

**IN THE HIGH COURT OF THE COOK ISLANDS  
HELD AT RAROTONGA  
(CIVIL DIVISION)**

**DP NO: 23/2015**

**IN THE MATTER** of the Section 6 of the Infants Act 1908  
(NZ) (as applied by Section 630 of the  
Cook Islands Act 1915) and of Section  
548 of the Cook Islands Act 1915

**AND**

**IN THE MATTER** of an Application for Custody and  
maintenance of **JACYNTA PONINI &  
TAURIAN PONINI**

**BETWEEN** **NGAIRE JASMINE UTANGA** of  
Rarotonga

**Applicant**

**AND**

**LI PHOENIX ANGELO PONINI** of  
Rarotonga, Assembler

**Respondent**

**Date:** 04 December 2015

**Counsel:** Mr W Rasmussen for Applicant  
Mr B Mason for Respondent

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**DECISION AND ORDERS AS TO CUSTODY AND DISCHARGE OF NON-  
MOLESTATION ORDER (DP 22/15)**

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[1] This is an application by the applicant who has obtained employment in Tauranga New Zealand and wishes to relocate there with the two children the subject of the application.

[2] The children are presently living in Rarotonga. Jacynta Ponini (presently aged 6 years) is living with her father, the respondent.

[3] Taurian, the other child of the relationship is aged 6 months. He has been in the care of his maternal grandmother in Rarotonga.

[4] There are no custody orders in place in relation to the children. There is a non-molestation order in place against the respondent in favour of Ake Utanga, the mother of the applicant. The order was made on 15 November 2015 by a Justice of the Peace under application DP 22/2015. It is due to expire on 31 May 2016 however Counsel requests that I deal with that matter today as well.

[5] Following submissions from the parties Counsel consulted were able to reach agreement as to appropriate interim orders. I make these orders by consent as follows:

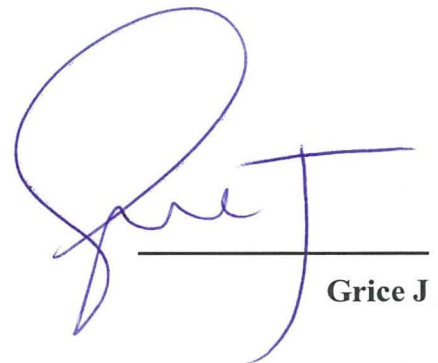
- 1) In relation to application number DP 22/2015, the interim non molestation order in favour of Ake Utanga (the mother of the applicant) is discharged immediately.
- 2) Jacynta Ponini born on 20 February 2009 shall:
  - a) Be in the custody and the day to day care of the Respondent when the Applicant is not in the Cook Islands.
  - b) In the custody and day to day care of the Applicant when the Applicant is in the Cook Islands. The Applicant will give reasonable notice to the Respondent of the dates she will be in the Cook Islands.
- 3) Taurian Ponini born on 18 April 2015 shall be in the custody of the Applicant although the day to day care of Taurian will be by his maternal grandparents Terry and Ake Utanga resident in the Cook Islands.
- 4) The Respondent shall have access between 9am to 5pm every Sunday.
- 5) The children will not be removed from the Cook Islands without further order of this Court.
- 6) A report on the children's circumstances and welfare for the purposes of the applications for custody and removal of the children from the jurisdiction will be prepared by the Department of internal Affairs.

[6] The parties wish to undertake mediation to attempt to resolve matters. Counsel will organise the mediation. The report on the custody and welfare of the children will be a useful guide for the parties in the mediation. Therefore that report should be prepared and made available as soon as possible. The applicant will need to travel from New Zealand to be present for the mediation.

[7] By consent the application for final orders is adjourned *sine die* to be brought on into a call over list to enable timetable directions to be made.

[8] If the matter is resolved in the meantime any Consent Memorandum may be referred to a Judge to deal with or alternatively the matter can be placed on the next list.

[9] If the matter is settled and no further orders are required Counsel will advise the Registrar as soon as possible to that effect.



Grice J

