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**IN THE FAMILY COURT
AT TE AWAMUTU**

**FAM-2010-063-000232
[2016] NZFC 3703**

IN THE MATTER OF THE DOMESTIC VIOLENCE ACT 1995

AND

IN THE MATTER OF THE CARE OF CHILDREN ACT 2004

BETWEEN TOM CRUSAN
 Applicant
 LACEY WILLIAMS
AND Respondent

Hearing: 8-10 March 2016
 18 March 2016

Appearances: R Senar for the Applicant
 E Pearson for the Respondent
 M Roots as Lawyer for the Children

Judgment: 8 June 2016 at 10.00 am

**RESERVED JUDGMENT OF JUDGE A J TWADDLE
[Parenting Arrangements and Application for Relocation of Child]**

[1] This case is about parenting arrangements for Zoe aged nine. Her mother, Lacey Williams wants to relocate her to [Overseas location 1 deleted]. Her father, Tom Crusan does not agree; he wants her to remain in his care near [location 1 deleted].

Background

[2] Having started living together in about 1998, Ms Williams and Mr Crusan married in 2001.

[3] Ms Williams had three children from previous relationships, Fred then aged twelve, Emily then aged four and Eamon then aged three.

[4] In addition to Zoe, Ms Williams and Mr Crusan are the parents of Angel, who was aged 21 months when they married.

[5] Fred went to live with his father in 1995. Emily, Eamon and Angel were living with Ms and Mr Crusan when they married.

[6] The history of the family is marked by a pattern of transience, dysfunction, deficiencies in the parenting of both parents and significant CYFS involvement.

[7] At the start of their relationship Ms and Mr Crusan lived near [location 1 deleted] where Mr Crusan worked [details deleted]. They moved from this address after about 18 months to a house between [location 2 deleted] and [location 1 deleted] and then, after about six months, to a house in [address 1 deleted].

[8] Ms and Mr Crusan then separated. Ms and the children moved to [location 1 deleted] where Mr Crusan joined them after about three months. They then moved to [address 2 deleted].

[9] In March 2004 a general practitioner made a report of concern to CYFS that Emily had been sexually abused by Mr Crusan. Mr Crusan moved out of the home

but within a matter of weeks reconciled with Ms Williams and the family moved to [location details deleted] near [location 3 deleted].

[10] In September 2006 a report of concern was made to CYFS by a police officer that Emily had been sexually abused by Mr Crusan. Ms Williams and Mr Crusan separated. Ms Williams and the children moved to Otorohanga. After about six months Ms Williams and the children joined Mr Crusan, who had moved to [name of town 1 deleted].

[11] Zoe was born on [date deleted] 2006.

[12] In June 2008 a report of concern was made to CYFS that Mr Crusan had punched Emily and Eamon. The children were removed from the care of Ms Williams and Mr Crusan. Subsequently a declaration was made, together with a custody order in favour of the Chief Executive.

[13] A final protection order was made in Ms Williams' favour in October 2008. Mr Crusan took no steps in the proceedings.

[14] The children returned to Ms Williams' care in an "unplanned transition" in November 2008.

[15] Ms Williams and Mr Crusan then separated. Ms Williams and the family moved to Rotorua.

[16] The custody order in favour of the Chief Executive was discharged in October 2010 and, under COCA, a parenting order as to day-to-day care was made in respect of Angel and Zoe in favour of Ms Williams. A parenting order as to contact was made in Mr Crusan's favour on various conditions, including that his contact was to be supervised and he was to undertake a SAFE assessment.

[17] Following a report of concern to CYFS about Mr Crusan having unsupervised contact, a FGC was held in 2011. The conference agreed that Mr Crusan would continue to have supervised contact as directed by the Court.

Following the conference Emily, who was developing difficult behaviours and was involved with Mental Health Services, went to live with other family members.

[18] Later in 2011 Ms Williams and Mr Crusan reconciled. Ms Crusan and the children moved to [name of area deleted] in the [location 1 deleted] district and by the end of the year, resumed living together in the same house with Mr Crusan.

[19] In 2012 Ms Williams and Mr Crusan separated. Ms Williams and the family moved briefly to [name of town 1 deleted] and then back to [name of town 2 deleted]. Ms Williams and Mr Crusan resumed their relationship, although they did not live together.

[20] Emily's behaviour became too difficult for her carers and she returned to Ms Williams' care in 2012. Her behaviour difficulties continued and in 2013 a report of concern was made to CYFS that she had been assaulted by Mr Crusan. After CYFS intervention, she began living independently.

[21] Early in 2014 Ms Williams, Eamon, Angel and Zoe moved to [overseas location 2 deleted] , on the basis Mr Crusan would join them [details deleted]. In [overseas location 2 deleted] Ms Williams met Walter Gates and they began living together in March 2014. Ms Williams advised Mr Crusan of this in April and he went to [overseas location deleted] in May to find out what was going on. Following an incident in which Ms Williams assaulted Eamon, the children said they wanted to return to New Zealand. Ms Williams agreed to this. Mr Crusan and the children returned to New Zealand on 2 May 2014. Ms Williams has returned to New Zealand nine times since leaving in 2014.

[22] In June 2014 a report of concern was made to CYPFS that Zoe was sharing a bed with Mr Crusan and Angel had been drunk. On investigation Mr Crusan accepted Zoe slept in his bed. Angel told a social worker she drank beer but did not get drunk. No further action was taken by CYPFS as the children reported being happy in Mr Crusan's care.

[23] In August 2014 a report of concern was made to CYPFS by a member of the police that Angel (then aged 14) had sex with a 19 year old while intoxicated. No further action was taken as Angel reported having consensual sex and Mr Crusan, who had supplied Angel with alcohol, was found to have implemented appropriate boundaries.

