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**IN THE FAMILY COURT  
AT MANUKAU**

**FAM-2015-092-000124  
[2016] NZFC 4578**

IN THE MATTER OF      THE CARE OF CHILDREN ACT 2004  
  
BETWEEN                      OLLIE WELCH  
   Applicant  
  
AND                              LORETTA BRIGGS  
   Respondent

Hearing:                      24 May 2016

Appearances:              EM Gibbs for the Applicant  
   K Leys for the Respondent  
   DM Tagelagi as Lawyer for the Child

Judgment:                   8 June 2016 at 11.00 am

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**RESERVED JUDGMENT OF JUDGE A J TWADDLE  
[As To Contact Arrangements for Child]**

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[1] This case is about parenting arrangements for Keeley aged two.

[2] Ms Briggs and Mr Welch were in a relationship between 2011 and November 2014.

[3] Since the separation Keeley has lived with her mother, Loretta Briggs. There are no orders in force. Ms Briggs and Keeley's father, Ollie Welch agree that Keeley should remain in Ms Briggs' care and that a final parenting order as to day-to-day care should be made in Ms Briggs' favour.

[4] Keeley attends [name and location of preschool deleted] every Tuesday, Wednesday and Thursday from 8.30 am to 4.00 pm. There was an issue about which preschool Keeley should attend but Mr Welch now agrees to her remaining where she is.

[5] The issues are:

- (a) Whether there are safety concerns for Keeley in the care of Mr Welch;
- (b) What arrangements for contact between Keeley and Mr Welch would best meet Keeley's welfare and interests.

### **Legal principles**

[6] Section 48 of COCA gives the Court power to make a contact order. The power must be exercised on a principled and reasonable basis. The principles to be taken into account are set out in ss 4 and 5 of the Act.

[7] The overriding principle, set out in s 4, is that the welfare and best interests of the child are the first and paramount consideration. Section 4 also provides that the conduct of either of the parents can be considered only to the extent that it is relevant to the child's welfare and best interests.

[8] The relevant s 5 principles are:

- (a) A child's safety must be protected, and, in particular the child must be protected from all forms of violence, from all persons including members of his or her family;
- (b) A child's care, development and upbringing should be facilitated by ongoing consultation and cooperation between his or her parents, guardians and any other person having a role in his or her care;
- (c) A child should have continuity in his or her care, development and upbringing;
- (d) A child should continue to have a relationship with both of his or her parents, and a child's relationship with his or her family group should be preserved and strengthened.

### **Safety issues**

[9] Ms Briggs' evidence was that Mr Welch had a serious alcohol problem. He has a conviction for drink driving and her parents told her that he had gone to their home on occasions for contact smelling of alcohol and with bloodshot eyes. Ms Briggs deposed to her concern about the use of alcohol by Mr Welch's parents, but no longer has a concern about this or any other aspects of Keeley's safety in the home of Mr Welch's parents.

[10] Ms Briggs said Mr Welch had become angry with her during their relationship, and had pushed her and scratched her, verbally abused her, prevented her from leaving a room, punched holes in a bedroom wall to intimidate her and had broken a set of drawers. Also he had assaulted her father.

[11] Mr Welch denied having an alcohol problem. He had self referred to CADS and a report dated 25 June 2015 said he appeared to be maintaining, "sensible limit drinking" based on his reported alcohol use over a period of 12 months. No further CADS involvement was considered necessary.

[12] Mr Welch was 18 when he was convicted on a drink driving charge (he is now 23); he said “Loretta and I argued and I had to leave the house and got stopped at a checkpoint”. Now, he said, he just drinks occasionally and not excessively. He does not drink after rugby games or practices, although he did drink recently at a friend’s stag party.

[13] Mr Welch “strongly denied” there had been any violence between himself and Ms Briggs; he had not been physically abusive towards her in any way. There was an incident of violence between himself and Ms Briggs’ father in November 2014, when Mr Briggs grabbed him and he pushed Mr Briggs. He said Ms Briggs had verbally abused him, sworn at him and told him how useless he was.

