is Puta's current report which in short indicates that he is not yet out of the woods so far as written and verbal expression is concerned but he certainly has a great interest in mathematics. Although he tries hard in Te Reo Maori he is by no means fluent and he is not keen on participating in Kapa haka in class. The report confirms that he struggles with a bilingual education.

[57] Maata confirmed in her affidavit of 15 December 2015 and her previous affidavit she was concerned about the lack of information in regard to Pipi's move to Rotorua but her concerns have been allayed to a certain extent by the evidence that Pipi gave in this regard. She is also concerned that Puta's Maori culture will not be supported by Pipi and she does not agree with Puta going into a mainstream classroom and believes that he copes quite adequately in a bilingual unit as he is in at present. She quite frankly referred to the fact that there are ongoing tensions

between her and Pipi and she disagrees that Puta needs a “fresh start” and in fact thinks that he needs consistency and stability and that a big change such as is proposed by him relocating to Rotorua and having to start a new school and mainstream classroom would be very difficult for him to handle. She is also concerned that if Puta moves to Rotorua then Pipi will not make any particular effort to have regular contact between Puta and Maata and her wider family. When she was cross-examined by Mr Gifford she agreed that she and her husband Tony live in a three bedroom house. She and her husband have one bedroom. There are four girls in the biggest bedroom and three boys (including Puta) in the other room. She admitted that they had a very busy household with people coming and going all the time and that Puta may well do better in a more calm environment. She also admitted that members of her family refer to domestic violence issues such as the argument between Waraki and Tame and that she cannot control what Puta overhears in her house in this regard. She said she was unaware that it had such a deep impact on Puta. She is also concerned about Pipi’s ability to cope in Rotorua once her partner Blake commences full-time work, particularly given Zander’s health problems. She is also concerned at Pipi’s failure to be supportive of Puta’s recreational activities such as his involvement in league, soccer and touch rugby. She agreed with lawyer for the child that his statement to Mr Coyle that he will always come from Taranaki is an important factor and will always feel an affinity with the region.

[58] When Mr Coyle was cross-examined he clearly, in my view, now supports relocation to Rotorua and referred to the “reset” that Puta would need to go through and that he could see this as being positive for Puta because he is currently cast in a certain light at [name of school deleted] and a change of school and relocating to Rotorua would give him the fresh start he needs. He was also not concerned that Puta might no longer go to a bilingual unit but go into a mainstream school and thought this would be beneficial to him. He clearly felt however that it was important for Puta to retain his Maori links and whanau involvement with Maata. He felt that Puta was clearly leaning towards living with his mother rather than Maata and he felt it was important for Puta’s development that he have his place in the Kingi home as the older brother looking after his younger brothers as this is an important development pathway for him.

[59] Mr Laurenson's report of 16 February 2016 records his meeting with Puta as recently as 15 February 2016. He records that he was able to have a "very easy discussion with Puta and he was not hesitant to express his views on this occasions." (para 5 of his report). In paragraph 7 Mr Laurenson records that he (Puta) also spoke very fondly about his home with his mother and Blake and expressed particular fondness towards his younger brothers. In paragraph 8 he says "Puta expressed that he would be sad if it was decided that he lives at his Auntie Maata's house for most of the time. I asked him why it would be sad and he said that he would miss his brothers." In paragraph 9 he records that "I asked him how he would feel if he lived most of the time at his mother's house and not at his Auntie Maata's house and he said it would be okay and that he would not be sad." Mr Laurenson also discussed with Puta the possibility of moving to Rotorua and in paragraph 10 he records that Puta "said that if he was allowed to move to Rotorua with his mother he would feel good. He said that it would be mean he would get to stay with his brothers." So far as contact with his Aunt Maata is concerned Mr Laurenson records that when he "suggested to him that he would miss Aunt Maata and his cousins at her home and he agreed he would miss them but reassured himself by saying he would get to have holidays with them." Of concern is Mr Laurenson's report that in paragraph 12 Puta said to him when talking about his father that "as far as he is aware his father hasn't been getting into any fights." This again raises the spectre of Puta having overheard talk about his father and domestic violence in Maata home. At paragraph 14 Mr Laurenson recorded "as a result of my discussion with Puta I submit that he was expressing to me a clear preference to move into his mother's home more permanently and he was not phased by the possibility that could mean a shift to Rotorua with his mother, Blake and his brothers. He seemed prepared within himself to deal with what that might mean to his relationship with his Aunt Maata, Uncle Tony and his cousins." At paragraph 16 he records "in other words I submit his preference for his mother's house was a clear one and was expressed regardless of whether his mother intends to remain in Taranaki or move to Rotorua. His views as expressed to me suggest he is now gravitating towards his mother and brothers."

