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IN THE FAMILY COURT
AT AUCKLAND

FAM-2015-004-001104
[2017] NZFC 7098

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[JAKE ARMSTRONG] Applicant
AND	[BROOKE ARMSTRONG] Respondent

Hearing:	1 September 2017
Appearances:	Ms Z Wackenier for the Applicant Ms [Armstrong] In Person Ms D Ransfield as Lawyer for Children
Judgment:	6 September 2017

RESERVED JUDGMENT OF JUDGE D A BURNS
[In Relation to Application for Change of Day-to-Day Care and the Issue of a Warrant to Enforce the Parenting Orders]

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[1] A chronology has been prepared which sets out a summary of the history in this case, together with the procedural history. I set that out in full:

Respondent's Chronology

2003	Parties Meet.
[Date deleted] 2005	Parties Marry.
[Date deleted] 2010	Parties separate (for the first time).
[Date deleted] 2011	Parties reconcile.
[Date deleted] 2011	**[TOBY ARMSTRONG]** born.
[Date deleted] 2014	**[JASMINE ARMSTRONG]** and **[ALICE ARMSTRONG]** born.
[Date deleted] November 2015	Mrs [Armstrong] and the children travel to [South Island location].
[Date deleted] November 2015	Mrs [Armstrong] applies without notice and is granted temporary protection, occupation and ancillary furniture orders and an interim parenting order placing the children in her day-to-day care with supervised contact to Mr [Armstrong].
[Date deleted] November 2015	Mrs [Armstrong] and the children return to Auckland and move back into the family home to the exclusion of Mr [Armstrong] (date of separation).
[Date deleted] December 2015	Mr [Armstrong] Skype contact commences – [day of week and time deleted].
[Date deleted] December 2015	Mr [Armstrong] files application to vary interim parenting order.
[Date deleted] February 2016	Mrs [Armstrong] files notice of response to Mr [Armstrong's] application to vary the interim parenting order.
February 2016	Mrs [Armstrong] unilaterally ceases Mr [Armstrong's] Skype contact.
[Date deleted] February 2016	Mr [Armstrong's] first face-to-face contact with children (2 hours supervised by Adapt Family Solutions). Mrs [Armstrong] agrees to Mr [Armstrong] having 2 x 2 hour sessions of supervised contact per week.
[Date deleted]February 2016	Mr [Armstrong] begins Toolbox parenting course for 0-6 year olds.
[Date	Mr [Armstrong] files notice of intention to appear and

deleted]February 2016	affidavit in support (DVA proceedings).
[Date deleted]February 2016	Mr [Armstrong] attends Parenting Through Separation course.
[Date deleted]March 2016	Mr [Armstrong] consents to temporary protection order being made final; interim parenting order is varied by consent to provide for supervised contact by a supervisor as agreed between the parties or as approved by lawyer for child.
[Date deleted] March 2016	Laywer for child meets with [Shannon Brown] (suggested supervisor) and approves her as supervisor. Despite clear terms of order, Mrs [Armstrong] does not agree to Ms [Brown] supervising contact.
[Date deleted]March 2016	Mr [Armstrong] completes Toolbox parenting course.
[Date deleted]March 2016	Mr [Armstrong] begins 12-week non-violence programme at [name deleted].
[Date deleted] April 2016	Parties attend round table meeting convened by laywer for child. No agreement reached.
[Date deleted] 29 April 2016	Mrs [Armstrong] files without notice application to relocate to [South Island location]. Judge Riddell directs the application is to proceed on notice.
[Date deleted] 1 May 2016	Mr [Armstrong] files notice of response opposing relocation.
[Date deleted] 19 May 2016	Hearing allocated before Judge Manuel to determine whether Mr [Armstrong's] contact can move to being unsupervised. Parties agree to vary the interim parenting order to provide for Mr [Armstrong's] unsupervised contact at play centre twice weekly (with Mr [Armstrong] being at liberty to take the children away from play centre). No agreement can be reached for weekend contact and the hearing proceeds (and is part-heard). Variation order made.
[Date deleted] July 2016	Mrs [Armstrong] begins breaching the interim parenting order by not making the children available for contact with Mr [Armstrong].
30 August 2016	Mr [Armstrong] makes without notice application for a warrant and on notice application for admonishment. Mr [Armstrong] details 9 breaches of the parenting order by Mrs [Armstrong] not making the children available for contact, and also details further breaches of the order by Mrs

	[Armstrong] continually bringing the children late, interfering with Mr [Armstrong's] contact. Application placed on notice with 48 hours for Mrs [Armstrong] to respond.
1 September 2016	Reserved judgment of Judge Manuel delivered. Unsupervised contact ordered. Interim parenting order made providing for Mr [Armstrong]' unsupervised contact with the children twice weekly at play centre ([Details of days and times deleted]) for extended periods of time increasing to weekly overnight contact 8 weeks from the date of the order. Final protection order varied to include the condition that Mr [Armstrong] may contact Mrs [Armstrong] by text if reasonably necessary regarding contact arrangements or guardianship matters. Mrs [Armstrong] directed to attend a parenting programme pursuant to section 460.
7 September 2016	Mrs [Armstrong] files notice of response to Mr [Armstrong's] applications.
20 September 2016	Hearing allocated before Judge de Jong in respect of Mr [Armstrong's] applications for a warrant and admonishment. Instead of pursuing applications, Mr [Armstrong] agrees to vary the interim parenting order to (hopefully) alleviate Mrs [Armstrong's] continual lateness and prevent future breaches. Variation order made by consent.
17 October 2016	Mrs [Armstrong] applies without notice to vary the parenting order to defer the commencement of Mr [Armstrong's] overnight contact. She seeks to reconsider the issue in February 2017. Judge Johnston places Mrs [Armstrong's] application on notice.
[Date deleted] October 2016	Section 133 psychological report of Melinda Brownsword is filed.
[Date deleted] October 2016	Mr [Armstrong] files notice of response and affidavit in support opposing the deferment of overnight contact.
[Date deleted] October 2016	Mr [Armstrong's] overnight contact with the children due to commence. Mrs [Armstrong] does not bring the children for any contact that weekend.
[Date deleted] November 2016	Mrs [Armstrong] does not bring the children for overnight contact (ignoring Mr [Armstrong's] text messages). Mr [Armstrong] has day time contact on Sunday.

