Update

Family Law Service

Service 207 — June 2022

Legislative amendments

Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022 (2022 No 10)

This Act amended the following sections of the Child Support Act 1991:

- s 40AA **election period**, effective 1 April 2022
- ss 81A, 87A, 88, 89H, 152B, effective 26 October 2021
- s 180D, effective 1 April 2021
- sch 1 Part 4, effective 1 April 2021
- sch 1 Part 6, effective 30 March 2022

Child Support Amendment Act 2021 (2021 No 6)

This Act amended the following sections of the Child Support Act 1991 on 1 April 2022:

- s 2 **adjusted income**, **income**, **income amount order**, **last relevant tax year**, **taxable income**
- ss 30, 34, 35, 35B, 38, 39, 40AA, 40, 41, 42, 43, 44, 44A, 88A, 105, 106, 106A
- sch 3

Te Kāhui o Matariki Public Holiday Act 2022 (2022 No 14)

This Act amended on 12 April 2022:

- r 104, Family Court Rules 2002
- s 2 **working day**, Oranga Tamariki Act 1989
- ss 317, 370 Oranga Tamariki Act 1989

Bills

Surrogacy — reform of surrogacy law — Improving Arrangements for Surrogacy Bill

The Improving Arrangements for Surrogacy Bill is currently at the First Reading stage. The Member's Bill will "simplify surrogacy arrangements, ensure completeness of information recorded on birth certificates, and provide a mechanism for the enforcement of surrogacy arrangements". See [6.701AA], [10.1], [10A.1] and [10A.10].

Updated commentary

Child support — estimation — departure order

In *McLaughlin v Raymond* [2021] NZFC 10075 the father was on a disability benefit in Australia and failed to provide any estimation or any information of his situation. Inland

Revenue estimated his income at three times the level of the benefit. Judge McHardy granted the departure, in effect reversing the Department's estimation. See [5.211.02] and [5.232].

Day-to-day care and contact — child placed with non-alienating parent

In *Ishan v Krithigan* [2020] NZFC 10248, Judge Callinicos decided that a child aged under 10 years old would return to Malaysia to be in her father's day-to-day care. The mother had wrongly moved the child to New Zealand and subsequently tried to deceive Immigration New Zealand that the father had consented to the removal. See [6.108C.01].

Guardianship — removal of natural parent as guardian — domicile

In *Shu v Huang* [2020] NZFC 8370, the father was removed as guardian after ten years of no contact by his choice. All parties had since moved to China, but the mother and her new husband intended to return to live in New Zealand permanently at some point and had not shifted their domicile away from New Zealand. See [6.204.01].

Guardianship — removal of natural parent as guardian

In *Jian v Yong* [2021] NZFC 1115, Judge Goodwin refused the mother's application to remove the father as guardian of their two children. The mother argued that the father was unwilling to perform guardian duties as he had not seen the children since December 2015. It was in the children's welfare and best interests to retain the father as guardian. See [6.204.02].

Guardianship — disputes between guardians — taking child overseas temporarily — COVID-19

Curiel v Zemanova [2021] NZFC 6283 Judge Barkle varied the parenting order to allow the child to travel overseas depending on the statistics and COVID-19 risk levels for each country on a third-party website, Reuters. See [6.206.02(a)].

Guardianship — disputes between guardians — taking child overseas temporarily — COVID-19

In *Giroux v Bond* [2021] NZFC 11188, Judge Russell refused the father's application for the child to travel overseas to the father in Europe. The father was resident overseas and was unable to travel in or out of New Zealand. International travel was impractical and, by the time it would be practical again, the child's views will become more relevant. See [6.206.02(a)].

Guardianship — disputes between guardians — vaccinations — COVID-19

In *Pearce v Bird* [2022] NZFC 1042, Judge Greig ordered that the two children were to be vaccinated against COVID-19 despite the father's opposition. The mother worked in health care and one child had severe risk of hospitalisation or death should he catch COVID-19, so the stakes were especially high. See [6.206.03(a)].

