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**IN THE FAMILY COURT
AT WELLINGTON**

**FAM-2014-085-003381
[2016] NZFC 3280**

IN THE MATTER OF THE CARE OF CHILDREN ACT 2004

BETWEEN BELLA WATT
 Applicant

AND BAZ TINDALL
 Respondent

Hearing: 12, 13, 14, 15 April 2016

Appearances: M Powell for the Applicant
 W Story for the Respondent
 R Dewar as Lawyer for Child

Judgment: 18 April 2016

ORAL JUDGMENT OF JUDGE T M BLACK

[1] I recently heard evidence from a psychiatrist in a Care of Children Act 2004 case, and he is a Nigerian born psychiatrist, and he told me that where he comes from there is a saying which is that when elephants fight it is the grass which suffers and that is a very apt description of the situation in this case.

[2] This is a case about Sharon who is 10 and she is represented by Ms Dewar. It is a slightly unusual case in that the parties are not both her parents. Sharon's father is Mr Tindall represented by Mr Story. Her mother is Tamia Hopper. She has played no part in these proceedings. She lives in Australia. The other party is Ms Watt represented by Ms Powell. She is Mr Tindall's ex-partner.

[3] This is a difficult case. Most of the cases which get to hearing are difficult ones because the easy ones settle; the answer is obvious. This is an oral decision following a hearing which occupied four days last week. When I say it is an oral decision I have not written this decision out, I am reading from notes and extemporising from notes. For that reason I reserve the right to myself when the decision comes back from typing to amend it, to correct any misstatements, obvious errors, that sort of thing but any such amendments will not alter the decision or the reasons for it.

[4] The structure of this decision is as follow; firstly I will detail the background. Secondly outline the hearing process. Thirdly outline the issues and the positions taken by the parties and lawyer for child in respect of those issues. Fourthly talk about the legal principles which are relevant to this case. Fifthly analyse the evidence set against those legal principles which will lead me finally to a conclusion.

[5] The background is as follows; the parties were in a relationship between 1985 and 1991. Their daughter Carmen was born in 1986 and their son Kurt was born in 1989. Around 1995 Mr Tindall left New Zealand to work overseas, mainly in Australia but in other places as well. On [date deleted] 2006 Sharon was born. She was conceived during a one night stand with her mother and in her early years Mr Tindall had no contact with or relationship with her.

[6] In mid 2009 Sharon was removed from her mother's care as a result primarily as I understand it because her mother was imprisoned. She spent some time with family members and foster carers. She was abused by some of the family members.

[7] In early February 2010 Sharon moved to Mr Tindall's care. At that stage he was living in Brisbane, working for [name of employer deleted]. He continued working for [name of employer deleted] for some months and then gave up his job to be a full-time caregiver for Sharon.

[8] In December 2011 Mr Tindall moved with Sharon to live in Melbourne. Initially they went to live with Ruby Yates, that lasted for about four months and then Mr Tindall got his own flat.

[9] In February of 2012 Sharon started at [name of school deleted]. In August 2013 Mr Tindall and Sharon visited New Zealand.

[10] In January 2014 Mr Tindall went to Brisbane for a seven month work contract with [name of employer deleted]. That contract had been arranged by or at least encouraged by Kurt who was still living in Brisbane at that time and still is living in Brisbane. Mr Tindall arranged for Ruby Yates to provide care for Sharon while he was undertaking the work contract. For reasons which I will come to that arrangement broke down and in February 2014 Mr Tindall arranged for his adult daughter Carmen to come to Melbourne and collect Sharon and return with her to New Zealand with the intention being that she would remain in New Zealand for the duration of Mr Tindall's contract in Brisbane and then return to Australia once that contract had finished.

[11] In April of 2014 Mr Tindall came to New Zealand for Easter. He stayed with Ms Watt. There were issues and arguments. There was an argument which ended up in a physical altercation between the parties. A police safety order was issued against Mr Tindall.

[12] On 6 June 2014 Ms Watt applied without notice for a temporary protection order and for an interim parenting order. Those applications were granted. The

protection order was dealt with at a hearing which occupied 6 October and 23 December 2014 and Mr Tindall attended the hearing on 6 October. He did not attend the hearing on 23 December. On 24 December 2014 Judge Johnston released her decision and she made a final protection order. That order was made on the basis of psychological abuse which she found Mr Tindall had carried out against Ms Watt and some of it Sharon had been exposed to.

[13] In August of last year Mr Tindall came to New Zealand to live and in October of last year Mr Tindall began supervised contact with Sharon. That contact was supervised by Les Williams. There have been something like 14 sessions of supervised contact to date.

[14] In terms of the hearing process, the hearing as I said occupied four days last week. I had affidavit evidence and reports from a number of witnesses. I heard evidence in person from the parties and from Mr Garner the s 133 report writer, from Ms Simpson a social worker who had written a s 132 report and from Ruby Yates, Alison Watt and Victoria Fallon.

