

DEAN BLAIR

BARRISTER
LLB

26 October 2017

Ministry of Justice
Tauranga Family Court
McLean House
26 McLean Street
DX HX 11034
Tauranga 3143

Attention: **Family Section**

RE: SCHMIDT v HOPFENGARTNER – FAM 2017-079-000015

I continue in my role as lawyer for **Clara**, aged 10. I have been expressly appointed as lawyer for Clara with respect to new Care of Children Act 2004 proceedings, in regard to the Interim Parenting Order and Warrant obtained by Ms Hopfengartner on a without notice basis on 28 September 2017. The interim parenting order provides Ms Hopfengartner with day to day care and provides for no contact between Clara and her father presently.

Mr Schmidt has filed a notice of response dated 29 September 2017. On 12 October 2017 Mr Schmidt lodged by email with the Court various other documents, the status of which are unclear. One of those documents is a Memorandum which more fully sets out Mr Schmidt's position in regard to the development of 28 September 2017 and his rejection of the prima facie findings of His Honour Judge Coyle in the Minute of 28 September 2017 granting the interim parenting order. Mr Schmidt has attached various photographs to the memorandum demonstrating his position that his time with Clara on 28 September following her uplift from school was a positive step in the reformation of that relationship.

The Family Court has also confirmed my role with respect to the unresolved expired passport issue, i.e. whether it should be returned to the German Embassy.

I have also been appointed as lawyer for Clara by High Court in regard to the appeal by Mr Schmidt against the Family Court decision.

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Passport issue

The Minute of His Honour Judge Coyle dated 20 October 2017 addresses, amongst other things, the passport issue.

His Honour notes in regard to that issue nothing has been received from Mr Ashmore for Ms Hopfengartner. I note a Notice of Defence dated 6 September 2017 was filed by Mr Ashmore defending the application re the passport. The accompanying memorandum of the same date raises that the (expired) passport also contains Clara's visa to be in New Zealand which is an issue to Ms Hopfengartner.

Having considered the situation, it is my position not to oppose the request by the German Embassy for the return of the expired passport to them. I submit the relevant factors are:

1. That the passport has expired in any event and the German Embassy will be correct in their proposition that it is the property of Germany.
2. That prior to the passport being returned to the German Embassy, the Registrar should take a certified colour photocopy of Clara's visa (contained within that passport) for provision to Clara's mother. I am advised the visa label contained within the expired passport will contain reference to the passport number, linking the documents together anyway.
3. That the loss of the physical visa label (contained within the expired passport) does not affect the ongoing status of Clara's present visa.
4. That if and when Clara is to receive a new passport there would need to be an application anyway to New Zealand Immigration for what is called a transfer of label to a new passport, meaning a new physical visa label is inserted into the new passport by Immigration.

New Parenting Order proceedings

The new parenting order proceedings brought about as a result of the uplift of Clara from school on 28 September 2017 by her father now create a new focus for the issues to be resolved by this Court. It is what care and/or contact arrangements as between her parents will be in Clara's best interests. Clara's views should, in my submission, carry significant weight and relevance pursuant to s.6 Care of Children Act 2004 ("COCA"). The principles in s.5 of the Act must be considered, including Clara's safety (mandatory), the primary role of parents, ongoing consultation and cooperation between Clara's parents (unlikely for Clara unfortunately), continuity in Clara's care and upbringing, parental and family relationships and Clara's identity being preserved and strengthened.

In his notice of response, Mr Schmidt advises he seeks day to day care and in the meantime access four days a month to re-establish the relationship. Mr

Schmidt refers to the deportation liability notice re Clara and to an extradition request re Ms Hopfengartner. I do not know whether any extradition process is occurring.

Ms Hopfengartner will need to clarify her position going forward as to any contact between Clara and Mr Schmidt (face to face or non-face to face) if Clara is able to continue in New Zealand and thus be subject to the efforts of this Court to resolve Clara's care and contact arrangements. Clara has formulated very clear views on issues relating to her father which I am summarising under the next heading below.