Guardianship — disputes between guardians — vaccinations — COVID-19 — children's views

In *Long v Steine* [2022] NZFC 251, Judge Coyle refused to order that a 12-year-old child be vaccinated against his firm views. Although the Judge labelled some of these reasons as "plainly wrong", the Judge still described the child's reasoning as a form of "scientific analysis" by weighing the pros and cons. The child was *Gillick*-competent and his views were to have significant weight. See [6.206.03(c)].

Guardianship — disputes between guardians — vaccinations — COVID-19 — children's views

In *Holloway v Parsons* [2022] NZFC 805, Judge Flatley ordered that the 11-year-old child be vaccinated against COVID-19 immediately before resuming school, rather than respecting his own preference to be vaccinated sometime in the future. See [6.206.03(c)].

Hague Convention — preventing removal of children from New Zealand — COVID-19

In *Curiel v Zemanova* [2020] NZFC 3782, Judge Barkle granted an order preventing the child from leaving the country during the 2020 school year because of the health risks created by the COVID-19 pandemic. See [6.153].

International — domicile — jurisdiction to make orders under Care of Children Act 2004

In *Shu v Huang* [2020] NZFC 8370 the mother and daughter were residing in Hong Kong to allow the girl to learn about her heritage and gain language skills. The mother wished to remove the father as a guardian but had to show that she had a New Zealand domicile for the Family Court to have jurisdiction. Judge Burns held that the mother had not changed her domicile to Hong Kong. See [11.14.06] and [11.34].

Relationship property — scope of "property" — bundle of rights — *Clayton*

The Privy Council on appeal from the Cook Islands followed *Clayton v Clayton [Vaughan Road Property Trust]* [2016] NZSC 29, [2016] 1 NZLR 551, [2016] NZFLR 230 in holding that the husband retained a bundle of rights in relation to the family trust: *Webb v Webb* [2020] UKPC 22, [2021] 2 NZLR 376. See [7.320.02], [7.320.03] and [7.325.16].

Relationship property — economic disparity — causation — quantum

In *Little v Little* [2022] NZHC 601 the Family Court Judge held that only 15 per cent of the disparity was attributable to the marriage. On appeal Fitzgerald J increased this to 20 per cent, largely on the basis that the wife's primary role as child carer had been under-emphasised. The real significance of this aspect of the judgment is on the calculation of the quantum of compensation. See [7.382.03] and [7.383.03(a)(iii)].

Relationship property — economic disparity — enhancement of earnings — quantum

Domazet v Domazet [2019] NZFC 3476 is an enhancement of earnings case, where $77,135.78 was awarded primarily because the husband was enabled to get an MBA degree and improve his earning potential and lifestyle, See [7.383.03].

Relocation — child's safety — Te Ao Māori

In *Hughes v Trask* [2020] NZFC 11292, the mother unsuccessfully applied to relocate to the United Kingdom. There was a turbulent and violent relationship between the mother and father. Nonetheless, the current contact arrangements were sufficient to keep the child safe for the purposes of s 5(a) of the Care of Children Act 2004. The Judge agreed that relocating the child would not honour her cultural identity, and may sever her relationship with her paternal family. See [6A.5], [6A.12.06] and [6A.16].

Relocation — relationship with half-sibling

In *J v R* [2020] NZHC 3526 the mother successfully appealed an order for relocation to the United States, the father's home country. Collins J criticised the Family Court Judge

for omitting the psychological evidence that the child would feel replaced if she relocated to the United States, because the mother was pregnant with a new child. The child would also lose the ability to build a long-lasting relationship with her new half-sibling. See [6A.12.03] and [6A.12.07].

Relocation — bar on appeals to Court of Appeal in relocation cases — s 145(1)(a), Care of Children Act 2004

The Court of Appeal in *R v J* [2021] NZCA 49 confirmed that s 145(1)(a) of the Care of Children Act 2004 bars relocation appeals unless intertwined with parenting or other similar issues. The "plain and ordinary language of s 145(1)(a)" makes it clear that there is an absolute bar against appealing sole relocation decisions to the Court of Appeal. See [6A.7].