[24] In October 2014 there was an incident in which Mr Crusan assaulted Emily. Mr Crusan was interviewed by police; he said the incident had occurred in the context of him removing Emily from his address to protect his younger children. No further action was taken by CYPFS.

[25] Later in 2014 Mr Crusan's mother, Sharon Bea moved from [overseas location deleted] to live with the family.

[26] The parenting order in favour of Ms Williams was suspended, and an order preventing removal of Angel and Zoe from New Zealand, was made on 5 December 2014.

[27] In June last year a parenting order as to contact was made in favour of Ms Williams. The order relevantly provides that Ms Williams is to have contact for the first week of each school holidays at Fred Dixon's home, on other weekends in New Zealand as agreed from time to time, by Skype and telephone every Wednesday between 6.30 pm and 7.00 pm and at such other times as are agreed.

[28] The order preventing removal of Angel from New Zealand was discharged in July last year and she went to live with Ms Williams in [overseas location 1 deleted] where she remains.

The proceedings

[29] The proceedings were allocated a two day fixture, but before the hearing, Ms Williams and Mr Crusan signed a consent memorandum. It was proposed that:

- (a) The non removal order would be discharged;

- (b) Zoe would be in the day-to-day care of Mr Crusan;
- (c) Ms Williams would have defined contact in the school holidays in [overseas location deleted] or New Zealand, with the cost of air travel being shared equally and by Skype and telephone.

[30] The hearing proceeded with Mr Roots cross-examining Ms Williams and Mr Crusan. Before the cross-examination had been completed, Ms Williams changed her position and resiled from the proposed agreement, contending that Zoe should be in her day-to-day care in [overseas location 1 deleted]. Counsel were then given the opportunity to cross-examine both parties and I also heard evidence from Ms Bea, Mr Gates and a psychologist, Ms Phipps.

The issues

[31] The issues are:

- (a) Whether Zoe should remain in the day-to-day care of Mr Crusan;
- (b) Whether Zoe should be in the day-to-day care of Ms Williams and relocate to [overseas location 1 deleted];
- (c) Contact arrangements.

Legal principles

[32] The purpose of the Care of Children Act is to promote children's welfare and best interests, and facilitate their development, by helping to ensure that appropriate arrangements are in place for their guardianship and care.

[33] Section 48(1) of the Act gives the Court the power to make a parenting order, determining the time or times when specified persons have the role of providing day-to-day care for, or may have contact with, a child.

[34] Section 44 of the Act provides that if two guardians of a child are unable to agree on any matter relating to their guardianship, either may apply to the Court for its direction. On such an application the Court may make any order relating to the matter that it thinks proper. A change to a child's place of residence that may affect the child's relationship with his or her parents or guardians is a guardianship issue: see ss 16(1) and (2) of the Act.

[35] The power conferred on the Court by ss 48 and 44 of the Act must be exercised on a reasonable and principled basis. The principles to be taken into account are set out in ss 4 and 5 of the Act.

[36] The overriding principle is contained in s 4(1) and is that the welfare and best interests of the child must be the first and paramount consideration.

[37] Further, s 4 provides:

- (a) An individualised assessment of the particular child in his or her particular circumstances must be made;
- (b) A parent's conduct is to be considered only to the extent (if any) that it is relevant to the child's welfare and best interests;
- (c) No gender bias is presumed in determining what is in the child's welfare and best interests.

[38] Section 5 of the Act sets out a number of principles which, so far as they are relevant, must be taken into account. The relevant principles in this case are:

- A child's safety must be protected, and, in particular, a child must be protected from all forms of violence (as defined in s 3(2)(5) of the Domestic Violence Act 1995) from all persons, including members of the child's family...(s 5(a));
- A child's care, development and upbringing should be primarily the responsibility of his or her parents and guardians (s 5(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 under a parenting or guardianship order (s 5(c));
- A child should have continuity in his or her care, development and upbringing (s 5(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 (s 5(e)).

[39] Section 6 of the Act provides that a child must be given reasonable opportunities to express views on matters affecting the child, and any views the child expresses (either directly or through a representative) must be taken into account.

[40] Zoe had the opportunity of talking to Ms Phipps and Mr Roots and I met her during the course of the hearing. I am satisfied that she has had reasonable opportunities to express her views.

[41] In *Kacem v Bashir* [2010] NZSC 112 at [23], the Court identified the general issue in relocation cases as:

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 children's best interests are thereby better served.

[42] At [24] the Court said that:

Everything would depend on an individualised assessment of how the competing contentions can 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 factors 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.

[43] The Court at [42] approved the approach taken by the Court of Appeal, which involved a comparison of the factors raised for and against relocation.

[44] Elias CJ identified the approach to be taken as follows:

In a case where one parent proposes to take a child to live at a distance from the other parent (or other family members of importance to the child), the statutory context provided by s 5 in practice will require consideration of whether the relationship with the other parent (or other family) will be disrupted or adversely affected. If so, and depending on the degree of disruption or adverse effect, it is likely that there will have to be other factors which could permit the conclusion that, notwithstanding the disruption of the relationship, the welfare and best interests of the child favour the change. Similar assessments will be required in cases where a change will disrupt continuity and arrangements for the child's care, development and upbringing (s 5(b)), or strained relationships between the child and other family members (s 5(d)). Change that would disrupt settled arrangements and important relationships prompts justification by other considerations if the paramount consideration of the welfare and best interests of the child is to be fulfilled.