[15] Prior to the hearing commencing, at Sharon's request, I met with her in the presence of lawyer for child on 7 April and I canvassed with her, her views and wishes. I issued a minute on 7 April outlining that meeting and I do not want to go through that in detail now but to summarise Sharon said that she wanted to keep living in New Zealand and with Ms Watt and to see her father every second weekend. Sharon volunteered that her father gets grumpy if people disagree with him but she told me he is not grumpy around her.

[16] Turning to the issues and positions. The issues are clear. They are, should Sharon live with Mr Tindall or with Ms Watt and what contact should Sharon have with the party she does not live with, should Ms Watt be appointed a guardian and should Mr Tindall be appointed a guardian. He is not, under New Zealand law, a guardian through an accident of law in the sense that he is a guardian of Sharon under Australian law because he is named on her birth certificate as her father but that birth certificate process does not extend to give him guardianship status under New Zealand law because the birth was registered in Australia, not under the

Births, Deaths and Marriages Registration Act of New Zealand and that is an issue which everyone is agreed needs to be resolved in some way.

[17] Ms Watt's position is that Sharon should stay living with her, that she should develop in a staged way some weekend and holiday contact with Mr Tindall. She says that Sharon needs consistency and continuity, that leaving her in her care enables her to maintain that continuity. She is doing well at present having regard to her trauma history and Mr Tindall's proposal is not sufficiently well formulated and Mr Tindall has not been able to consistently demonstrate that he is focused on Sharon's needs as opposed to his own needs.

[18] Mr Tindall argues for the reverse in terms of care arrangements. He says that he is Sharon's father, he may have made some mistakes but he provided more than adequate care for her for four years when she lived with him in Australia and there is no reason why he should not have Sharon returned to his care.

[19] Ms Dewar as lawyer for child did not advocate for a particular outcome. Other than that she supported Ms Watt's application to be appointed as a guardian. She pointed me to the psychological evidence about Sharon's needs and submitted that that was of significance in this case, that there is a need for caution, significant caution before disrupting the current care regime.

[20] Turning to the legal principles which are applicable and of course I must start with s 4 of the Act, the paramountcy principle which says that the welfare and best interests of Sharon and her particular circumstances are the first and paramount consideration. In other words the law tells me to care about what is good for Sharon and not what is good for either Ms Watt or Mr Tindall or what they want.

[21] Section 5 sets out a list of non-exhaustive principles of which I should consider when assessing the welfare and best interests. I want to run through those briefly and identify them as relevant or otherwise in this case. The first is the s 5(a) which says that Sharon's safety must be protected and in particular she must be protected from violence as that is defined in the Domestic Violence Act 1995. That is relevant in this case because there are allegations that there is a psychological risk

to Sharon in Mr Tindall's unsupervised care. Section 5(b) says that Sharon's care, development and upbringing should primarily be the responsibility of her parents and/or guardians and in this case of course Ms Watt at this time is neither a parent nor a guardian of Sharon. Section 5(c) says that Sharon's care, development and upbringing should be facilitated by consultation and cooperation between Mr Tindall as her parent and Ms Watt as a person having a role in her care. There has been a considerable lack, almost a complete lack of co-operation and consultation recently but that is a goal which is nevertheless relevant to this case.

[22] Section 5(d) says that Sharon should have continuity in her care, development and upbringing. That of course is relevant in this case because Ms Watt argues that the continuity principle means that Sharon should remain with her.

[23] Section 5(e) says that Sharon should continue to have a relationship with her parents and that her relationship with her wider family should be preserved and strengthened. That is relevant here because the ability of each party to maintain and strengthen relationships with wider family is at issue.

[24] Finally under 5(f) Sharon's identity should be preserved and strengthened and that is relevant because Sharon is Australian. She lived the first eight years of her life in Australia and she is an Australian citizen, although the holder of a New Zealand passport.

[25] What I have to do is to weigh up the s 5 principles. There is no presumption as the Supreme Court made clear in *Kacem v Bashir* that any of the principles carry more weight than the others except for s 5(a) safety trumps every other principle. I need to weigh up the principles and any other relevant material and work out what is in Sharon's welfare and best interests. I cannot start from any prior assumptions.

[26] Section 5A of the Act is relevant because there is a final protection order. I am required to take that into account in terms of the circumstances in which it was made and the reasons given by Judge Johnston when making the order.

[27] Under s 6 I am required to give Sharon a reasonable opportunity to express views. She has expressed views both through lawyer for child, the s 133 report writer and directly to me. I have to give her views such weight as I decide is appropriate. Sharon is 10. She is an intelligent and articulate 10 year old but she is a 10 year old and 10 year olds do not get to decide what their care arrangements are. That is the job of the adults in their lives and if the adults are unable to agree that they have effectively ceded the decision making authority to me. So while I must give Sharon's views significant weight they are not determinative.