[14] There is insufficient evidence as to time, place and context in respect of Ms Briggs’ allegations that Mr Welch used violence against her to enable me to conclude that Keeley would be at risk of physical violence in Mr Welch’s care. There was an incident in November 2014 in which Mr Welch used physical force against Ms Briggs’ father, but this was likely to have been in the context of the separation of Mr Welch and Ms Briggs and the incident does not affect my assessment of risk to Keeley.

[15] I find that when he was younger, Mr Welch drank to excess, as is demonstrated by his conviction for drink driving. I accept his evidence that he has moderated his use of alcohol since then. I find that any risk to Keeley as a result of Mr Welch’s drinking when she is in his care to be low, and that the risk can be managed by a condition on any contact order that Mr Welch is not to consume alcohol when Keeley is in his care.

### **Contact arrangements**

[16] Keeley was aged ten months when Ms Briggs and Mr Welch separated. Ms Briggs took Keeley to visit Mr Welch about eight times between November 2014 and February 2015, on each occasion for about three hours. Between April and November 2015 Mr Welch had contact at Ms Briggs’ house, sometimes in her presence. He began having unsupervised contact at his parents’ home in December.

Christmas arrangements were agreed and worked well. From 18 January Mr Welch began having contact each Saturday from 8.00 am to 6.00 pm. The contact increased on 5 March to Saturday 8.00 am to 6.00 pm in week one, and Saturday and Sunday from 8.00 am to 6.00 pm in week two.

[17] Keeley's weekly routine is that she is cared for by her maternal grandmother on Mondays (Ms Briggs is at work), attends daycare on Tuesday, Wednesday and Thursday and is cared for by Ms Briggs on Friday.

### **Proposals**

[18] Mr Welch's proposal is that he should have contact on a two weekly cycle; in week one on Sunday from 8.00 am to 6.00 pm and in week two from 8.00 am Saturday until 6.00 pm Sunday (one night) for the first four weekends of overnight contact, then extending to 6.00 pm Friday until 6.00 pm Sunday (two nights).

[19] Ms Briggs wants the arrangement to remain as it is.

### **The evidence**

[20] In his affidavit evidence Mr Welch said:

- (a) He has a girlfriend, a good job, does not take illegal drugs, has no convictions except the drink driving conviction in 2012, lives with his parents where Keeley has a bedroom, plays rugby and enjoys an occasional night out with his mates;
- (b) He has a strong relationship with Keeley and believes she feels safe and secure in his care;
- (c) As Keeley's father, he would like to play an important role in her life and believes his contact proposal would ensure their relationship is maintained and developed;

- (d) Ms Briggs is an excellent mother, but she is inclined to be over-cautious and over-restrictive in the contact she has allowed him and in the rate at which she has allowed contact to increase;
- (e) He completed a Parenting Through Separation course on 29 June last year.

[21] In his oral evidence Mr Welch accepted that he and Ms Briggs “communicate badly”. There are “no communication boundaries” and there had been quite a few mix ups as a result. They could communicate by text, but he had not done so in the past because “they were not on the same page from the start”. On one occasion he had returned Keeley early without telling Ms Briggs (he was going to a mate’s stag do and expected someone to be at Ms Briggs’ home); he had gone away for a week and did not tell Ms Briggs he would not be available for contact on 14-15 May (Ms Briggs had lost a day’s wages as a result). He could not say why he had done this and accepted he needed to be more upfront. Recently he misunderstood whether he was to have contact (he texted Ms Briggs at 7.30 am and woke the household up; it was not his contact day).

[22] Mr Welch said that when he played rugby on Saturday afternoons, his parents could look after Keeley; she could go to watch him depending on the weather.

[23] Ms Briggs’ affidavit evidence was:

- (a) She accepts Mr Welch loves Keeley and that Keeley is happy to go with him;
- (b) She has been reluctant to increase contact because Keeley has shown signs of stress with respect to contact, developing eczema and disturbed sleep patterns. Also she has been constipated and very unsettled after contact;
- (c) She had agreed to extend contact on one occasion but Keeley came home very tired and unsettled;

- (d) While she accepts that at some stage Keeley will have to have overnight contact, she would not agree to contact increasing to overnight contact until she is certain Keeley would be able to cope;
- (e) When she and Mr Welch were living together, he spent little time with Keeley, choosing instead to spend time with his mates playing football and socialising;
- (f) Keeley does not have a comfortable relationship with Mr Welch because he has spent so little time with her;
- (g) She has not yet done the Parenting Through Separation programme because she works long hours but she intends to do the programme.

