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**IN THE FAMILY COURT  
AT HAMILTON**

**FAM-2013-019-001404  
[2016] NZFC 2552**

IN THE MATTER OF      THE CARE OF CHILDREN ACT 2004  
  
BETWEEN                      SOPHIE BURT  
   Applicant  
  
AND                              WIREMU SMITH  
   Respondent

Hearing:                      16 March 2016

Appearances:                M Hope for the Applicant  
   No appearance by or for the Respondent  
   J Wasey as Lawyer for the Child

Judgment:                    16 March 2016

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**ORAL JUDGMENT OF JUDGE G S COLLIN**

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## **Introduction**

[1] Sophie Burt and Wiremu Smith are the parents of Jasna Burt-Smith born on [date deleted] 2007. Jasna will be eight [age details deleted].

[2] The parties entered into a relationship in 2005 when Ms Burt was 16 and Mr Smith was 18. They resided together in both [location deleted] and in Hamilton.

[3] In April 2011 Ms Burt and Mr Smith relocated to Brisbane, Australia. In late 2011 their relationship ended and Mr Smith returned at that time to live in New Zealand. Ms Burt and Jasna remained in Australia initially living with Ms Burt's mother but subsequently living independently.

[4] In late 2011 until January 2013 Ms Burt returned to New Zealand in the school holiday period so that Jasna could visit Mr Smith. In January 2013 when Ms Burt was in New Zealand over the Christmas holiday period Ms Burt and Mr Smith reconciled and lived together until May 2013 and following an incident of violence Ms Burt returned to Australia taking Jasna with her. The return to Australia was done unilaterally with no notice being given to Mr Smith and no consent being obtained from him before Jasna's return.

[5] In August 2013 Ms Burt returned to New Zealand with Jasna and initially settled in Whangarei with the intention of commencing [details deleted]. In October 2013 Ms Burt moved from Whangarei to Hamilton where she has resided since the parties were first involved in Court proceedings.

[6] The first application to the Court was made by Ms Burt on 5 November 2013 for day-to-day care and for the resolution of contact issues in relation to Jasna. That application languished but was overtaken when the parties reconciled for a three-month period in early 2014. I accept the evidence that Mr Smith did not engage in counselling nor defend the proceedings and in many ways during that time adopted a disinterested stance.

[7] On 13 May 2014 following a further incident between the parties, Ms Burt made another application, this time on a without notice basis. Just three days later at a directions conference on 16 May 2014, a parenting order was made by consent which granted Ms Burt day-to-day care of Jasna and reserved to Mr Smith contact every second weekend after school Friday until Sunday at 5.00 pm, half the school holidays, on Christmas Day in even numbered years, on Father's Day and at other times as agreed. The order was subject to conditions that Jasna was not to be exposed to any domestic violence in any form at any time, that she would reside within the jurisdiction of the Hamilton District Court unless there was prior written consent of both parties, and that she would remain at [name of school deleted] unless otherwise agreed in writing by both parties. At the same time as those orders were made an order was made by consent that prevented Jasna from leaving New Zealand. For the most part the orders the parties have agreed upon have worked reasonably well.

[8] On 20 May 2015 Ms Burt made a further application to the Court at this time, seeking to relocate to Australia, to vary the parenting order of 16 May 2014 to take into account changes in contact arrangements should the relocation be granted, and in addition to that, to have the order preventing the removal of Jasna from New Zealand discharged. It is those applications that come before the Court for determination today.

### **Issues for determination**

[9] The issues for determination by the Court are:

- (a) Should Jasna be permitted to relocate to Brisbane, Australia?
- (b) If Jasna relocates, what orders if any should be made in relation to her day-to-day care and contact?
- (c) If she does not relocate to Australia what orders should be made for Jasna's day-to-day care and contact in New Zealand?

- (d) Should the order preventing removal be discharged?

**The parties' positions**

[10] It remains Ms Burt's position that she seeks to relocate to Brisbane with Jasna. If the relocation occurs with Mr Smith remaining in New Zealand, Ms Burt's final proposals for contact as set out in the submissions made by her lawyer are:

- (a) That Jasna be with her father for half of the school holidays.
- (b) For half of the Christmas holidays on a week about basis. I assume this is on the basis that Ms Burt will also be in New Zealand during that time.
- (c) Christmas Day in odd-numbered years
- (d) For weekly Skype and phone contact.
- (e) At other times as agreed.

[11] I note that this is a change from the original position advanced by Ms Burt namely that Jasna would be in New Zealand for 13 out of the 16 holiday days during the school term holiday periods. Ms Burt's reasons for the change relate to her having read the s 133 report and her concerns regarding the violence within Mr Smith's home.

[12] Ms Burt's evidence is that she would meet the costs of Jasna's travel to and from Brisbane and she relied on the fact that she did this between late 2011 and January 2013 to demonstrate both her willingness and financial ability to do so.

[13] In the event that Jasna is not permitted to relocate to Brisbane, Australia it is Ms Burt's position that she will remain in New Zealand. In those circumstances she would seek minor adjustments to the existing orders and proposed that contact be made as follows:

- (a) Every second weekend Friday to Monday; and
- (b) Every week from Tuesday to Wednesday; and
- (c) For half of the school holidays; and
- (d) At other times by agreement.

[14] It is Mr Smith's position that he opposes the relocation of Jasna. His position is that he seeks the continuation of the current order. He was reluctant to commit to any additional contact but when pushed agreed to extend his current weekend contact to include a period Friday to Monday.

[15] I am left slightly uncertain as to his position in relation to alternate week time contact and although he considered he might be willing to have contact of that nature the submissions provided by his counsel seek orders being made that the child remains in New Zealand and that the current contact regime for the respondent is confirmed, namely the fortnightly Friday to Sunday contact.

[16] It is Mr Smith's position that if Jasna relocates to Brisbane then he should have contact with her during all of the school holiday periods by Skype and other electronic means. He suggested in his evidence that he may be in a position to make some contribution to travel but given his personal circumstances and unemployment his ability to contribute in that way is doubted.

### **Jasna's views**

[17] Section 6 requires that children must be given reasonable opportunities to express their views on matters affecting them and that any views expressed must be taken into account in the making of Court orders.

[18] Jasna is represented by Ms Wasey who filed reports on 13 May 2014, 26 August 2015 and 20 January 2016. In her reports she sets out Jasna's views as follows.