[45] I also take into account the principles referred to in *Stadnickzenco v Stadnickzenco* [1995] NZFLR 493 (CA) and *D v S* [2002] NZFLR 115 (CA) and particularly the following:

- (a) Freedom of movement is an important value in a mobile community (although a parent's freedom of movement is relevant only within the overall context of what is in the best interests of the child);
- (b) Determining what will be in the best interests of the child is necessarily a predictive assessment as it is a decision about the future;
- (c) Choice of residence and relocation may be affected by the nature and duration of the existing care arrangements (a factor now reflected in s 5(d) of the Act).

Relevant factors

[46] To determine the arrangements which will best promote Zoe's welfare and interests, I consider:

- (a) The parties' current circumstances and proposals;
- (b) Zoe's circumstances, views, needs;
- (c) The allegations of sexual abuse by Mr Crusan;
- (d) Use of violence by Mr Crusan;
- (e) Mr Crusan's parenting skills;
- (f) Ms Bea;
- (g) Use of violence by Ms Williams;
- (h) Ms Williams' parenting skills;
- (i) Mr Gates;
- (j) Relationship between Ms Williams and Mr Crusan.

Current circumstances and proposals

[47] Mr Crusan lives at [name of area deleted], a rural district near [location 1 deleted], with Zoe, Eamon and his mother. He works [occupation details deleted] where he has been for seven years.

[48] Mr Crusan said Zoe should remain in his care because she is safe with him, he provides a stable, happy and supportive environment and she is well settled at her school.

[49] Ms Williams lives at [location deleted] on the [overseas location 3 deleted] in a four bedroom home she shares with Mr Gates and Angel. If Zoe lived with her, she would attend [name of school deleted]. Ms Williams thought Zoe would fit in well there, but had no information about the school, such as the number of students or the programmes offered.

[50] Ms Williams is agreeable to Mr Crusan having contact in New Zealand. Initially she said the contact should be supervised because she did not trust him, but later said supervision would not be necessary as long as Mr Crusan's mother was also living in the home. She would agree to assist with the payment of airfares.

[51] Ms Williams is [occupation details deleted]. Ms Williams and Mr Gates worked in the business but Mr Gates anticipated getting his licence back in March. When this happened, Ms Williams would no longer have to drive Mr Gates. She hopes to begin an [occupation details deleted] course in July which would involve studying between 9.00 am and 2.30 pm three days a week.

[52] Ms Williams said she has family support; her mother lives a short distance away and her younger sister and brother also live in the area.

[53] In Ms Williams' view, Zoe would have advantages living in [overseas location deleted]; she could associate with more people, have access to better schooling and sports opportunities, and be able to maintain a relationship with her (she would be available fulltime to care for her) and Angel. She would set rules and boundaries and give Zoe stability.

Zoe, circumstances, views, needs

[54] Ms Williams accepted that Zoe attends school regularly and is doing well. [Details deleted]. Ms Williams said Zoe would fit in well to school in [overseas location deleted] "like she did when I took her over to [overseas location deleted] the first time". She said Ms Phipps was wrong in saying there was a risk that Zoe would be unhappy, distressed and non-compliant if she went to [overseas location deleted].

[55] Mr Crusan agreed that Zoe has a "really close" relationship with Angel and that her relationship with Angel was probably her most important sibling relationship because Emily and Eamon are older.

[56] Ms Phipps said Zoe's teachers reported she was very happy, tried very hard in all respects and had made remarkable progress. She was engaging, affectionate and

exceptionally eager to help. At home she enjoyed [details deleted]. Her health, hygiene and welfare were said by her teachers to be well attended to (she suffers from [medical information deleted] which is controlled by medication).

[57] To Ms Phipps, Zoe indicated “a high level of satisfaction with the current situation” although she said her mother does not Skype or call often.

[58] Ms Phipps said:

...She [Zoe] sees herself as [details deleted]...She is very well settled at her school...Overall it is apparent Zoe’s easygoing personality contributes a great deal to her ability to function well in these settings, and the stable arrangements she experiences facilitate her adaptation to the changes she has experienced.

[59] Zoe was, Ms Phipps said, very clearly caught in the middle of the conflict between her parents; she was confused about whether to go to [overseas location deleted] to be with her mother or stay in New Zealand with her father; she was very careful about indicating how she felt about each parent; she felt loved by both. Ms Phipps’ observation suggested she has a high level of comfort and familiarity with each parent (she spontaneously touched each, held her father’s hand while walking and held her mother’s arm while playing a board game, smiled often with each, talked freely to them and was appropriately assertive at times). In short, Ms Phipps said, she loves both parents equally, feels supported and has a well established, warm and comfortable relationship with each and will miss either when she is away from him or her.

[60] Outside her relationship with her parents, Zoe’s most significant relationship is with Angel, but Ms Phipps said this consideration should not weigh heavily because Angel appeared unsettled and it was possible she would return to New Zealand in the future.

[61] Asked about the impact on Zoe of moving to [overseas location deleted], Ms Phipps said it is likely to be more difficult than it was before because she has been living with her father in the absence of her mother for some time. Her current life [details deleted] would be very different from what she would experience in [overseas location deleted]. She is aware of the conflict between her parents, her

loyalties have already been compromised by the conflict, and in coping with this, she keeps things very much to herself. She would probably be less likely to act out than to keep things to herself, not deal with them and become unhappy.

[62] In his memorandum dated 3 March, Mr Roots said Zoe advised him that things at her dad's home were good. She spoke of school activities and a trail bike ride she was to undertake. Mr Roots said:

- (a) I discussed the consent arrangements with Zoe, who expressed no great preference about her mother's or father's homes but stated that she "really liked this school but [name of school 2 deleted] is better". I understood her comments related to the fact that [name of school 2 deleted] had a bigger pool and she thought six playgrounds;
- (b) Zoe thought that it would be good to be able to go and see her mum in [overseas location deleted] so she could see Angel and Mum's cats;
- (c) There was nothing that Zoe identified at her mother's or father's home about which she was unhappy or that worried her.

