
CANADA / JUDGMENT

A.M.L. v. W.L.L.

2008 BCSC 1718

COURT

Supreme Court of British Columbia

DECIDED

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2008 BCSC 1718 A.M.L. v. W.L.L.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.M.L. v. W.L.L.,

2008 BCSC 1718

Date: 20081212

Docket: E060532

Registry: Vancouver

Between:

A.M.L.

Plaintiff

And

W.L.L.

Defendant

Before: The Honourable Madam Justice Sinclair Prowse

Reasons for Judgment

Counsel for the Plaintiff:

S.H. Keet

Counsel for the Defendant:

W.L.L. Appearing On His Own Behalf

Date and Place of Hearing:

September 19, October 12, and November 3, 2007

January 24,25, 28, April 25, July 28, and August 26-28, 2008

Vancouver, B.C.

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(I) NATURE OF THE PROCEEDING	

[1] This is a family law action in which both parties seek final judgment of their various claims pursuant to Rule 18A of the Rules of Court.

- [2] With respect as to whether Rule 18A is a suitable vehicle through which to decide these claims, I am satisfied that it is. I am able, on the whole of the evidence, to find the facts necessary to decide the issues of fact and law. I am also satisfied that that it would not be unjust to decide these claims in this type of trial.
- [3] The trial of this action was on a piece-meal basis, extending over almost a year-long period. To say the least, there were a number of contentious issues. Because of the unique and somewhat complicated circumstances of this matter, I have concluded that it would be in the children's best interests if I remained seized of all applications for the next year. There will be an order to that effect. The parties are granted liberty to set a matter down (through the Registry) at any mutually convenient time and to appear by telephone.

(II) BACKGROUND CIRCUMSTANCES

- [4] These parties were married for 11½ years before they separated in the winter of 2006. They have 3 sons who are presently 11, 9, and 5 years old. The Father is presently 47 years old and the Mother is 44 years old.
- [5] Both parties claim in their pleadings that they separated on January 10, 2006. However, during this hearing, the Father contended that that was mistaken and that they did not separate until February 7, 2006. It is unnecessary to determine which of these dates is correct as nothing turns on it.
- [6] There is no dispute that on February 7, 2006, the Father was arrested for assaulting the Mother and that the parties have not lived together since then. As he admitted during the subsequent criminal proceedings, the Father assaulted the Mother by putting his hand over the Mother's mouth while making derogatory remarks to her and ultimately, by pushing her on the chest.
- [7] For some time prior to this assault, the parties had been experiencing marital difficulties. They had been endeavouring to resolve them through marriage counselling. Those endeavours were ultimately unsuccessful.
- [8] Following his arrest for the assault, the Father was placed on a peace bond. Included in that bond was a term that he have no contact directly with the Mother and that he not attend within a 2 block radius of the family residence.
- [9] Over the next 10-month period, he breached these terms and similar terms in subsequent recognizance orders. This conduct resulted in at least 3 convictions of breaching court orders as well as convictions for criminal harassment and for forcible entry.
- [10] Specifically, the Father was arrested on charges of criminal harassment and forcible entry in the middle of July 2006. Prior to this arrest, he had been convicted on at least 3 occasions for breaching his recognizance. These breaches included attending the family residence and contacting the Mother directly.

- [11] As far as the forcible entry is concerned, it pertained to an incident in which the Father was seen by a neighbour entering the family residence through an unlocked window. The Mother and children were not home at the time. The neighbour called the police and the Father was arrested at the scene.
- [12] The criminal harassment charges pertained to about 14 different breaches of the no contact/no attendance orders which occurred from February 2006 to July 2006. These breaches included 8 incidents in which the Father either attended the family residence or made telephone calls and 6 incidents where he drove back and forth in front of the family residence.
- [13] Upon his arrest on these charges, the Father was remanded into custody, where he remained for the next 36 days. He was released from custody pending sentence after he pled guilty to both of these charges in early September 2006. Sentencing was adjourned pending the completion of a pre-sentence report and a psychiatric report. As had been the case with his previous recognizances, a term of his release on this occasion was that he not contact the Mother and that he not attend within a 2 block radius of the family residence.
- [14] Within a month of his release in early October, the Father had breached this recognizance. He was seen walking by the family residence and was arrested by the police within a block of the home.
- [15] The Father spent the next 47 days in custody awaiting his sentence hearing for his convictions for criminal harassment and forcible entry. He was sentenced on these charges in late November 2006. By that time, he had spent a total of 83 days in custody - 36 days following his initial arrest on these charges and 47 days following his most recent breach.
- [16] He was sentenced to time spent in custody (which was equivalent to a 6-month sentence) and to 3 years probation which, as the Judge explained to him, was the most to which she could sentence him. Included in the terms of this probation were orders that the Father not have any contact with the Mother directly or indirectly except through legal counsel and that he not go within a 2 block radius of the Mother's residence.
- [17] Meanwhile, the family law proceedings continued on March 1, 2006. The Mother was granted sole custody and sole guardianship of the children and exclusive occupancy of family residence. In addition, the Court ordered that the Father be restrained from coming within 1 kilometre of the Mother and children's residence; of the children's school; of the caregivers of any of the children; and of the home of the Mother's sister and her husband.
- [18] On April 10, 2006, the Court ordered that the Father pay \$1,280 per month in child support based on an imputed income of \$65,000 under the Child Support Guidelines Regulation, B.C. Reg. 61/98 (the "Guidelines").

