

**NOTE: PURSUANT TO S 125 OF THE DOMESTIC VIOLENCE ACT 1995,
ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO
11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER
INFORMATION, PLEASE SEE
[HTTP://WWW.JUSTICE.GOVT.NZ/COURTS/FAMILY-
COURT/LEGISLATION/RESTRICTIONS-ON-PUBLICATIONS](http://www.justice.govt.nz/courts/family-court/legislation/restrictions-on-publications)**

**IN THE FAMILY COURT
AT AUCKLAND**

**FAM-2015-068-000037
[2016] NZFC 2769**

IN THE MATTER OF THE DOMESTIC VIOLENCE ACT 1995

BETWEEN FAITH DIXON
 Applicant

AND NATHAN KING
 Respondent

Hearing: 4 April 2016

Appearances: N Quirke for the Applicant
 N Simpson for the Respondent
 G Harrison as Lawyer for the Children

Judgment: 4 April 2016

ORAL JUDGMENT OF JUDGE T H DRUCE

[1] This is the matter of Dixon and King and concerns the three children of the parties. Fabian is seven, Lachlan six, and Riley shortly five. The mother's child of a prior relationship, namely Joe aged 15, is also peripherally involved.

[2] Ms Dixon seeks a final protection order and also seeks a final parenting order today. She is present with Ms Quirke her counsel.

[3] The matter was called at 10 o'clock. The father was not then present but arrived shortly after. His counsel, Ms Simpson, was able to take updated instructions however he has chosen not to stay to be heard by the Court. I personally heard him through the Court door in a state of some emotionality. He has filed evidence in opposition to both of the mother's applications and he has made his own application for a day-to-day parenting order although that has now been overtaken by events.

[4] The current situation is that from some date on or about October last year following CYFS involvement, the children have actually been in their mother's care whereas for most of 2015 prior they were in their father's care in [location deleted] and appear to have been doing reasonably well in their local schooling and the father has produced evidence of positive support from the school principal and other evidence of the children making progress.

[5] The mother's position now is that she is living in the greater Auckland area, she is in settled housing, she has taken a number of steps to address her own health needs which I will get into in a moment, and she has given evidence today of how the children are more settled and trusting in their environment and developing as one would expect children of their age after a prolonged period of living with parents who both have addictions, a propensity to conflict and some physical violence, and moves of housing between Australia and New Zealand. So there has been a lack of stability and predictability in their environment.

[6] The Australian child protection agency, equivalent to CYFS, was involved in Australia prior to the couple's return to New Zealand. In 2013 the children were actually removed from their parents' care for a period in Australia and the same thing

happened subsequently here in New Zealand which highlights the care and protection nature of the children's circumstances in the past.

[7] The key issue turns out to be which parent has actually gone through a recovery process to be in a position today where they are ready and able to provide safe day-to-day care for the children. The answer to that from the evidence is that the mother is in that position and there is a great deal of doubt about the father's readiness to be involved in a stable and predictable manner in the children's lives.

[8] Ms Simpson for the father acknowledged that at one point at the beginning of today she had instructions to consent to the protection order although in the course of discussions prior to the father's departure he withdrew that consent. On that basis I have approached the issue on a formal proof basis. It is plain that the parties' evidence is in significant conflict. However given that the father has not made himself available for cross-examination and given the mother's very clear presentation of her evidence and her sworn evidence by affidavit I am satisfied that the jurisdictional requirements for a protection order are well made out.

[9] It does not of course mean that she herself has not behaved problematically prior to her taking steps to recovery. She acknowledges that at times she behaved improperly with the children, primarily psychologically, and that she emotionally was not there for the children. She acknowledges that there was conflict and difficulty in the couple's relationship. She does not accept being physically violent to him. She says the father was physically violent to her and gives particular examples which the father denies generally but without giving specific accounts of what occurred. She describes being strangled, on one occasion in December 2014 to the point of blacking out and another in January 2015 where she says he "backhanded her" causing a fracture to her cheek bone. While the medical evidence has not been produced to support her account, the father's evidence has provided no other explanation for her injury and I therefore accept it as the best evidence and find that the respondent has been quite improperly physically violent to the applicant.

[10] In terms of necessity the mother has moved from [location deleted] to the Auckland area to go through her recovery process accessing appropriate alcohol and

drugs services and while the father's current whereabouts are not known he has given his counsel his mother's address in [location deleted] as his address for mail. His former home in which he lived with the children last year has been sold with settlement last week. Each parent has a significant sum of money in their possession and it seems likely that he will have obtained or will be in the process of obtaining accommodation in the Auckland area. It is also likely that he will want to have regular contact with his children whom he clearly loves and for whom he cared last year and in those circumstances both the children and their mother will need security and protection from domestic violence. I therefore am satisfied that there is a necessity for ongoing protection and I make the protection order accordingly.

[11] I am aware from papers provided by the registrar that there is an issue about the respondent's non-attendance at a programme. He has not been served with a summons. That issue will have to be taken further but because he will read this in the next week or so, he is urged to make contact with Ms Catherina Kimiangatau at the Auckland Family Court Registry so that arrangements can be made for him to be directed to attend a convenient service here in Auckland. I note that in the report dated 5 February 2016 from the facilitator of the programme he had been directed to attend, but failed to attend on 28 January, there is a recommendation that he would benefit from attendance at a programme.

[12] I turn now to consider child safety issues and the mother's application for a final parenting order.