[28] In this case the primary tension is between the continuity principle and the principle that parents should have primary responsibility but there are also other relevant s 5 factors which I will come to. Section 5 is not a checklist, it is not a question of going through and ticking boxes and counting up how many ticks belong to each party. Sharon's welfare and interests are the touchstone and I need to keep going back to that.

[29] I do want to say something about the continuity versus parent argument. Ordinarily a biological parent has primacy. As Tipping J said in *V v Department of Social Welfare* [1998] 16 FRNZ 522:

“the Act reflects the way in which the New Zealand Parliament has given effect to the United Nations convention on the rights of the child. We must not be thought to be downplaying the importance which biological ties have and the principles underlying this area of the law. Ordinarily the interests and welfare of children are best served by their being in the custody of their biological parents or at least one of them. That is to do no more than state the obvious and to recognise the fundamental role of the biological family in our society.”

However, Tipping J added that making decisions about custody, he was dealing with a similar provision in the Child, Young Persons and Their Families Act, the welfare and interests of the child predominate over the interests of the biological parents and over the biological tie factor. In other words the primacy of the parent is the starting point but it is not a trump card because it is always subject to welfare and best interests.

[30] I turn to an analysis of the evidence set against those principles and I make it clear that I am focusing on what I see as being the core issues. I am not going to

spend any time analysing historical or neutral matters unless they are directly relevant to the issues which I need to determine. By way of example both parties have alcohol and/or substance abuse histories however there is no credible or reliable evidence before me that those issues currently affect their ability to provide adequate and safe care for Sharon and I simply set them to one side. The same is true of the mental health histories of both parties. Both parties have at times suffered from mental health issues but again there is no credible or reliable evidence before me which would allow me to conclude that those issues currently has an impact on their ability to provide adequate or safe care for Sharon.

[31] In terms of the safety issue I cannot find that there is any real risk of physical abuse of Sharon by Mr Tindall. I am bound by the findings of Judge Johnston in terms of behaviour occurring prior to October 2014 and I refer to page 31 in the bundle in that regard.

[32] In terms of witnesses generally I have to consider how useful their evidence is or to put it more accurately how reliable it is. In assessing reliability I have regard to consistency and by consistency I mean internal consistency, in other words is the witness' evidence consistent with other evidence given by the same witness and is it consistent with their contemporaneous behaviour or their behaviour in relation to the matters in relation to which they are giving evidence.

[33] I also have to have regard to external consistency. Is the witness' evidence consistent with other available evidence from other witnesses or other available evidence from other sources especially neutral third party or independent evidence.

[34] I can also have regard to how a witness gave evidence, although I need to be careful about demeanour, which is a fancy way of saying that some people are good liars and some honest people are bad witnesses. The case is not about who is best at giving evidence.

[35] I want to deal firstly with the evidence of the non-party witnesses whose evidence was critical of a party. Firstly the evidence of Alison Watt. It is clear that there are longstanding issues between Alison Watt and her sister Ms Watt. Those

issues are nothing to do with the current dispute which is before this Court but it appears that the current dispute has provided fuel for a long simmering fire of conflict and resentment between the pair which is unfortunate.

[36] There is conflicting evidence given by her and by her sister Ms Watt about an incident which occurred in August of last year. As I indicated at the hearing, I do not intend to attempt to resolve the conflicts of evidence in that regard other than to note that it is clear that a conflict occurred and Sharon was exposed to that conflict and that Bella Watt participated in that conflict.

[37] Lola Watt, Alison's daughter, filed an affidavit. She was not required for cross-examination but the evidence which she could offer in relation to upbringing, parenting styles and that sort of thing was largely from an historical perspective and I am interested in what the parties can offer now rather than what they offered five or 10 years ago.

[38] I heard evidence from Ruby Yates who I acknowledge at once is an important person in Sharon's life. The theme of her evidence was that Mr Tindall was not a good parent. She said that he did not attend to Sharon's needs. He was rough with her and I am paraphrasing her evidence. She referred to hair brushing and that he verbally abused Sharon on occasions.

[39] I have to say that I found Ms Yates a wholly unimpressive witness. Her evidence was not internally consistent. For example, if Mr Tindall had behaved so badly towards Sharon as she described why did she not do something about it in the four years during which she would have been aware of that behaviour. She knew that the Australian Social Servants Agencies were involved, at least in an oversight way, with Sharon's care, she knew that Sharon was involved with various counselling interventions. She did not say anything to the Social Service Agency. She did not say anything to the counselling agency and ACT in particular. She did not say anything to the school and her evidence was not externally consistent.