My attendance with Clara on 13 October 2017

I spoke privately with Clara in a private interview room provided to me by the Thames Court on 13 October 2017. Ms Hopfengartner brought Clara into the foyer of the building to meet me and then left with her family to go shopping. Clara thus had complete privacy (and a perception of privacy) whilst we spoke.

I started the discussion by summarising there are four main aspects which Clara needs to distinguish. We set those out on a piece of paper so Clara could visualise them. These are:

1. The completed Family Court case about whether Clara should be sent back to Germany. Clara knows there is international law between countries such as Germany and New Zealand which organises this. She already knows about that decision of the Family Court, i.e. that she was not directed to be sent back to Germany. I had already explained that outcome to Clara in September following the release of the Family Court decision and she was *very* excited about the outcome.
2. The appeal by her father of the Family Court decision to the High Court. We discussed how the Court system in New Zealand works and she therefore knows that a higher Court is looking at whether it agrees with the Family Court decision or whether that decision should be different.
3. Clara's immigration issues. She could tell me about the "IPT" and she knows it is under question whether she and her family can even stay in New Zealand.

When I had spoken with Clara in September following the release of the Family Court decision, to explain that outcome, I attempted to qualify her excitement about the Family Court outcome by pointing out to her that it is still very unresolved whether the family can even stay in New Zealand pursuant to immigration processes. Clara knew at the time, therefore, that the immigration side of things continued as a risk. In my discussion with Clara on 13 October 2017, she continued to express an awareness about this. She knows that a decision of the IPT has not been made yet. Mr Schmidt's Memorandum dated 3 October 2017 advises on page 13 at 2.3 (second bullet point) that in Mr Schmidt's discussions with Clara on 28 September 2017, she did not know that she will have to leave New

Zealand because of the deportation liability note (sic). This is not correct in two respects. Clara already knew about the immigration/potential deportation issues (I had discussed this with her), and it is still not known what the IPT decision will be.

4. The new Family Court proceedings filed by Clara's mother on 28 September 2017 for the parenting order following Mr Schmidt's removal of Clara from school and taking her to an unknown location. Clara had an awareness that her mother had made that application. I explained to Clara that these new Family Court proceedings will be a method by which the Court in New Zealand will consider any ongoing arrangements between Clara and her father (unless she leaves NZ because of the High Court decision or because of the IPT decision).

At the age of 10, I thought Clara demonstrated a good ability to understand those aspects of what is happening for her.

Clara did not wish to speak in any detail about what happened on 28 September 2017. She says she would rather not have to think about it. We agreed she would instruct me about it briefly.

Clara instructed me she was in class on 28 September 2017 (she can remember the date) and that her father came into the class (she recalls with two others) and she was taken from the class by them. Clara advises there are 27 children in her class and she thinks one might have been away that day meaning there were perhaps 26 there.

Clara recalls that her teacher went "really pale" and Clara was later told that the girls in the classroom were crying.

I was aware from the Memorandum filed by Mr Schmidt shortly before my visit with Clara that his perspective is that their time together went well, that Clara showed signs of interest in him and enjoyment of seeing him and that there were the beginnings of a reconnection for them. I was very careful how I questioned Clara, keeping in mind that her father's perspective could perhaps be one shared by Clara. I explained to Clara her father's point of view and mentioned that there were some photographs of she and her father that day which Mr Schmidt saw as signs that their time together went well. I was very careful not to predetermine through my questioning that the day had not been a good one for Clara.

Clara instructs that following her removal from the school she was in shock for the rest of the day, and frightened. She says she was having "weird feelings".

Clara explained that any photographs of her would *not* show that she was happy that day. I did not show Clara the photographs but she mentioned there is probably one of her sitting with her father in a café. She explained to me that she was not feeling happy when the photograph was taken.