[Date deleted] November 2016	Mr [Armstrong] files without notice application for a warrant and on notice application for admonishment. Judge Walsh places application on notice with Mrs [Armstrong] having 48 hours to file a defence, noting "*the respondent is urged to reconsider her position*" and "*the respondent is put on notice the Court may well issue a warrant if satisfied she is in default …*"
[Date deleted November 2016	Mrs [Armstrong] files notice of response and affidavit in support accepting she had breached the order by not dropping the children off for overnight visits.
16 December 2016	Hearing before Judge Manuel. Her Honour records 7 overnight visits ought to have occurred by that date, but none have. Judge Manuel declines Mrs [Armstrong's] application to vary the parenting order to defer the commencement of overnight contact. Judge Manuel authorises warrants to issue for the next two weekends.
[Date deleted]December 2016	Mrs [Armstrong] did not make the children available for contact (again). Mr [Armstrong] was required to use the warrant and involve the police to uplift the children. The police are required to climb through the window at Mrs [Armstrong's] house as Mrs [Armstrong] would not open the door. Mr [Armstrong's] first overnight contact with the children.
[Date deleted] May 2017	Mr [Armstrong's] last contact with the children.
[Date deleted][May to June 2017]	Mrs [Armstrong] unilaterally takes the children to [South Island location] (without consultation or consent). Mrs [Armstrong] advises this is to attend a [family event].
[Date deleted]June 2017	Correspondence exchanged between counsel, and between the parties directly, seeking advice as to when Mrs [Armstrong] will return the children to Auckland. Mrs [Armstrong] did not respond to Mr [Armstrong's] text messages, and gave her lawyer limited instructions (with no date for return to [North Island location]).
[Date deleted] June 2017	Mrs [Armstrong] advises, for the first time, that she will not be returning the children to [North Island location].
14 June 2017	Mr [Armstrong] files without notice applications for a warrant, to vary the parenting order and for a guardianship direction that the children be returned to [North Island location]. Judge Fleming directs applications to be on reduced

	(24 hours) notice.
16 June 2017	Mrs [Armstrong] files notice of response opposing Mr [Armstrong's] applications and seeking leave to file further evidence.
[Date deleted] June 2017	Mr [Armstrong], through counsel, proposes interim contact in Auckland (with the parties sharing the travel equally), as well as regular Skype contact while the children are in [South Island location].
[Date deleted] June 2017	Mrs [Armstrong] refuses Mr [Armstrong's] proposal for contact suggesting he rent a furnished home in [South Island location] on an ongoing basis to facilitate contact. There is no agreement (or mention) of Skype contact. Mrs [Armstrong] advises, for the first time, she has enrolled the children in Kindergarten in [South Island location] (commencing the same week). This was done without consultation or consent.
4 July 2017	On notice was heard and determined by Judge Burns
17-18 October 2017	Application for permission to relocate the children from Auckland to [South Island location] has been set down for a backup hearing
1-2 November 2017	Primary fixture on 15-16 January 2018

[2] On or about [Date deleted] May mother made a unilateral decision to relocate the children from Auckland to [South Island location]. In the oral judgment delivered on 4 July I found that the decision was unilateral in breach of her guardianship obligations. I made the following orders and directions inter alia that:

(a) The children's habitual place of residence is a central part of Auckland. That is [suburb deleted] and [suburb deleted] where they previously lived through to [suburb deleted].

(b) The children are not to be removed from the Auckland area.

(c) Mother was to return to Auckland with the children by no later than 3.00 pm on [date deleted] July 2017, and if they did not return by that time the children would be placed in father's day-to-day care and a warrant has to be available to enforce that arrangement.

[3] I granted leave to apply for further orders to give a better effect to the orders. I said:

> [26] It is clear to me that the shift that she made to [South Island location] was planned. It was somewhat cynical and was done in clear contravention that she had of her obligations. I have to reject and find that much of her evidence was not credible to date and she was endeavouring to try and persuade the Court to justify her breach of law. I am not persuaded.
>
> [30] Further, she delayed father's application to be brought urgently by a subterfuge to say that she was going to return when I do not think she was genuine in that. I think she made a calculated decision to take her chances, knowing that there may not be any significant downside of consequence. The fact that she is on legal aid, she probably knew that she may not be eligible to receive a costs award against the costs that father has been put to.

[4] The children did return to Auckland on [date – one day after the ordered date - deleted] July (a little late) but thereafter there were problems with the contact order that was to continue (if they did return) and further breaches. Father set out the nature of those breaches in his affidavit of 11 August.

