**ANONYMISED VERSION - PUBLICATION PERMITTED IN THIS FORM - OTHERWISE SECTION 139 CARE OF CHILDREN ACT 2004 APPLIES**

**IN THE HIGH COURT OF NEW ZEALAND**
**TAURANGA REGISTRY**

**CIV 2009-470-547**

| | |
|---|---|
| BETWEEN | KEVIN JAMES CASEY<br>Applicant |
| AND | CARPENTER<br>First Respondent |
| AND | ARMSTRONG<br>Second Respondent |

Hearing: (on the papers)

Counsel: K J Casey, Lawyer for the Children, Applicant
A Brown for First Respondent
F Mackenzie for Second Respondent

Judgment: 31 July 2009

---

## JUDGMENT OF HEATH J

---

*This judgment was delivered by me on 31 July 2009 at 9.O5am pursuant to Rule 11.5 of the High Court Rules*

***Registrar/Deputy Registrar***

Solicitors:
Tauranga Family Law, Tauranga
Mackenzie Elvin, Tauranga
Cooney Lees Morgan, Tauranga

[1] Earlier today, I gave judgment on Mr Carpenter's appeal against parenting orders made by Judge Annis Somerville on 25 June 2009. The appeal was allowed and, in lieu of the orders made by the Family Court, the two children (Craig and John) were placed under the guardianship of the Family Court on specified terms. The orders made in the appeal judgment are made as Family Court orders: see s 143(4) of the Care of Children Act 2004 and s 76(1) of the District Courts Act 1948.

[2] The background to the parenting application is set out fully in my judgment on the appeal: *Carpenter v Armstrong* (High Court, Tauranga, CIV 2009-470-511, 31 July 2009). I incorporate that summary by reference into this judgment.

[3] After the appeal hearing (on 14 July 2009), Mr Casey, Lawyer for the Children, filed an application seeking leave to apply to have the children placed under the guardianship of the High Court. I deferred a decision on that application, pending delivery of my judgment on the appeal. Having now given judgment on the appeal, I deal separately with Mr Casey's application.

[4] In light of the orders made on appeal, I consider that it is premature to make any order on Mr Casey's application. The only circumstance in which I could envisage the High Court assuming jurisdiction would be if there were good reason to conclude that a High Court guardianship order was likely to be more beneficial if, subsequently, Ms Armstrong were granted day-to-day care of the two children on the basis that they can live in England.

[5] I expressed concerns, in my judgment, about the enforceability of any contact provisions that might be inserted into such an order. The ability of Courts with inherent jurisdiction to deal with each other, based on principles of comity, could (possibly) provide a greater degree of confidence that co-operation will occur.

[6] Ultimately, however, I consider it is for the Family Court (as the Court having presumptive first instance jurisdiction under the Care of Children Act 2004) to determine whether to transfer the whole proceeding to this Court. An application

has been filed by Mr Casey which, I anticipate, will be determined urgently by the Family Court, in view of the orders made on appeal. No doubt a hearing on that application can be undertaken by telephone if necessary.

[7] I adjourn Mr Casey's present application for a telephone conference before me at 8.30am on 7 August 2009. If the Family Court has transferred the Care of Children Act proceedings to this Court, I will make further directions at that stage and will substitute the guardianship of the High Court for the guardianship of the Family Court, being the order made on appeal. If the Family Court has declined to transfer the proceeding, I will dismiss Mr Casey's application.

[8] The application stands adjourned on that basis. I order that the reasonable costs and disbursements incurred by Mr Casey, as Lawyer for the Children, in respect of this proceeding shall be paid out of public funds appropriated for the purpose.

_____

P R Heath J

Delivered at 9.05am on 31 July 2009