

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN
[SQUARE BRACKETS].

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**IN THE FAMILY COURT
AT AUCKLAND**

**I TE KŌTI WHĀNAU
KI TĀMAKI MAKĀURAU**

**FAM-2018-019-000332
[2024] NZFC 10489**

IN THE MATTER OF	THE CARE OF CHILDREN ACT 2004
BETWEEN	[PATRICK GULLY] Applicant
AND	[GAYLE BEAKER] Respondent

Hearing: 9 August 2024

Appearances: The Applicant appeared in Person
The Respondent appeared in Person
S de Luen as Lawyer for the Child

Judgment: 15 August 2024

RESERVED JUDGMENT OF JUDGE D A BURNS
[In relation to a dispute between guardians re secondary schooling]

[1] I presided over a three-day hearing on 5, 6 and 7 March 2024 where the issues were related to parenting orders and the location of the child. I also dealt with the schooling issue.

[2] For the reasons set out in my judgment I made orders relating to the schooling of the child to the conclusion of Year 8. I was aware that he was due to attend

secondary school from 2025 onwards and was due to start Year 9. For the reasons set out in the judgment I declined to make a ruling on secondary schooling and set in motion a process where the parents were to consult each other as guardians and if they did not reach agreement to attend a mediation. That process has been undertaken and the parents were unable to reach agreement. Accordingly, the case was set down for hearing before me for half a day and took place on 9 August 2024. Each of the parties were in person and Ms de Luen represented [Aspen Beaker Gully] born [date deleted] 2011.

[3] Father proposes that he commence secondary schooling at the beginning of Term 1 2025 at [School 5] being the [details deleted] secondary school in the country. Mother proposes that he continue at his current school which goes to Year 13 being [Te Kura]. [Te Kura] is a full immersion kura. [Aspen] has been in full immersion since he was three years of age. He is currently in a class with [under ten] pupils.

[4] The contrast between the two proposals is very stark. The parents as guardians of [Aspen] have been unable to reach agreement on their son's secondary schooling. As a result the Court has been asked to make a decision.

[5] Father's case in summary is as follows. Father considers that [School 5] offers a lot more options for his son. That there is a wide number of clubs and interest groups which will enable him to pursue a wide range of choices. That [School 5] has an excellent academic record and he is concerned about the academic achievements of his son at his current school. He acknowledges that it is a large state secondary school but considers that [Aspen] will cope with the change of environment. He has ascertained that there are good support mechanisms within the school. He considers that he should start at the beginning of Year 9 because the processes and learning styles and options commence in Year 9 and if he was to start later he would be disadvantaged. He considers that [Aspen] would be able to continue to pursue his knowledge of Te Reo and there are options available to him. He is strongly of the belief that the long-term outcome will be much better for [Aspen] in a state secondary school such as [School 5]. He contends that it will be good for his social and academic development. He considers that [Aspen]'s views expressed to his lawyer have been influenced by mother. He says that [Aspen] has expressed dissatisfaction at times with

his current school. That he is not achieving in maths and science in particular. That his attendance was of concern but acknowledges that it has improved as of late. He is concerned that the number of children at [Te Kura] diminishes as they get nearer to Year 13, getting down to only one or two children. That he is likely to want to shift to [School 5] at some point in his secondary schooling career and it is better to start at the beginning of Year 9 rather than attend the school when he is a bit older. I consider he argues that the shift to [School 5] is going to happen and it is better that it commences sooner rather than later.