[63] I find:

- (a) Zoe has an easygoing personality;
- (b) Zoe has a warm, accepting, positive, emotionally aligned relationship with both of her parents;
- (c) Exposure to the conflict between her parents has compromised her loyalties and makes her keep things very much to herself. This can cause "internal emotional scrabbling", and could impact detrimentally on her if issues arise which she is not able to deal with or which make her feel uncomfortable;

- (d) Zoe has no clear or firm views either way about living with her mother or father, but enjoys the activities which [details deleted] enable her to do;
- (e) Zoe's needs are:
 - (i) To be protected from all forms of harm;
 - (ii) To live in a secure, stable, predictable environment;
 - (iii) To be nurtured in her cognitive, behavioural, emotional, educational and social development by a parent who is genuinely interested and involved in her welfare.

Allegation of sexual abuse against Mr Crusan

March 2014

[64] Ms Williams' evidence was that Emily (then aged seven) told her Mr Crusan had put his diddle in her mouth. She took Emily straight to the doctor. On the way, Emily told Ms Williams her daddy "had taken her into the bathroom and put his diddle in her and in her mouth". An examination by Dr Topping did not reveal any evidence of abuse. Emily then underwent two specialist interviews. No hard data about abuse was obtained at either interview. Ms McNally's evidence was that Emily said she did not want to tell the truth "because Daddy said don't tell the truth". When asked to clarify, she said she did not know what Daddy didn't want her to tell the truth about and then said it was nothing.

[65] Mr Crusan said the allegation was false. He was interviewed by the police, who took no action against him. While Emily was always a child who would make a lot of noise if she did not get her own way, she had not indicated by her behaviour or any other statements that she had been sexually abused. When he returned to live in the house with the family, for his own safety he said he stayed where other adults were; he never bathed or toileted the children, never went to their bedrooms and was never alone with them.

September 2006

[66] Ms Williams' evidence was that on 28 September 2006 she had taken Angel to hospital to have grommets inserted. Mr Crusan was at home with Eamon and Emily (then aged nine); when she came home Emily told her Mr Crusan had put his penis into her mouth. Ms Williams immediately confronted Mr Crusan who denied the allegation. Emily underwent a medical examination. She told the paediatrician she had washed her face after the incident. At an evidential interview on 29 September she repeated her disclosure of Mr Crusan putting his penis in her mouth, provided details of ejaculation and having to swallow something. She said Mr Crusan wiped his penis with a purple towel and told her not to tell anyone. She said the same thing had happened lots of times and referred to two residential locations. She said she sometimes had to swallow stuff and sometimes she spat it out in the basin. She said she had told her mother in the past. The interviewer concluded that sexual abuse was substantiated.

[67] Mr Crusan was interviewed by the police and denied the allegation. Mr Crusan did not contest Ms Williams' application for a protection order, based in part on the allegation of sexual abuse and did not formally deny the allegation of sexual abuse because, he said, he wanted to do everything he could to get his daughters back into their mother's care. He could not explain Emily's reference to a purple towel, other than to say he and Ms Williams used a towel after they had sex.

[68] Ms Williams said, "her head had doubts" about whether the abuse occurred, but her heart knew the abuse had occurred. Despite this, she and Mr Crusan reconciled about six months later.

[69] Although directed by the Court to undertake a SAFE assessment in October 2010, Mr Crusan did not do so.

[70] After the protection order was made, Mr Crusan completed a 21 week anger management programme. He thought this programme was part of the SAFE programme. If the Court made a further recommendation that he complete a SAFE

assessment, he said he would do so although the cost could make this impossible (the assessment would cost \$3,000 and any subsequent programme about \$15,000).

[71] Ms Phipps agreed that the second allegation of sexual abuse was substantiated. Although Emily was not Mr Crusan's biological daughter and Zoe is, this would not preclude Mr Crusan sexually abusing Zoe. Ms Phipps said it would be important for Mr Crusan to engage in some intervention that helped him to understand how to behave around children in terms of sexual behaviour and the sorts of triggers he might experience.

[72] Asked about likely outcomes if no assessment is undertaken by Mr Crusan, Ms Phipps said:

...I think we are already aware of one outcome and that is that Zoe is sleeping in her father's bed and he lacks the ability to stop her from doing so...there is a degree of risk that the sleeping in his bed could result in touching, inappropriate touching between either of them and that could proceed to more serious sexualised behaviour.

[73] Ms Phipps said the risk threshold would be raised if Mrs Bea was not in the home; there would then be no monitoring.

[74] I find:

- (a) It is more likely than not that Mr Crusan sexually abused Emily in March 2004 by putting his penis into her mouth;
- (b) Mr Crusan sexually abused Emily on 28 September 2006 by putting his penis into her mouth, and it is more likely than not that similar abuse occurred on a number of prior occasions;
- (c) There have been no further allegations of sexual abuse against Mr Crusan since 2006, a period of approximately ten years;
- (d) Mr Crusan has denied sexually abusing Emily, although he did not do so in the proceedings in which Ms Williams obtained a protection order;

- (e) Although directed to do so in 2010, Mr Crusan has not undertaken a SAFE assessment or any other intervention relating to allegations of sexual abuse (he did complete an anger management programme but this would not have dealt specifically with sexual abuse issues);
- (f) Given the expense involved, it is unlikely Mr Crusan will undertake a SAFE assessment or any subsequent programme in the future;
- (g) Mr Crusan has demonstrated no insight into the effects of sexual abuse on a child;
- (h) There is a moderate risk that Mr Crusan will sexually abuse Zoe in the future.

