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**IN THE FAMILY COURT
AT WANGANUI**

**FAM-2014-083-000221
[2016] NZFC 3214**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	JEAN SIDDALL Applicant
AND	JONINA BROWNE First Respondent
AND	DANNY MORIN Second Respondent

Hearing: 19 April 2016

Appearances: R Simon for the Applicant
S Proctor for the First Respondent
S Little for the Second Respondent
G Takarangi as Lawyer for the Child

Judgment: 19 April 2016

ORAL JUDGMENT OF JUDGE L HARRISON

Introduction

[1] These proceedings involve Teal Morin-Browne born on [date deleted] 2013.

[2] Teal is the child of Jonina Browne and Danny Morin. They have one other child together, namely Leo, who was born on [date deleted] 2016.

[3] Teal's caregiver is Jean Siddall and she applied for a parenting order on 1 August 2014 for the day-to-day care of Teal.

[4] Teal has only ever been cared for by Ms Siddall. Teal has had supervised contact with her parents and since July 2014 that has been undertaken by the Birthright organisation. She sees her parents on different days.

[5] The issues for determination at this hearing include:

1. The day-to-day care of Teal: is it in her best interests to remain in the care of Ms Siddall or would a change of care to her mother be in her best interests?
2. If she is to remain in the day-to-day care of Ms Siddall should Ms Siddall be appointed as an additional guardian for Teal?
3. The next issue relates to contact. If day-to-day care remains with Ms Siddall then what contact is in the best interests of Teal with regards to her parents, more specifically what kind of contact is in the best interests of Teal with her mother, should it be supervised or unsupervised at this point in time and what terms of supervised contact are in the best interests of Teal with her father?

[6] I note for the record that there was no written application for additional guardianship but I accept that that has been simply a genuine oversight throughout the course of the proceedings and I have accepted an oral application at the start of the hearing in that regard. There was no objection from other counsel.

[7] The evidence before the Court is in the form of affidavit evidence from Ms Browne and Mr Morin, social workers' reports from David Preston, Sheena Lees and Mr Phillip, two lawyer for child reports, a family group conference plan for baby Leo. Evidence was given in Court and witnesses were subjected to cross-examination and evidence was given by both of the parents, Ms Siddall, Ms Rae Holland, Ms Angela Rogerson and the social worker Mr Phillip.

Background

[8] By way of background, it was in 2012 or thereabouts that family violence incidences between Ms Browne and Mr Morin started to be recorded by Child, Youth and Family. At that time Ms Browne had four children in her care. They are from previous relationships.

[9] Family violence in the Browne/Morin household appears to have been a fairly constant state of affairs and it got steadily worse. It included, on 24 August 2014, the child Briscoe, then aged nine, being assaulted by Mr Morin; he was smacked on his forehead. This was substantiated and resulted in a criminal charge and conviction.

[10] On 8 October 2013 Mr Morin assaulted Ms Browne. She was seven months pregnant with Teal at the time. Her younger son, Adrian, was standing next to her.

[11] The four children of Ms Browne were then removed from her care and it was largely because of the family violence involving Mr Morin. They left her care in 2013 and they have been raised by an aunt who has Court orders in respect of those children. Their contact with their mother has been supervised but I note that recently the two oldest children, who are now 13 or 14 years of age, now have some unsupervised contact time with their mother.

[12] The social worker reports of Ms Browne that she had a violent upbringing, that she has been in violent relationships and that the three different fathers of her children have all been violent. I note for the record that she acknowledges only two who were violent towards her.

[13] Ms Browne herself has a longstanding history of involvement with Child, Youth and Family and this dates back to 2005. She also has a conviction for assault on her child, namely her son Briscoe, in 2010 when she hit his face with a stick.

[14] A Child, Youth and Family family group conference was held on [date deleted] 2013 just prior to the birth of Teal. An outcome of the family group conference included that baby would be placed with Ms Siddall. A safety plan at birth was also created and signed by all the parties and the social worker, Mr Phillips, on [date deleted] 2013. This indicates to me the very high level of concern that was held by Child, Youth and Family in respect of Teal.

[15] The baby went into Ms Siddall's care as planned on discharge from the hospital but this sadly was not before there was another episode of family violence between her parents and she was in the room at the hospital at the time of this incident.

[16] Following the family group conference there have been two reviews by Child, Youth and Family in April and July of 2014. This has resulted in Ms Siddall applying for a parenting order under the Care of Children Act 2004 and Child, Youth and Family effectively stepping back from Teal's situation. That appears appropriate given that Teal was no longer in need of care and protection because she was safe with Ms Siddall.

[17] It appears that the first family group conference outlined steps that the parents would need to make to have their baby with them and I accept that this has created an expectation of one or either of them being able to care for their daughter in the future.