> 34. I summarise the events which have taken place since Judge Burns' decision as follows.
>
> 35. On Friday, 7 July 2017 I tried to telephone the children, but [Brooke] would not let me speak to them. She told me that if I called again, she would call the Police. Annexed and marked "D" is a copy of my lawyer's letter on 11 July 2017 about this. In that letter, I also sought [Brooke]'s agreement to my phoning the children the next two nights (Wednesday and Thursday, 12 and 13 July 2017).
>
> 36. In the meantime, I did not hear anything from [Brooke] (either directly or through her lawyer) about her return to Auckland with the children.
>
> 37. After not having received any response to our letter, my lawyer followed up with [Brooke]'s lawyer on [date deleted – day before ordered return] July 2017. In that email, I also sought a copy of the children's flight to Auckland [Brooke]'s lawyer responded by saying she would advise when she had instructions. Copies of those emails are annexed and marked "E".
>
> 38. It was not until 11.08am on the day that [Brooke] was ordered to return to Auckland with the children, that we received a copy of the tickets from [Brooke]'s lawyer. While [Brooke] was ordered to return to Auckland by 3pm, the flight was not scheduled to arrive in Auckland until 3.20pm. A copy of [Brooke]'s lawyer's email is annexed and marked "F".
>
> 39. At 2.13pm my lawyer received an email from [Brooke]'s lawyer saying that her flight had been delayed, making her anticipated arrival time around 3.50pm. A copy of that email is annexed and marked

"G". Copies of boarding passes, and photos of the children on a plane, were then sent to my lawyer.

40. My lawyer then received emails from [Brooke]'s lawyer at 3.55pm and 4.01pm confirming that she had received a text message from [Brooke] saying she had arrived in Auckland with the children. Copies of photos of those emails are annexed and marked "H". Copies of the children at the airport were then sent to my lawyer.

41. My first contact with the children was to take place on Saturday, 15 July 2017 and Sunday, 16 July 2017. That contact took place, but [Brooke] insisted that I collect the children from [suburb deleted] (despite that the usual arrangement involved [Brooke] dropping off the children to me at the commencement of contact, and me returning the children to her at her at the conclusion of contact). [Brooke] was late to both changeovers.

42. I was concerned about the amount of travel the children had been required to undertake with a changeover in [suburb deleted]. I made various proposals to alleviate that travel in my lawyer's letter to [Brooke]'s lawyer on 17 July 2017, a copy of which is annexed and marked "I".

43. After not having received any response, my lawyer followed up with [Brooke]'s lawyer on 20 July 2017. In that email, my lawyer also noted that [Brooke] was an hour late to changeover the day before, Wednesday 19 July 2017. [Brooke] was also over an hour late that day, 20 July 2017. [Brooke]'s lawyer's email in response on that day referred to my being late to changeovers. I had retained the children in my care on those days for around the length of time that they had marked due to [Brooke] being late. Copies of those emails are annexed and marked "J".

44. [Brooke] then proceeded to send me text messages in which she basically blames me for the present situation (i.e. her having to return to [North Island location]).

45. On 25 July 2017 my lawyer sent an email to [Brooke]'s lawyer referring to those messages. My lawyer suggested that all outstanding matters, including where the children are presently living and [Toby]'s schooling (expanded upon below) are discussed at a round table meeting. We asked for an urgent response, due to the urgent nature of the issues, and confirmed that I would have no choice but to file further proceedings if matters cannot be negotiated. A copy of that email is annexed and marked "K".

46. On Wednesday, 27 July 2017 [Brooke] did not turn up to changeover until after 12pm (over two hours after she was meant to be there). I sent a number of text messages to [Brooke] asking where she was, but she did not respond until 11.23am (saying that [Alice] was unwell).

47. On 28 July 2017 my lawyer received an email from [Brooke]'s lawyer, annexed and marked "L". Again, that communication reads as if [Brooke]'s present situation is my fault, rather than of her own making. In that email, [Brooke] agreed to attend a meeting, said that

she would bring a support person, and suggested that the meeting take place some time in the week commencing 7 August 2017.

48. On Saturday 29 July 2017 [Brooke] arrived 40 minutes late to changeover (at 4.40pm). While [Toby] jumped out of [Brooke]'s vehicle straight away, the girls did not. [Brooke] then got out of her vehicle and told me that the girls did not want to go. She then got back into her car, closed the doors, and proceeded to record her exchange with the girls (during which they presumably said they did not want to go) using her mobile phone. The girls were never unbuckled from their seatbelts, and never got out of their seats. [Brooke] then reached into my car, grabbed some lollies out of the girls' bags that she had already put in my car, and gave them to [Jasmine].

49. I then asked [Brooke] to reconsider her position, to which she responded that she would obtain a protection order if I approached her vehicle, and that the girls do not need to go for contact if they do not want to, saying "*they have emotions, which should be respected*".

50. It was not until the next day, at 11.39am, Sunday 30 July 2017, that I spent some time with the girls (about two hours). The reason [Brooke] gave for "allowing" that contact was that the girls missed [Toby]. I eagerly collected the girls, yet again, from a different location in [suburb deleted] dictated by [Brooke].

51. On Wednesday, 2 August 2017, an hour before contact was to commence, [Brooke] sent me a text message saying that all three of the children were "not well enough" to attend contact. I responded by asking [Brooke] whether she intended to take the children to the doctor, but did not receive any response.

