

MEMORANDUM OF JUDGE SJ COYLE
WITHOUT NOTICE APPLICATION, CARE OF CHILDREN ACT

IN THE FAMILY COURT
AT TAURANGA

FAM-2017-079-000008

Assigned To: Leah Wills Phone: (07) 928 7244

28 September 2017

WITHOUT NOTICE APPLICATION FOR:
S47 Parenting Order
S72 Warrant to Enforce Role of Providing Day to Day Care

Lisa Hopfengartner, Axel Schmidt

THE FOLLOWING ORDER/S DIRECTIONS ARE MADE:

- ☐ The application is refused.
- ☐ Leave to apply is granted pursuant to s 47(1)(d) or (e) and/or s 139A. Reasons are (for example, a material change of circumstances within 2 years) as follows:

- ☒ The application is dealt with on the papers filed. I am satisfied that the delay that would be caused by making the application on notice would or might entail serious injury or undue hardship, or risk to the personal safety of the applicant or any child of the applicant's family, or both.

Jurisdiction made out. Threshold met. I am very familiar with this file as I was the hearing judge for the proceedings under the Hague Convention. I am very familiar with the contents of the s133 report referred to by the applicant. Based on the evidence around how Clara was removed from school by her father, and the evidence before me in the Hague proceedings, I have no doubt that the father's actions in removing Clara today have been cataclysmic for her. She has not lived with her or seen her father for years. She is petrified of him for the reasons set out in my decisions and the s 133 report. She has now been unilaterally removed from her primary caregivers' care, and away from her sister. He has taken her away from all that is known and familiar and important, and placed her with a father that she fears and whom she will not know at present.

This court has in effect, by refusing to order return, determined that the jurisdiction for determining what is in the welfare and best interests of Clara lies now with the NZ Family Court. Mr Schmidt has thwarted that process by snatching Clara. If this application were to proceed on notice, Clara would remain with her father and that, for these reasons, would cause her undue hardship. I have taken into account the principles in *Martin v Ryan* and *Fletcher v McMillan*, and the relevant rules. On the evidence before me, and taking into account the evidence in the Hague proceedings that were heard before me, there is no doubt in my mind that Clara's emotional and psychological safety has now been put at risk, and that she has been harmed by the father's actions. The delay that would be caused by proceeding on notice will continue to cause undue hardship to Clara and serious psychological injury to her. This order must be made without notice to the father, who has shown that he has no respect for the rule of law in New Zealand, and no insight as to what is best for Clara.

- ☒ Interim Parenting Order in favour of the applicant who is to have day-to-day care of the following child/ren:

Clara Larissa Schmidt

03 July 2007

☒ Interim parenting order in favour of the respondent who is to have contact on the following terms and conditions:

☐ (i) ~~As agreed, or as follows~~

☐ (ii) ~~There shall be supervised contact by either:~~

~~a) An approved supervised contact provider; or~~

~~b) A person approved by the Court.~~

☒ (iii) The respondent shall have no contact with the child until further order of the court.

☐ ~~The application is to be on notice and served. Time for filing defence is fixed at hours/days~~

For your information, regardless of whether the proceedings are considered without notice or directed to be on notice, you must now make directions pursuant to one of the options below.

☒ **Option 1 - Remains on the without notice track (lawyers may act)**

☒ I direct the proceedings to remain on the without notice track

☒ I direct a hearing

☒ I direct the Registrar to allocate a directions conference before me before the hearing. Lawyers may act pursuant to s 7A(4)(a)

☐ **Option 2 - Standard track (no lawyers)**

☐ ~~I direct parties are referred to FDR; or~~

☐ ~~I direct proceedings be transferred to the standard track and direct the Registrar to allocate an issues conference.~~

☐ **Option 3 - Standard track (Parties representation considered)**

☐ ~~I direct proceedings to be transferred to the standard track.~~

☐ ~~I direct a hearing. Lawyers may act pursuant to s 7A(4)(c) and (b)(iii)~~

☐ ~~I direct pursuant to s 46Q the Registrar to convene a settlement conference.~~

☐ ~~Prior to the settlement conference I direct the Registrar set down an issues conference.~~

☐ ~~I recommend that the Registrar request a s 131A report from the Chief Executive of the Ministry for Vulnerable Children, Oranga Tamariki.~~

☐ ~~Lawyer for child is appointed (brief set out below) pursuant to s 7~~

☐ ~~I am satisfied that there are concerns for the safety and/or wellbeing of the children and I consider the appointment necessary for the following reasons:~~

~~_____~~
~~_____~~
~~_____~~

☐ ~~The ages of these children~~

☐ ~~The issues disclosed in the proceedings~~

☐ ~~Pursuant to s6 of COCA and Article 3.1 of UNCROC, I believe that these children should be afforded an opportunity to express views to the court if they wish.~~

☐ I consider pursuant to s 9B(1)(c) Family Courts Act that the appointment of Lawyer for child/ren would assist the parties in reaching agreement on the matters in dispute.

☐ Other:

☐ The brief for Lawyer for child/ren is set out below:

☐ Investigate child/ren's situation and identify any need for urgent action.

☐ Define issues to be resolved.

☐ Ascertain child/ren's views where appropriate.

☐ Assess need for specialist reports and/or counselling for the parties.

☐ Assist the parties to reach agreement on the matters in dispute — see s 9B(1)(c).

☐ Negotiate interim contact if appropriate (maximum three hours for this task).

☐ Identify any other action required by the Court to progress this matter.

☐ Represent child/ren at any conference or hearings when allocated.

☐ Other specified tasks:

☐ Report to the Court within 14 days and advise whether an extension to this brief is required.

☒ Lawyer for child is not appointed. Reasons as follows: Mr Blair will be appointed when Clara is found and returned to her mother's care.

☐ The above named child/ren's place of residence shall be:

_____ until further order of the Court.

☐ The above named child/ren are not to be removed from New Zealand until further order of the Court.

☐ All passports and travel documents in the names of the child/ren or relating to the child/ren to be surrendered forthwith to the Registrar.

☒ Warrant to uplift children to be issued/a faxed copy is authorised (to expire the close of the third day after this authorisation).

☐ Other:



Judge SJ COYLE
Family Court Judge

Date: 28/09/2017 3:43 pm
Authenticated by Rules 197(4) & (4A) FCR 2002