[40] For example, the reports from the counselling service and from [name of school deleted] paint a picture of an engaged and emotionally available father of

which is in direct conflict with Ms Yates' evidence. For whatever reason Ms Yates harbours a great and deep antipathy towards Mr Tindall. She told the Court that she wished she had never met him. She could not really point to any positive attributes of him as a parent. She had clearly and unequivocally aligned herself with Ms Watt and I conclude that her evidence is not reliable and where it is in conflict with evidence given by Mr Tindall who denied her allegations largely, I set her evidence to one side and I prefer the evidence of Mr Tindall.

[41] I heard also from Ms Fallon. She is a friend of Mr Tindall's. She has known him for something like 15 years. At least for the two years between 2010 when Sharon came into his care and when they left to go to Melbourne, Ms Fallon had regular contact and observation of Mr Tindall and observed his parenting of Sharon and, indeed, his interactions with her own daughter, whose name I think is Hailey. She made positive observations of Mr Tindall's parenting of Sharon. While I understand, of course, that Ms Fallon is aligned with Mr Tindall, her evidence is externally consistent with the other available evidence.

[42] I want to deal with the psychological evidence before I turn to the evidence of the parties. I summarise the tenure of Mr Garner's evidence as follows: Firstly, each party is a good enough parent as that term is understood in the sociological literature. Secondly, each party is capable of meeting Sharon's needs. Thirdly, continuity is very important. In that regard, I refer to page 5, line 27, of the notes of evidence where he said, "I think she's a vulnerable child. She will have ongoing vulnerability and I think about ensuring stability of schooling, housing, care giving and the continuity of that is the primary issue."

[43] At page 27, line 20, he said, "I think we need to adopt a view that Sharon's best interests are continuity, stability, you know, lack of change, lack of uncertainty in her care and, you know, any decisions about her care that could introduce lack of certainty, lack of predictability, change are not in her best interests. She needs to have involvement with as few people taking responsibility of her care as possible, whilst maintaining contact with Bella and Baz."

[44] At page 42, he talked about the need for support and that Sharon would need support if she were to change care, and significant support at that.

[45] The next issue Mr Garner identified was that Sharon's life needed to be as conflict-free as possible. By way of example at page 9, line 14, he said, "I think whoever has the care of Sharon, whether it's Bella or Baz, or anyone else, needs to be aware that for a child such as her it's even more important than for any other child that they experience a life is free of the potential for violence and aggression and conflict as they can."

[46] Another issue which Mr Garner raised was what he described as Mr Tindall's ambivalence about caring for Sharon. By that he meant that when Sharon was in his care in Australia he had, at times, expressed doubts about whether he was able to continue in that role, whether he was doing the best thing continuing in that role. Also, the impression that Mr Garner had about Mr Tindall delegating significant aspects of Sharon's day-to-day care to various other persons while she lived with him in Australia and finally his expressed ambivalence about whether he wished to pursue a return of Sharon to Australia or not. Of course, his report was written at a time when at that stage Mr Tindall was pursuing that outcome. He no longer is.

[47] Mr Garner had doubts about each party's ability to set aside the grievance which they had with the other about these proceedings and the other's conduct both leading up to and during the course of these proceedings but he remained hopeful that they would be able to do so because, of course, if they do not that will significantly impact negatively on Sharon's welfare.

[48] There was some discussions with Mr Garner about transition if a change of care was contemplated. While he initially thought a quite gradual transition was appropriate, in discussions with me he moved to the view that given that it would be a return to a previous carer and if such a return were contemplated some of his concerns would, of necessity, have been found to be unfounded. He could see a more abrupt transition taking place and the culmination of that exchange is page 47, line 11.

[49] For reasons of logistics and convenience Mr Garner gave evidence first. That meant that he did not hear or read the evidence of the other parties when they were cross-examined and to my mind that is of some significance on some issues. For example, in his report at paragraph 19, page 6 of the supplementary bundle and at page 7, line 5, he talks about the need for any introduction or re-introduction of Sharon to her mother, Tamia Hopper to be managed sensitively and there was an implied criticism in his evidence of Mr Tindall's behaviour in that regard. However, that criticism was unfounded as the evidence came out in terms of how and what Mr Tindall had done in relation to Tamia.

[50] Another example where I have to take some care in relation to his conclusions in relation to his impression of a delegation of significant aspects of care to others. As the evidence emerged, while there have been a number of other people involved with care it is clear that in Brisbane, at least for 18 months of that time, Mr Tindall provided almost all of the day-to-day care of Sharon with only limited and incidental assistance from others. When they were in Melbourne again there were other people involved but apart from periods totalling something like three months over a two-year time frame Mr Tindall was in Melbourne and available to care for Sharon on a day-to-day basis. The person who was mostly involved with Sharon after Mr Tindall stopped working shortly after he moved to Melbourne was Ruby Yates and the reason for that involvement with care was so that Sharon could have a maternal figure in her life rather than a delegation of care responsibilities.

