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**IN THE FAMILY COURT
AT WAITAKERE**

**FAM-2009-090-000790
[2016] NZFC 2856**

IN THE MATTER OF THE CARE OF CHILDREN ACT 2004

BETWEEN IOSEFA COLLINS
 Applicant

AND DEBBIE LATU
 Respondent

Hearing: 7 April 2016

Appearances: C Kelly for the Applicant
 S Bennett for the Respondent
 R Glynn on behalf of P Ginnen as Lawyer for the Child

Judgment: 7 April 2016

ORAL JUDGMENT OF JUDGE B R PIDWELL

[1] This is an application by Mr Collins for an order preventing the removal of a child, known as Emma, from New Zealand. Emma's legal name is Vailea Collins. She was born on [date deleted] 2007.

[2] The parties to the proceedings, Mr Collins and Ms Debbie Latu, are not her biological parents. They have each been appointed an additional guardian of Emma by Court order. Ms Latu was appointed an additional guardian on 5 February 2010. Mr Collins was appointed an additional guardian of Emma on 21 September 2010. Emma is the biological daughter of Mr Collins' brother and a former partner of his. However, for all intents and purposes Emma is the child of the parties. She knows no other parents and they are her legal guardians.

[3] Unfortunately for Emma, there is a significant Court file in relation to her care arrangements. This is the fifth set of proceedings filed in relation to issues about her care. They commenced in 2009 and this last application was filed in September 2015 by Mr Collins who was representing himself at that time. The application that he filed was for an order preventing the removal of Emma from New Zealand after he had learned that Ms Latu had travelled with Emma to Australia for a holiday without his knowledge or consent.

[4] The relevant parenting order which regulates Emma's day-to-day care is an order of 22 August 2011 which provides that Ms Latu has the day-to-day care of Emma and that Mr Collins has contact with Emma every Friday in the afternoon and every Saturday during the day and at other times as agreed.

[5] In addition to that order, there is a judgment of Judge Adams of 22 August 2011 where he made the following orders by consent as a result of an issue arising about Ms Latu taking Emma on a holiday to Samoa at that time (an order preventing her removal had been made on 10 December 2010 and the issue before the Court was whether that order should be discharged to enable the travel) by consent the Court ordered as follows:

- (a) Ms Latu had permission to take Emma on holiday to Samoa in December 2011.

- (b) Confirmed that her habitual residence is New Zealand.
- (c) Directed Ms Latu to provide Mr Collins with three months' written notice of her intention to take Emma for any other overseas holiday and for her to provide him with a copy of return tickets two weeks prior to the travel.
- (d) Directed Mr Collins to provide a photocopy of Emma's passport two weeks prior to the travel in December 2011 and the same condition is repeated in respect of other overseas travel.
- (e) Directed Mr Collins to be provided with a contact address and telephone number for Emma whilst she was overseas to enable him to contact her during the holiday.
- (f) Noted she was not to have unsupervised contact with a person called Aleki Niu.

[6] That order of the Court is not a condition of the parenting order. Rather, they are guardianship directions.

[7] The issue before the Court then is whether I should make an order preventing the removal of Emma from New Zealand. The application is by Mr Collins, who I acknowledge is partially blind and had sought the assistance of a Samoan interpreter today but because it was a submissions only hearing, and an interpreter was not available, it has proceeded without the assistance of an interpreter. However, he is supported today by his caregiver. His application is based on the fact that he has a concern that he is not being consulted about overseas travel by Ms Latu who has taken Emma to Australia without his knowledge and consent. His position is that that is in breach of the guardianship directions that were made which I have listed, requiring her to consult with him and provide him with details of travel overseas. His concern is that Ms Latu has family in Australia and Samoa and that he is not consulted about holidays with Emma to those countries. He has recently been asked to provide consent for a new passport to be issued. He does not know whether any

further travel is planned but suspects it is. He is suspicious of Ms Latu's intentions because of the lack of consultation. His position is that he does not wish to prevent Emma from having enjoyable holidays and meeting extended family but he wished to be informed of the trips in advance in accordance with the guardianship direction and, indeed, guardianship obligations in s 16 Care of Children Act 2004. Because those obligations have been flouted, from his perspective, he seeks the order preventing the removal as a protective measure for Emma.

[8] Ms Latu opposes the order being made. Her position is that since the parties separated, Mr Collins has not exercised other guardianship rights or responsibilities in the form of participating in Emma's schooling or sporting or medical needs and does not contribute financially; that the overseas holidays, she acknowledges, she has not consulted with him fully although says there has been some discussion. But her concern is that his consent will be unreasonably withheld which will prevent her taking Emma on planned holidays which she sees as being in Emma's best interests and welfare. She says there is no evidence that she is intending to permanently relocate Emma to Samoa or Australia. Indeed, the evidence she relies on suggests that she has indeed always returned Emma to New Zealand.

[9] It is submitted on her behalf that her position in not fully consulting with Mr Collins as the other guardian is not unreasonable given the level of mistrust and the issues contained within these lengthy proceedings about Emma's care. She says that an attempt to discuss an upcoming overseas holiday in December 2015 around her 50th birthday celebrations did not occur because Mr Collins did not appear at the meeting convened to discuss it. Mr Collins has an explanation for his non-attendance.

[10] She says that it is in Emma's best interest and welfare to be able to freely travel to see family overseas and she has no intention of relocating her permanently. To have an order preventing removal would be overly burdensome in terms of administration and cost.