52. Later that day, my lawyer wrote to [Brooke]'s lawyer confirming the recent breaches of the current order. A copy of that letter is annexed and marked "M". Again, I confirmed that I would have no choice but to file an application if matters were not resolved.

53. In that letter, my lawyer also confirmed (again) my willingness to attend a meeting, and confirmed my (and my lawyer's) dates of availability. It also confirmed my agreement to [Brooke] bringing a support person, and included an offer to host the meeting (so that me and [Brooke] were not put to the cost of securing a venue).

54. Lawyer for the children confirmed her availability to chair such a meeting by email on 2 August 2017, a copy of which is annexed and marked "N". My lawyer sent an email later that day updating her availability to attend a meeting (a copy of which is annexed and marked "O") and it was clear that Monday, 7 August 2017 would work for both my lawyer and lawyer for child.

55. The next day, on Thursday, 3 August 2017, I did not see the children either. [Brooke] sent me a text message saying the children were unwell, after my having sent text messages to her at 9am and 9.30am. Again, I asked whether she was going to take the children to the doctor, but did not receive any response.

56. On 4 August 2017 lawyer for child sent an email seeking confirmation that the meeting was proceeding the following Monday. My lawyer responded confirming that it was to proceed from our perspective. [Brooke]'s lawyer then sent an email saying that she had not received confirmation from [Brooke]. Copies of those emails are annexed and marked "P".

57. On Sunday, 6 August 2017 lawyer for child sent an email to [Brooke]'s lawyer requesting confirmation by 9.15am the following morning. By 9.26am we had still not received any response, and so my lawyer sent an email saying we had assumed that the meeting had been cancelled, and expressing my concern and disappointment. It was not until the next day, Tuesday 8 August 2017, that [Brooke]'s lawyer advised that she did not have any instructions from [Brooke] in relation to setting up another time for a meeting that week. Copies of those emails are annexed and marked "Q".

58. Since that time:

    (a) On Wednesday, 9 August 2017, [Brooke] sent me a text message saying "*I am unable to bring the kiddies to contact today*". I responded asking her why, but she did not respond.

    (b) On Thursday, 10 August 2017 I did not hear from [Brooke] at all. I sent her two texts messages, and tried calling her, to find out whether the children would be made available for contact, but she did not respond to any of my attempts to contact her.

59. I have not heard from [Brooke] since.

[5] Father as a result of those breaches made an application for a parenting order placing the children in his day-to-day care and for a warrant to enforce that order. That application was brought without notice but came before me on the eDuty platform and I placed it on notice. The case was originally set down for hearing on 25 August but could not proceed on that date because Ms Ransfield was unavailable. I granted the adjournment application and directed it be heard on 1 September.

[6] I directed that the children be made available at the beginning of the hearing so I could conduct a judicial interview to ascertain their views. Mother did not comply with that direction and did not bring the children from [South Island location] to Auckland for the purposes of a judicial interview, or for that matter being able to see their lawyer Ms Ransfield who had not been able to see them. She is in breach of the Court's order.

[7] The Court has had to issue two warrants previously. Judge Manuel issued a warrant on 16 December 2016. That was to enforce father's contact. The overnight contact had been due to start on 29 October and at the time of the hearing seven overnight contact visits should have taken place but mother had not agreed and had not allowed that to occur. There are also other breaches in relation to lateness and contact not occurring for excuses such as the children not being well. Her Honour in a decision referred to the psychologist's report and I set out paragraph [13] of her decision including the references to opinions given to the Court by the psychologist Ms Brownsword:

> [13] Ms Brownsword stated that the care arrangements could be enhanced through the parents establishing an improved view of one another with respect to the role they had in caring for their children. Consistency and regularity of care times for the father would also improve the situation for the children, because they needed to know that they would be seeing their father rather than being asked whether they wished to go or not. Ms Brownsword stated that contact should be encouraged and promoted by the other parent in order for positive experiences to be had. She addressed the mother's position squarely and acknowledged that while it was important not to minimise her fears or concerns, they needed to be put into perspective:
>
> > The reports from the supervisors at Adapt indicating positive interactions between the children and their father and evidence that the father had attended parenting programmes had not seemed to alleviate her concerns, fears and concerns around his parenting. (Paragraph 71)
> >
> > The fears and anxieties around the children's contact with their father have likely caused … the mother to act as a gatekeeper for contact between them … gatekeeping could be characterised as actions by a parent that are intended to interfere with the other parent's involvement with the child and would predictably negatively affect their relationship. Commonly following separation and divorce information control, micromanaging, inflexibility on parenting time, derogating the other parent, reflecting personality disorder and overnight disputes are some ways in which gatekeeping can be translated. (Paragraph 72)
> >
> > While it is natural for a child to miss a primary parent when in the care of the other parent … so much of how a child copes in the other parent's care is related to how the primary parent reacts to the care regime. This point is very relevant to the mother as at present she plays the primary caregiver role for the children. It will be highly important that she reflect on this point. (Paragraph 73).

[8] I set out paragraph [20] of Judge Manuel's decision where she authorised the issue of a warrant:

> [20] I trust that her love and care for the children will be such that she will facilitate the transition to overnight care. It is clear from the s 133 report writer's comments that her blessing and support will be a critical factor in making the process as easy as possible for the children. Notwithstanding that, I authorise a warrant to issue. It is to be effective over the coming weekend, when the first overnight contact in terms of the existing order is to occur.
>
> The warrant was executed.

