

Tracey Gunn

B A R R I S T E R

22 July 2020

Ministry of Justice
Tauranga Family Court
TAURANGA

Attention: Carmel O'Rafferty

By Email: Carmel.O'Rafferty@justice.govt.nz

RE: FAM-2017-079-000008 – SCHMIDT v HOPFENGARTNER

I act as Lawyer for the Child in respect of this matter.

A Directions Conference has been scheduled for **Monday 27 July 2020 at 9.30am.**

I **enclose** for filing:

1. Memorandum of Lawyer for the Child.

Counsel is seeking permission to attend Monday's Conference by way of telephone.

Counsel will ensure that this letter and Memorandum are forwarded to Ms Hopfengartner via email. Unfortunately Counsel is not able to send email correspondence to Dr Schmidt as it is always rejected by my server. Accordingly, I would be grateful if the Court could forward a copy of this letter and Memorandum to Dr Schmidt before Monday.

I also confirm a copy of this letter has been forwarded to Ms Cohen, Counsel for Oranga Tamariki, as the issue of counselling is touched upon in Counsel's Memorandum and Ms Cohen may wish to comment upon that.

Yours faithfully



Tracey Gunn
Barrister

220720.1

Copy to: Axel Schmidt
By Email

Copy to: Lisa Hopfengartner
By Email

Copy to: Oranga Tamariki
Tauranga
Attn: Liat Cohen
By Email

36 Thackeray Street, Hamilton
PO Box 4179, Hamilton East 3247
Telephone 0-7-839 2002
e-mail: tracey@traceygunn.co.nz

IN THE FAMILY COURT
HELD AT TAURANGA

FAM-2017-079-000008

BETWEEN: **AXEL SCHMIDT**

Applicant

AND **LISA HOPFENGARTNER**

Respondent

MEMORANDUM OF LAWYER FOR CHILD

This document is filed by:

Lawyer for Child:

Tracey Gunn
Barrister
P O Box 4179
Hamilton East
Phone: 839 2002
tracey@traceygunn.co.nz

MEMORANDUM OF LAWYER FOR CHILD

1. I act as Lawyer for:

CLARA LARISSA SCHMIDT ("Clara"), born 3 July 2007.

2. A Directions Conference has been convened in respect of this matter on **Monday 27 July 2020 at 9.30am.**

SECTION 46R DISPUTE BETWEEN GUARDIANS

3. Counsel understands that this matter is now resolved and that Ms Hopfengartner has discontinued her applications. Counsel received a Minute from the Court today discontinuing that application.
4. Counsel notes that Clara has commenced her orthodontic treatment.

PARENTING ORDER PROCEEDINGS

5. Parenting Order proceedings remain unresolved before the Court. In addition to this, Dr Schmidt has filed a further application dated 10 May 2020. Ms Hopfengartner has filed a response dated 23 June 2020.
6. In a minute dated 2 July 2020, Counsel's appointment has been extended to cover Dr Schmidt's most recent application.
7. Essentially there are three components to Dr Schmidt's most recent application:
 - (a) He is seeking specific periods of contact with Clara to re-establish his relationship with her;

- (b) He is seeking to have Clara placed in his sole day to day care;
and
- (c) He is seeking that Clara receives therapy and counselling with
an experienced therapist.

CLARA'S VIEWS

- 8. Counsel met with Clara by herself in order to discuss the most recent application. Clara's views remain consistent in terms of what she has previously expressed to Counsel, the Court and s133 report writers.
- 9. Clara's position is that she does not wish to have contact with her father. She said, "*It's scary*" and "*I don't want to see him*". Clara stated that her mother asks her if she would like to see her father and encourages her to have contact.
- 10. Clara confirmed that her main fear is that her father will collect her and will not return her to her mother. She said simply, "*I just don't want to see him*".
- 11. Clara is becoming frustrated with the ongoing Court proceedings (and the necessity, in her view, to repeatedly express views that she has already made clear to both Counsel and the Court appointed psychologists). Clara stated, "*I wish I could fire my Dad and get a new person in*".
- 12. Counsel pushed Clara in terms of having some form of contact with her Dad. She then stated, "*If I had to absolutely see him (there's no chance though) it would have to be in a room with glass. I would have to have Mum with me and other people*". When Counsel probed who those other people were, she said, "*Mr Hopfengartner (her stepfather), her mother, Counsel and Judge Blair (her previous Counsel)*".

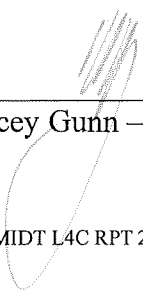
13. Counsel also queried with Clara whether some form of electronic communication could be arranged. Clara said, *"I want him to stay in Germany and never come and to leave me alone"*.
14. Clara is adamant that she does not wish to be in her father's care. She stated that she enjoys living in New Zealand with her mother, stepfather and sister and that she doesn't want things to change.
15. Counsel also spoke to Clara directly about having counselling or therapy. Counsel notes that Clara has already had therapy and that this was addressed in Counsel's Memorandum to the Court dated 5 February 2020. Clara is of the view that if she was required to, she would attend further counselling with Mr Leonard. However, she felt that it wasn't really necessary and she would rather do *"other things"*. Clara was clear that Mr Leonard was nice. Clara said, *"I would go if I was told to but it's not necessary"*.
16. Counsel notes that Clara is now 13 years of age. Clara stated, *"Axel asks again and again and again. It would be nice if he'd leave it"*. Clara is getting to the point where she is very frustrated that she has continually expressed her views and that these are not acknowledged or accepted by Dr Schmidt.
17. Clara also said, *"If I want to see him, I can talk, I can write and I can tell people"*. Clara was quite clear that if she changed her mind about wishing to have contact with her father that she would be able to articulate this. Clara also confirmed that her mother encourages her to write and have contact and that she is well aware of her choices in that regard. Clara also confirmed that she is aware that she can contact Counsel to have contact facilitated should she choose to do so.

18. Counsel notes that in light of the Covid -19 situation, it is difficult to progress the issue of specific contact dates or even an observation between Dr Calvert, Clara and Dr Schmidt.
19. Counsel has been provided with a copy of Clara's "Post Covid-19 Well-Being Report" from Whenuakite School dated June 2020. That report states under the heading 'Transition back to School and Well-Being': *"Clara took a few days to readjust after lockdown and needed a little reassurance but quickly realised that the routines and relationships she left had not changed, and that life was going to carry on as normal. Since then, she has continued to work diligently taking the lead in her learning and striving for excellence. Clara has shown herself to be a compassionate and thoughtful student who leads from the front. She has managed younger students well, responding to and resolving conflict with maturity. Clara is fully engaged in all areas of the curriculum and takes challenges head on, showing ever increasing resilience. She can be entrusted with responsibility and reliably carries out tasks. Clara is also growing in humility, learning to share her successes with discretion"*.

SECTION 133 REPORT

20. Dr Calvert remains available to complete an update of the Section 133 Report should the Court so direct this. Dr Schmidt has made a complaint against Dr Calvert. Dr Calvert advised Counsel that this complaint remains "parked" by the Psychologist's Board while the Family Court file remains active.
21. Dr Calvert is of the view that Clara may benefit from counselling to address the "resist/refuse" dynamic that currently exists, particularly if Dr Schmidt indicates that he is willing to travel to New Zealand and undergo quarantine in an effort to meet with Clara.

Dated at Hamilton this 22nd day of July 2020.



Tracey Gunn – Lawyer for Child

SCHMIDT L4C RPT 220720