- (a) Firstly, on 13 May 2015 Ms Wasey reports that Jasna was aware of the dispute between her parents. If she went to Australia she was concerned her father might be lonely and that this was her own worry not the worry of her mother, and to being confused as to what she wanted to do and feeling divided about that.
- (b) Ms Wasey's report of 26 August 2015 expressed no views nor was it intended to as the purpose of the report was to provide to the Court police family violence records.
- (c) The final interview that Ms Wasey had with Jasna was reported upon in her report of 20 January 2016. Ms Wasey reported that Jasna was extremely reluctant to express any views and in fact had no wish to talk about the Court proceedings. Jasna did not want to meet the Judge but just wanted everyone to be happy and to get along together.

[19] Ms Natasha Moltzen, a registered clinical psychologist, was appointed by the Court to complete the s 133 psychological report in relation to Jasna. Her brief included that Jasna's views and wishes about her care should be ascertained and also any influence on those views and wishes were to be looked at. Ms Moltzen was also asked to comment on the age and maturity of Jasna in looking at the views that she expressed. In respect to Jasna's view Ms Moltzen reports:

- (a) That Jasna enjoyed a positive relationship with her mother, looked to her for comfort and had no concerns at all about anything in the mother's household.
- (b) She had a positive relationship with her father and that he too was a person she would seek comfort from. She expressed the desire for increased contact with her father.

- (c) Jasna did comment, "I am right in the middle. I want to go. I want to stay." And further, "I don't want to leave Dad because sometimes he is alone." Additional comments included, "A tiny bit of me and a little bit of me wants to go."

[20] Other issues that were important to Jasna included the change of school and friends that would need to occur if she relocated, the idea of which she described as "being annoying". Jasna was aware of both parents' views and knew that her mum wanted her to go to Australia "and I think Dad doesn't want me to go."

[21] In addition to Jasna's views being reported by Ms Wasey and Ms Moltzen they have also been reported to the Court by her parents and in particular by Ms Burt, who has given evidence that Jasna has said that she wants to go to Australia.

[22] In ascertaining the welfare and best interests of a child his or her views are only one of the factors that I must consider. The weight to be attached to Jasna's views must take into account her age, her maturity, her ability to understand the impact of the proposals on her life, the consistency with which she has expressed a view, whether it has been maintained over time and any influences acting upon her.

[23] Jasna does have experience of living in both New Zealand and Australia and although she has not been to Australia since 2013 has experienced life in close proximity to both her Brisbane and Hamilton family groups. She has also attended schools in both locations.

[24] The evidence suggests that Jasna is aware of her parents' views and in particular her mother's desire to relocate to Brisbane. The psychological report suggests that Jasna is doing reasonably well at school. I am satisfied from the evidence that she is able to express a view consistent with her age.

[25] Apart from the information that she gave her mother that she wanted to relocate to Brisbane, Jasna's views as expressed to both Ms Wasey and Ms Moltzen appear to indicate a preference, even if not a strong one, to continue to reside in

Hamilton. In this case however I am reluctant to attach any significant weight to Jasna's views because of Ms Moltzen's comment that at Jasna's developmental stage she is not capable of mature reasoning and has limited capacity to think about future implications of her decisions.<sup>1</sup> It is important to note that although I have taken into account Jasna's views, they are not in any way determinative of the final outcome and have not in any way impacted on the decision that I have made.

### **The law**

[26] Any decision in a relocation decision must be fact specific and consider "these children in his or her circumstances". Guidelines as to how a particular case is to be determined are found within the Care of Children Act and from decisions of the Court, in particular from *Kacem v Bashir* [2010] NZSC 112. These can be summarised as follows:

- (a) Section 4 of the Act requires that the Court's primary and paramount consideration is to be what is in the welfare and best interests of the child;
- (b) An individualised assessment of each child is demanded. This must take into account his or her particular circumstances and needs: s 4(2) of the Act. In this case I have concluded that the children's needs are the same and that any orders made should be identical;
- (c) Decisions need to be made and implemented in a timeframe appropriate to the child's sense of time: s 4(5)(a);
- (d) The Court is required to consider all of the principles outlined in s 5, having regard to those that are relevant to the particular child's welfare and best interests: s 4(5)(b) and 5;
- (e) The leading case is the Supreme Court decision in *Kacem v Bashir*. This binds the Court as to the way in which the s 5 principles are to be

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<sup>1</sup> Refer Report Ms Moltzen, para [12.5]



applied, with that approach outlined at paragraphs [19] – [24] of the majority judgement where the Court said:

[19] It can therefore be seen quite clearly that the ultimate objective is to determine what outcome will best serve the welfare and best interests of the particular child or children in his, her or their particular circumstances. In making that determination the s 5 principles must each be examined to see if they are relevant, and if they are, must be taken into account along with any other relevant matters. It is self-evident that individual principles may have a greater or lesser significance in the decision-making process, depending on the circumstances of individual cases. If, for example, principle (e) (concerning the child's safety) is engaged it is likely to have decisive weight, not because of any presumptive legal weighting, but because of the crucial factual importance of protecting the safety of children when compared with the objectives at which the other principles are aimed.

[20] Principle (b) sets out the objective of having continuity in the arrangements for the child's care, development and upbringing. It is also concerned with promoting continuity in the child's relationships, to the end that they should be stable and ongoing. Various familial and other relationships are referred to, of greater or lesser breadth. By means of the bracketed words the court is, in the context of that breadth, enjoined to have regard in particular to the child's relationships with both of his or her parents. This focus on both parents is designed to give that aspect of the child's various relationships particular emphasis, no doubt on account of the special and vital part parents generally play in the wider family context.

[21] There is nothing in the language of principle (b) or in the structure of s 5 as a whole to suggest that principle (b) or any of the other principles there set out should have any presumptive weighting as against other principles referred to in the section. That could hardly be so when the principles must be considered in all the many and varied proceedings and circumstances in which the welfare and best interests of children come into issue. Relocation is only one of a number of such contexts.

[22] All the principles, save for (e), are couched in the language of "should". In principle (e) the word used is "must". As we have already indicated, principle (e), if relevant, will generally carry decisive weight in the factual assessment. That is probably why this principle is

couched in terms of “must” rather than “should”. “Should” signals a desirable objective, the fulfilment of which, and by what method, will depend on the presence of other desirable objectives and the facts of individual cases. “Must” signals an essential factual requirement. The ultimate point is that principle (b) cannot be read as having any presumptive precedence over the other principles, or indeed any presumptive precedence of a stand-alone kind.