[51] Mr Garner initially assessed, although he acknowledged it was on the basis of a limited opportunity for observation, Mr Tindall as having an indulgent parenting style but when confronted with the material from [name of school deleted] which suggested that he was more authoritative than that he conceded that he could not determine or assess his parenting style with confidence.

[52] His conclusion in relation to the parties' ability to work together and set aside their grievances was also reached on the basis of the pleadings and the interviews prior to hearing. He didn't hear the evidence of the parties in that regard and in my view the evidence and the behaviour of the parties at the hearing or in the precincts of the court during the hearing gives cause for more optimism than he expressed.

[53] I turn now to the parties' evidence in support of their positions and I want to say from the outset in this discussion that there is no doubt that Ms Watt has provided good care for Sharon over the last nearly two years. What I need to do in my view is to analyse her reasons as to why she says Sharon should not return to the care of her father and the need to analyse those reasons in a context where all were agreed that the return would happen.

[54] By way of example at page 88 of the bundle, which is a family violence report from the incident in April 2014, the police have recorded that "Sharon has been living with Watt for the past six weeks while Tindall is busy at work. She is supposed to be staying for a few more months." At page 108 which is Ms Watt's affidavit, she said that she considered that Sharon's care should not be transferred "at this stage" and at page 110 in the same affidavit she says, "I do not think she should be taken to Australia until a proper investigation is carried out." So to be clear, and Ms Watt agreed this in the evidence, the deal was always at the time when Sharon came to New Zealand that she would be going back to Mr Tindall's care in Australia once his work contract had concluded.

[55] I need to assess Ms Watt's refusal in evidence, I accept not now in submission, to even entertain unsupervised contact against that background. In other words what has changed since the middle of 2014 which makes it no longer appropriate for Sharon to return to Mr Tindall's care and in particular what has he done which now, according to Ms Watt, disqualifies him from such care?

[56] Ms Watt's objections in 2014 were mainly around his living circumstances which I will deal with later. In cross-examination Ms Watt made a number of allegations about the standard of Mr Tindall's pre-2014 care but those allegations did not appear in the pleadings. Ms Watt expressed concerns about anger that Sharon had been exposed to but I have to note that there was no hint from any of the number of professionals who Sharon has been exposed to or worked with of that being an issue for her and I include lawyer for child, and Mr Garner, in that group of people.

[57] When I asked Ms Watt what would satisfy her that Mr Tindall's living circumstances were such that the original intention that Sharon could go back and

live with him could be followed through she said that if Mr Tindall was open to doing the Stopping Violence course. That appears at page 84 of the notes of evidence.

[58] At page 89 I suggested to Ms Watt that her position was that if Mr Tindall does not have any understanding or ownership or acknowledgement of what he has done wrong, how can he stop himself doing it again and she agreed that that was her position, at page 89.

[59] At page 114 she acknowledged that Mr Tindall as a good enough parent. At page 116 she confirmed that her criticism of Mr Tindall in terms of his conversations with Sharon about her were restricted to conversations connected to the current Court proceedings and care arrangements more generally but she acknowledged that she had not heard and neither had Sharon reported other occasions when on the telephone Mr Tindall had said derogatory things about her in a general sense.

[60] I gained the impression that the list of prerequisites which Ms Watt would require to be undertaken by Mr Tindall had grown during the course of the proceedings.

[61] Mr Tindall acknowledged his poor decision making. He acknowledged and explained the care arrangements in Australia. He acknowledged that Sharon needed a mum and saw Ms Watt, potentially his daughter Carmen and certainly Ms Yates as being able to contribute in those areas. He acknowledged that he had behaved badly. By way of example at page 191 line 28, "I make no bones, since this has happened to me I have handled this situation absolutely deplorably, I have not coped and I have not acted in an adult responsible manner, I own that completely. There have been times when my behaviour has not been in Sharon's best interests and I openly admit that."

[62] He was cross-examined in relation to the issue of ambivalence. At page 205 he explained that it was not that he did not wish to care for Sharon but that at times he had been overwhelmed particularly in the last two years by the Court process and

what was happening and had felt like giving up but had resolved to carry on for the sake of his daughter.

[63] He explained the contact with Tamia, Tammy as she is known and what was seen as child abuse by Ms Yates, when explained by Mr Tindall, was nothing of the sort. Sharon had been talking to Mr Tindall about her mother. Mr Tindall knew that Tammy was out of jail because Tammy's older daughter and Sharon had regular contact with each other. He made contact with Tammy. He gave her some photos or showed her some photos of Sharon and updated her as to her progress. He told her that if she wanted to have contact with Sharon that would have to be managed by the professionals and he spoke to Sharon's psychologist and passed on the name of Tammy's psychologist so that those discussions might take place if Tammy wished to pursue the issue of contact. He did not tell Sharon about the contact which he had had with Tammy.

