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**IN THE FAMILY COURT
AT TOKOROA**

**FAM-2010-077-000037
[2016] NZFC 2264**

IN THE MATTER OF THE CARE OF CHILDREN ACT 2004

BETWEEN JOSH YORK
 Applicant

AND DEENA TRUMAN
 Respondent

Hearing: 18 March 2016

Appearances: E Reilly for the Applicant
 R Simm on behalf of R Spoorle for the Respondent
 J Rae as Lawyer for the Children

Judgment: 18 March 2016

ORAL JUDGMENT OF JUDGE J F MUNRO

[1] Today has been a hearing to consider safety issues in relation to the contact between Deena Truman and her children, Melanie and Abraham. They are aged seven and four respectively.

[2] The children are in the care of their father, Josh York, and there is currently an order in place from 3 December 2015 providing for the mother, Deena Truman, to have supervised contact with the children on Sundays from 9.00 am until 12.00 pm and otherwise as agreed between the parties.

[3] There has been some difficulty in relation to the availability of supervisors. The situation now is that, in the short term, Ms Truman is seeking unsupervised contact but wishes to pursue a parenting order for day-to-day care or shared care. Mr York seeks day-to-day care and considers that there is ongoing need for supervision.

[4] The issue for the Court today then is to consider whether the children will be safe in the unsupervised care of Ms Truman. There is a significant history with these parties. They have been in a dysfunctional relationship for approximately 10 years. There have been earlier proceedings but the parties reconciled.

[5] Of significance is that in 2006, there was a particularly serious incident of violence and Ms Truman was convicted of stabbing Mr York. He, arising out of the same incident, was charged with assault on Ms Truman.

[6] Both parties accept that during the relationship, there was domestic violence, although the parties give different evidence as to whose fault that violence was, how frequent it was, and how serious it was.

[7] Ms Truman accepts that when she has become frustrated and angry, she has hit Mr York on a number of times and that she has frequently thrown things at him. She says that Mr York has also hit her. Certainly, as I have said, he has been convicted of an assault on her. His evidence is that any violence by him has been a response to Ms Truman's violence in an attempt to either push her away or to stop her from acting in the way that she does.

[8] The parties separated in September last year following a further incident in which Ms Truman threw a pot at Mr York. It hit him and she was charged and convicted of an assault, although I am not provided with details of the exact nature of the assault with which she was charged.

[9] Clearly there has been violence between the parties during this relationship. Since the separation, there has been one incident in January I think this year, when Ms Truman arrived at the home uninvited to collect some items. There was an argument. She was told to leave. She became loud and abusive and she says that she was pushed by Mr York. She was holding the younger child Abraham at the time. It is accepted that these children have been exposed to the ongoing dysfunction in the parents' relationship.

[10] In terms of any violence towards the children, it is accepted, as I have said, that they have been exposed to violence. Melanie, the older child, has disclosed that her mother has hit her and that is a concern that she raised with her lawyer, Mr Rae. As a result of that, Mr Rae made a report of concern to Child, Youth and Family and Melanie was interviewed. It is unfortunate that a copy of that evidential interview has not been made available to the Court, but it has been clarified with the police that they are taking no further steps in relation to that.

[11] The ongoing safety issues for these children arise out of Melanie's disclosures to Mr Rae about being hit by her mother and that she does not like her mother shouting and swearing at her. It is accepted that Ms Truman, when she becomes frustrated, uses foul language. She says that that is accidental and she tries not to do that and that she does not do that very often. The evidence before the Court would suggest that it is a frequent habit of hers and it upsets Melanie particularly.

[12] It is clear to me that Ms Truman has an issue managing her anger and her frustration. She has said that she has tried to locate an anger management course and a parenting course but that those are not available in Tokoroa, and she has no transport to travel elsewhere for that. It is unfortunate because the Court would be

very much reassured if Ms Truman could take some positive steps to address what is clearly an issue in terms of her ability to manage her emotions.

[13] The supervision that has been happening has been undertaken by family members and a friend but for one reason or another, that has not been able to continue.

[14] During the hearing today, there has been discussion about whether unsupervised contact should take place in a public place. Reluctantly, Mr York would agree with that because he says that Ms Truman is better able to control her anger and does not display this sort of behaviour when others are around. I would be attracted to that proposal except that Ms Truman considers that that is not workable, and I can see the difficulty of that particularly when we are now in autumn and as the weather gets colder, it becomes more difficult to locate a public place that is suitable for contact.

[15] Ms Truman says that her frustration and anger are exhibited when she is with Mr York and because of the difficulties in their relationship. She says that when she is with the children, she is not like that and that the children are safe in her care.