[11] This is an application under the Care of Children Act 2004. Any application must be considered under the guidance of the principles set out in s 5 and any

order made has to be in the child's best interests and welfare. The parties' adult positions are noted but are not conclusive. Any order must have the focus of the child's best interests and welfare at its core.

[12] I must also take into account Emma's views as set out in s 6. She is represented by Ms Ginnen. Ms Glynn appears as her agent today. Ms Ginnen has filed two reports in respect of this application and provided the Court with Emma's views. Emma was seven years old at the time when Ms Ginnen obtained her views. She notes that she is a friendly and chatty girl, easy to engage with and who is doing well at school. Indeed, that was endorsed by the school principal who described her as a lovely girl.

[13] Emma confirmed to Ms Ginnen that she had recently been on a holiday with Ms Latu and that she had had a wonderful time. She told Ms Ginnen that she did not want to tell her dad about the holiday because he would get angry and she thought he would have stopped her from going. Emma was positive about each of her parents and I note there is no issue before me about her current care arrangements. Her views then can be summarised by being that she has enjoyed her overseas travel and she feels a reluctance to talk about that with her father, knowing that there is conflict between her parents about that issue. That is an unfortunate position for a child to be in - knowing that the two people in the world who love her the most are in conflict over her care.

[14] Section 77 of the Act gives me the jurisdiction to make an order preventing the removal of a child from New Zealand. In order to make an order I need to be satisfied that there are reasonable grounds to believe that a person may take the child out of New Zealand in circumstances where the taking of the child would be likely to defeat the claim of a person who has applied, or is about to apply, for the role of day-to-day care or contact or is likely to prevent any order of the Court providing the day-to-day care or contact with a child from being complied with.

[15] In considering this application, as I have said, I need to be guided by the principles in s 5. The relevant principles are, in my view, principles (e) and (f). Principle 5(e) states that:

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.

And also, principle 5(f), being that:

A child's identity (including, without limitation, his or her culture, language, and religious denomination and practice) should be preserved and strengthened.

[16] In this case, Emma holds a New Zealand passport, she is a New Zealand citizen, she has ties through her parents to Samoa and the evidence suggests there are ties to Australia in terms of family. The times when Emma has been taken out of New Zealand by her mother have been to visit external family in those jurisdictions. They have been holiday times and she has returned. There is already a Court direction acknowledging that Emma's habitual residence is New Zealand for the purposes of the Hague Convention on the Civil Aspects of Child Abduction.

[17] In order for me to make an order preventing the removal of Emma from New Zealand in the future, I need to be satisfied that there is evidence to suggest that she will be removed in order to prevent a claim to her contact or day-to-day care or to prevent an order of the Court regarding that being complied with. There is no evidence before me to suggest that Ms Latu is going to remove Emma permanently from New Zealand. Indeed, the evidence suggests that the only times when Emma has been taken out of New Zealand has been for short holiday trips to visit family to countries within the region. Emma currently attends a local school. She has a New Zealand passport and, as I have said, there is no suggestion of any permanent removal.

[18] There is evidence to confirm that Ms Latu has not consulted with Mr Collins in respect of the guardianship decision to take her overseas on occasion. The law requires parents and guardians to consult. That is an ideal. In this case I acknowledge there are difficulties and complexities both because of the fact that each of the guardians are Court-appointed rather than biological parents and also by their separation, the lack of trust and, indeed, the cultural flavour within this family.

[19] In this day and age, travel between countries is the norm. Indeed, the right to travel and freedom of travel is endorsed and secured by the New Zealand Bill of Rights Act. In my view, children benefit from new experiences, overseas travel and holidays and exposure to different cultures, and connections, more importantly, with extended whānau. It is important for Emma to grow up with a sense of her cultural identity, her links to Samoa, her wider family in Samoa and any other cultural benefits that she will get from exposure to that nation. Her identity is a hybrid of that and the culture of New Zealand in which she has been brought up in.

[20] I acknowledge that Mr Collins feels frustrated by the lack of consultation over the past visits to Samoa and Australia. However, I can find no evidence to suggest that the respondent is even contemplating a permanent move with Emma out of the country or that she is taking any steps to defeat his contact with her. Indeed, she has returned each time and Emma continues to have contact with her father. As a result of these proceedings I would hope that Ms Latu now fully understands the requirements to consult with him in the future about overseas travel and that agreement will be reached to ensure that Emma can freely travel to other countries by consent and that consent will not be unreasonably withheld.

[21] In my view, an order preventing the removal of Emma would be an unnecessary barrier for both parties and would not be in Emma's overall best interests and welfare. The administrative costs of overturning such an order, either on short notice, if urgent travel is required for family occasions, or to suspend it for overseas travel, is an unnecessary burden both financially and administratively.

[22] It follows, therefore, that I dismiss the application for an order preventing the removal of Emma.

[23] I make the following amendments to ensure that the previous Court orders reflect Emma's legal name:

- (a) The guardianship order of 5 February 2010 shall be re-issued, changing the child's name to reading her full legal name which is Vailea Collins.
- (b) The guardianship directions of 22 August 2011 shall re-issue in the same form but replacing the child's name from Emma with her full legal name of Vailea Collins.

[24] Ms Ginnen's appointment is terminated with the thanks of the Court.

B R Pidwell
Family Court Judge