[9] I issued a further warrant in August to enforce the contact orders. This was after the children were supposed to be returned to Auckland and the hearing that was conducted before me on 15 August. Evidence was given by father that he suspected the children had been returned to [South Island location] but his evidence was not directed and invited the Court to draw inferences. I decided to err on the side of caution and issued a warrant to enforce the existing contact orders on the following Wednesday and Thursday. That warrant was not executed because the children were not in Auckland and were not made available for the contact to occur. Therefore there has been quite a significant gap in time prior to the hearing that the children have seen their father.

[10] At hearing before me Exhibit 1 was produced. It showed a text transcript showing requests for contact and demonstrate that the children had been relocated back to [South Island location] unilaterally without the Court's or father's consent. They were enrolled in Kindergartens and school unilaterally without consultation or consent from the father. The mother had made up excuses and developed a strategy of delay and obfuscation and non-compliance with the contact order. She had not been proactive and sought other forms of contact. This is consistent with a pattern of behaviour of non-compliance and breach of her obligations as a guardian set out in the Care of Children Act.

[11] At the same time as all of this was going on mother became preoccupied with her involvement with the news media. A story was printed by Ms Melanie Reid which had the headline "Mum's plea 'My kids are safe in their home'," which had a considerable reference to evidence given by mother and her perception. I am not

aware of Ms Reid interviewing father about the situation or seeking to have access to the Court files so that she could see what other evidence there was before the Court. I am not aware of her ascertaining if there had been any decisions delivered in the case. This article was printed in August at a time when she was supposed to be complying with the Court order and meeting her obligations as a parent and guardian. Clearly mother's attention was diverted from her role as a parent to becoming a role as an advocate for problems she sees in the Family Court.

[12] At the hearing before me on a question from me as to why she had not complied with the Court's direction to bring the children to the Court for the purposes of judicial interview she said that she did not regard it as in the best interests and welfare of the children. Clearly she regards herself as having the final say or determination as to what is in the best interests and welfare of the children and has the right to override a Court direction. Similarly she delayed the Court's order in implementing overnight contact and that did not occur until a warrant was issued. She did not observe her obligations as a guardian under ss 15 and 16 of the Care of Children Act to consult about the children's locality and education and unilaterally relocated them to [South Island location] and also unilaterally enrolled them at day care and school.

[13] At the outset of the hearing Ms [Armstrong] filed submissions. Those submissions are quite lengthy but essentially they can be summarised as follows. She regards the decision made by the Court following the full two-day hearing in relation to safety, and an inquiry in terms of s 5(a) of the Care of Children Act that the children were safe with their father was wrong. She continues to believe that the Judge did not consider all the evidence, that the psychologist subsequently reported that the children had a good relationship with their father was an error and she is not suitably qualified to give that opinion. She maintained that the supervised access providers who had provided reports on each supervised contact visit and had observed father parenting the children over quite a long period of time were in error. That she maintained that because there was a protection order there was therefore a determination made by the Court that father had been a perpetrator of domestic violence.

[14] Mother continues to label father as an abuser and will not be persuaded otherwise despite the finding of the Court. She relies on a protection order having been issued. In this case the protection order was initially granted on an without notice on a temporary basis. Father elected not to defend the making final of that order because he decided he wanted nothing further to do with mother. He chose to put his time, energy and resource into establishing a relationship with the children. His focus therefore was on the s 5(a) safety hearing as he had no desire to have any contact with Ms [Armstrong]. He saw there was no benefit in spending a significant amount of money on legal fees to defend the protection order application and in this case there has been no defended hearing on the allegations of domestic violence and no findings made by the Court.

[15] The Court did make the TPO final on an unopposed basis but father specifically recorded that whilst he did not oppose the making final of the order he did so without any acknowledgement or admission that the allegations were true. When the case was fully tested before Judge Manuel in the context of whether the children were safe in his care, Judge Manuel found very clearly that the children were safe in his care and extended the amount of contact that he was having with the children. That is where mother parts company with the Court and she does not accept that finding despite her not being able to produce any corroboration of her allegations of violence and not being able to prove them in Court to the required threshold (section 85 Domestic Violence Act 1985).

[16] Therefore the hearing schedule before me on 1 September was to determine the following issues:

(a) Whether the application filed by father to vary the current interim parenting order so as to provide the children to be in his day-to-day care should be granted;

(b) Whether a warrant is issued to enforce any order made and if so, on what conditions; and

(c) Whether the Court should hold any party in contempt (whether there is a referral by the Court of the case with the New Zealand Police and/or the Solicitor General).

[17] I am satisfied that mother was fully aware of the application and the directions made by the Court. Ms Palinich in her memorandum made it clear that those had been provided to her client. Mother did attend the hearing and there was no issue raised by her that she was not fully aware of the application before the Court and what was at stake.

[18] Mother's case in summary is as follows. That she is convinced that father has abused her and the children and that the children are unsafe in his care. That she has acted protectively towards the children. She considers that she was not able to afford to remain in Auckland and that [a close family member] was gravely ill and she had no other choice but to shift and relocate to [South Island location]. She accepts that she did not consult with or obtain father's consent. She cannot conceive of, or even imagine that the Court would place the children in the father's day-to-day care because she considers that a protection order has been issued for herself and the children.