[18] Ms Browne still has that expectation. She does not consent to a parenting order for the day-to-day care being made in favour of Ms Siddall. She tells the Court that she has made changes and is ready now to have Teal in her care and her position is supported by Mr Morin.

Day to Day Care

[19] In respect of the day-to-day care of the child, the mother's position is for a change of care; that she is ready and able to care for her daughter but not immediately. It is something that would happen over time; that there ought to be a graduation of an increase in time with Teal, a move away from supervised contact to unsupervised contact which would include fuller daytime contact and overnight stays.

[20] The evidence before the Court is she does not have unimpeded care of Leo. There was a family group conference before Leo was born. Leo was identified as a child at risk of care and protection when born. A family group conference plan sees that Leo is living with his mother but they live with a couple who are charged with the responsibility of ensuring that the home environment is safe and secure for Leo and that his developmental needs are being met.

[21] Child, Youth and Family have no confidence in Ms Browne. There is no certainty that she will end up with the permanent full-time day-to-day care of Leo at this stage.

[22] There is a concern about Ms Browne's honesty and openness about the nature of her relationship with Mr Morin. This is in question, especially given their intimacy and the second child to him.

[23] Rae Holland, a social worker who has worked alongside Ms Browne and had provided supervised contact for her with the other children, was surprised, to say the least, when she learnt of the pregnancy and that Mr Morin was the father. Ms Holland outlined in her affidavit evidence the multiple agencies that have been involved with Ms Browne, there are at least eight, but none presented evidence before this Court in support of her position regarding the care of Teal changing to her.

[24] There is evidence before the Court of Ms Browne's transience, there is evidence of her poor choices of intimate partners and her acceptance that she cannot seem to get away from them.

[25] She has a criminal conviction and is responsible for her own assaultative behaviour on her son.

[26] Throughout the course of the evidence I got glimpses of her relationship with Mr Morin. I give Ms Browne credit for her insightfulness, that Mr Morin was not child focused when they were left together in the hospital room following the birth of Teal.

[27] It is significant to me that she tried to prepare him for the hospital visit. She went to lengths to make sure that he had his phone charger, that he would bring some clothing to the hospital. He chose to ignore her advice and support. I infer that she anticipated he would be somewhat uncomfortable and out of sorts if he was not prepared. Having given birth, she was then prepared to give up her bed so that he could be more comfortable rather than being on the recliner chair.

[28] Her evidence further was about knowing when not to engage in talk with Mr Morin about their situation when he has been drinking, yet she did so on another occasion and it ended in a police callout.

[29] Of concern to me was her evidence that they were arguing about a taonga, something that Mr Morin had given her at the start of the relationship that he wanted back, something that was precious to her.

[30] She feels sorry for Mr Morin. He has been relying on her for transport and support, particularly in times of need when he has lost his employment or when he was burgled on various occasions.

[31] It has the hallmarks, to me, of a coercive, controlling relationship.

[32] In giving evidence Ms Browne acknowledged to lawyer for child that she has not addressed the issues that concern Child, Youth and Family and she also accepted in cross-examination that she is not ready for Teal to be returned to her care.

[33] I note that she has no concerns regarding the standard of care that Teal is provided by Ms Siddall and that she was a person who chose Ms Siddall right at the start.

[34] Her criticisms of the current arrangement are that she feels left out of the loop, there is poor communication between her and Ms Siddall, she is concerned about the lack of information sharing and that Ms Siddall is deliberately shutting her out of Teal's life. She wants more time with her child; more time to her equates to strengthening their relationship which equates to a change of care.

[35] The evidence in support of Ms Siddall maintaining the day-to-day care includes that she has always cared for Teal, in fact she is her only caregiver that she has ever known. Her standard of care is exemplary. Her level of love/care/commitment was palpable when she gave her evidence in this Court. She and Teal have their own bond, she is a protective caregiver and was quick to withdraw from supervising the contact after an aggressive incident involving Mr Morin. She has committed herself and the child to Birthright contact on a regular basis and she is prepared, in the future, to maintain funding. She has provided relevant information to the child's parents on a medical condition and daycare. She is inclusive in respect of Teal's siblings and she is willing for Leo to be included in supervised contact with Teal and her mother. She provides a suitable home environment, she is financially able to support the child and she recognises and enhances the child's cultural heritage.

[36] By all accounts she is an entirely appropriate caregiver for Teal.

[37] When I consider the law that is relevant I am referring predominantly to the statute which is the Care of Children Act 2004. Section 4 is relevant, that is the section that tells us that the child's welfare and best interests is paramount when the Court is making decisions regarding the guardianship of a child, day-to-day care or

contact for the child and it is the welfare and best interests of the particular child in her particular circumstances that must be considered.