[23] At the highest level of generality the competition in a relocation case is likely to be between declining the application for relocation because the children's interests are best served by promoting stability, continuity and the preservation of certain relationships, as against allowing it on the ground that the interests of the children are thereby better served. Put in that way, it is difficult to see how any presumptive weight can properly be given to either side of those competing but necessarily abstract contentions. To do so would risk begging the very question involved in what is necessarily a fact-specific inquiry.

[24] Everything will depend on an individualised assessment of how the competing contentions should be resolved in the particular circumstances affecting the particular children. If, on an examination of the particular facts of a relocation case, it is found that the present arrangements for the children are settled and working well, that factor will obviously carry weight in the evaluative exercise. All other relevant matters must, of course, be taken into account and given appropriate weight in determining what serves the child's welfare and best interests, as s 4(5) puts it. The key point is that there is no statutory presumption or policy pointing one way or the other. All this seems to us to follow from ss 4 and 5 of the Act as a matter of conventional statutory interpretation.

- (f) The s 5 principles of the Act are not exclusive and do not prevent other matters relevant to the child's welfare and best interests from being taken into account: s 4(4)(b);
- (g) An overall assessment needs to be made that takes all relevant matters into account. *Kacem* affirmed and re-emphasised the decisions in

*D v S*<sup>2</sup> and *Stadniczenko v Stadniczenko*<sup>3</sup> that the welfare of the child was paramount.

(h) In summing up the task of the Court it was stated at paragraph [35]:

...The judge's task is to determine and evaluate the facts, considering all relevant s 5 principles and other factors, and then to make a judgment as to what course of action will best reflect the welfare and best interests of the children. While that judgment may be difficult to make on the facts of individual cases, its making is not assisted by imposing a gloss on the statutory scheme.

[27] The Court is warned against adopting a tick box scheme for the assessment of a child's welfare and best interests but factors which have been considered as relevant to an individualised assessment include those set out in *S v O*<sup>4</sup>, *GMS v SCS*<sup>5</sup> and in *Pope v Pope*<sup>6</sup>, all of which have been referred to by counsel.

## **Section 5 principles**

### *5(a) Children must be protected from all forms of violence*

[28] This principle provides that a child must be protected from all forms of violence from all persons including members of a child's family, family group, whānau, hapū and iwi. Violence is defined as physical, sexual or psychological abuse and includes causing or allowing a child to see or hear abuse or actions that put a child at risk of seeing or hearing abuse between adults or other persons within a household.

### **Safety in the home of Mr Smith**

[29] Issues of violence in the relationship between Mr Smith and Ms Burt were dealt with in the Court prior to the making of the order of 16 May 2014. In the judgment of Judge Cocurullo at that date he states:

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<sup>2</sup> [2002] NZFLR 116 (CA159/01)

<sup>3</sup> [1995] NZFLR 493, (1995) FRNZ 145, (CA103/94)

<sup>4</sup> [2005] BCL 730

<sup>5</sup> [2010] BCL 450

<sup>6</sup> [2014] NZFC 5694

I considered the welfare and best interests under s 5. I have had alerted to me some domestic violence within the application. I am advised that there are no protection orders in existence. I have considered s 5(a). I have also seen a very helpful s 131A report. I am grateful to the Chief Executive for filing that as soon as possible. I have considered the input and content of that. I am satisfied that it is safe and appropriate that Jasna have unsupervised care and/or contact with both Ms Burt and Mr Smith. Such simply confirms the situation that they have got to now in the longer term.

[30] Judge Cocurullo made the parenting order by consent of both parties which is important in looking at issues of violence within their relationship. I note however that the order made included a protective condition that Jasna was not to be exposed to any form of domestic violence at any time.

[31] Since Judge Cocurullo's judgment, there do not appear to have been any further incidents of physical violence between Ms Burt and Mr Smith that the Court needs to take into account. The last reference to physical violence appearing to occur in May 2014 during the time of the parties' reconciliation. An argument occurred and the police were called by a neighbour. No further steps were taken as a consequence of that. This incident appears to have occurred immediately prior to the making of the orders by Judge Cocurullo.

[32] Ms Burt has attached to her affidavit a large number of texts, which for the most part indicate reasonable communications between the parties concerning Jasna's care. I accept however that some of the texts are rude and offensive and could be classified as psychological violence. The texts are difficult to date, but even taken at their worst would not in my assessment raise a 5(a) issue to the extent that supervised contact would be justified. I further note that although the texts from Mr Smith are more offensive than those from Ms Burt she also has been involved in texts which could likewise be described as somewhat inappropriate. I refer to texts between the parties at page 163 and 164 of the evidence:

Ms Burt	"Cos that's cutting into my week"
Mr Smith	"Fuckin' Monday at latest bitch"
Mr Smith	"I'm being lenient saying Monday at the latest"
Ms Burt	"Yep"
Mr Smith	"Yep what, Sunday or Monday?"

Ms Burt

“Fuckin’ be clear egg so I don’t have to keep texting you.”

[33] In relation to issues of violence between the parties I accept Ms Burt’s concerns, but note that although she has concerns, she at no stage suggested that Mr Smith’s contact with Jasna should in fact be supervised.

[34] As I understand the evidence, Ms Burt’s main concern is not that Jasna herself would be subjected to any violence by Mr Smith but that she would be the witness of domestic violence occurring in his household. That concern is justified.

[35] Mr Smith has been in a relationship with Lani Natana. Together they have two children, Kea aged two and Tui aged one. The evidence is that Mr Smith and Ms Natana are now separated and although they continue to be friends do not at this stage appear to be in a continuing relationship. There are however incidences of violence between Ms Natana and Mr Smith which appear to have included incidences in July 2013 and October 2013, 18 September 2014, October 2014 and 15 December 2014.

[36] The incident which occurred on 18 September 2014 was serious and as a consequence Mr Smith was charged with assault with intent to injure Ms Natana. On that charge he was convicted in April 2015 and sentenced to 12 months’ intensive supervision. The offending included the choking of Ms Natana to the point where she lost consciousness. The offending was compounded by Mr Smith ripping the telephone out of the wall, preventing Ms Natana contacting the police and by the presence of both Kea and Tui. The failure by both Mr Smith’s parents, who were witnesses to the attack, to intervene or to remove the children from the scene of the incident is an aggravating factor. A further compounding factor in relation to that incident is Mr Smith’s refusal to allow his parents to be involved in reporting the matter to the police or giving any statement to them and also his insistence that his parents not be involved in these Court proceedings. This all indicates a dominant powerful position that has been assumed by Mr Smith and a concern for the protectiveness of his parents if any future incidents of violence occurred at which Jasna was present.