[64] There can be absolutely no criticism of Mr Tindall for those actions. He perhaps unwisely gave, he thinks Tammy's daughter but it may have been Tammy, Ms Watt's phone number and Tammy made unannounced contact with Ms Watt over the telephone. He was unwise in doing that because he should have thought through the potential for harm.

[65] Mr Tindall acknowledged that he had made a poor decision in relation to Sharon coming to New Zealand. He told me at page 247 that with the benefit of hindsight he should have either attempted to persuade Ms Yates to honour the agreement she had made to care for Sharon while he was in Brisbane or he should have quit the job in Brisbane and come back to Melbourne and cared for Sharon there himself. He acknowledged Ms Watt's qualities as a parental figure at page 249. He told me that he trusted Ms Watt to look after Sharon appropriately. He said, "There is many things that she has done that I find absolutely wrong, I have used the word treachery and that but when the rubber hits the road Bella will definitely protect Sharon, I'd be a liar if I said she wouldn't, I wouldn't give my daughter to anyone I had doubts on about that, especially not internationally, she is with family."

[66] He acknowledged that Ms Watt would be the appropriate person to provide female guidance for Sharon especially during puberty and that is at page 257. He reiterated at page 261 that he had made an adult focused decision both in the decision to send Sharon to New Zealand and also his decisions not to avail himself of the opportunity for supervised contact when he was visiting New Zealand on two occasions prior to him moving back here in August of last year. That exchange is at 261.

[67] The evidence is that Mr Tindall does not generally have a reputation for a temper. Ms Fallon spoke of his reputation in that regard in her own observations but clearly in his family situation there are times when he has behaved inappropriately which he acknowledged.

[68] It is my view that the main reason why a protection order was made against Mr Tindall was that he lost control of his temper at the hearing in October 2014. He acknowledged that he did so. It is my view that Mr Tindall does need to adopt some strategies and get some education about his temper. He could not tell me quite what had changed for him since October of 2014 but he did contain himself during the hearing last week. It is clear that at times he felt angry but he managed to, within reason, contain himself which is in stark contrast to his behaviour of October 2014 and I have read the notes of evidence from that hearing and it is clear that Mr Tindall's concession that he "lost the plot" was a well justified concession.

[69] Having regard to all of the evidence I am of the clear view that there is nothing which disqualifies Mr Tindall from future involvement and unsupervised involvement in Sharon's care. There is nothing since October 2014 which could be considered abusive such that it would raise a s 5(a) safety issue, acknowledging that at times since that time Mr Tindall has behaved unwisely or inappropriately but I do note the comment I referred to earlier that Sharon told me that her father never got angry with her.

[70] The criticisms of Mr Tindall's care, for example excessive involvement with other persons, actually turn out to be overstated when the evidence supporting those concerns or criticisms is tested.

[71] It comes down to continuity versus the other s 5 and s 4 factors. Under 5(b) Mr Tindall is a parent. In terms of the 5(e) relationships issues it is my view that those relationships with wider family can be maintained regardless of the care arrangement I settle on because if Sharon stays with Ms Watt Mr Tindall can facilitate relationships with the members of her family with whom she does not get on and Ms Watt can maintain Sharon's relationship with Ruby Yates with whom Mr Tindall does not get on with.

[72] It is my view, having heard the evidence, that Mr Tindall despite his anger and his mistrust of Ms Watt has a slightly better ability to foster Sharon's positive regard for Ms Watt than the other way around and I say that because of his very clear and unequivocal acceptance without hesitation of the importance to Sharon of Bella's ongoing involvement in her life and that clear immediate and unequivocal acceptance was not I have to say reciprocated by Ms Watt.

[73] Under s 5(f) I have referred to the fact that Sharon is Australian. It is my view that because of Mr Tindall's links to Australia and perhaps more importantly at a practical level his work history and work prospects, he has more of an opportunity to maintain Sharon's cultural heritage because put simply he is more likely to be able to resource future holidays and visits to Australia than Ms Watt is.

[74] The other matter which I want to mention briefly is that in my view there is a risk and it is no more than that, that the ongoing conflict between Ms Watt and other members of her family could spill over and affect Sharon. There is the Watt family feud I think as one witness put it. There are also Carmen's current difficulties, the possibility that Ms Watt may have to assume a caregiving role for Carmen's children in some way or another. She already has assumed that in a significant way and disputes about those arrangements risk spilling over and affecting Sharon. I say that it is no more than a risk but it is a risk nonetheless.