Section 4 - Child's welfare and best interests to be paramount

(1) The welfare and best interests of a child in his or her particular circumstances must be the first and paramount consideration—

(a) in the administration and application of this Act, for example, in proceedings under this Act; and

(b) in any other proceedings involving the guardianship of, or the role of providing day-to-day care for, or contact with, a child.

(2) Any person considering the welfare and best interests of a child in his or her particular circumstances—

(a) must take into account—

(i) the principle that decisions affecting the child should be made and implemented within a time frame that is appropriate to the child's sense of time; and

(ii) the principles in section 5; and

(b) may 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 that conduct is relevant to the child's welfare and best interests.

(3) It must not be presumed that the welfare and best interests of a child (of any age) require the child to be placed in the day-to-day care of a particular person because of that person's gender.

(4) This section does not—

(a) limit section 6 or 83, or subpart 4 of Part 2; or

(b) prevent any person from taking into account other matters relevant to the child's welfare and best interests.

[38] The Court is guided by s 5 because s 5 sets out various principles that need to be taken into account when the Court is going through the exercise of what is in a child's best interest.

Section 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.

[39] Section 6 is relevant to the extent that children have an opportunity to express a view. That has not been possible on this occasion because of her age but I acknowledge the submissions made on her behalf by her counsel. They are submissions that are focused on her best interests.

[40] I find in favour of Ms Siddall having a parenting order for the day-to-day care of Teal and I need to be clear, the order I make today is intended to be a permanent order. The order is necessary because it reflects reality. It reflects what is in Teal's best interests. It ought to give Ms Siddall confidence that she needs to be able to keep going with her care of Teal, that she is on the front foot in this regard and I hope that it also will allay her anxiety about losing Teal and it will also lessen the strength of her gate-keeping over contact, and I will refer to that shortly.

[41] I accept that the making of a parenting order is not a vaccination against future applications challenging the care. Ms Browne indicated honestly when she gave her evidence that she will make future applications. If she does so then I recommend the Court obtain evidence by way of a s 133 psychological report which, amongst other things, ought to address what specific parenting challenges Ms Browne faces, if any, due to being in an abusive, coercive, controlling relationship.

Contact

[42] In respect of contact, the evidence is that contact has been supervised by Birthright since around July 2014. It has, by all accounts, been regular for Teal and her mother. It has been less so for Mr Morin and I accept the evidence that in part this is to do with fortnightly contact not being able to occur on that basis because of the unavailability of Birthright, Father's work commitments, issues about cost of sessions and, at times, ill health of Teal. I note that there has been no contact this year for Teal and her father.

[43] I have already referred to my impression of the relationship of her parents and I have real reservations about Mr Morin. The evidence about her father is he is an alcoholic, he is attending a second residential Bridge programme currently, he is doing that in Wellington, he will return to Whanganui at the end of that course in eight weeks.

[44] He was raised by his father with his siblings and that follows his mother being absent shortly after his birth. He has held various jobs not for particularly long and the most recent was for a couple of months. He has the prospect of work on return to Whanganui with [employer details deleted] but he has only done two days' trial work with that workplace. There are no guarantees; there is no certainty of his hours of work/days of work.

[45] He assaulted his step-son, he assaulted Ms Browne. He has effectively wreaked havoc on Ms Browne and her children since 2012 and it continues to this very day. He has an ongoing association with Ms Browne. He says he is committed to contact with his daughter.

[46] I have to express my concerns about his parental capacity and I am compelled by the evidence to ask myself how likely it is that Mr Morin, who has controlled and abused his intimate partner, how likely it is that he is capable of the loving, nurturing and self-disciplined behaviour that is required if someone is going to be a good parent. So I question the purpose of contact.

[47] Ms Little in her submissions said for Teal just to know her father is not enough, and I agree, but I have to ask, is her father capable of more? He is not out of the woods yet with regards to his issues, he has work ahead of him including the successful completion of the bridge programme.

[48] Research tells us that children benefit from both parents having meaningful involvement in their lives. That is the ideal and it is achievable with the right set of circumstances. For Teal her circumstances at present fall short of that and I certainly would not be prepared to elevate this idea above the safety principle.

[49] Mr Morin has a long way to go in demonstrating his capacity to play a meaningful part in his daughter's life. I am not persuaded to increase his hours immediately.

[50] I do take into account the positive reports from Birthright when he has attended through to March of 2015.

[51] In determining who to supervise the contact, I take into account the relationship that Teal has with the Birthright supervisors. It is a familiar place for her at her age and stage it is an appropriate facility but she will grow out of it. It is restrictive by virtue of its physical boundaries and its opening hours.