Use of violence by Mr Crusan

[75] Ms Williams referred to four incidents during which Mr Crusan used violence against her; he had punched her and broken her nose, broken her arm by twisting it, backed into her with a car in 2001 and pinned her to a wall with his hand around her throat. She said she and Mr Crusan argued frequently, often in the presence of the children. She had been abused as a child, and regarded Mr Crusan's abuse as normal.

[76] A notification was made to CYFS on 30 June 2008 that Mr Crusan had punched Emily and Eamon. Ms Williams said Mr Crusan had a temper and thought he had punched Eamon with a closed fist on her shoulder.

[77] In April 2013 Emily was seen with a fat lip; she said Mr Crusan had assaulted her. Subsequently during a specialist child interview she said Mr Crusan physically assaulted her, including by dragging her, punching her on her mouth and spitting in her mouth.

[78] Mr Crusan denied Emily and Eamon but accepted he had hit Emily with an open hand. He accepted he had punched Ms Williams on her nose, and had put his hand around her throat to push her away from him. He could not remember any

other physical altercations but accepted he may have broken her arm and that he had been angry and verbally abusive to her. He had been verbally abusive to the children by yelling and swearing at them and had smacked their backsides for discipline purposes maybe three or four times a year. Also he had forcibly removed Emily from his property in October 2014.

[79] Mr Crusan said he thought he had “an anger management problem until he did the anger management programme, and he had been getting better at handling his anger since then”.

[80] I find that:

- (a) During the relationship of himself and Ms Williams, Mr Crusan was frequently angry towards Ms Williams and the children and verbally abused them;
- (b) There was a pattern of Mr Crusan using moderately serious physical violence against Ms Williams and Emily;
- (c) Mr Crusan developed some insight into his behaviour during the anger management programme in 2008 but incidents since then establish that he remains prone to losing his temper and using physical violence;
- (d) While Mr Crusan’s circumstances are now more settled, there remains a low risk he could physically or verbally abuse Zoe in the future.

Mr Crusan’s parenting skills

[81] Ms Williams said while she and Mr Crusan did not drink a lot when they were together, Mr Crusan’s use of alcohol now is a concern to her; she had seen photographs of him intoxicated, standing next to Zoe, and she was very concerned that Angel had been allowed alcohol before having sex with a neighbour. She said Mr Crusan “liked young girls” and there were no rules or boundaries in his house;

Zoe was allowed to do what she wants. Asked if there were any good things about his parenting, Ms Williams said, “He goes to work every day”.

[82] Mr Crusan accepted he had let Angel have a lot of time off school in 2014; he said “Maybe I was too naïve at the time and allowed her to have her own way too much”.

[83] Mr Crusan said that all he needs to do to discipline Zoe is to change the tone of his voice. He does not now drink to excess; 18 cans would last him about a month. Angel had two cans of beers on the night she had sex with the neighbour. For him now alcohol for the children was a “no go zone”. He does as much as he can with Zoe’s school and assists with fundraising.

[84] Mr Crusan said that while Zoe has her own room, on most nights she climbs into his bed. He did not think it was wise for her to be in his bed, but had talked to a lot of people, including from CYFS, who told him it was “a comfort thing” and no-one, he said, could give him advice about how to stop her doing it. The evidence was:

- Q. Do you think you should be working on a positive strategy to ensure that she has her own sleeping space and remain separate?
- A. Yes, I’m trying to, I’m trying to get as much information as I can because everyone says she just feels safe being with me. That’s why she’s doing it, after all she’s been through. Basically I just haven’t got – no-one’s got – given me any ideas of how to – any more ideas than I’ve already got to get her to sleep in her own bed.

He accepted that with the historical allegations of sexual abuse, having Zoe sleep in his bed was a risk for him.

[85] Mr Crusan denied having a relationship with a young girl in the last couple of years, but said since he had returned with the girls in 2014, an 18 year old friend of Emily’s had slept in his bed with himself and Zoe in the middle. He did not have a sexual relationship with the girl, who called him “dad”. On that occasion Zoe was in his bed because one of his friends was staying in Zoe’s room. Asked if this situation was “a blurring of the boundaries a bit in terms of what Zoe was seeing and

hearing”, he said he had learned a lot since he returned with the girls in 2014 and was still learning.

[86] Ms Phipps’ evidence was that Mr Crusan has a laissez faire or permissive rather than an authoritative parenting approach; he provides Zoe with opportunities and supports her education (her homework was reliably attended to), but her activities in the home and [details deleted] were “loosely structured”. He said he ensured that someone was present when Zoe returned from school but it was not clear how reliable the afterschool care was. Zoe did not have any set responsibilities at home and Mr Crusan allowed considerable freedom, which was taken up in [details deleted] by Zoe.

[87] Ms Phipps said Zoe needed to sleep by herself. Issues around sexual intimacy and alcohol use had not impacted on Zoe at present, but Mr Crusan would benefit from professional assistance in developing and implementing appropriate boundaries. The lack of boundaries was likely to be pervasive across his parenting style, and was exemplified by his inability to get Zoe to sleep in her own bed or to get her to speak to her mother on the phone. Zoe largely does not present parenting challenges at present, but every child has times of misbehaviour and clear limits and boundaries are necessary to manage this. At some point Zoe could easily take advantage of situations and get herself into difficulties as happened with Angel (for example her access to alcohol). Also, Zoe would not be able to understand her own limits and what was appropriate and what was not.

[88] If Mrs Bea was not living in the home, there would be a question mark over the care Zoe would receive, given that Mr Crusan was expected to work [details deleted] and the amount of time Zoe might be on her own unless alternative arrangements were made.