- [19] In that same hearing, the Court granted the Father access to the children, but ordered that that access be supervised; that the supervision be done by a mutually agreed upon person; and that the supervision remain in place until the Father had completed the "previously ordered Anger Management Courses and a Psychiatric Evaluation". These courses and evaluation had been ordered by the Provincial Court in the criminal proceedings.
- [20] Though this access order was not settled and entered for almost a year, the Father did have access visits with the children during that period.
- [21] However, after his arrest in July 2006 on the criminal harassment and forcible entry charges, he did not have access to the children for over a year, until after the commencement of this hearing in September 2007.
- [22] For the first 6 months of this year-long period, that is, the period extending from mid-July 2006 until early February 2007, the Father did not request access to the children. For most of the first 4 months of this period, he was in custody. Within a week of his release following the imposition of his sentence, he had moved to Quebec where he has resided ever since.
- [23] In February 2007 and in July 2007, the Father visited British Columbia. During those visits, the Father requested access to the children, but it did not occur because the parties could not agree upon a supervisor.
- [24] Extended family members had been willing to supervise in the first few months after the parties separated. However, as time went on, they refused to provide this service, citing the Father's increasingly aggressive and abusive behaviour towards them as their reason. It became more and more difficult for the parties to find willing people that they could mutually agree upon to supervise the access visits.
- [25] Since this trial's commencement in September 2007, the Father has had access to the children on a number of occasions through court orders. All of these visits have been supervised by a professional supervisor. The costs of this supervisor have been funded by the parties through advances from the net proceeds from the sale of the family residence.
- [26] With respect to other contact between the Father and the children during the 14-month period extending from his arrest on the criminal harassment charges in July 2006 and the commencement of this trial in September 2007, the Father did send presents and a letter to the children in January 2007. Apparently, the children sent him a number of emails after that, but the Father did not respond to any of them. During the trial, he explained that he did receive these emails, but that he did not reply to them because he had no means by which to do that. This is puzzling as he apparently had (or had access to) the necessary equipment to receive the emails.

- [27] On February 9, 2007, the Court granted an order authorizing the Mother to complete the sale of family residence. The proceeds of that sale were placed in trust on February 21, 2007, and have remained in trust ever since. As was mentioned earlier, some advances have been paid from these monies to finance the supervision of access costs.
- [28] Within a year or so of the parties' separation, the Mother and the children moved to a different part of the Lower Mainland, where they remain. This new location is much closer to her employment than the family residence had been. This location has not been disclosed to the Father. His probation order prohibits him from attending her residence until the end of November 2009. When the Father has access to the children, the children are brought to him.
- [29] The Father continues to live in Quebec. He has formed a new relationship. He and his new partner are living in a home that she has recently purchased. Given this situation and the fact that his present contract extends into the summer of 2009, he will be continue to reside in that province for at least the next year if not permanently.

(III) CHILD CUSTODY, ACCESS, AND GUARDIANSHIP

(A) Custody

- [30] Until final submissions, custody had been an issue with both parties seeking sole custody. However, during his final submissions, the Father withdrew his claim and advised the Court that he agreed that the children should be placed in the sole custody of the Mother. He went on to explain that it would be hard on the children to leave their friends and school in B.C. and relocate to Quebec, particularly if they had to relocate again in another couple of years if he returned to B.C.
- [31] I agree with the parties that the children be placed in the sole custody of the Mother as the evidence establishes that it is in the children's best interests.
- [32] The children have lived their whole lives in the Lower Mainland area. By all reports, they are thriving and happy here, although there is no question that they miss their Father. They are well-settled in the community, are happy in their schools and have a network of friends and extended family members with whom they have a strong and ongoing relationship. Other than their Father, they do not have any family members or friends in Quebec.
- [33] Given this situation, I agree with the Father's submission that it would not be in the children's best interests to relocate to Quebec, particularly as there is the possibility that he will be moving back to the Lower Mainland in a year or so.
- [34] There is also evidence that the Mother would facilitate and promote the children's relationship with the Father. As was observed by Dr. Elterman who wrote the s.15 Report, Ms. Provan who provided counselling services to the children, and David Morris who has acted as the supervisor on most, if not all, of the access visits, the children have not been alienated from the Father.