[60] Mr Laurenson refers in his report to the fact Puta's behaviour at school is improving and that his teachers have noted that he regularly talks about his brothers in class and includes his step-father Blake in his discussions and refers to him as

“papa whangai.” Mr Laurenson also refers to Puta’s involvement in Te Reo in paragraph 23 and states (they) Puta’s teachers describe Puta as quite a reluctant student of Te Reo and an example of this is the Kapa haka programme at school which Puta is extremely reluctant to be involved in.

[61] When Maata was being cross-examined a letter from Dr Jacquemard, a consultant paediatrician dated 30 September 2015 was shown to her. This letter was written after she, Puta and Pipi attended Dr Jacquemard’s clinic on 30 September and the particular paragraph referred to states:

General Behaviour

Maata and Pipi tell me that the real issue is Puta’s acting up at school. Puta has been running into trouble there regularly. Teachers are concerned about Puta’s behaviour. He easily hits out at peers in the playground. Hitting also at home, for instance with his cousins. Maata says that at home she does not find Puta specifically hyperactive. He appears to have reasonable focus and attention. “Does have his moments.” Better in one-on-one situations. Can hurt other children, head butt, punch. At home behaviour is variable, can clash with cousins. Behaviour at school more problematic.

[62] Maata agreed that was a fair assessment of Puta’s behaviour at that point in time. This summary clearly shows that Puta was not in a good state at that point in time and his behaviour was unacceptable. Thankfully his behaviour appears to have improved since then but he recently had a violent interaction with Maata’s daughter Jess on at least two occasions[details deleted].

[63] At the close of the evidence I received written submissions from counsel for Pipi and Maata and Mr Laurenson addressed me orally. Mr Laurenson particularly referred me to s 5 Care of Children Act and in particular sub-para (b) which refers to the primary responsibility for a child is the child’s parents. He submitted that a child should not remain separated from its natural parent unless for some good cause. His submission was that the time had come for Puta to be returned to his mother and that on the recent evidence there was substantial support for this. I agree with Mr Laurenson. The fact that there have been almost eight months in which to observe and consider Puta’s position has meant that his situation has been clarified in that he now prefers the time he spends with his mother and his brothers to that which he spends with his auntie. That is only natural as his bond with his mother, although

fractured in the past, has been re-established and that is no doubt because the first two years of his life were spent with his mother, albeit in somewhat dysfunctional circumstances, but Mr Coyle acknowledged that time was crucially important in his development.

[64] I have weighed up each of the s 5 principles to determine Puta's day-to-day care. The factors that convince me that Pipi should have day-to-day care of Puta are in particular as follows:

- (i) Shared care is not working for Puta as there are different rules in Maata's and Pipi's houses. Puta is the youngest child in Maata's home and yet he is the oldest child in Pipi's home – it is important for his development that he has the role of being oldest child in Pipi's home.
- (ii) Puta has been exposed to recent further knowledge of violence within the wider [Rata] whanau which cannot be countenanced. There are safety issues if Puta remains in Maata's care and there are no such issues if Puta is placed in Pipi's care.
- (iii) Puta's education is not helped by him being in a bilingual school as he is not able to cope with this type of schooling. At his current school he gets involved in physical altercations with other children and once he is removed from this environment hopefully these altercations will cease. Mr Coyle sees a big advantage in Puta being "reset" in a new mainstream school.
- (iv) As Mr Laurensen said subs 5(b) refers to the fact that a child's care, development and upbringing should be primarily the responsibility of his parents. Now that his mother is in a situation where she can care for Puta it is appropriate that she should be given the ability to do so.

- (v) Finally Puta has expressed a preference to live with his mother, Blake and his brothers.

[65] Accordingly, my decision is that Pipi is to have day-to-day care of Puta and all other orders relating to Puta are discharged. I requested Mr Laurensen to prepare a consent memorandum setting out the contact that Maata is to have with Puta which includes the various practical arrangements such as providing Maata with all the information that a person who had been granted guardianship would be entitled to have. Maata's guardianship application is dismissed.

Decision

[66] Accordingly I made the following orders:

1. All existing orders relating to Puta are discharged.
2. I make a parenting order providing that Puta is to be in the day-to-day care of his mother/Pipi.
3. Maata is to have contact with Puta on terms and conditions to be agreed between the parties and I extend Mr Laurensen's brief to assist the parties in preparing an appropriate contact order which shall include Puta's father Waraki if Mr Laurensen thinks it appropriate.

Other matters

[67] I particularly want it noted that Maata is to be thanked for all the good work she has done for Puta over the last five years because I am certain that he would not be where he is today without her and her husband Tony's support and love. However, it is time to step back and be an auntie, not a mother but as you now have a hugely important role in Puta's life I want to make sure, as I have done in my orders above, that you have continued contact with him.

C D Sygrove
Family Court Judge