[16] Melanie wishes to have frequent contact with her mother. She has said she would like to have contact on Fridays and Saturdays, although it seems as though she might be referring to Saturday and Sunday, given that she is at school on a Friday. She likes having a supervisor there because the supervisor stops her mother from swearing. It will be for her mother to take some control over her emotions and make sure that she does not upset her daughter by swearing, which is completely unacceptable, gratuitous and simply wrong.

[17] In considering whether there is an ongoing need for supervision, I need to consider what conditions could be put in place if contact were to be unsupervised that might mitigate any risk for these children. There has been evidence about that and an agreement by the parties that they would accept conditions.

[18] There is also an acknowledgement that Melanie is a forthright little girl who will speak her mind. She is seven. She is old enough to tell her father if things are not going well at contact. In saying that, I do not expect that her father will be quizzing her about contact, but certainly I accept that if the children are being shouted at, sworn at, or in any way physically disciplined during contact, Mr York will know and he will take appropriate steps in terms of contacting his lawyer to address the issue. I am somewhat reassured by that. If these children were younger and not able to report any problems with contact, then I would certainly not be agreeing to supervised contact at this stage.

[19] At the conclusion of the hearing I indicated that I would be making an order for unsupervised contact and gave counsel and parties some time to consider what orders would be appropriate. In my view, it is appropriate to allow Ms Truman the opportunity to be as good as her word and to provide her children with contact that will be enjoyable, positive, free from stress and anxiety for them.

[20] It will be necessary to review the situation in short order. It was my thinking that three months would be an appropriate time and I am pleased to see that that is also the time that counsel and parties have considered appropriate. Ms Truman is due to give birth in August of this year. It is important that the contact provisions be reviewed prior to that so that if any changes need to be made, they can be put in place prior to the birth of the child.

[21] There is general agreement to an interim contact regime. There is disagreement about two matters:

- (a) The length of the contact on the Saturday; and
- (b) Whether there should be a condition precluding the older child Briar from being present. That has not been raised at all during the hearing and so I am not prepared to make any order or condition in relation to her. If it becomes an issue, again that is something that can be reviewed.

[22] The proposed contact is for every Saturday and alternate Sundays. It is agreed that the Sundays will be from 11.00 am to 4.00 pm. Ms Truman proposes that the Saturdays be from 11.00 am to 7.00 pm to enable her to give the children their lunch, spend the afternoon with them, feed them, bathe them and arrange for the children to be picked up in time to go to bed.

[23] Mr York does not agree with that. He proposes midday to six on the basis that Ms Truman would give the children their lunch and he would give them their tea. He considers that 11.00 am to 7.00 pm too long I think because of the potential for there to be stress and the possibility of Ms Truman struggling with them for that length of time.

[24] In considering how long that contact should be, I take into account what the contact has been up until now which is just three hours once a week. This is a significant increase in contact.

[25] I accept the concerns raised by Mr York about the length of time. I am also mindful of the fact that we are going to be coming into the winter and I think it is preferable that these children have their contact largely during the day time and not going into the evening. For that reason, in my view, the length of time that Mr York proposes, which is six hours, is appropriate but it would make more sense I think for those six hours to enable Ms Truman to give the children their lunch and for them to be back home for Mr York to give them their dinner and to prepare them for bed.

[26] Accordingly, I make the following orders:

- (a) The interim contact order of 3 December 2015 is discharged.
- (b) I make a further interim parenting order as to contact for Mr Truman as follows:
 - (i) Commencing Sunday 20 March 2016 from 11.00 am to 4.00 pm.
 - (ii) Thereafter on a two weekly cycle as follows:

1. Saturday 11.00 am to 5.00 pm
 2. Ms Truman to give the children their lunch and for them to be home for Mr York to give them their evening meal.
 3. Week two Saturday 11.00 am to 5.00 pm and Sunday 11.00 am to 4.00 pm.
- (iii) Mr York is to drop off and collect the children from Ms Truman's home.
- (iv) There is to be telephone contact every Wednesday at 4.00 pm with Ms Truman calling Mr York's cellphone.
- (c) The following conditions apply to both parties:
- (i) There will be no physical discipline of the children.
 - (ii) There will be no discussion of adult issues in front of the children.
 - (iii) The children are not to be exposed to domestic violence.
 - (iv) There is to be no illicit drug use.
- (d) The proceedings will be reviewed in three months by way of a settlement conference.
- (e) I authorise Mr Rae to convene a roundtable meeting if that is considered appropriate prior to the settlement conference in order to progress matters.
- (f) The settlement conference will be on a date to be advised by the registrar. Updating affidavit evidence is to be filed no later than

seven days prior to the settlement conference as to proposals for ongoing care arrangements and the reasons for them.

- (g) Counsel are to file memoranda also prior to the conference as to the agreed issues that are contentious.
- (h) I request that Mr Rae meet with the children prior to the settlement conference and file an updating report as to Melanie's views particularly.

J F Munro
Family Court Judge