- [35] Mr. Morris attested that he was surprised by the fact that there was no indication of parental alienation given the strain in the parents' relationship. The hallmark characteristics of parental alienation (namely, hesitation and shyness of the children towards a parent) were completely absent in this case. To the contrary, all of these professional witnesses (that is, Mr. Morris, Dr. Elterman, and Ms. Provan) testified that the children demonstrated immediate, open, and unrestrained affection towards their Father.
- [36] I find that there is no evidence of parental alienation. The Father's allegations of parental alienation by the Mother are not supported by the evidence.
- [37] I note that the children have been in the Mother's custody since separation. During this period, the circumstances between the parties have been stressful to say the least. Most notably, the Father harassed the Mother to the point that his conduct constituted criminal harassment. The fact that there is no evidence that the Mother has attempted to alienate the Father from the children demonstrates that she is committed, even in the most trying of circumstances, to preserving the Father's relationship with the children.
- [38] The evidence does not, however, show that the Father would facilitate the children's relationship with the Mother if he had sole custody of the children. To the contrary, the Father's continuing pre-occupation with the Mother and his anger towards her indicates that he would undermine the children's relationship with the Mother and would probably endeavour to alienate them from her. I will set out the Father's attitude towards the Mother and the difficulties that it raises in more detail in the "Access" portion of this Judgment.
- [39] Given all of these circumstances, I am satisfied that it is in the children's best interests that they be placed in the sole custody of the Mother. That is the order that will be made.

(B) Access

- [40] As was set out earlier in this Judgment, access has been supervised from the outset. The issue in this trial was whether that supervision should continue.
- [41] That the Father would ever physically hurt the children has never been a general concern. That is, the concern regarding the children pertains more to emotional and/or mental abuse arising as a consequence of the Father's attitude towards the Mother.
- [42] From the time of separation, the Father has been pre-occupied and angry with the Mother. This pre-occupation has at times reached the level of obsession and his anger has bordered on irrational rage.
- [43] As was demonstrated throughout the evidence and through his actions during the trial, the Father's attitude towards the Mother precludes meaningful and effective communication between him and the Mother. Furthermore, it prevents him from having a full relationship with the children. When left unsupervised, he will question the children about the Mother. He has done this on at least one occasion before the supervisor could stop him. He will also make disparaging remarks about the Mother.

- [44] The Father blames the Mother for most, if not all, of the unfortunate events that have occurred in the last few years. Though he contends that he has taken responsibility for some of these events, that contention was not consistent with his submissions generally. Rather, the theme of his submissions was that he was the victim and that the Mother and the legal system were to blame for this situation. For example, on at least two occasions during his final submissions, he contended that it was the Mother's own fault that he had assaulted her because she appreciated that he was short-tempered and yet she had still provoked him.
- [45] Furthermore, as became clear during the course of the trial, the Father's anger with the Mother prevents him from working together with her. Time and time again during this proceeding, the Father misconstrued and misinterpreted solutions that the Mother was proposing to facilitate his communication and access to the children. On a number of occasions, he dismissed her proposals for no apparent reason other than the fact that she had been the one who had made them. On other occasions, he would change a proposal that he had initially made for no apparent reason other than that the Mother had agreed with his initial proposal.
- [46] The Father's anger prevents him from appreciating any of the positive efforts that the Mother has made to facilitate his relationship with the children. For example, he refuses to accept that the Mother is not now and has not in the past endeavoured to alienate the children from him. Throughout the trial, the Father alleged parental alienation. As mentioned above, there was no evidence tendered to support this allegation and I have found that there was no indication of parent alienation.
- [47] In spite of this fact, during the adjournment between the close of the evidence and final submissions, the Father secured a report from Dr. Flaubert, a clinical psychologist in Quebec, setting out the harm done to children as a result of parental alienation. Clearly the Father's instructions to Dr. Flaubert were that parental alienation had been proven in this case. In other words, the Father refused to change his position regarding the Mother's conduct regardless of the uncontradicted evidence to the contrary.
- [48] In addition, his anger results in him seeing the Mother in the most negative of terms. Any reference to her (even a passing reference) was made using the most disparaging terms.
- [49] For most of the trial, the Father's anger towards the Mother was so obvious and intense that it was necessary to have a Sheriff present at all times - not only during the actual court proceedings, but also afterwards as well as during the breaks.
- [50] The preceding paragraphs are not intended to be an exhaustive description of the Father's attitude towards the Mother but, rather, are intended to provide a sense of it.