[13] The key issue around risk and safety is the mother's chronic alcoholism. She acknowledges that she is an alcoholic. She is 14 months one week and one day into her recovery process. I am well satisfied that she has taken the usual, professionally recommended, recovery steps. She came up to Auckland to do so leaving her children with the father. She has all of the supports that one looks for as part of a well supported recovery process. She is an articulate woman who tells me that she is now engaged in giving service at [name of facility deleted] which is always an indicator of someone who has achieved the essential first steps of recovery and is in a position to give back to others. She has the personality and articulateness which I would imagine would be very useful in that service work. She maintains a

relationship with a sponsor who is a woman with her own children, with whom she has contact three times a week and a face-to-face meeting once a fortnight. She has been sentenced on excess blood alcohol matters and driving while disqualified. She is on intensive supervision for a 14-month period commencing January this year. The children are engaged with her in a Family Action programme. That means that Fabian and Lachlan are involved in one-to-one counselling work on a weekly basis.

[14] She has taken the children to [name of facility deleted] who did an assessment and she understands [name of facility deleted] found no particularly strong or important indicators of concern and no need for ongoing service from [name of facility deleted]. [Name of facility deleted] is the acknowledged expert agency for the assessment of psychological/psychiatric issues for children.

[15] There are some indicators that Fabian, the eldest boy, may have been impacted by trauma but it does not appear to be at a level that requires specialist assistance beyond counselling. There is specific work going on with Lachlan with reading recovery and the mother says that she is in very close contact with Lachlan's teacher as much as daily contact. All the signs are positive. It is consistent across different domains that she is in charge of her life and she is actively and appropriately engaged in meeting the needs of the children. She has spoken of having an old friend within a close distance with whom she has visits once or twice a week and that she is socialising with other women with children.

[16] While the usual expert evidence I have in Court is that recovery really is not stable for a period of two years or so, and the research shows us that people with addictions on average go through relapses on six or seven occasions in their lifetime, nevertheless I am satisfied that the mother has made sufficient progress in her recovery and her psychological state to be left with the responsibility for the children's day-to-day care on a permanent basis.

[17] For that reason I am making a final parenting order granting her day-to-day care of the three children of this relationship.

[18] I turn to consider the father's situation. There is no evidence yet that he has successfully established any form of recovery from drug addiction. He acknowledges in his evidence that he has been using other persons' prescription medication, Ritalin. He has been a heavy user of marijuana over more recent years and is an ex-heroin user from many years past so he has a long history of addiction. He also importantly has a long history of pain and he fits the classic profile of a person who has self-medicated because of back pain. I have no evidence that he has been assessed by a specialist pain medical agency and whether anybody has really ever got to grips with his misuse of medication for pain relief as well as because of addictive aspects. His evidence is that he at some point has been diagnosed as having ADHD but he does not give any details of the person who made that diagnosis and he gives no details of who or how he continues to have Ritalin prescribed beyond saying that he is prescribed Ritalin but he acknowledges he was using Ritalin from a non-prescribed source immediately prior to the children being removed from his care by CYFS last September-October.

[19] There are other aspects of concern about his presentation. I have noted his emotionality today which is often linked to addiction and instability. I note in the mother's evidence that she has received some 2500 texts from him over a period of six months. That is again a sign of dependency and difficulty emotionally. Beyond that I cannot take it much further. He is on a heavy pain medication called Tramadol for a back injury. His counsel advises that he obtained legal aid on the basis that he is a beneficiary. It appears he may be on an invalid's benefit but that is not entirely clear.

[20] Having read the evidence I had become concerned that these children have been exposed to trauma within the family context. Because of that and also because of the history of domestic violence between the parents I consider that the only safe way in which the children can re-establish emotionally safe contact with their father is by professionally supervised contact in the short term. Mr Harrison has volunteered to meet with the paternal grandmother to explore whether she could be of assistance. The mother was unequivocal in her evidence that the paternal grandmother has herself got an alcohol problem and has been erratic and unreliable in her contact with the children and that the children do not have a reliable

relationship with her. On the basis of her evidence I am not minded to approve her as a supervisor. It is for Mr Harrison to do his job as he sees fit but I am imposing the requirement for professionally supervised contact which if it can be done conveniently should be at [name of contact centre deleted] in [area deleted] Auckland.

[21] If the father wishes to advance an application for variation of the supervised contact terms he is invited to do so and to have evidence from anyone who can assist or facilitate that process filed along with his own evidence. To assist him I make it clear that he will need to provide evidence of taking steps to achieve his own recovery from addiction and to better manage his own emotionality. Disrupted emotions are a part of addiction and it is seen as usually the first stage for recovery, the ability to manage mood and disorders of mood. He needs to go through that before he can expect a Court to support some form of contact other than supervised contact. He gave evidence of the children's nervousness about meeting with their mother while they were in his care. I anticipate exactly the same anxiety in the reverse situation. Professionally managed supervision will ensure this is managed in a way that the children will have confidence in it.

[22] So the final parenting order will include the provision that the children are to have contact with their father on the following terms:

- (a) Contact to be supervised by the [name of contact centre deleted] supervised contact service or, in the event of their not being readily available, some other accredited service provider within a convenient distance of the mother's residence in Auckland.
- (b) The supervised contact to develop in two stages:
 - (i) Stage 1: Up to one and a half hours contact 1x per month for 3 consecutive months with lawyer for child to report at the end of the 3 month period. His appointment is specifically extended to report on the success or otherwise of the contact.

- (ii) Stage 2: If the father takes steps within the next three months to initiate the Stage 1 contact, and he consistently attends the contact sessions in a satisfactory manner for three visits over a three-month period, then supervised contact will thereafter be fortnightly on either a Saturday or a Sunday until further order of this Court.

[23] In the event of the father having expended the sale proceeds of his house in some other capital investment (such as housing), leave is reserved for his counsel to seek a direction from the Court under s 60 Care of Children Act 2004 for costs of supervised contact to be met for by the State. That request should be referred to me in Chambers.

T H Druce
Family Court Judge