[37] The October 2014 incident between Ms Natana and Mr Smith appears to have commenced with a verbal dispute and resulted in him punching a hole in the door. Mr Smith had gone around to Ms Natana's house in breach of his bail conditions that there be no contact.

[38] In December 2014 it is alleged that Mr Smith punched a hole in the front door and smashed one of his children's plastic bikes. The children were present.

[39] In her report Ms Moltzen comments that Mr Smith has a significant history of violence in his adult relationships. I agree. However nothing is known to have been reported since December 2014 apart from an incident which was relayed by Jasna to her mother and occurred shortly before the hearing of this matter. I am unable to place any weight on that incident because other than the report from Jasna to her mother nothing is known about it.

[40] Despite the incidences between Ms Natana and Mr Smith, no protection order appears to have been issued and as a consequence the provisions of s 5A do not need to be considered. The evidence also suggests that Jasna has not been exposed to any of the violence that has been between Ms Natana and Mr Smith other than the incident that she relayed to her mother the details of which are not known by the Court to any significant degree.

[41] Ms Moltzen, both in her report and in her oral evidence, expressed concerns regarding firstly the potential for Mr Smith to be violent in the future, and secondly concerns regarding the lack of protective adults within the Smith household. I share that concern.

[42] Ms Moltzen's concerns included Mr Smith's significant history of violence and high level conflict within adult relationships, Mr Smith's unrealistic view that he can deal with his violence issues by reducing alcohol use, his failure to take intervention to specifically address his violence issues and what she described to be his lack of motivation to do so. Ms Moltzen concluded that Mr Smith had not fully addressed the real issues and that there must remain a risk that Jasna could be exposed to violence and a high level of conflict when in the care of her father.

[43] Mr Smith did not call any witnesses in support of his defence of the relocation application. His explanation was he did not want his parents to be involved in what was his own private dispute and as a consequence chose not to call them. Although this is in one sense understandable, it is a concern that the most serious of violence incidences between Mr Smith and Ms Natana occurred in the home with his parents being present. Also present as I have said were Kea and Tui. Mr Smith's parents did not provide statements to the police because Mr Smith did not want them involved in his private business.

[44] Ms Moltzen has expressed her concerns regarding the absence of protective adults in the Smith household. There must be concerns that if Mr and Mrs Smith are willing to put the interests of their son before the interests of other members of the household. Jasna, who is a young child, is entitled to protection and if no-one is willing or able to act to protect her, then there must be a risk for Jasna whilst in the care of her father. In this regard I specifically request that Ms Wasey meet with Mr Smith's parents and discuss this part of the judgment with them and bring to them my concern at their lack of involvement and lack of protection of children present in their household.

[45] Mr Smith has reported a history of substance abuse including past alcohol misuse and the use of methamphetamines and cannabis. The last reported use of methamphetamines was in February 2015 and cannabis in the last two years. Excessive consumption of alcohol has also been a factor in Mr Smith's life.

[46] I would not be at all surprised if Mr Smith has under-reported both his use of cannabis and methamphetamines and also the recency in which they have been consumed by him.

[47] As a condition of his sentence for the September 2014 assault Mr Smith has completed a five-session drug and alcohol programme which he says has resulted in a reduction in his alcohol use. His evidence in relation to alcohol is somewhat conflicted although he did consistently maintain that he had either reduced or now stopped drinking alcohol at all.

[48] Ms Moltzen expressed her concern that a one-year period of abstinence from drug or alcohol abuse is not sufficient to be confident of any change particularly in circumstances where the no use of alcohol or drugs or the no recent use of violence may be attributable to other factors including bail or sentencing prohibitions.

[49] Ms Moltzen concluded that given the recent extent of substance abuse issues, the brevity of drug and alcohol intervention and the limited repertoire of relapse prevention strategies there is a concern about possible relapse into alcohol misuse and illicit drug use. This also could result in a relapse associated with increased risk of violence.

[50] Having carefully considered the safety issues, I have concluded that it is appropriate to make an order that Mr Smith have unsupervised contact. I accept that there are risks that Jasna might be exposed to domestic violence, but consider that the risks can be mitigated by protective conditions being included in the order and by Ms Wasey meeting Mr Smith's parents and impressing the need to ensure that Jasna is not exposed to violent behaviour whilst in their home.

[51] I warn Mr Smith that if he displays violent behaviours or in any way places Jasna at risk, a variation of unsupervised contact to supervised contact would be seriously considered by the Court.

#### **Safety issues in the household of Ms Burt**

[52] No suggestion exists that Ms Burt was violent in her relationship with Mr Smith or has in any way been violent towards Jasna. The only incidences of violence which involve Ms Burt appear to be as a victim of alleged violence perpetrated against her by Mr Smith.

[53] At some stage early in 2015, the dates of which remain unclear, Ms Burt formed a relationship with Mr Al Wright. She became pregnant with Mr Wright's child at a time when they do not appear to have been living together. In early September 2015 Ms Burt and Mr Wright had a three week break in their relationship. They subsequently reconciled and commenced living together in September 2015 and have remained together since. There are no reported incidences of violence



between Ms Burt and Mr Wright. It is Ms Burt's evidence that no such violence has occurred in their relationship.

[54] Mr Wright has a child, Atua Wright aged three. Enquiries made are that Mr Wright has no known Child, Youth and Family Services involvement nor convictions for violent offending. Mr Wright's evidence is that he has regular fortnightly contact with his son. This has been arranged between him and his former partner without the need for Court intervention. No protection orders appear to have been taken out against Mr Wright by any other person. The only issue in relation to Mr Wright is that he is currently serving a six-month sentence of community detention following a fourth conviction for excess breath alcohol.

[55] Ms Burt denied observing any alcohol misuse issues by Mr Wright during their relationship and noted that Mr Wright's alcohol offending occurred before she had met him.

[56] Mr Wright was vague with Ms Moltzen about his past and current pattern of alcohol use, describing it simply as "here and there drinking" and his offending as "being a silly mistake". Ms Moltzen was concerned that Mr Wright minimised his substance use issues. Notwithstanding that Mr Wright has now completed Court-ordered drug and alcohol counselling, and reports that his use of alcohol is now significantly reduced or nil, the use of alcohol by Mr Wright remains a risk issue for Jasna.

[57] Although Mr Wright's alcohol convictions indicate a risk of further offending I do not consider that they are issues of violence under s 5(a) that need to be considered in respect of Ms Burt's household.