- [51] It is because of the Father's attitude towards the Mother that access has been supervised. From the outset, this Court has ordered that access be supervised until the Father addresses this problem and, in particular, at least until he completes the Anger Management Courses and undergoes a Psychiatric Evaluation as ordered by the Provincial Court in one of the first criminal proceedings.
- [52] The Father did attend two Anger Management sessions in November 2007, almost two years after these had been ordered. However, given his attitude during the trial, I find that these sessions were not sufficient in addressing the underlying cause of the Father's behaviour because his attitude towards the Mother has not changed. I note that Dr. Elterman's opinion is that the Father's attitude towards the Mother may not be so much of an anger management problem as it is a problem caused by unresolved issues arising from the Father's relationship, or lack thereof, with his own father.
- [53] Whatever the cause of the Father's attitude towards the Mother, the evidence has proven that as long as the Father continues to be pre-occupied and angry with the Mother, it is in the children's best interests that access be supervised. If left unsupervised, there is the very real possibility that the Father will undermine the children's relationship with the Mother, and perhaps, even with him.
- [54] The Father has undergone a total of three psychological assessments in the course of the criminal and civil proceedings in this case. All of these assessments recognize his attitude as a problem that needs to be addressed. Dr. Speth did the initial psychological and risk assessment of the Father in May 2006. He opined that there was no need to address the problem because the Father was addressing it and further breaches were unlikely. Unfortunately, this was overly optimistic as the Father subsequently forcibly entered the family residence and continued to harass the Mother, actions which culminated in the criminal harassment conviction.
- [55] Dr. Kropp did an updated assessment of the Father in November 2006 as part of the sentencing proceedings. Subsequently, Dr. Elterman did a psychological evaluation of the Father as part of his s.15 Report. Both recommended that the Father undergo individual counselling to redress this problem by addressing the underlying cause.
- [56] As all of these psychological assessments indicate, the Father's attitude is a fixable problem. In his report, Dr. Elterman explained that the personality and aggression testing indicated that the Father is not "characteristically an angry or anti-social individual but that he does have a particular blind spot in relation to [the Mother] and his feelings that she betrayed him."
- [57] There is no dispute that the Father adores his children, that he wants to play an active and meaningful role in their lives, and that, as Dr. Kropp puts it, he has "an intense fear of losing his relationship with his children".

- [58] There is also no dispute that the children adore the Father and want to have more involvement with him. There is further no dispute that the Mother will do what she can to facilitate a strong and loving relationship between the children and the Father.
- [59] Finally, there is no dispute that it would be in the best interests of the children to have a strong and loving relationship with the Father - a relationship in which they would have ongoing contact with him interspersed with regular unsupervised visits.
- [60] However, that arrangement is not possible unless the Father decides to redress his attitude towards the Mother. To say the least, it would be tragic if he refused to take the steps necessary to fix this problem as inevitably that failure will result in him losing his relationship with his children. This would be an unnecessary loss for both him and them.
- [61] During the trial, the Father applied for an order that the Mother also undergo treatment. In his report, Dr. Elterman advised that the personality testing showed that the Mother portrays herself as someone who is relatively free of the common shortcomings to which most individuals admit. However, Dr. Elterman did not opine that treatment was necessary or that this trait was interfering in the Mother's ability to parent.
- [62] Given these circumstances, this application of the Father is dismissed.
- [63] I also make an order that the Father's access to the children will be supervised.
- [64] Barring any other material changes, that supervision requirement may be set aside upon the following conditions being completed. The Father must receive counselling. His counsellor must provide a letter attesting to the fact that in his/her opinion, the Father understands the underlying cause of his past reactions and attitude towards the Mother; that he understands the harm that it will do to the children if he does not change his attitude towards the Mother; and that he has addressed this problem and it is unlikely that he will ask the children about the Mother's activities and that he will not refer to her in disparaging terms.
- [65] That letter is to be forwarded to Dr. Elterman. Dr. Elterman, in turn, is to provide a letter setting out his opinion as to whether the problem has been resolved or not. A copy of Dr. Elterman's letter and the counsellor's letter is to be forwarded to both parties.
- [66] If Dr. Elterman and the counsellor are of the view that the Father has successfully addressed the present problem and if the parties agree that supervision is no longer required, the parties may vary the present access order to remove the supervision requirement, provided that the agreement is reduced to writing.
- [67] If Dr. Elterman and the counsellor are of the view that the Father has successfully addressed the present problem, but the parties do not agree that the supervision requirement should be set aside, the parties are to set the matter down at a mutually convenient time through the Registry and I will decide the matter. Provided that all of the materials upon which the parties intend to rely are filed and delivered to the opposite side, that hearing can be done by telephone if the parties so choose.