[89] Ms Phipps identified the strengths in Mr Crusan’s parenting as being that he has developed a very warm and loving relationship with Zoe; he likes to make her happy and he supports her with his involvement in her schooling. Against this however was his inability to set and implement boundaries and limits and his tendency to give Zoe what she wanted.

[90] I find:

- (a) Mr Crusan has a permissive parenting style;
- (b) Mr Crusan has a warm, positive relationship with Zoe and is supportive of her schooling;
- (c) Mr Crusan has difficulty setting and enforcing boundaries and limits relating to Zoe's behaviour and he tends to give her what she wants;
- (d) Mr Crusan's parenting style poses a moderate, immediate risk to Zoe insofar as her sleeping in his bed is concerned and a moderate to high long term risk that if Zoe's behaviour becomes more challenging as she enters puberty, he will not be able to control her.

Mrs Bea

[91] Mr Crusan's mother, Sharon Bea said she will stay with Mr Crusan and Zoe for as long as she is needed.

[92] Mrs Bea said she was living in New Zealand when the allegations of sexual abuse were made against Mr Crusan. She was aware of the earlier allegation through the family grapevine but was not aware of the allegation made in 2006.

[93] Mrs Bea said the allegations did not raise any concern for her about Mr Crusan's parenting of Zoe because she had watched Zoe since she arrived at the home and Zoe was very happy and secure with her father.

[94] Nor was it a concern for her that Zoe slept in her father's bed. Her evidence was:

Because it's a comfort thing, just every now and again because Tom's hours that he works. It's their time together and I'm always in the room right, when they're on the couch. As for sleeping she's usually asleep by the time he goes to bed and he's exhausted by the time he's heading there.

Q. Do you think however that Tom having Zoe in his bed is a risk issue?

- A. Not to me no. I'm being a grandmother here and I'll say it this way. I mean they might think, say it's substantiated but it's my son so...
- Q. So are you saying that you don't believe that?
- A. I don't believe it no...
- Q. If Zoe was to say to you "dad's been doing something to me that I don't like", who would you believe about that?
- A. Zoe.
- Q. Why Zoe, you just said that you don't believe that –
- A. I believe Tom, yes, I don't believe Tom's ever done that sort of thing with any child, but I would actually believe the child and talk with her and take her somewhere where she is safe and then actually talk to Tom.

[95] Later in her evidence Mrs Bea said something needs to happen about Zoe sleeping in her father's bed but "she just dislikes sleeping in her own room". She did not think alcohol was an issue for Mr Crusan.

[96] Mrs Bea has a close association with Zoe's school, [details deleted].

[97] Ms Phipps said Mrs Bea could provide positive support to Mr Crusan in parenting Zoe but her evidence that she was not worried about Zoe sleeping in her father's bed was concerning, and her evidence that she would believe Zoe over her father if something untoward was disclosed, needed to be taken with a grain of salt.

[98] Ms McNally said that Mrs Bea being in the home was not by itself sufficient to allay concerns without her being educated about the risk factors to offer protection to Zoe, and an assessment would be required of her ability to step in and keep boundaries in place.

[99] I find that Mrs Bea's belief that Mr Crusan had not been involved in sexually abusive behaviour, despite substantiated allegations, is of considerable concern, as is her somewhat ambiguous evidence about who she would believe if Zoe raised an issue of abuse with her. I find it would be more likely than not that Mrs Bea would support Mr Crusan rather than Zoe, and that even if she is educated about the risks to Zoe, her presence in the home would not significantly reduce any risk to Zoe of

abuse by her father, or from his failure to impose and enforce boundaries on her behaviour.

Use of violence by Ms Williams

[100] When she was 18 or 19, Ms Williams was convicted of common assault and sentenced to supervision. She said a knife was involved and she was protecting herself from her brother. She had done an anger management course in 2010 or 2011. She accepted she had hit Mr Crusan once.

[101] Mr Crusan said on 15 May 2014 Ms Williams went to the home of his mother in [overseas location 1 deleted] and assaulted Eamon by smacking her on the side of her head. Mrs Bea took Eamon to the doctor because her ear was bleeding. The eardrum was not perforated but was badly bruised. The children had told him Ms Williams and Mr Gates had verbally abused them, but he considered Angel and Zoe would be safe in Ms Williams' house.

[102] Ms Williams said she was angry when she went to Mrs Bea's home because she had agreed to the children going to the home for the weekend. She was unaware that Mr Crusan would be there. She wanted to take the children home. Eamon persisted in saying she should talk to Mr Crusan and, she said, kept coming at her, and was in her face and was pushing her. She did not want to speak to Mr Crusan and slapped Eamon once. She knew she should not have done this, and should have walked away, but felt betrayed by Mrs Bea and wanted the children back. She accepted she has "a bit of a fiery temper" when she is convinced of her position on something.

[103] Ms Williams said the anger management course taught her to walk away from conflict.

[104] Ms Williams accepted she had had a row with another woman in the presence of Ms Phipps and that she had a volatile nature.

[105] Ms Phipps described Ms Williams as having a volatile temperament and as being subject to unmanaged outbursts. If Zoe was subject to any expression of volatility, she would be upset, she would feel very uncomfortable and not know how to deal with it. Ms Williams needed to work harder at appropriate anger management and not expressing her angry feelings.

[106] I find:

- (a) Ms Williams has used physical violence towards Mr Crusan and Eamon on isolated occasions but she does not have an underlying propensity to physical violence;
- (b) A risk to Zoe of physical violence in Ms Williams' care cannot be excluded because of her volatile temperament but is low;
- (c) Of more concern is the slightly greater risk that Zoe could be emotionally abused if exposed to an outburst caused by Ms Williams' volatile temperament.