### **Section 5(b) - parental responsibility**

[58] This principle provides that a child's parents and guardians are primarily responsible for their care, development and upbringing and that the parties should be encouraged to agree on their own arrangements for their children.

[59] Despite the difficulties that have existed between Ms Burt and Mr Smith they have in a number of ways been able to be involved in the care of Jasna and to agree over their own care arrangements. Examples of their ability to work together include:

- (a) Ms Burt's return to New Zealand on four occasions with Jasna to see her father between late 2011 and January 2013;
- (b) The funding of that travel by Ms Burt;
- (c) The fact that the parenting order of 16 May 2014 was made by consent and provided an arrangement that recognised Jasna's relationship with her father and also Ms Burt's primary care;
- (d) The adherence, without very many problems, of the parties to those arrangements;
- (e) The communications between the parties as evidenced between some of the texts contained on the file which show that they have an ability to work together at times;
- (f) The use of trusted family members and in particular Mr Smith's sister Kat to facilitate contact and deal with issues between them when they have arisen.

[60] Examples exist however of Ms Burt and Mr Smith's inability to work together at times. These have included:

- (a) Ms Burt's unilateral relocation to Australia in May 2013;
- (b) Mr Smith's retention of Jasna following the contact visit in May 2014.
- (c) That communications between the parties can at some times be fraught with difficulties and demonstrate their inability to communicate for Jasna's benefit.

[61] Relevant also is that despite Mr Smith and Ms Burt's inability to agree on the relocation issue, little is in dispute as to the care or contact arrangements which should exist for Jasna if she is relocated to Australia or is required to remain in New Zealand.

[62] Overall it is my assessment that despite the communication difficulties between the parties and some of the difficulties that were evident in their relationship they have, with the help of their whānau, which they have accepted when necessary, been able to work together in a responsible way for Jasna's care and at most times to agree and adhere to their own arrangements.

**Section 5(c) considerations – parents must consult and co-operate**

[63] This principle provides that the child's care, development and upbringing should be facilitated by ongoing consultation and co-operation between the parents. There is an overlap between matters for consideration in this section and those involving issues under ss 5(b), (d) and (e).

[64] As I have said in respect of 5(b) there are examples contained in the evidence of the parties' ability to work together but also a number of examples of difficulties that have arisen as a consequence of their inability to do so. The predominant role of parenting has been undertaken by Ms Burt since Jasna's birth, and apart from exercising contact with Jasna, Mr Smith has not until recently taken any particular responsibility for her care outside the immediate period in which Jasna has had contact with him. This is reflected in Mr Smith's lack of any involvement in Jasna's schooling until recently, his inability to recall the name of Jasna's teacher and his only recent organisation of directly receiving school information in relation to her.

[65] Overall Mr Smith appears to be a less motivated person in respect of the care of his daughter than Ms Burt who has clearly assumed the major role for that. This is reflected in the 133 report conclusions made by Ms Moltzen as a consequence of her home visits and observations.

[66] In respect of the visits to Mr Smith Ms Moltzen reports:

Jasna spoke of enjoying a range of activities during contact with her father. Mr Smith reported that during contact Jasna played outside with her half-siblings, helped him repair his vehicle and they visited family in [location deleted] and Tauranga. For much of the period of observation Mr Smith sat at an outdoor table while Jasna sat on a stationary quad bike. There was no attempt by Mr Smith to engage Jasna in any activities and she appeared somewhat bored during this time.

She goes on to say:

Mr Smith has not sought involvement in Jasna's formal learning. He has not attended parent-teacher conferences and Jasna's teacher reported that Mr Smith had made no direct contact with her. In conclusion there is considerable scope for improvement in the stimulation dimension of Mr Smith's parenting.

[67] Overall Ms Moltzen's conclusion was that Mr Smith presented with a lack of guidance and boundaries in his parenting.

[68] Further comments made by Ms Moltzen which are relevant was that Mr Smith did not present as a strong pro-social influence for Jasna. Ms Moltzen referred to his criminal convictions for violence, his reported past substance abuse, his affiliation with persons engaged in substance abuse and the fact that he had remained unemployed for some two years.

[69] Overall I accept Ms Moltzen's evidence that Mr Smith's home environment lacks stimulation and had demonstrated a lax approach to Jasna's care which has occurred, at least in part, because of his own lack of motivation caused historically by his use of substances and alcohol.

[70] Observations made by Ms Moltzen of Jasna's relationship with Ms Burt were reflected in her comments that Ms Burt adequately met Jasna's needs for stimulation both at home and in the community, that she was involved in Jasna's schooling attending parent-teacher evenings and ensured that Jasna always attended school with correct gear, equipment and funds. Ms Burt was described as setting appropriate boundaries for Jasna and having reasonable expectation of responses from her as a consequence.

[71] Overall I accept that Ms Burt has the predominant responsibility for Jasna's care, development and upbringing and that apart from the issues identified by Ms Moltzen, regarding the need for stability, has met Jasna's needs well.

[72] Both parents need to work together better in respect of both the principles contained in ss 5(b) and (c). Jasna would benefit from more active involvement by her father and the ability of both parents to properly communicate and co-operate in their parenting of her.

**5(d) considerations – continuity of arrangements for a child and 5(e) continued relationships with parents and extended family members**

[73] Principle 5(d) provides that there should be continuity in arrangements for a child's care, development, and upbringing. There is a significant overlap between this principle and the principle in (e) which provides 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 should be preserved and strengthened. I intend to deal with these principles together.

[74] Jasna has a large extended family both here in New Zealand predominantly in the Waikato area and in Australia predominantly in the greater Brisbane area. As a consequence of this Jasna has during her lifetime lived and formed relationships with family members in both places. I think it is worthwhile to endeavour to summarise Jasna's family tree.

*Mr Smith*

[75] In respect of Mr Smith his parents Gerrard Smith and Roxie Smith live together in [location deleted]. Mr Smith resides with them. Jasna has regular contact with her paternal grandparents who are significant others in her life. Mr Smith has a sister, Pia, who lives in Tauranga who has one child, Che, a brother, Zak, who lives in Hamilton and has no children and a sister Kate, known as Kat, who has no children and lives in Hamilton. Kat is a trusted and important adult in Jasna's life. Jasna spends time with all of those members of her family.

[76] Mr Smith has two other children, Kea and Tui, the children of Ms Natana. Jasna has frequent contact with her half siblings and the relationship that Jasna has with both of them is identified by Ms Moltzen as important. Other extended family members live in the Hamilton-Waikato area.