- [68] If upon receiving the letter from the counsellor Dr. Elterman is not satisfied that the Father has successfully addressed the present problem and the Father wishes to challenge that conclusion in order to seek a change to the access provision, he may set down a hearing through the Registry to have that issue decided by myself. This hearing may also be done by telephone provided that all of the materials upon which the parties intend to rely are filed and delivered to the opposite side.
- [69] There is the issue of who is to pay for the supervision costs. Because it is the conduct of the Father that has resulted in the need to have access supervised and because it is solely within his control as to whether that conduct is addressed and resolved, he will bear the costs of supervision.
- [70] Moreover, there will be a parenting co-ordinator appointed. The appointment of a parenting co-ordinator is appropriate for two reasons: (1) the Father is prohibited by court order from contacting the Mother directly until the end of November 2009; and (2) the parties are currently unable to communicate in an effective and meaningful manner. A parenting co-ordinator will be able to facilitate communication and assist them in developing a means of eventually working together to parent their children.
- [71] In addition, with respect to communication, the parties are to set up a "drop-box" system whereby each of them can leave messages for the other. As this system was explained during the trial, the Mother (for example) would set up a drop-box in which she and the children could leave messages for the Father. The Father would be given a password through which he could access this information. This system permits one party to send information and the other to receive it. It does not permit the receiving party (in this example, the Father) to reply to the information sent. The Father is also to set up a drop-box so that he can send information to the Mother and the children. The information regarding the mother's drop-box location and password should be communicated by her counsel to the Father, and the Father should provide his drop-box location and password through the Mother's counsel.
- [72] It is hoped that in the future the parties will be able to communicate directly. For the time being, until the Father has addressed his present conduct problem and until the court order has expired, the parties will use this type of mechanism in addition to the parenting co-ordinator to communicate with one another.
- [73] With respect to the terms of access, the Father is granted liberty to communicate with the children through the drop-box at any time and by web-cam twice a week at a pre-arranged time. The supervised access will include the supervision of the web-cam. In addition to communicating with the children in this way, the Father may communicate with them through the drop-box. However, if the Father abuses that option in any way, such as by using it to seek information from the children regarding the Mother or by referring to the Mother in a disparaging manner, the communication with the children will cease.

- [74] Through the drop-box mechanism, the Mother is to provide the Father with general information regarding the children and their activities. Similarly, when the children are with their Father, he is expected to provide the Mother with general information about the children during that visit.
- [75] Because it is recognized that both parties are very busy, the information regarding the children is not expected to be a treatise but, rather, a general overview. It is the mechanism by which each of the parents can then mention to the children that they have been advised of their activities by the other parent, thus conveying to the children that their parents are communicating and that they need not hide anything from either of them.
- [76] If the Father travels to the Lower Mainland and wishes to visit with the children, he is permitted to have supervised access to the children, provided that reasonable notice is given. Generally speaking, reasonable notice is a week. However, if it is not possible due to reasons beyond his control for the Father to provide that length of notice, he is to provide as much notice as possible and the Mother is to endeavour to produce the children for access if it is possible given the short notice and any other commitments.
- [77] As far as the length of the access visits are concerned, they may be for as long as 8 hours. However, by agreement, the parties may shorten or lengthen that time. Reasonable consent is not to be withheld. For the time being, the Father is not to take the children to church. The reason for this is that the Father has drawn members of the congregation into this litigation by securing letters from them, including a letter from a pastor from the church that he is now attending when in Vancouver.
- [78] Once the Father has addressed his attitude towards the Mother, it is hoped that the situation will change to the extent that the children can spend one-half of all of their holidays with each of their parents and that the children will have regular web-cam and telephone contact with the Father.
- [79] Once the present problem is addressed, it is anticipated that the parties will develop a relationship in which they can communicate in a meaningful and effective manner regarding their children.
- [80] To this end, I have made an order for a parenting co-ordinator. The parties had asked Dr. Elterman if he would fulfil that role. However, he has declined as it is his view that assuming that role would further complicate matters as he may eventually be required to give an opinion as to whether the Father has successfully addressed his attitude towards the Mother.
- [81] Given that situation, a parenting co-ordinator is to be appointed through the written agreement of the parties. If they are unable to reach an agreement, they are to make arrangements through the Registry to have a hearing before me and I will select the parenting co-ordinator. This hearing may be done by telephone provided that all of the materials upon which the parties intend to rely are filed and delivered to the opposite side.

