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ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO
11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER
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**IN THE FAMILY COURT
AT WHAKATANE**

**FAM-2015-087-000122
[2016] NZFC 2689**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	LINCOLN BUKOWSKI Applicant
AND	FELICITY ESTERS First Respondent
AND	MARK FLETCHER Second Respondent

Hearing: 31 March 2016

Appearances: B Lewis for the Applicant
K Kumar for the First Respondent
A Spencer for the Second Respondent
J Kay as Lawyer for the Child

Judgment: 31 March 2016

ORAL JUDGMENT OF JUDGE S D OTENE

[1] These proceedings concern Chloe Fletcher born on [date deleted] 2006, now aged nine. She is the daughter of Mark Fletcher and Felicity Esters.

[2] Whilst there is some dispute as to the exact timing, Chloe has, since at least 2012, been in the care of Lincoln Bukowski and until her passing in January last year, the care also of Mr Bukowski's partner Anya Marlow. Ms Marlow and Ms Esters were best friends and as I understand it, Ms Marlow and Mr Fletcher are whanaunga.

[3] Mr Bukowski is present in Court with his lawyer Ms Lewis. Mr Fletcher is present in Court with his lawyer Ms Spencer. Ms Esters is not present, however, her lawyer Ms Kumar attends with instructions from Ms Esters. Finally, Mr Kay attends Court as lawyer for Chloe.

[4] By way of background, Mr Bukowski initiated proceedings under the Care of Children Act 2004 in August last year. A judicial settlement conference was held on 16 February 2016, at which an interim parenting order was made by consent providing for Chloe to be in Mr Bukowski's day-to-day care and for unsupervised contact between Chloe, Mr Fletcher and Ms Esters. It was anticipated that in the absence of any concerns arising, that order would become final in six months.

[5] On 29 February, Ms Esters made a without notice application to discharge the interim parenting order and for a parenting order, as to day-to-day care in her favour.

[6] The basis of her applications was that she had learnt that Mr Bukowski had been charged with male assaults female in relation to an incident on 1 February and a second charge of wounding with intent to cause grievous bodily harm in relation to an alleged incident on 16 February.

[7] At that time, due to her concerns, Ms Esters had withheld the care of Chloe, contrary to the terms of the interim parenting order. Mr Bukowski therefore applied, on the same day, for a warrant. The applications by Ms Esters and Mr Bukowski were both declined on a without notice basis and came before Judge Coyle at a

directions conference on 16 March. He made a detailed minute outlining the complexities of the matter, which I attempt to summarise as follows:

There are allegations of serious violence against Mr Bukowski and that Chloe was present on one occasion. Except for Mr Bukowski, none of the parties in these proceedings can give direct evidence as to the alleged incidence, so as Judge Coyle pointed out, it is difficult for this Court to make any determination of the factual issues, so as to then inform any sort of risk assessment. It would seem that ultimately, those matters will need to be determined in the criminal jurisdiction whether they are resolved by trial or by Mr Bukowski pleading guilty. This Court could then have regard to those determinations when considering longer term arrangements for Chloe.

[8] Against that background, a one hour hearing was directed today, not to determine the factual issues in dispute, but for the narrow purpose of determining whether there should be any variation to the interim parenting order to ensure that Chloe remains safe.

[9] I should also add that, for the sake of completeness, that upon receipt of lawyer for child's memorandum of 18 March, a warrant was issued to effect the return of Chloe to Mr Bukowski. It was not necessary to execute that warrant and as I understand, Chloe is now in the care of Mr Bukowski.

[10] The situation today is that for Ms Esters, her situation has changed. At the time of the settlement conference, it was anticipated that should be returning to Australia to reside and that is reflected in the terms of the contact recorded in the interim parenting order. She now intends to remain permanently in New Zealand and so, seeks to have her contact with Chloe defined.

[11] Mr Fletcher's position is that he wishes to preserve his contact with Chloe as had been provided for in the interim parenting order. Mr Kay has set out Chloe's views in his memorandum of 18 March. It emerges clearly that Chloe has been distressed by recent events and the dynamics between the important adults in her life. She did not express a concern about being in the care of Mr Bukowski. Her

greatest concern is that she may be prevented from seeing the adults who she cares about.