[52] It was very helpful to have evidence given by Ms Rogerson. She was a person engaged by Child, Youth and Family to supervise Mr Morin's contact with Leo following the birth. She has also been supervising contact with Leo and her parents. She is an experienced Child, Youth and Family approved caregiver, she supervised contact from time to time for two of the children in her care. In my view she is well qualified.

[53] The social worker, Mr Phillips, had no reservations about Ms Rogerson's ability to supervise for safety reasons. There is no cost involved with her service of supervising contact, she has flexible hours and she is available outside of the Monday to Friday working week. Her focus was clearly on the child. She has appropriate expectations of how supervised contact will occur. She understood most

importantly the need for the carer, Ms Siddall, to be on board. She has offered a commitment for two years.

[54] Furthermore in determining the issue of contact arrangements I take into account that the contact arrangements will inevitably change when Teal starts school.

[55] An advantage for Teal is that this other supervision that could be available through Ms Rogerson creates new opportunities for contact and interaction in a home-based environment with appropriate outdoor areas. On the face of it, it will meet the needs of a child up to age five.

Orders and Directions

[56] So it is against this background that I make the following orders and directions:

1. There is a parenting order vesting the day-to-day care of Teal in Jean Siddall.
2. There is an additional guardianship order appointing Jean Siddall as the additional guardian for Teal in respect of all of her guardianship matters generally.
3. There is to be a contact order for Jonina Browne on the following terms:
 - (i) Contact is to be supervised.
 - (ii) Until Teal reaches the age of three, contact is to be fortnightly at Birthright for one and a half hours on a Wednesday.
 - (iii) There will be contact at other times undertaken by Angela Rogerson on special occasions or when Birthright is not available to provide the contact.

- (iv) Thereafter, commencing January 2017 when the child is three, there will be fortnightly supervised contact for two hours by Angela Rogerson and if she is not available then by Birthright.
- (v) The days and times of that contact is to be agreed between the parties and the supervisor.
- (vi) There is to be contact on [date deleted] for two hours supervised by Angela Rogerson, this being Teal's birthday.

4. Contact for Danny Morin is as follows:

- (i) Contact is to be supervised from July this year or from his return from the Bridge programme, whichever is the earlier.
- (ii) There will be monthly supervised contact at Birthright on a Thursday or with Ms Rogerson upon producing proof of his employment that therefore makes contact on a Thursday unworkable.
- (iii) He will also have contact with Teal on her birthday for two hours, supervised by Ms Rogerson.
- (iv) Thereafter from [date deleted] 2017 when the child is three, there is to be fortnightly contact for two hours supervised by Angela Rogerson and if she is not available then by Birthright.
- (v) The day and times of that contact is to be agreed between the parties and the supervisor.

5. There are conditions to the supervised contact:

- (i) Contact for each parent with Teal is to be individual except for on her birthday when both her mother and father may be

present. This will only occur at the discretion of the supervisor, Ms Rogerson.

- (ii) Ms Rogerson is to report any concerns regarding the contact arrangement with Ms Siddall and also with Child, Youth and Family Whanganui office.
 - (iii) The involvement of Ms Rogerson with Teal and her mother is not to start any sooner than July 2016 in order to give Ms Siddall and Teal the opportunity to get to know/become comfortable and familiar with Ms Rogerson.
6. Mr Morin is to provide Ms Siddall with a discharge summary, if there is one, or a certificate of his successful completion of the Bridge programme.
 7. There is to be a referral to counselling specifically for communication counselling as between:
 - (i) Mr Morin and Ms Siddall.
 - (ii) Ms Browne and Ms Siddall.
 8. Ms Siddall is to fund the Birthright payments for Ms Browne until such time as Ms Browne has paid the arrears that are owed to Birthright. Thereafter Ms Browne is to pay.
 9. Ms Siddall is to fund the monthly Birthright payments for Mr Morin.
 10. Lawyer for child is to work alongside Ms Rogerson and assist with the preparation of the terms of understanding, which are to be in writing, for the supervision that she will be undertaking. In other words, rules and expectations need to be set out in a document that needs to be signed by Teal caregiver Ms Siddall, the parents and Ms Rogerson.

11. Thereafter lawyer for child's appointment will terminate in July of this year.
12. Ms Siddall is to share information about Teal with both of her parents such as:
 - (i) Her progress at daycare and then school.
 - (ii) Any issues concerning her health.
 - (iii) Any special achievements or special moments for her in respect of her education.
 - (iv) Her usual routine.
 - (v) Her contact with her other siblings and any other relevant information.
13. This information needs to be provided every four months. It does not have to be long but it does need to be shared with her parents.

L Harrison
Family Court Judge