[19] Father's case in summary is that he has been the subject of a determined dogged campaign to defame him and label him as an abuser which has no foundation to it, but that he has had to put up with a huge amount of grief and stress as a result. That mother has lied to the Court and is essentially seeking to cut him out of the children's lives, that she would prefer him just to go away and no longer have any part in the children's lives.

Options

[20] The options for the Court are as follows:

(a) Placing the children in father's day-to-day care, issuing a warrant to enforce that order and provide for supervised contact to mother to

minimise any risk of unilateral snatching or removal of the children wrongly; or

(b) Continuing with the existing orders and issue warrants for enforcement of the contact order which would have to be executed in [South Island location] being where the children currently are and I predict that this would have to be issued on multiple occasions, bearing in mind mother's very strong held view that father should not have anything but supervised contact; or

(c) Accepting the current status quo which has arisen as a result of mother's unilateral shift to [South Island location] and leave the situation as it is.

[21] It is a matter of weighing up which of these options is in the best interests and welfare of the children.

The Law

[22] I set out ss 4, 5 and 6 of the Care of Children Act.

> **4 Child's welfare and best interests to be paramount**
>
> (1) The welfare and best interests of a child in his or her particular circumstances must be the first and paramount consideration—
>
> (a) in the administration and application of this Act, for example, in proceedings under this Act; and
>
> (b) in any other proceedings involving the guardianship of, or the role of providing day-to-day care for, or contact with, a child.
>
> (2) Any person considering the welfare and best interests of a child in his or her particular circumstances—
>
> (a) must take into account—
>
> (i) the principle that decisions affecting the child should be made and implemented within a time frame that is appropriate to the child's sense of time; and
>
> (ii) the principles in section 5; and

(b) may take into account the conduct of the person who is seeking to have a role in the upbringing of the child to the extent that that conduct is relevant to the child's welfare and best interests.

(3) It must not be presumed that the welfare and best interests of a child (of any age) require the child to be placed in the day-to-day care of a particular person because of that person's gender.

(4) This section does not—

(a) limit section 6 or 83, or subpart 4 of Part 2; or

(b) prevent any person from taking into account other matters relevant to the child's welfare and best interests.

5 Principles relating to child's welfare and best interests

The principles relating to a child's welfare and best interests are that—

(a) a child's safety must be protected and, in particular, a child must be protected from all forms of violence (as defined in section 3(2) to (5) of the Domestic Violence Act 1995) from all persons, including members of the child's family, family group, whānau, hapū, and iwi:

(b) a child's care, development, and upbringing should be primarily the responsibility of his or her parents and guardians:

(c) a child's care, development, and upbringing should be facilitated by ongoing consultation and co-operation between his or her parents, guardians, and any other person having a role in his or her care under a parenting or guardianship order:

(d) a child should have continuity in his or her care, development, and upbringing:

(e) a child should continue to have a relationship with both of his or her parents, and that a child's relationship with his or her family group, whānau, hapū, or iwi should be preserved and strengthened:

(f) a child's identity (including, without limitation, his or her culture, language, and religious denomination and practice) should be preserved and strengthened.

6 Child's views

(1) This subsection applies to proceedings involving—

(a) the guardianship of, or the role of providing day-to-day care for, or contact with, a child; or

(b) the administration of property belonging to, or held in trust for, a child; or

(c) the application of the income of property of that kind.

(2) In proceedings to which subsection (1) applies,—

(a) a child must be given reasonable opportunities to express views on matters affecting the child; and

(b) any views the child expresses (either directly or through a representative) must be taken into account.

[23] In this case s 4(3) is particularly relevant. I detect from mother's case that she essentially contends as the children's mother she has the best interests and welfare of the children as paramount and therefore she should be able to determine what the outcome is. When she disagrees with the Court she considers that she has a status as mother which is more important to that of father. That is not what the law says and subs (3) particularly makes that clear.

[24] The principles are particularly relevant in this case and s 5(b) is relevant. Section 5(c) is relevant particularly having regard to the multiple breaches in this case of the obligation to consult and cooperate. Section 5(d) is relevant because of the need to have continuity for the children and s 5(e) is very relevant because the children have not been able to have the relationship with him or both their parents because it has been frustrated or prevented by the actions of mother. This has meant that the relationship with father has not been preserved and strengthened. Mother essentially argues that s 5(a) is the mandatory paramount consideration and because the children are unsafe with father (her perception) therefore that trumps all the other principles in s 5 and that gives her the right to shift to [South Island location] because she is acting protectively.

[25] Section 5(a) not only provides for the Court to have regard to the children's physical safety but also their psychological safety. There are a number of risks that the children currently face in their present circumstances and I am faced, as many Family Court Judges are, on weighing up the risks. In order to make the best outcome for the children and manage the requirement to operate in the best interests and welfare of the children sometimes the Court has to make very difficult decisions.

[26] In applying s 5(a) of the Act I reach the following conclusion, that there are risks to the children if they remain in mother's care. The risks can be summarised as follows:

(a) Mother has had to lie to the children. In my view the children have a good relationship with their father. This is supported by the psychologist's report. They would have been asking mother as to why they are not seeing him. She was really equivocal in her explanation as to that question in Court. She indicated that she had not been involving them in adult issues but I think it is likely for the children to have reached a conclusion that their father has abandoned them and it is likely that they will blame him for that. This could damage their relationship with him.

(b) As a role model she has shown that non-compliance with the law and Court orders is okay. This means that they will grow up believing that non-compliance with the law is acceptable.