[24] In her oral evidence Ms Briggs said the lack of communication between herself and Mr Welch has been going on for 15 months and is frustrating for her; they needed to communicate better for Keeley's sake. She preferred to talk face to face. Texting is a good backstop. She did not think a communication book was necessary. While she would agree eventually to overnight contact, she is opposed to this at present because she wants to keep Keeley in a good routine, and Keeley is unsettled when she comes back from contact. She has to spend two hours trying to figure out what is wrong with her and how she can settle.

[25] Ms Briggs does not trust Mr Welch sufficiently at present to try overnight contact. She did not agree she was being over-protective; Keeley had come back from contact tired and cranky, with dirty clothes, no pants and on one occasion her toenail "had been half ripped off" and she was "constipated all the time". She did not agree to Keeley going to rugby.

### **Discussion and decision**

[26] I find that the circumstances of the separation caused the relationship of Ms Briggs and Mr Welch to become highly mistrusting, especially on the part of Ms Briggs, which has affected their ability to communicate effectively about Keeley.

[27] Ms Briggs' mistrust of Mr Welch has made her very cautious about his contact with Keeley, and Mr Welch has not improved the situation by his somewhat cavalier attitude towards contact arrangements.

[28] Both parents were young when Keeley was born. They have allowed issues between themselves and their desire to meet their own needs (particularly in the case of Mr Welch) to cloud their view about what is in Keeley's welfare and interests.

[29] Keeley is young but is likely to have formed a positive attachment with Ms Briggs.

[30] Dealing with the relevant s 5 principles, I have found that there is insufficient evidence to conclude that Keeley would be at risk of physical violence in the care of Mr Welch, and that any risk to Keeley as a result of his drinking can be managed by a condition that he is not to consume alcohol while Keeley is in his care.

[31] While Ms Briggs and Mr Welch have been able to agree that Keeley is to be in the day-to-day care of Ms Briggs and that she is to remain at her present preschool, their inability to consult or communicate effectively is a major problem, which has caused disruption to contact arrangements and, in all likelihood, unsettlement to Keeley. To assist with their communication, I consider they should undertake communication counselling.

[32] The agreement that Keeley is to remain in Ms Briggs' day-to-day care and have contact with Mr Welch will provide continuity for her.

[33] Mr Welch's proposal for an increase in contact to overnight contact would assist in developing Keeley's relationship with Mr Welch and her paternal grandparents. If the current arrangement continues for an indeterminate period, Keeley's relationship with her father and paternal family would be preserved but is not likely to be strengthened. This factor favours an increase in contact.

[34] Dealing with Keeley's overall welfare and best interests, I take into account Ms Briggs' concerns about her being unsettled, constipated, dirty and not properly



dressed when she returns from contact, but I consider the advantages to Keeley in the long term of being able to maintain and strengthen her relationship with her father and paternal family outweigh these disadvantages.

[35] Taking into account Keeley's age, I accept Ms Tagelagi's submission that contact should be extended, but more gradually than proposed by Mr Welch, with a review in three months.

### **Orders**

[36] I make the following orders:

- (a) An interim parenting order providing that Keeley is to be in the day-to-day care of Ms Briggs, on condition that Ms Briggs completes a Parenting Through Separation programme within three months;
- (b) An interim parenting order as to contact, providing that Mr Welch is to have contact on a two weekly cycle:
  - (i) In week one on Sunday from 8.00 am to 5.00 pm;
  - (ii) In week two from 8.00 am Saturday until 5.00 pm Sunday;
- (c) The interim parenting order as to contact is on condition that Mr Welch does not consume alcohol while Keeley is in his care;
- (d) Ms Briggs and Mr Welch are to undertake communication counselling;
- (e) The proceedings are adjourned to a settlement conference in three months for discussion about long term contact arrangements.

Family Court Judge