[75] In the end the expert evidence and the law is not that continuity must be preserved over all other considerations. I cannot ignore that the settled care arrangement between 2010 and 2014 was Sharon being in the primary care of Mr Tindall and him providing more than adequately for her needs during that time. I

cannot overlook that the New Zealand care arrangement was intended by the parties and known by Sharon to be temporary.

[76] On a full examination of the circumstances there is nothing to justify not giving effect to the arrangements previously made, or put another way, on a balancing of the s 5 principles and all the other relevant considerations it is my very clear view that Sharon's welfare and interests are best served by her returning to the primary care of her father. There needs to be a transition but over a short period of time and I will deal with that shortly.

[77] In terms of the guardianship matters I am going to treat Mr Tindall as having made an oral application through Mr Story for appointment as a guardian under s 19 not under 29. Section 19 requires a father to be appointed on application for that purpose unless such an appointment is clearly not in Sharon's welfare and best interests. It is a different test for the appointment of a non-parent and there is simply no way that the threshold for non-appointment is anywhere near reached.

[78] In relation to Ms Watt I have given this anxious consideration. On the one hand Ms Watt has made guardianship decisions over the last two years and Mr Tindall makes no criticism of the decisions that she has made. On the other hand having regard to the background there is potential for tension in terms of guardianship responsibilities.

[79] I have weighed those matters up. In the end I need to acknowledge in my view the fact that Ms Watt and Mr Tindall are for the foreseeable future at least the persons who are going to play the parental roles in Sharon's life and for that reason it is my view that it is appropriate that Ms Watt is appointed as a guardian and I sincerely hope that with some assistance the parties can get to a point where they can co-operate over guardianship matters.

[80] I make the following orders and directions as a consequence of the decision that I have made:

- (a) Firstly, the interim parenting order which from my reading of the file there is only one, and that was made on 6 June 2014, is discharged.
- (b) There is an order appointing Mr Tindall as Sharon's guardian pursuant to s 19 of the Act.
- (c) There is an order appointing Ms Watt as an additional guardian pursuant to s 29.
- (d) The application for an order preventing removal from New Zealand is dismissed. It is not pursued. It was agreed that those issues could be dealt with by way of conditions attaching to the parenting order.
- (e) There is a new final parenting order. Firstly, in relation to a transitional phase which is between now and 15 July 2016, Sharon is to be in the day-to-day care of Ms Watt. Mr Tindall is to have contact as follows:
 - (i) On Sunday 24 April, that is this Sunday between 10.00 am and 4.00 pm, changeover at the [location deleted] and for the next three successive Sundays, that is 1 May, 8 May and 15 May.
 - (ii) From 10.00 am on Saturday 21 May until 5.00 pm Sunday 22 May, same changeover and for the next three successive weeks, that is 28 May, 4 June and 11 June.
 - (iii) From after school 17 June 2016 until at school 20 June 2016, changeover at school and for the following three weekends, that is, 24 June, 1 July and 8 July. However, as 8 July is in the school holidays the changeover at the end of the contact will be the [location deleted] 10.00 am.

- (f) Reasonable telephone contact.
- (g) Further or other contact as agreed.
- (h) The final phase is from 10.00 am Friday 15 July 2016, Sharon is to be in the day-to-day care of her father.
- (i) Ms Watt is to have contact as follows:
 - (i) During term time on a fortnightly cycle as follows:
 1. Week one, Friday after school until Monday at school.
 2. Week two, one day after school as agreed until 7.00 pm with Ms Watt dropping Sharon to Mr Tindall's home. If there is no agreement as to which day it is the default is Wednesday.
 - (ii) The fortnightly contact starts as week one on Friday, 29 July 2016.
 - (iii) If Sharon is in Ms Watt's care in a weekend which has a Friday or a Monday as a public holiday then her care of Sharon will extend to the Thursday after school or Tuesday at school, as required.
 - (iv) In each of the term holidays one, two and three, she will have contact from the Friday after school at the end of the school term until 5.00 pm on the following Friday, changeover [location deleted].

- (j) Summer holidays will be dealt with as follows:
 - (i) Firstly, the summer holiday period is defined as being from the end of the school year until the Friday before the start of the new school year.
 - (ii) In even numbered years Mr Tindall will have Sharon in his care from the end of school until 10.00 am on Boxing Day. Ms Watt will have Sharon in her care from 10.00 am on Boxing Day until 10.00 am on 31 December, New Year's Eve.
 - (iii) The balance of the summer holidays will be divided equally on a week about basis as agreed. In default of agreement in even numbered years Mr Tindall's care will commence on 31 December and then alternating weekly thereafter.
 - (iv) That arrangement will alternate in odd numbered years so that Ms Watt will have Sharon in her care from after school until Boxing Day.
- (k) If Father's Day and Valentine's Day fall on days when Sharon is not otherwise in her father's care, he is entitled to have her in his care between 10.00 am and 5.00 pm.
- (l) Each of the parties is entitled to spend time with Sharon on her own birthday.
- (m) Ms Watt is entitled to reasonable phone contact and such further or other contact as is agreed.