Ms Williams' parenting skills

[107] Ms Williams was convicted on a drink driving charge in 2014. She drove after drinking because she and a friend got into an altercation with a drunk woman at a sports club; her friend had been stripped naked and she drove her home. Her evidence was that she and Mr Gates do not drink excessively, but might have a couple drinks, not every night. The girls had told Ms Phipps Mr Gates was often intoxicated; Ms Williams said this was not true. Mr Gates never put Zoe to bed. Zoe had started calling Mr Gates "Dad" because Mr Gates' daughters did this; she did not encourage Zoe to do this.

[108] Asked about Ms Phipps' evidence that she has a volatile temper, Ms Williams said she had "nothing to say". She said she understood how this could impact on the children.

[109] Ms Williams said she is paying child support for Zoe.

[110] Ms McNally said she would have a concern about Ms Williams' ability to provide sustained stability for Zoe and that she might not be protective of Zoe, for example her uncertainty as to whether Emily had been sexually abused.

[111] Ms Phipps' evidence was that Ms Williams is likely to be more directive in her parenting than Mr Crusan. She is more authoritative than him and can exert stronger boundaries and limits on Zoe's behaviour. She was observed to be emotionally nurturing towards Zoe but her temperament is volatile and her unmanaged outbursts in front of her daughters showed a lack of appreciation of their emotional functioning.

[112] Ms Williams' ideas about Angel and Zoe largely ignored their wishes; she was inclined to dictate to them and needed to show empathy for them and their situation. She had not visited Zoe's proposed school and seemed to be unaware of the extent of the impact of changing from a small rural school to a much larger suburban school, for example the loss of friends and activities (Mr Gates' evidence was that [name of school deleted] had 450 to 500 students). Also, she appeared to lack an appreciation of the extent of the adaption Zoe would need to make if she moved from [location details deleted] to [overseas location 1 deleted]. There was a risk that Zoe could become unhappy, distressed and non-compliant in Ms Williams' care.

[113] Ms Phipps acknowledged Ms Williams had engaged in considerable efforts to learn how to handle particular situations, but she needed to work harder at managing any angry feelings she had.

[114] Ms Phipps identified as strengths in Ms Williams' parenting that she was devoted to her daughters, would do her best for them from her perspective of their welfare and had a warm, loving relationship with Zoe. The deficits in Ms Williams' parenting were her volatility and inability to manage her anger outbursts, her views around alcohol and her lack of appreciation of the extent of the change for Zoe in moving from her current situation to living with her and Mr Gates in [overseas location deleted].

[115] I find:

- (a) Ms Williams is devoted to Zoe and has a warm, loving relationship with her;
- (b) Ms Williams has a more authoritative parenting style than Mr Crusan and is more likely to be able to impose boundaries and limits on Zoe's behaviour as she gets older than Mr Crusan;
- (c) Ms Williams is inclined to dictate to the children rather than show empathy for them and their views; it is likely that Ms Williams has minimised the impact of the change for Zoe in moving to live with her in [overseas location 1 deleted], which could affect her ability to help Zoe if she went to live in [overseas location 1 deleted] and became unhappy there.

Mr Gates

[116] Mr Gates, aged 40, has two daughters aged 18 and 14. He has regular contact with them. He has an amicable relationship with his former partner, the children's mother. Their relationship broke down during the economic downturn when they made some bad business decisions and each was made bankrupt. Mr Gates' bankruptcy was due to expire on 3 April this year. At the time of the separation, Mr Gates said "he felt a bit lost" and made some poor choices, which resulted in a drink driving conviction and a conviction for driving with a suspended licence.

[117] Mr Gates believes his relationship with Zoe is good and they get on well. He did not know whose idea it was for Zoe to call him dad but he said he would promote her relationship with her father and make sure she had regular contact with him. He said the relationship of himself and Ms Williams is happy and settled; they are engaged to be married. They have had a few arguments but through discussion had worked things out. Ms Williams had never lost her temper with him.

[118] Mr Gates denied ever being intoxicated around the children. He would, he said, have on average five or less drinks a week.

[119] Ms Phipps said Mr Gates' role and function in Zoe's life seemed uncertain; she appeared to experience him as innocuous during the three months she had spent in [overseas location deleted], but the girls reported feeling unsafe with him as he was often intoxicated and put Zoe to bed in that state. Ms Phipps said she would question the veracity of this information, which was given to her by Eamon, who was unhappy about being formally interviewed and the statement "constituted something of an angry outburst from her". Ms Phipps said:

...The role of the stepfather needs to be carefully considered and he and Ms Williams would need to be empathetic to it and Zoe's situation and functioning.

[120] I find:

- (a) The relationship of Ms Williams and Mr Gates is stable and settled and they envisage it to be a long term relationship;
- (b) Zoe does not have a close emotional relationship with Mr Gates but does not view him negatively and there is no reason to believe that a positive relationship could not develop;
- (c) Mr Gates was unstable at the time his last relationship ended but he is now much more settled;
- (d) It is possible that Mr Gates has minimised his use of alcohol, but I find it is unlikely that he has been intoxicated in the presence of the children or ever put Zoe to bed when he was intoxicated;
- (e) The impression I had of Mr Gates' evidence (I heard his evidence but he was not present in Court) was that he is a reasonable person who would act in the best interests of Zoe.

The relationship of Ms Williams and Mr Crusan

[121] Mr Crusan said communication between Ms Williams and himself had been quite difficult since he returned to New Zealand with the girls; there had been verbal conflict between them which Zoe had seen. Zoe had tended to “run away from the phone” when her mother called. He had tried to get Zoe to talk to her mother but she “shook her head”. Sometimes Ms Williams rang his mobile phone if she could not speak to Zoe but she abused him and he ended the calls.