[6] Mother's case in summary is as follows. She contends that [Aspen] is happy at his current school. That he has small class sizes which he is comfortable with. She considers that the clear views expressed by [Aspen] to his lawyer are ones genuinely held by him. That she has not influenced [Aspen] in any way. That she is proud of the way that he has worked through what he thinks about the situation and that he has been able to express himself freely as to what he wants. She says that if [Aspen] was expressing a clear view to attend [School 5] she would support that but that he has given considerable thought to what he wants and that is to remain at his current school. That he is familiar with all of the teachers and the pupils and everyone at the school know who he is. She says that he has never expressed any unhappiness with the school and considers that he is doing well academically and that she continues to work with the school and support and facilitate his academic achievements. She reports that his maths teacher considers that he is an engaged learner, loves course work and is doing well. She considers that [Te Kura] supports [Aspen]'s emotional, spiritual and academic development. She says that he is currently involved in [sport 1], [sport 2] and martial arts. That there is really no time for him to do anything else and he is not in any way suffering or experiencing any detriment in attending a much smaller school. She says that [Aspen] is concerned about being one of many whereas he stands out in his current school. She has researched the situation and says that 780 children are currently enrolled in Year 9 at [School 5]. She says the contrast between the two schools is significant. She acknowledges that [Aspen] is resilient but she is worried that if he did not succeed at [School 5] it would set him back. She also points to the opinion given by Professor May to the Court when I heard the matter in March that eight years of full immersion would be ideal and cement his knowledge of Te Reo in place and that he has presently had seven years of full immersion. She says one more

year to go would meet his best interests. She says that as he gets older she is open to him going to [School 5] should he express a view to do so and she will be supportive of him doing so should he wish.

Judgment

[7] I was disappointed to see the parents could not resolve this issue in the interests of their son. I have given careful thought to the two proposals. I have decided that he should continue at [Te Kura] for 2025 onwards and make a ruling pursuant to s 46R accordingly. I make that judgment for the following reasons:

[8] Firstly, it is consistent with the views of the child as ascertained by Ms de Luen and set out in her memorandum of 7 August 2024.

[9] Secondly, the ruling is consistent with the expert opinion of Professor May that he would benefit from eight years of full immersion and he has presently had seven, a further year would be of benefit to him becoming fully bilingual.

[10] Thirdly, his first language is Te Reo Maori. He will struggle in a large secondary school where the main language is English. I consider his English needs to get to a higher level than at presently is before attending and making the transition into [School 5].

[11] Fourthly, his happiness and wellbeing are important and in my view trump any academic concerns. Emotional and spiritual development need to be given proper weight. If there are academic issues it is for the parents to work with the school to address those issues.

[12] Fifthly, it is likely that his attendance at [Te Kura] will lessen as he gets older because of the pupils leaving. He is likely to go to mainstream when the number of pupils in his year group drop down to say two or three. I think the transition to [School 5] is likely to happen as a probability and this will happen naturally.

[13] Sixthly, I accept that there is some benefits in starting at the being of Year 9 but they are not of sufficient weight to justify starting in Year 9. I am confident that

he will be able to start at [School 5] say at the beginning of Year 11 and cope. There will have to be adjustment but the change would not be insurmountable. By that stage his Te Reo should be cemented in place and he will have the benefit of two languages for the rest of his life.

[14] Seventhly, from the way the parents describe [Aspen] I am satisfied that he is confident enough and resilient to start at [School 5] when he is a bit older. The picture that the parents paint of their son gives me confidence that he will be able to make a transition at a later stage. He will then be able to access the benefits the [School 5] offers but also take advantage of the benefits that [Te Kura] offers. His development at secondary school will therefore progress organically and naturally.

[15] I take into account his age and stage of maturity. I consider that significant weight can now be given to his views, particularly relating to schooling and it is clear from Ms de Luen's memorandum that [Aspen] has given the situation a lot of thought. I undertook a judicial interview with him when the hearing was before me in March. Having met him I am satisfied that I can accept the views expressed by him through Ms de Luen. Both parents accepted that [Aspen] has expressed those views. I am also satisfied that a transition from Te Kura Kaupapa to a mainstream can occur at [Aspen]'s pace in accordance with his needs and the decision made by both parents to enrol him in full immersion from three years of age needs to proceed to its natural conclusion. Accordingly, I am satisfied that he should continue at his current schooling for 2025 and beyond.

Judge DA Burns

Family Court Judge | Kaiwhakawā o te Kōti Whānau

Date of authentication | Rā motuhēhēnga: 15/08/2024