(c) They have suffered a loss of relationship with one parent. It is not only with father but also with his family. This could have long term consequences.

(d) In terms of the parental hierarchy where the parents are supposed to be in an authority position mother is essentially saying that she is more important than father and this is likely to undermine the children's relationship with father because they will come to see him as not so important a person.

(e) She has set an unfortunate precedent that they can see that she does not have to consult as a guardian with him as required by law. That therefore the children will see mother as the sole authority figure and it is likely that this continue into the future and she will fail to negotiate or consult with them in relation to guardianship issues such as schooling and medical treatment.

(f) Continued exposure to mother's fixed views about physical safety despite the Court's finding, mother is found to be not credible by me at the hearing in relation to unilateral relocation and was found not credible by Judge Manuel in her evidence in relation to the safety finding. She has continued to expose the children as a parent in not providing a balanced view to them and is likely to alter and damage their psychological identity and wellbeing. There is a real risk in this case that mother's perception (which is in error) will permeate through the children and father will end up being labelled as dangerous and mother in a position of being a rescuer when in fact that is not based on reality.

[27] The Court has bent over backwards to try and allow mother to take steps to comply with the Court orders and demonstrate that she will act in the best interests and welfare of the children. She was given a notice period to return back to Auckland. She did so but then again without permission from the Court or from father, relocated back to [South Island location]. She contends that further issues have arisen which have been breaches of the protection order but has not made any complaint to the New Zealand Police nor has she taken any steps to lodge the matter with Oranga Tamariki. I looked at her affidavit in support of her application for leave to appeal the interim decision.

[28] In my view what she has set out there does not amount to a breach of the protection order and is therefore entirely predictable as to why she did not lodge the matter with the New Zealand Police. I refer to paragraphs 24, 25 and 26 of her affidavit and I think a reading of that can be seen in itself that the allegations are without corroboration and do not amount to a breach.

[29] The Court was unable to see the children because mother did not make them available. Similarly Ms Ransfield was not able to see them. The most compelling evidence in relation to the children's views is set out by the psychologist in her report and I am satisfied the children have a good relationship with their father. They want to and need to see him.

[30] Ms Ransfield in her memorandum dated 30 August to the Court set out the impact on the children if there is a change of care and I set out paragraph 23 to 35 of the memorandum.

> 23. The children have been in the primary day to day care of their mother since birth. Mrs [Armstrong] has always been a stay at home mother and Mr [Armstrong] has been in full time employment. The evidence of Mr [Armstrong] however, is that during the period of the marriage, he was involved in the children's day to day care as well. Following separation, the children remained in the primary day to day care of their mother and Mr [Armstrong] had supervised contact until such time as a Safety Hearing could be held.
>
> 24. Her Honour Judge Manuel made findings on 1 September 2016 that the children would be safe in the unsupervised care of their father and made Interim Orders which set out a staged progression of contact to the point of the current Interim Order which provides for one overnight contact visit per week, in addition to two daytime visits.
>
> 25. It is clear that Ms [Armstrong] did not accept the Safety findings made by Her Honour Judge Manuel and she sought to defer the implementation of overnight contact.
>
> 26. The Court obtained a section 133 report from a psychologist, Melinda Brownsword. Ms Brownsword filed her report on 24 October 2016. Ms Brownsword was of the clear view that all three children were of an age that they were able to cope with overnight contact visits with their father as provided for in the current Order. Ms Brownsword raised no safety issues for the children in the unsupervised care of their father.
>
> 27. At paragraph 91 of her report, Ms Brownsword noted that:
>
> *"There is a real risk for alienation to occur if the contact times were to be reduced. This is primarily related to the negative view that the mother holds of the father, as well as her tendency to minimise his involvement.*"
>
> 28. A submissions only hearing was held on 16 December 2016 before Her Honour Judge Manuel to deal with Ms [Armstrong's] application filed on 17 October 2016, to defer the commencement of overnight contact, and to deal with Mr [Armstrong's] application dated 8 November 2016, for a warrant to enforce his order for unsupervised overnight contact, which should have commenced on 29 October 2016, but did not.
>
> 29. Judge Manuel noted at paragraph 19 of her decision that Ms [Armstrong]:
>
> "*Is entitled to disagree with the findings made in the decision on 1 September 2016 although she has taken no steps to appeal (for reasons of expedience I am told) however, she is not entitled to*

disregard a Court order in the manner that she has done or treat it as something to which her consent must be given."

30. Her Honour confirmed that overnight contact in terms of the Interim Parenting Order was to occur and she issued a warrant for the contact visit that was to occur on 17 December 2016.

31. Ms [Armstrong] failed to make the children available for overnight contact in terms of the Court Order and Mr [Armstrong] was required to contact the police to enforce the warrant. Ms [Armstrong] was well aware that the warrant would be executed if she did not make the children available for contact, but chose to ignore the Court Order, requiring the police to climb in the window of her home to gain access.

32. Ms [Armstrong] subsequently unilaterally relocated the children to [South Island location] at the end of May and as noted above, Mr [Armstrong] was required to file an application requiring the children to be returned to Auckland. That Order was made on 4 July 2017.