*Ms Burt*

[77] Ms Burt's mother, Joanna, is married to Archie Porterhouse. They live in Brisbane. It is the important relationship Ms Burt has with her mother that is behind her application to relocate. She seeks the support of her mother. Jasna undoubtedly has a close relationship with her grandmother as a consequence of time spent with her during her time in Brisbane and also as a consequence of her grandmother's efforts to come to New Zealand to see family and in particular Ms Burt and Jasna. Joanna Burt and Mr Porterhouse have a daughter, Beth, aged 19 who lives in Brisbane. She too is likely to have a relationship with Jasna as a consequence of the times Jasna spent there.

[78] Ms Burt's grandmother, Urangi Burt, has a good relationship with Ms Burt. She lives in [location deleted]. Living with Urangi Burt is Ms Burt's full sister, Mere and her two children aged six and one. Ms Burt has regular contact with Mere, who is a trusted person and was nominated by Ms Burt as the go-to person if Jasna was in New Zealand on holiday with Mr Smith and things went wrong.

[79] Other extended whānau including aunts, uncles and cousins live both in New Zealand and Australia. Ms Burt's mother's sister, Sarah and her brother Leon, his partner Star, and their children also live in the Brisbane area.

[80] Early last year Ms Burt formed a relationship with Al Wright. He and Ms Burt have a child, Steve Wright, born on [date deleted] 2016. Mr Wright gave evidence. He intends to relocate with Ms Burt to Brisbane. Mr Wright also has family both in the Waikato and in the Brisbane area. Importantly in New Zealand Mr Wright has his son aged three and of course now has Steve. Mr Wright made an application to prevent his son leaving New Zealand for Australia but gave evidence that his son and the mother of that child are now considering going to Australia. No

active steps have been taken to ensure that occurs, nor was no evidence provided to the Court by the mother of her intention to go.

[81] Mr Wright's father lives on the Gold Coast and it is for his father that Mr Wright intends to work if relocation is allowed. No evidence however was provided regarding the father's willingness to employ Mr Wright other than the oral evidence given by Mr Wright.

[82] Mr Wright is a disqualified driver in New Zealand. As a consequence of his four convictions for excess breath alcohol, he cannot drive in Australia on a New Zealand licence. Mr Wright does not currently have an Australian licence.

[83] Mr Wright gave evidence that his father who lives on the Gold Coast will travel from the Gold Coast to Brisbane to pick him up for work and return him at the conclusion of work. This involves two return trips a day between the Gold Coast and Brisbane. This in my assessment is somewhat unrealistic.

[84] Other persons who I identified as being relevant in Mr Wright's whānau are his two sisters, Erina who is aged 18 and pregnant, and Tiffany who is aged 19 with a child of four months. Mr Wright's two sisters live with his mother Brie Wright in Hamilton. As I understand the evidence Mr Wright and Ms Burt see Erina, Tiffany and Brie Wright every week. They provide support for Ms Burt and Mr Wright.

[85] I am satisfied that Ms Burt wants to live in Brisbane and in particular is close to her mother and wants to live near her. I am satisfied also however that in both Brisbane and New Zealand, and in particular in the Waikato area, there are extended and close family supports for Jasna and all of the adults involved in these proceedings.

[86] Although what is good for a parent is important in determining a child's ultimate welfare and best interests it is those [interests] of a child that must take priority. In that regard the principle that there should be continuity between a child and both his or her parents is an important one in this case.

[87] Less important, but still very relevant, is the preservation and strengthening of a child's relationship with other family or whānau. There is not in law any ranking of the importance of particular relationships. A case-specific approach must be adopted in every case which has regard to a child and his or her particular circumstances. I am satisfied that in Jasna's circumstances particular regard must be had to her relationships with her half-siblings, which I assess as important, as well as her family in New Zealand with whom she has established a relationship, particularly over the last two years.

[88] The attachment that Jasna has to each of her parents has been considered carefully by Ms Moltzen and is referred to in paras 9.1 and 9.2 of her report. In summary they describe Jasna as having a positive relationship with her mother with Jasna not identifying any negative aspect or concern regarding that relationship. No issues within Ms Burt's household are identified other than issues of stability which would diminish Jasna's closeness with her mother. It is clear that Jasna's close relationship with her mother is her primary relationship.

[89] Ms Moltzen describes Mr Smith's relationship with Jasna as having been impacted in a detrimental way as a consequence of the disruption in the relationship over a period of time. However over the last two years, when there has been regular contact, Jasna has formed a positive relationship with her father and has expressed her desire to spend more time with him. Observations indicated that the relationship between Mr Smith and Jasna was meaningful and close but the security of that relationship has been impacted on by the past disruption which has occurred as a consequence of either the relocation by her father or by her mother and could be impacted on by a further relocation.

[90] In considering issues of continuity and stability, her relationships with her family and continuity within Jasna's community which includes her schooling, her physical location, her friendships and her social involvements, need to be taken into account.

[91] Ms Moltzen, in her report<sup>7</sup> says:

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<sup>7</sup> Report of Ms Moltzen at para [8.11]



Jasna has experienced a high level of residential mobility relocating between Australia and New Zealand several times and changing school five times within four years. She was exposed to multiple reconciliations and separations in her parents' relationships. Her relationship with her mother has been her only continuous relationship and she has experienced repeated disruptions in her relationships with her father and with her paternal and maternal families.

She goes on to say:

A substantial body of literature has found that high levels of residential mobility in childhood are associated with lower levels of educational achievement and increase the probability of social, emotional and behavioural problems.

[92] Comments were made by Ms Moltzen regarding the importance of Jasna having a relationship with her siblings and the need for regular contact in order to build a lasting and positive relationship which would continue in later life. Identified risks included multiple relationship loss as a consequence of relocation, with this being particularly relevant in relation to Jasna's siblings. In respect of schooling and friendship issues Jasna spoke of always changing schools and leaving friends. Ms Moltzen identified frequent changes of schooling as being associated with the loss of social capital, and noted that research suggested that a high level of residential mobility was a risk factor and an important consideration now that Jasna has a network in New Zealand and was benefiting from the stability of school, friends and family.

[93] Having considered the evidence I accept:

- (a) That Jasna has a close relationship with both parents, that her relationship with both parents is meaningful and that remaining in New Zealand will be conducive to a continuation of those relationships.
- (b) That Jasna has meaningful relationships with important others in both New Zealand and in Australia, but that at this stage in her life, the relationships she has with her siblings and wider whānau in New Zealand are more significant than with those in Australia.