[82] The duties and responsibilities of the parenting co-ordinator will be as follows:

- (i) to promote the best interests of the children;
- (ii) to help the parties resolve parenting issues in a way that is intended to minimize parental conflict and in a child-focused manner;
- (iii) to help with the implementation, maintenance and monitoring of the duties and responsibilities of the parties as set out in these Reasons for Judgment, including the access schedule (the "Parenting Regime");
- (iv) to help clarify and resolve different interpretations of the Parenting Regime and the access schedule;
- (v) to monitor the children's adjustment to the separation of the parents, the Parenting Regime and/or access schedule;
- (vi) to help facilitate the children's relationship with each of the parties,
- (vii) to help the parties communicate more effectively;
- (viii) to help with the exchange of information about the children (for example, their health, welfare, education and religion) and their routines;
- (ix) to help the parties settle anticipated or actual conflicts in the access schedule;
- (x) to make decisions about temporary changes to the access schedule to accommodate holidays, special events and other circumstances for the children and the parties;
- (xi) to make decisions that resolve conflicts about the children's participation in extra-curricular activities and programs;
- (xii) to make rules that will assist in the movement of the children between the households of the parties; and
- (xiii) to make rules that resolve conflicts concerning the children's day to day healthcare and education matters, passports, activities, religious education, and events that are not otherwise addressed in this Judgment or the access schedule.

[83] In addition, these duties and responsibilities will also extend to providing the parties with guidance as to the timing and process by which they should introduce new partners to the children.

[84] The parenting co-ordinator has the authority:

- (i) to require that the parties or the children meet with him/her at the times and for the frequencies that he or she directs;
- (ii) to require that the parties or the children participate in coaching in order to improve communication between the parties or the children;

(iii) to require that the parties or the children attend counselling with a counsellor, at the times and for the duration that the counsellor may require; and

(iv) to consult with or obtain information from third parties, including the parties' lawyers, family members, third party caregivers, school personnel, therapists and health care professionals.

[85] When the parenting co-ordinator makes decisions or rules pursuant to this order, he or she shall deliver a written statement of that decision or rule to the parties. This may be done through email. If either party is dissatisfied with that decision or rule, they may apply to this Court for a review of that decision or rule, at which time the decision or rule may be affirmed or varied.

[86] The terms of the appointment of the parenting co-ordinator are as follows:

- (i) that the length of the appointment is for at least 2 years and that the term may be lengthened by the written agreement of the parties or order of the Court, but that it is not to be shortened except if ordered by this Court;
- (ii) that the person appointed as parenting co-ordinator may, with leave of the Court, withdraw at any time, having provided the parties in writing with reasonable notice (30 days if possible) of this intent and the reason(s) for it;
- (iii) that the person appointed to act as parenting co-ordinator may be changed at any time to a different person by order of the Court or by written agreement of the parties;
- (iv) that if the person appointed as parenting co-ordinator is changed, all of the provisions set out in these Reasons apply to the newly appointed person;
- (v) that the length of the appointment of the parenting co-ordinator may be extended beyond the 2nd year by an order of this Court or by the written agreement of both parties subject to the following conditions:
 - (a) each party must have advised the parenting co-ordinator and the other party, at least two months before expiry of the parenting co-ordinator's term, whether that party wants to renew the parenting co-ordinator's appointment; and
 - (b) the parenting co-ordinator has the option not to renew the appointment.

[87] With respect to the payment of the fees of the parenting co-ordinator, these fees are a special expense within the meaning of s.7 of the Guidelines. Each party will pay their proportional share of that expense.

[88] If the parties are unable to reach an agreement with respect to the amount of the fees that are payable by each of them, they are granted liberty to apply to me for further instructions. That application may be done by telephone at any mutually convenient time.

[89] In the event that the parties return to court to litigate issues concerning the children, none of the work done by the parenting co-ordinator is privileged or confidential, and he or she may be compelled to give evidence by either party or the Court about any matter relating to that appointment.

(C) Guardianship

[90] There will be an order for joint guardianship.

[91] There is no dispute that the Father cares deeply about the children and wants to play an ongoing and active role in their lives. Because of this commitment, I am optimistic that he will take the steps necessary to address his present attitude towards the Mother and resolve their communication difficulties. If I am wrong, and he does not choose to address this problem, the children will eventually be placed in the sole guardianship of the Mother. As was touched upon before, that situation would be tragic.

[92] However, this order is made on the basis that the Father will address his present problem and that he and the Mother will develop a healthy and effective parental relationship.