33. Since Ms [Armstrong] unilaterally relocated the children to [South Island location] at the end of May, some three months ago, the children's contact with their father has been inconsistent. This will have had an impact on the children's relationship with him. It is unclear how Ms [Armstrong] has explained to the children, the reduction in contact with their father. Since September of last year, they have been used to seeing him three times per week and over the last three months, the visits have been sporadic and inconsistent. It is counsel's submission that Mr [Armstrong] is well able to physically provide for the care of the children. He is fortunate that he is able to arrange his work commitments to be available to care for the children as often as possible. Ms Brownsword, in her section 133 report, observed that Mr [Armstrong] demonstrated parenting skills that would be consistent with an authoritative style of parenting. She then commented that the research is clear, that authoritative parenting is ideal and is the preferred parenting style (para 58 of her report). Her observation was that Ms [Armstrong] demonstrated parenting skills that are in line with predominantly permissive style of parenting (para 59).

34. If the Court does grant Mr [Armstrong's] application for primary care, it is likely that this will have a considerable emotional impact on the three children if they are separated from their mother, without any regular contact. Counsel would hope however that if the Court does change care, Ms [Armstrong] would focus on the children's best interests and return to Auckland so she can maintain regular contact with the children. The potential difficulty however in Ms [Armstrong] having contact is that this could lead to a situation where once again, she retains the children and unilaterally relocates or goes into hiding with them.

35. If the Court does not make an Order in favour of Mr [Armstrong] for day to day care, then it is likely that he will continue to experience difficulties with his contact with his children and his relationship

> with them will continue to diminish. Ms [Armstrong's] actions to date can give the Court no confidence that she will comply with a Court Order and Mr [Armstrong] would be required to continue to enforce his contact by seeking warrants to uplift. It is certainly not going to be in the children's best interests for the police to have to be involved on a regular basis to ensure contact occurs. Unfortunately the history of this case is that when the Court has issued a warrant with Ms [Armstrong] full knowledge of that, she has chosen to still retain the children knowing that there could be an impact on the children with the police having to be called to enforce the warrant.

[31] I fully accept that there will be an impact on the children if there is a change of care, but essentially mother has taken steps which has made that option to the Court as the only viable option. The risks to the children of them remaining with their mother in terms of the present situation far outweigh the risks to the children of a change of care. The ability to have contact on a regular basis as envisaged with the current Court orders whilst they remain in [South Island location] is not viable. The costs would be huge including air fares and also the costs as mother insists of supervision; that is not a viable option.

[32] Effectively therefore there are only two options available to the Court. One is a change of care and the other is leaving them with mother and therefore sanctioning the unilateral action taken by her. I have outlined above the psychological risks to the children whereas if there is a change of care to father, whilst contact with mother needs to be supervised initially until there is acceptance by her of the situation, then she can be reintegrated back into the children's lives and that is likely to be a much more achievable outcome than if they stay with mother because I predict she will sabotage and make it considerably difficult for father to have contact. The probable outcome is that he will find it so difficult that he will walk away. That will mean the children will likely lose their relationship with him which will have long term if not lifelong consequences.

[33] In my view it would be irresponsible for the Court not to take advantage of at least this opportunity to ensure that the children have a relationship with both of their parents I consider that father is much more likely to facilitate and promote a relationship of the children with their mother than the reverse. Therefore I make the following Court Orders:

1. I place the children in the interim day to day care of their father.

2. I issue a warrant to enforce that order. I make it a condition of the warrant that at the same time police officers execute the warrant they should have with them one or more social workers to assist in the transfer of the children. The warrant is to be executed in [South Island location] with father travelling to [South Island location] for the purposes of execution.

3. I direct mother to cooperate with respect to the changeover and assist as much as possible to make it as less traumatic for the children as possible.

4. I direct that mother immediately make it known her address and cooperate with the police and social workers with respect to the change of care. If she fails to do so and takes any other steps I will consider urgent applications placing the children under the guardianship of the Court and make appropriate authorisation to social workers to take steps in relation to the children.

5. I further direct as a condition of the warrant and interim parenting order that the children are not to be filmed (as requested by counsel) when the police or social workers execute the warrant. That is clearly not in the best interests and welfare of the children.

[34] Ms Ransfield helpfully captures the issues before the Court. In this case in paragraph 40 of her memorandum which I set out as follows:

> This case is caused by mother's fixated and incorrect view that the children are not safe with their father. She has not been prepared to modify her views despite full enquiry by the Court and findings made. I find that if I do not take steps the children are going to lose their relationship with their father and that will be damaged with long term consequences. The Court can't stand by and allow that to occur. The outcome of the children having a relationship with both parents is likely to be promoted and facilitated by placing them with father and then reintroducing them back to mother when she has made appropriate steps to come to terms with the situation and modify her views so that it is safe psychologically for the children to be with her.

[35] I accept Ms Ransfield's submissions.

[36] In the interim there will need to be supervised contact and I think it best to be at a supervised contact centre in the initial stages because I think it is unlikely mother will be able to afford any private supervisors. If she is able to do so then I give leave for her to apply for consent to have a private supervisor provide services. Because of her limited income and being on a benefit I am going to authorise the Court to pay for 12 sessions initially with a supervised contact centre on a weekly basis seeing the children each [day and place deleted] for a period of one-and-a-half hours in accordance with their protocols so they can get up and running. This will be conditional upon mother returning to live in Auckland pending the relocation hearing which is already directed to be set down.

[37] Finally, I refer this case to the New Zealand Police to consider criminal prosecution of mother for the breaches of parenting orders.

Signed at Auckland this 6th day of September 2017 at am / pm

D A Burns
Family Court Judge