- (c) That Jasna has a strong need for stability as a consequence of her repeated changes of residence in her life and that remaining in New Zealand would meet her need for continuity and stability.
- (d) That relocation and changing of schools and residences may impact negatively on Jasna.
- (e) That this risk is highlighted by Ms Burt's lack of insight into the impact of multiple relocations.
- (f) That the benefit of Jasna remaining in New Zealand outweigh those of relocating to Brisbane, despite the fact that relocation would provide Ms Burt's support of her mother and would increase contact between Jasna and her maternal grandmother and other Brisbane whānau.
- (g) I accept Ms Moltzen's evidence that Ms Burt is focused on the positive aspects of the relocation without having carefully considering the negative risks that might be involved.

**5(f) – consideration of a child's identity should be preserved and strengthened**

[94] This principle provides that a child's identity should be preserved and strengthened. Relevant issues relating to identity include culture, national identity and language. I expected there might have been more evidence about this principle and that one of the significant benefits of moving Jasna back to the Waikato would have been the enhancement of Jasna's Māori heritage. However issues of cultural identity and language were not a significant factor in this case and were not argued by either party with any particular thought. In the circumstances I am satisfied that there is no disadvantage to Jasna in respect of her Māori heritage irrespective of whether she lived in Brisbane or lived in the Waikato.

**Other matters**

[95] Having considered the principles I now want to turn to other matters that need some brief consideration.

*Merits and reasonableness of Ms Burt's wish to relocate*

[96] Ms Burt's expressed desire to relocate is because:

- (a) She wants more family support which I have already dealt with; and
- (b) Because of her belief that a better life can be provided for her and for Jasna in Brisbane than in New Zealand.

[97] The case for a better life in Australia was not well put or pleaded and unfortunately left the Court in a position where very little reliable evidence existed that could be relied upon. Only limited financial information and information regarding the availability of houses or employment in Australia was provided to the Court. Little information was provided regarding benefit entitlements nor had any great thought been given to Mr Wright's convictions and the impact of those on his ability to relocate or the fact that he is currently on home detention and has not completed community work. No letter of support or other information was provided in relation to Mr Wright's employment situation or ability to obtain work in Australia or to obtain a driver's licence.

[98] In cross-examination questions were put regarding potential financial positions. I am not satisfied, having heard that evidence, that there is significant financial benefit to the parties in relocation. Ms Burt's evidence is that she might obtain employment in Australia at a rate of \$19 an hour, which could be a \$4 to \$5 an hour improvement on her current position, but that she was only planning to work 20 hours a week so that her position would improve by \$80 a week. Against that there is the cost of transport from New Zealand to Australia four times a year at an estimated amount of \$2000, the loss of accommodation benefits in New Zealand estimated at \$180 per week and family tax credits of \$190 per week. Factored into this mix is also the oral evidence given by Ms Burt that she might be entitled to benefits in Australia including an accommodation grant of about \$80 and a family tax credit of \$200. However no evidence has been provided to support this.

[99] Ms Burt gave evidence that she has a student loan of \$11,000 and no information was provided to the Court as to repayment implications upon her if she were to relocate.

[100] In relation to Mr Wright his evidence is that he works currently 40 hours a week earning \$15.20 per hour. He thought that in Australia he might earn \$20 per hour, which is less than what Ms Burt predicted of \$24 per hour. Mr Wright's position might improve by some \$200 a week but against that again has to be measured the cost of transport between the Gold Coast and Brisbane and also the uncertainty of the proposals in Brisbane which did not include any letter confirming his employment or the amount that he would be receiving. Mr Wright has no current savings, a car worth \$6000 subject to a hire purchase of \$2000 and fines of \$900. The only savings that are enjoyed by the parties are \$200 which Ms Burt says that she has saved.

[101] Ms Burt and Mr Wright have no money at the moment to pay tickets to Australia and are not in a position where they could currently set up house or meet any unexpected costs that might flow out of the proposed relocation.

*Practical consequences of relocation*

[102] I must consider also the practical consequences of relocation and in particular the ability of Jasna to maintain a relationship with Mr Smith and Jasna's extended family in New Zealand. I have referred already to the cost of travel which at \$500 per trip and four times a year would equate to \$2000. Given the parties' current financial position I have some doubts as to whether or not this is sustainable but do take into account that Ms Burt managed to pay for and ensure that Jasna travelled to New Zealand in 2012 when she was in Brisbane at that time.

[103] However I also take into account that there appeared at least to be the potential for an ongoing relationship between Mr Smith and Ms Burt at that time, and that subsequently there was a reconciliation. No such event is now likely to occur and Ms Burt does not have the same incentive or even willingness to facilitate contact between Jasna and her father that she did in 2012. In my view relocation will expose Jasna to a risk of loss of a relationship with her father and with her siblings and wider family unit in the Waikato.

[104] One of the other factors that featured in the evidence was Ms Burt's concern that if Jasna was returned to New Zealand for contact and spent extended time with

her father she would be subjected to greater risk of exposure to violence. I do not take this into account as a significant factor. Irrespective of whether Jasna travels to Brisbane or not the proposal is that she spend at least a week at a time in the care of her father and as a consequence of that would be exposed to the potential for violence irrespective of whether a relocation occurred or not.

## **Conclusion**

[105] Should the Court permit Jasna to relocate to Australia. The answer to this is no. In determining this I have regard to the following factors:

- (a) Jasna enjoys a close relationship with both parents.
- (b) Jasna enjoys a meaningful relationship with her half-siblings.
- (c) There are other close family members of Ms Burt's, Mr Smith's and Mr Wright, all of whom live in the Waikato and with whom Jasna has a meaningful relationship.
- (d) Ms Burt's mother is clearly a good and concerned grandparent and has gone out of the way to maintain a relationship with Jasna by regular travel to New Zealand and by Skype contact. Although that relationship would be enhanced by a move to Brisbane I am confident that it will continue as a consequence of maternal mother's own commitment to that relationship remaining.
- (e) In the end I am satisfied that the benefits of Jasna relocating to Brisbane are not as great as the benefits of her remaining in the Waikato when the relationship between her father and siblings is taken into account.
- (f) I place significant weight on Ms Moltzen's evidence regarding the need for Jasna to have a continuing stable relationship with her father and siblings and also the need for her to have continuity in schooling, friends and residence.

- (g) I take into account that little information is available to the Court regarding the practicality of relocation and that there is uncertainty regarding work and income, lifestyle benefits and schooling that remained unaddressed in the evidence that was provided.
- (h) I assess that there is a real risk that contact will break down between Mr Smith and Jasna as a consequence of financial pressures on Ms Burt and the real financial commitment that would be required to sustain four contacts a year.
- (i) There has been an evident lack of communication between the parties over a period of time.