[81] There are a number of conditions which attach to contact:

- (a) Firstly, neither party shall be under the influence of alcohol to the extent that they would not legally be able to drive a motor vehicle at any time when Sharon is in their care.

- (b) Secondly, neither party shall use non-prescription drugs, that is drugs which have not been prescribed to them by a medical practitioner, during a period of time when Sharon is in their care or in the 12 hours immediately preceding a time when Sharon is in their care.
- (c) Neither party shall comment in a derogatory way to Sharon about the other party, nor shall they allow Sharon to be exposed to such comments by others and this prohibition extends to discussions about care arrangements which are not initiated by Sharon herself.
- (d) Mr Tindall is to engage with and complete a parenting programme. I extend Ms Dewar's brief for the purposes of identifying a suitable programme and I expect that that programme if availability does not preclude it, will have been commenced before Sharon comes into Mr Tindall's full-time care.
- (e) Mr Tindall is to complete a stopping violence programme but need not enrol for one until after 25 July 2016.
- (f) Sharon's place of residence is to be Wellington, New Zealand.
- (g) Sharon is to attend [name of school deleted] unless the parties agree otherwise in writing.
- (h) Mr Tindall is not to take Sharon to Alison Watt's home in [location deleted] for an overnight visit before 10 October 2016. Of course if he does take her to Ms Watt's home he is subject to the condition about not exposing Sharon to derogatory comments about Bella Watt.
- (i) There is a further condition to the parenting order; that is that the party with whom Sharon is being cared for at the relevant time shall ensure that Sharon continues to be engaged in her current Skylight counselling and any other therapeutic interventions recommended by that organisation or Child, Adolescent Mental Health Service.

- (j) Mr Tindall is to be personally responsible for Sharon's before and after school care, until at least the beginning of term one, 2017.
- (k) There is a restriction on travel overseas for Sharon without the written consent of both parties, which will be filed to enable the release of the passport. Such consent is not to be unreasonably withheld. If there is any issue about a proposed holiday, the parties should file their proposal, counter-proposal and reasons and I will deal with that on a chambers hearing basis. In any event, there is to be no overseas travel before Christmas 2016.
- (l) If there are significant issues arising as a consequence of my decision being communicated to Sharon, Ms Dewar may revert to the Court. I will give counsel the opportunity to be heard by memoranda and I will make a chambers decision about any necessary guardianship directions in terms of Sharon accessing appropriate support to deal with that decision.
- (m) A valid passport for Sharon is to be obtained and filed at the Family Court.

[82] Ms Dewar is requested to convey this decision to Sharon.

[83] If Ms Dewar takes the view that it would be helpful for me to meet with Sharon, then she can liaise with the registry to make the appropriate arrangements.

[84] By consent, I make a referral to specialist counselling under s 46G of the Act. I authorise the provision of 12 sessions and I authorise the counsellor to include other persons, specifically Sharon if the counsellor believes that that would be appropriate. The purpose of the counselling is to improve the parties' communication and to assist with implementation of the order I have just made.

[85] I do not consider this an appropriate case for inter-partes costs and costs will lie where they fall.

[86] In relation to cost contribution orders Ms Watt is legally aided. In accordance with the High Court decision in *Re Karaka* [2016] NZHC 183 I am not able to make a cost contribution against her.

[87] In relation to Mr Tindall he is not legally aided, however, the circumstances of this case are such that I consider it would be clearly inappropriate to order him to pay the prescribed proportion of Court incurred costs and, pursuant to s 135A(5) of the Act, I reduce the amount payable by Mr Tindall in relation to those costs to the amount of \$1.

[88] I extend Ms Dewar's brief at my request to draft an order for ceiling in consultation with counsel.

[89] Mr Tindall, do not see this as a victory because Sharon needs Ms Watt in her life and you need to find a way of putting aside your sense of injustice so that you and she can work together for Sharon's benefit because, if you do not do that, Sharon will suffer. And you need to make sure that you do not align yourself with people who attack Ms Watt for whatever reason because if you go around and gloat about this and involve Alison Watt in it and all of those sorts of things and Bella gets to hear about it then she will come back to the Court, justifiably, and say, "This man is not helping my relationship with Sharon," and if that is established then you risk those care arrangements that you have fought so hard and so long for being reversed.

[90] Ms Watt, I know this is not the decision you wanted but I do want to acknowledge that the Court and Mr Tindall and, most especially Sharon, owe you a debt of gratitude for what you have done for Sharon over the last couple of years. So I thank you for what you have done and I acknowledge that your application has been brought with good motives and good intentions and I do want to acknowledge that.

T M Black
Family Court Judge