[93] The terms of this joint guardianship order will be as follows:

- (a) the parents are to be joint guardians of the estates of the children;
- (b) in the event of the death of either parent, the remaining parent will be the sole guardian of the persons of the children;
- (c) the Mother, who has the sole custody of the children, will have the obligation to advise the Father of any matters of a significant nature affecting the children;
- (d) the Mother will have the obligation to discuss with the Father any significant decisions which have to be made with respect to the children, including significant decisions concerning the health (except emergency decisions), education, religious instruction, and the general welfare of the children, and the Father will have the obligation to discuss these issues with the Mother, and each parent will have the obligation to try to reach agreement with respect to those major decisions;
- (e) in the event that the parents cannot reach agreement with respect to any major decision despite their best efforts, the parenting co-ordinator will have the right to make that decision, and each party will have the right, under s. 32 of the Family Relations Act, R.S.B.C. 1996, c. 128, to seek a review in court of any decision which he/she considers contrary to the best interests of the children;
- (f) the Mother shall advise the Father of the name of the children's medical and dental practitioners; and

- (g) each parent will have the right to obtain information concerning the children directly from third parties, including teachers, counsellors, medical professionals and third-party caregivers.

(IV) CHILD MAINTENANCE, EXTRAORDINARY AND SPECIAL EXPENSES AND ARREARS

(A) Child Maintenance

- [94] As far as child maintenance is concerned, the only issue was the quantum of the Father's income. The Father contended that his income could well be within the range of \$45,000 to \$50,000, but that because his income fluctuates from year to year, he left it up to the Court to determine the appropriate quantum.
- [95] Using the \$65,000 income imputed to him in April 2006 as a starting point for the Father's income, the Mother contended that his income should be in the \$60,000 to \$70,000 range. She further submitted that his financial records for 2007 support an increase in this income to \$98,623 as the result of a \$36,000 payment that he received.
- [96] The evidence does not support the submissions of the Mother.
- [97] The Father is presently and was for most, if not all, of the marriage, employed as a design engineering technician. He is hired by different businesses to work on specific projects. Each of those projects usually last 4 to 6 months. When a project is finished, he then looks for work on another project. He also incorporated his own business in 2007.
- [98] As was disclosed in the evidence, the Father's income during the marriage varied from year to year and was within the range of \$42,000 to \$53,000 - being \$43,810 in 2003; \$52,806 in 2004 and \$41,883 in 2005. Although the exact amount of his 2007 income has not yet been finalized, the statements provided by the Father's accountant indicated that it would be in the range of \$45,230. This is in keeping with the income that he earned throughout the marriage.
- [99] His income for 2006 was artificially low (\$21,459), no doubt because of the fact that the Father spent a good portion of that year in jail. That was also the year that the parties separated.
- [100] The evidence in this trial did not disclose the basis on which the Court imputed the Father's income to be \$65,000. The Father was not employed at the time that the order was made as he was between contracts. The Father may have optimistically submitted that he would make that income that year.
- [101] In any event, whatever the basis may have been for the imputation of his income to \$65,000, the evidence proves that that was not a realistic income to be attributed to him. It is higher than any income that he has ever earned.

- [102] As far as the \$36,000 dividend was concerned, this dividend was paid to the Father by his own company, as evidenced by his financial records for 2007. Though the Mother interpreted this payment as being in addition to the other income that he had earned, the evidence proved that it was not. This dividend was not a payment in addition to his earnings but, rather, was the method used by his company to pay him his entire earnings. This method was used because it reduced his income taxes.
- [103] For all of these reasons, I am not satisfied that the evidence proves that the Father's income should be imputed to be either \$98,623 or in the \$60,000 to \$70,000 range.
- [104] Though there were some deficiencies in the underlying financial documentation tendered by the Father, I am satisfied that his income is probably in the range of income that he earned during the marriage. Having reached that conclusion, his income will be imputed to be \$46,166, which is the average of his incomes that he earned in the last three years of the parties' marriage.
- [105] As far as the amount of child maintenance is concerned, based on a Guidelines income of \$46,166, the Father is ordered to pay \$920 per month for the support of his children. Those payments are to be made in two equal instalments of \$460 per month commencing on December 15, 2008, and payable on the 1st and 15th of each and every month thereafter.
- [106] Furthermore, on or before June 15th of each year, commencing with June 15, 2009, the parties are to exchange copies of their Income Tax Returns filed that year. For example, on June 15, 2009, they will exchange their 2008 Tax Returns. This documentation is to include their Notice of Assessment and copies of the underlying documentation.
- [107] If the Father's income has changed from the preceding year, the parties are to adjust the quantum of child maintenance to correspond with the quantum payable under the Guidelines, with the assistance of the parenting co-ordinator. Any agreement reached is to be reduced to writing. If an agreement cannot be reached, the parties may appear before me for resolution of the matter. That appearance may be made by telephone.