[12] Counsel have undertaken some discussions this morning and taken instructions from their respective clients. As a result of that, I am being invited to amend the interim parenting order to provide for Chloe to have direct contact with Ms Esters, as well as continuing direct contact with Mr Fletcher.

[13] There is consent, at this stage, for Chloe to remain in the day-to-day care of Mr Bukowski. I am persuaded on the information available to me at this stage that such an arrangement with appropriate protective conditions in place, is in Chloe's welfare and best interests.

[14] I take into account in particular, the upheaval for her over recent events and that if her parents and Mr Bukowski are in a position to now ensure that her care and contact proceeds in a smoother fashion, that is to her advantage. It also means that there is ongoing oversight by all the important adults of the position for Chloe.

[15] That is not to say that I am satisfied that there is no risk to Chloe in terms of the current arrangements. Although Mr Bukowski denied the use of serious violence, a common feature of both alleged incidents is his presence at social gatherings that have seemingly got out of control, possibly fuelled by alcohol. That Mr Bukowski has recently engaged in counselling to address alcohol and grief issues is to his credit but it also suggests that alcohol is an issue for him.

[16] The evidence does not suggest that Chloe is at physical risk from Mr Bukowski. What I am concerned about is his ability to exercise good judgment that ensures that Chloe is not exposed to violence or placed in social situations that are inappropriate for a child of her age.

[17] In terms of a way forward, I propose to request a report from a social worker so that when the interim order is due for review in August, there is some independent information before the Court so that it is better placed to make a safety assessment

because the likelihood is that the criminal proceedings may not have been resolved by that time.

[18] With all that, I make the following orders and directions:

- (a) The interim parenting order made on 19 February is varied as to Chloe's contact with Ms Esters and Mr Fletcher as follows:
 - (i) On a three week cycle during school term times, Chloe shall have contact with Ms Esters on the first weekend of that cycle, commencing 4 April 2016, from afterschool on Friday until Sunday at 4.00 pm.
 - (ii) On the second weekend of that cycle, Chloe shall remain in the care of Mr Bukowski. On the third weekend of that cycle, Chloe shall have contact with Mr Fletcher from 4.00 pm on Friday until 4.00 pm on Sunday.
 - (iii) During school term holidays, Chloe shall have contact with Mr Fletcher for the first five nights, commencing on the first such Saturday being 16 April 2016. For the next five nights Chloe shall be in the care of Ms Esters. For the balance of the term holiday period, Chloe shall be in the care of Mr Bukowski.
- (b) The order shall be further varied by the addition of the following conditions, to those already recorded:
 - (i) First, any changeovers involving Ms Esters' contact with Chloe, if not at school, shall occur at [location deleted].
 - (ii) Changeovers involving Mr Fletcher's contact shall occur by direct arrangement between Mr Fletcher and Mr Bukowski.

- (iii) There is a further condition that none of the parties will be under the influence of alcohol whilst having the care or contact of Chloe and will ensure that she is not in the presence of any third parties so influenced.

- (c) There shall be a s 132 social worker's report with the following brief:
 - (i) To consider whether there are any concerns arising for Chloe in the care of Mr Bukowski, particularly in the light of circumstances surrounding his pending criminal charges and to consider whether there are any concerns for Chloe whilst she is having contact with Mr Fletcher or Ms Esters.
 - (ii) To recommend any supports for Chloe or the parties to promote their care or contact with Chloe.
 - (iii) To provide details of any police involvement with Chloe or any of the parties and if possible, the criminal convictions of any of the parties to these proceedings.

- (d) Finally, I confirm that in accordance with the interim order as it was made on 16 February 2016, this order is to be reviewed in six months' time, that is by 16 August 2016. The matter is to be referred to Judge Somerville in chambers as she directed.

- (e) Lawyer for child is requested to file an updated memorandum prior to the review date to recommend whether the order should be made final or to seek any further directions to progress the matter.

S D Otene
Family Court Judge