[122] During their relationship Ms Williams described Mr Crusan as her “addiction”; she could not finally end the relationship. She was unable to see any good things about Mr Crusan’s parenting (other than a rather grudging statement that “he goes to work every day”) and said she does not trust him. They had not talked until just before the consent memorandum was signed. Their relationship is likely to have worsened after Ms Williams changed her position about caring arrangements for Zoe.

[123] Ms Phipps agreed that during past separations Ms Williams had not stopped the children seeing Mr Crusan. If Zoe was to live in [overseas location deleted], possible negative impacts on her could be mitigated by clear, positive communication between the parents, avoidance of conflict and an absolute commitment to the contact arrangements. Ms Williams would need to promote Mr Crusan’s strengths and not suggest he was incompetent.

[124] I find the relationship of Ms Williams and Mr Crusan is highly conflicted, which impacts on their ability to communicate positively about Zoe. Mr Crusan has not been able to get Zoe to talk to her mother on the phone, and Ms Williams could have difficulty speaking positively about Mr Crusan to Zoe.

Advantages and disadvantages of relocation

[125] Ms Phipps’ evidence was that the advantages for Zoe of being in her mother’s care were:

- (a) This would enable her to retain and strengthen her bond with her mother, which would be weakened if she remained in New Zealand

because of the relatively infrequent opportunities they would have to spend time together;

- (b) There would be a likelihood of a wider range of experiences available to her than those available [location details deleted];
- (c) Enrolment at a large suburban school would be likely to provide more varied activities than would be available at her current school.

[126] Ms Phipps identified as disadvantages for Zoe if she moved to Australia the following:

- (a) She would be separated from her father and the lifestyle which she enjoys, which she would view as a considerable loss;
- (b) She would lose her established patterns of relationships with family in New Zealand, her peer group and school. If she moved to [overseas location deleted] she would have to adapt to new friends, different activities and a much bigger school.

[127] Ms Phipps said the advantages for Zoe in living with Mr Crusan would be:

- (a) The primary advantage would be that she would retain a much valued lifestyle, both [details deleted] and at school;
- (b) She is at an age where she is likely to be making enduring friendships with her school peers, which she would lose;
- (c) This is a known situation and she is happy with that situation.

[128] Ms Phipps identified the major disadvantages for Zoe living with Mr Crusan as the loss of opportunity to spend real time with her mother, frequently and in a natural setting.

Analysis

[129] Returning to the s 5 principles, I find:

- (a) There is a moderate risk that Zoe would be sexually abused by Mr Crusan and a low risk of physical or verbal abuse if Zoe remained in the care of her father. These risks would not be significantly reduced if Mrs Bea was also living in the home. There is a low risk that Zoe might be physically abused by her mother and a slightly higher risk of emotional abuse in her care;
- (b) Mr Crusan has a permissive parenting style. While he has a warm, positive relationship with Zoe, he has difficulty setting and enforcing boundaries and limits on her behaviour. His style poses a moderate immediate risk to her (his inability to prevent her sleeping in his bed) and a moderate to high risk he would not be able to control her as she gets older. Ms Williams has the ability to impose boundaries and limits on Zoe's behaviour but she can be dictatorial and lack empathy for Zoe's views;
- (c) Ms Williams and Mr Crusan are unable to cooperate and consult about parenting arrangements, which is likely to result in contact difficulties whoever Zoe lives with;
- (d) If Zoe remains in the care of her father, she would have continuity in her care arrangements and schooling and she would be able to continue with a lifestyle she loves. If she moves to live with her mother, she would need to adapt to a new environment and school and make new friends;
- (e) Whoever Zoe lives with, it is likely that her relationship with the other parent could be maintained by contact visits, but it is difficult to see how the relationship would be strengthened.

[130] There are risk factors which go both ways and I have found the decision to be difficult. The option which will best meet Zoe's needs in her circumstances is the

least detrimental option. I consider I have to give greatest importance to Zoe's safety; I find that the risks to Zoe's immediate and long term safety in the care of her father outweigh the other factors. While there are risks to Zoe in the care of her mother and having to adapt to new surroundings and make new friends, these risks are not so serious as the longer term risks to her in the care of her father.

Contact

[131] Ms Williams and Mr Crusan have both said they will contribute to the costs of travel. Ms Phipps recommended a minimum of one week in each school term holiday and three weeks in the summer break, with alternating Christmas celebrations, together with Skype contact at least once a week at a set time. This recommendation was reflected in the arrangements in the proposed consent memorandum.

Orders

[132] I make the following orders:

- (a) The order preventing the removal of Zoe from New Zealand is discharged;
- (b) The order suspending the parenting order as to day-to-day care in favour of Ms Williams, and the parenting order as to contact in favour of Ms Williams are discharged;
- (c) The parenting order made in 2010, giving day-to-day care of Zoe to Ms Williams is confirmed;
- (d) Ms Williams is authorised to take Zoe to [overseas location deleted] to live;
- (e) I make a parenting order as to contact providing that Mr Crusan is to have contact:

- (i) In New Zealand for one week in each of the [overseas location 1 deleted] school term holidays;
 - (ii) In New Zealand for three weeks in the [overseas location 1 deleted] Christmas school holidays, with Zoe to be in the care of Ms Williams on Christmas Day 2016 and alternating thereafter;
 - (iii) By Skype or telephone once a week, at a time to be agreed;
- (f) The contact order is on condition that the face to face contact in New Zealand is monitored by (although not supervised by) Mrs Bea;
- (g) The costs of travel are to be shared equally by Ms Williams and Mr Crusan.

A J Twaddle
Family Court Judge