

[5] Seen from his perspective, he did not abduct his son, but he accepts that he kept him beyond the agreed period of access and that, at least for a time, Mrs Daniel was unaware where Jesse was living, unable to contact him and thus unable to get him back..

[6] As a result, at some personal inconvenience to herself, she issued proceedings out of the Federal Circuit Court of Australia (under file number (P) BRC9177/2014) seeking Orders requiring Jesse's return to her.

[7] The Family Court of Australia was sufficiently concerned about the circumstances where Jesse's whereabouts were unknown to his mother, to put Jesse on what is called the "watchlist" to prevent him being taken out of Australia and issued Orders requiring the Police, passports authorities, school authorities, telecom providers and the like to search their records and advise the Court if they were able to assist in locating Jesse.

[8] In the event Jesse was returned to his mother and on 18 November 2014 Judge Spelleken of the Federal Circuit Court ordered, on an interim basis, that the parents attend Mrs Philomena Bowman and that both parents have equal, joint, parental responsibility for Jesse.

[9] The Order, however, specified that Jesse should live with his mother and contained reasonably lengthy provisions for access so that Jesse could spend time with both his parents, with that access either being agreed or as ordered by the Court,

[10] Given Ms Daniel's intention to return to the Cook Islands with Jesse and Mr Zwies' intention to remain in Australia, the Order contained provision for facilitating access by Mr Zwies to Jesse, predominantly in Australia, though at his expense.

[11] There were also consequential Orders made.

[12] The Australian Family Court proceedings remain on foot and Mr Zwies places significant reliance on them and the Orders made in those proceedings in relation to these proceedings.

[13] This is an application filed by Ms Daniel in the High Court of the Cook Islands on 11 December 2014 following the pair's return to Rarotonga seeking a custody order in her favour in relation to Jesse plus access orders, particularly over the forthcoming Christmas vacation.

[14] It was expected that access would be able to be enjoyed by Mr Zwies in Rarotonga on and around Christmas day and Jesse's birthday and discussions were held between counsel acting for both parties in the Cook Islands with a view to finalising the arrangements to enable that to occur.

[15] However, as it turned out, access was unable to be exercised by Mr Zwies. It seems there were altercations between Ms Daniel, Mr Zwies and his new partner. It seems there was disagreement over details of the access: times and dates of commencement, completion and the like. In any event, access did not occur.

[16] Since that time, Jesse has continued to live in Rarotonga with his mother and these proceedings have remained on foot.

[17] A direction was made that the case be called during the sessions of the Court commencing on 9 March 2015 with a direction that an opportunity be extended for Mr Zwies to participate, either in person, or, if that proved impracticable, by telephone. A welfare report was obtained.

[18] The matter was first dealt with by way of a telephone conference on 17 March with Mr Zwies participating. There was a lengthy telephone conversation and it was hoped that as a result it would be agreed that Jesse could travel to Queensland during the forthcoming Cook Islands school holidays with him either travelling as an unaccompanied minor in the aircraft or with his mother travelling with him as far as Auckland and his father taking over for the travel to Queensland, and with the reverse taking place for his return.

[19] Unfortunately agreement was unable to be reached over the finer details of the proposed access or of access generally.

[20] The matter therefore falls to be determined today in a way which best suits Jesse's interests and on the present material.

[21] What was before the Court was Ms Daniel's initial supporting affidavit (which exhibited the whole of the papers filed in the Australian Family Court proceedings); a lengthy affidavit by Mr Zwies; a report dated 15 December 2014 from Philomena Bowman; and a welfare report dated 10 March 2015 from the Cook Islands Ministry of Internal Affairs Children and Family Services.

[22] Mr Zwies is employed as a barge captain, it seems on a 3 weeks on, 3 weeks off roster and although he was invited to participate by telephone conference to deal further with this matter on 20 March, he advised by email that he was at sea and was unable to take part.

[23] In light of that, the best that can be done in Jesse's interests at the current stage, is to make an Order for the Interim Custody of Jesse Caian Zwies born 26 December 2008 in favour of the Applicant. There will be an Order to that effect.

[24] There will be a further Order that Jesse Caian Zwies not be removed from the Cook Islands other than by agreement between the parties or pursuant to an Order of this Court and, in either case, only on agreed conditions concerning his travel, welfare and return.

[25] The third Order is that there will be a reservation of reasonable access in favour of Mr Zwies with his having power to ask the Court to determine the details of that access if he and Ms Daniel are unable to agree on that topic.

[26] No further Orders are required or appropriate at this juncture.

[27] It remains to add that Mr Zwies was advised during the conference on 17 March that this Court's view is that the Australian Family Court, were those proceedings to be reopened, would in all probability be unlikely to exercise jurisdiction concerning Jesse.

[28] It had jurisdiction when it made the Orders of 18 November 2014 because Jesse was then in Queensland. But he has now been continuously in

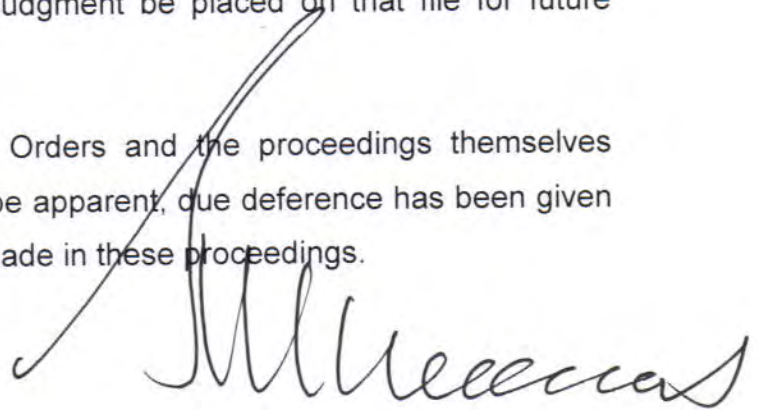
the Cook Islands since his return from Australia, he was born here, he is domiciled here and it would seem unlikely that the Australian Family Court would feel able to exercise jurisdiction in relation to a child who is not present within the jurisdiction and is neither resident, nor domiciled in the State of Queensland or the Commonwealth of Australia.

[29] It is accepted that there are currently no treaties or other reciprocal arrangements in place between Queensland (or Australia) and the Cook Islands which would entitle the parties to these proceedings to register Orders made in Australia in the Cook Islands or vice-versa and so have them treated as the Orders of the local Court.

[30] For that reason, such matters can only proceed as an issue of comity between the jurisdictions. Despite that, it has been made clear that this Court is prepared to do all it reasonably can to give effect to Orders made in Queensland and the hope is expressed that the Courts in Queensland would do likewise.

[31] For that reason, a copy of this judgment – and of any sealed Order incorporating the Orders herein - is to be transmitted by the Registrar to the Registrar of the Family Court of Australia dealing with the file numbered as mentioned with a request that the judgment be placed on that file for future reference if required.

[32] The Australian Family Court Orders and the proceedings themselves already form part of this file. As will be apparent, due deference has been given to those proceedings in the Orders made in these proceedings.

A handwritten signature in black ink, appearing to read 'H Williams', is written over a horizontal dotted line. The signature is fluid and cursive.

Hugh Williams J