Clara recalls someone called Collin being involved and recalls that he was up in Auckland with she and her father. Clara instructs she and her father went to a home in Auckland later that night which is where the Police then picked her up - late at night.

Clara instructs she was taken by Police to the house of a friend of her mother in Auckland until such time as her mother could travel to Auckland to collect her. Clara was therefore back home for 29 September 2017 and made an arranged visit to school at lunchtime on 29 September 2017 to see the children there – to assure them she is alright.

Clara instructs that what happened on 28 September 2017 has affected her, but she could not give me specifics.

I sought Clara's instructions about her ongoing living and contact arrangements with her parents. Clara wishes to continue living with her mother, stepfather and younger sister, in New Zealand. She seeks no contact whatsoever with her father. Clara described the strength of her rejection of any ongoing contact with her father in different ways. She listed approximately 18 "No's" (8 in a row and then about 10 more) delivered in a firm voice. At a different point in the discussion she indicated to me that "No is here" – pointing at the level of the desk we were sitting at. She then explained that she could not dig deep enough into the ground to explain how deep the "No" is now.

I asked Clara to think back to our previous discussions during the Hague proceedings about the prospects of seeing her father. She conceded that at that time she had said no to contact being arranged but might have been kind of open to it in the future. She could recall that I had tried to discuss it with her at the time to see if something could be arranged. She contrasted that previous position with how she feels now.

My meeting with Clara was at the end of the school term holidays and she was due to return to school on the following Monday. She was looking forward to it and to seeing her friends and classmates. I have no doubt that she was hoping to normalise things with the return to school. Clara also wanted to tell me about having come second in a school cross country race recently which she is very proud of. Equally proudly, she told me that her younger sister, Lottie, had come first in her race. Clara wanted to tell me about some new baby chickens at her home and she listed their names. Clara is therefore hoping to focus on life as normal.

As lawyer for Clara, my position is therefore that the incident on 28 September 2017 has significantly increased Clara's opposition towards having contact with her father and was a negative event for her. As advised, she says she was in "shock" throughout that day and evening.

I acknowledge Clara's perspective recorded in this report may come as a surprise or disappointment to Mr Schmidt. Clara is of course entitled to her perception, views and instructions and for those to be taken into account. If the

Court wishes to refine or cross check the information about the impact of 28 September 2017 upon Clara, then a psychological report will be necessary.

Overlap with High Court proceedings

Timetabling and directions for the High Court proceedings are still to be resolved. An unresolved issue is whether the High Court will direct an updated psychological report (re the s.106 defence aspects and most likely with a particular focus on any changes brought about by 28 September 2017). I have put my position to the High Court that an updated report will be necessary. It is likely counsel will need to propose the intended psychologist to the High Court for approval, if one can be sourced and agreed.

I can say that as a result of my inquiries to this point about a possible psychologist for the High Court report (if directed), Ms Lightfoot will not agree to any further involvement given Mr Schmidt's complaint about her. I believe this will work to Clara's detriment in terms of having to engage with yet another professional, in the event the High Court does direct the updated report. This is no criticism of Ms Lightfoot, however.

Immigration issues

It is my understanding the ITP had been awaiting His Honour Judge Coyle's reserved decision and I note the Minute provided by His Honour dated 20 October 2017 now addresses this. It is unknown whether that Tribunal will elect to float matters whilst these ongoing Court processes unfold.

Progression of Family Court proceedings

There is a without notice Directions Conference on 29 November 2017 at 10am. By that time it should be known whether the High Court has directed an updated psychological report and who the psychologist is. That may have a bearing on whether the Family Court directs a s.133 psychological report and who the psychologist would be.

Yours faithfully

Dean Blair
Barrister



This report is subject to the privilege of the Family Court. It is confidential and must not be discussed with, nor shown or provided to any other person not involved in the case. The report is not for publication.

Copy to: Alex Ashmore

By Email

Axel Schmidt (unrepresented by counsel in these new proceedings currently)

By Email