[106] In reaching this decision, I reiterate that even if Jasna had expressed a clear view to go to Brisbane, as her mother gave evidence that she had, it would not have impacted on the final decision that I have made.

### **Day-to-day care**

[107] Having determined that Jasna should remain in New Zealand the issue is what day-to-day care arrangements should now be put in place. Many of the factors relevant to the relocation issues are also relevant to the day-to-day care issues. In determining these issues I have regard to the position of the parties which is not a long way apart.

[108] Ms Burt's caregiving role to Jasna and the attachment that she has to her which has been the predominant care feature in Jasna's life. There are compelling reasons why Ms Burt should have day-to-day care including her commitment to Jasna's upbringing and the closeness of her relationship, the status quo which is generally working well and the identified risks of Jasna being in the care of her father including the exposure to violence which is mitigated by less time, his lack of motivation and his slow engagement with Jasna's schooling and the need to provide more stimulation to Jasna within his home environment.

[109] Jasna does have a close relationship with both parents and there is a need to promote continuity of care to ensure stability and the continuation of the meaningful relationship that each has. It is important to enhance the relationship that Mr Smith has with Jasna and the need to enhance and preserve the relationship that Jasna has with her siblings and paternal family.

[110] Finally in relation to the day-to-day care arrangements it is entirely appropriate that Jasna be able to travel to Brisbane, Australia for holiday periods. This should be able to occur with frequency and without there being a need for Ms Burt to have to come back to Court to have orders preventing removal suspended or discharged. Although I have denied the relocation application, Jasna needs the opportunity to travel overseas to spend time with her maternal family who are important to her. For that reason I intend to discharge the order that prevents her removal from New Zealand.

### **Orders and directions**

[111] Against all of that background I therefore make the following orders and directions:

- (a) The application to relocate Jasna to Australia is declined.
- (b) The interim parenting order of 16 May 2014 is discharged.
- (c) The order preventing Jasna's removal from New Zealand is also discharged.
- (d) I make a day-to-day care order granting to Ms Burt day-to-day care of Jasna.
- (e) I make an order granting to Mr Smith contact with Jasna as follows:
  - (i) Every second weekend 3.00 pm Friday until 9.00 am Monday.
  - (ii) Mr Smith will be responsible for uplifting Jasna from school and returning her to the school at 9.00 am each Monday.

- (iii) If Friday is a public holiday contact during that week will commence at 3.00 pm on Thursday. If Monday is a public holiday contact will conclude at 9.00 am on the Tuesday by delivery to school.
- (iv) Unless otherwise agreed all pickup and drop offs will occur at Jasna's school.
- (f) *School holiday arrangements.* School holidays at the end of terms 1 and 3 and at Christmas. Jasna will be with each parent for one-half of the school holidays at times to be agreed but failing agreement will be with Mr Smith from 3.00 pm on the Friday when he is due to commence his every second week contact continuing for a one-week period until 3.00 pm Friday one week later.
- (g) *Holidays at the end of term 2.* Jasna will be with each parent for one-half of the school holidays as provided for in the school holiday periods at the end of terms 1 and 3 provided however that if Ms Burt so elects, by giving Mr Smith six weeks' notice in writing, Jasna will be in her care for the whole of the term 2 holiday period from 3.00 pm on the last day of the term until 3.00 pm on the Friday at the end of the second week of the school term. This holiday will only be available to Ms Burt if she travels with Jasna to visit family in Australia.
- (h) *Additional holiday time at Christmas.* The school term holidays provisions at the end of terms 1 and 3 are to apply during the Christmas period subject only to Ms Burt the right to take Jasna to Australia for a two-week period during each Christmas term holiday period at times at times to be elected by her but not to be between 24 and 26 December.
- (i) *Christmas Day contact.* In odd numbered years Jasna will be with Ms Burt from 3.00 pm on 24 December until 3.00 pm on 25 December and with Mr Smith from 3.00 pm on 25 December until



3.00 pm on 26 December, and in even-numbered years with Mr Smith from 3.00 pm on 24 December until 3.00 pm on 25 December and with Ms Burt from 3.00 pm on 25 December until 3.00 pm on 26 December.

- (j) *Recommencing contact.* For the avoidance of all doubt if the parties cannot reach agreement as to how normal arrangements recommence at the end of the Christmas holiday period the Friday at the end of the first week of the school term will be Mr Smith's Friday weekend contact.
  
- (k) *Travel overseas.* Jasna will be permitted to travel overseas provided that travel occurs within the periods that are provided for in this order or otherwise during any period of time when Jasna is in the care of his or her parent. Travel details are to be provided by the travelling parent to the non-travelling parent a minimum of six weeks in advance. The travelling parent is to provide the non-travelling parent contact details so that Jasna can be contacted at any time during the travel period. Jasna is to be returned to New Zealand in accordance with the travel schedule. Jasna's passport is to be at all times held by Ms Burt but will be immediately provided to Mr Smith in the event that he travels overseas and will then be returned to Ms Burt within 48 hours of his return.
  
- (l) *Conditions of contact.* It will be a condition of the parenting order that:
  - (i) Unless otherwise agreed Jasna shall reside within the jurisdiction of the Hamilton District Court.
  
  - (ii) That Jasna will not change school without the agreement of both parents.
  
  - (iii) That Jasna is not to be exposed to any domestic violence in any form at any time.

(iv) That if any of the following events occur Mr Smith is to advise Ms Burt within a period of 48 hours

1. He is charged with any criminal offending including any offence of driving with excess alcohol or drugs.
2. He is at any time issued with a protection order.
3. He is at any time served a Police Safety Order.
4. He is at any time notified that he is being investigated by Child, Youth and Family Services in respect of his care of any child.
5. If Mr Smith fails to advise Ms Burt within 48 hours of any of these events occurring it will be a breach of the parenting order which may justify Ms Burt seeking a variation or suspension of the contact as set out in the order.

[112] In the course of this judgment I requested that Ms Wasey make a copy of this judgment available to Mr Smith's parents and requested that she explain to them the concerns I have regarding their protectiveness. I extend Ms Wasey's appointment specifically for that purpose and direct that she undertake that task within two weeks of the release of this judgment to her.

[113] I am advised that both parties are in receipt of legal aid in respect of these proceedings and for that reason no cost contribution order is to be made against both of them.

G S Collin  
Family Court Judge