(B) Special and Extraordinary Expenses

- [108] Special and extraordinary expenses are shared by parents in proportion to their incomes.
- [109] As was set out at paras. 81-82 in *McLaughlin v. McLaughlin* (1998), 57 B.C.L.R. (3d) 186, [1999] 7 W.W.R. 415 (C.A.), in making the determination as to whether a proposed expense should be incurred, it is necessary to consider all of the surrounding circumstances including:
- (a) the combined incomes of the parties,
 - (b) the nature and amount of the individual expense (including any benefit such as a tax relief that may flow to one of the parties),

- (c) the nature and the number of the activities combined (activities should be considered in their totality, as activities may not be extraordinary when considered individually but may be extraordinary when considered collectively),
- (d) any special needs or talents of the children, and
- (e) the overall cost of the activities.

[110] Once an expense or expenses are found to be extraordinary, it is necessary for the Court to determine whether the expenses are necessary in relation to the children's best interests and reasonable, having regard to the means of the parents and those of the child and to the family's spending pattern prior to separation.

[111] In the present case, the proposed special and extraordinary expenses are about \$8,432 in total for all of the children per year. These expenses include costs incurred for childcare, medical/dental insurance, and Tae Kwon Do lessons.

[112] I am satisfied that the evidence proves that these expenses are special and extraordinary and that they are necessary. Though the children were not involved in Tae Kwon Do during the marriage, I note that they had previously been involved in various sporting activities.

[113] To determine whether these expenses are reasonable, it is first necessary to determine the financial resources of both parties.

[114] As was set out in the preceding section, the Father's income is \$46,166.

[115] The Mother earned an income of \$95,156 in 2006 and of \$84,310 in 2007. As was proven in the evidence, she earns a base income of \$74,889 working as a school administrator and has been able to supplement that income by \$9,000 or more per year through extra teaching contracts which she does in the evening.

[116] The difficulty is that her supplemental income fluctuates with the availability of contracts. She anticipates that this income will probably decline in the future for reasons beyond her control.

[117] For the time being, I am satisfied that the evidence proves that her income will be approximately \$84,310.

[118] Given the Mother's income of \$84,310 and the Father's income of \$46,166, their proportionate contributions to the children's special and extraordinary expenses are 65% and 35%, respectively. As the present expenses total \$8,432 annually, the Mother's proportionate contribution is \$5,481 and the Father's proportionate contribution is \$2,951.

[119] The Father's contribution is to be paid to the Mother in equal payments on the on the 1st and 15th of each month throughout the year, commencing on December 15, 2008. The amount owed by the Father is currently \$246 per month or two monthly payments of \$123 each.

[120] The quantum of these payments will be adjusted if other expenses are incurred or if the quantum of the existing expenses increases or decreases. The parties are to communicate through the parenting co-ordinator on or before June 15th of every year, commencing with June 15, 2009, to determine the activities in which their children will participate in during the upcoming year and the amount of the contribution to be made by each of them. The "year" will run from July 1 to June 30. The plan set out with the parenting co-ordinator may be adjusted from time to time to include unanticipated expenses.

[121] During the trial, the Father submitted that he would like to see the children once again enrolled in hockey, soccer and baseball as they had been prior to the parties' separation. This is no doubt a topic that the parties will want to discuss with the parenting co-ordinator and, in particular, whether the parties can now financially afford to enrol their children in all or any of these activities.

(C) Arrears

[122] There is an outstanding balance of arrears of about \$12,650. The Mother seeks an order enforcing those arrears. The Father seeks an order cancelling or reducing them.

[123] In April 2006, the Father was ordered to pay \$1,200 per month. After the commencement of this trial, this amount was varied (on a without prejudice basis) to \$1,231 per month. This included a payment of \$927 per month for child maintenance (using a Guidelines income of \$46,500) and a payment of \$304 per month for his 33.2% contribution to the children's special and extraordinary expenses.

[124] During the period extending from the initial maintenance order until the variation during this trial, the Father should have paid \$20,400. He has paid a total of \$7,750 so far. Those payments included \$3,600 in 2006 (\$1,200 each in May and in June, \$600 in July, and \$600 in December) and \$4,150 from January 2007 to August 2007. There is thus an outstanding balance of \$12,650.

[125] Since the commencement of the trial, the Father has not been in arrears other than for a shortfall of \$410 at the conclusion of the trial which he submitted would be paid shortly.

[126] Assuming that that \$410 payment has been paid, the outstanding balance of arrears is \$12,650.

[127] With respect to whether these arrears should be reduced or cancelled, the law places a heavy onus on the Father. Specifically, he must demonstrate, on the balance of probabilities:

- (a) that there has been a significant and long-lasting change in circumstances: McLaughlin; Heiden v. British Columbia (Director of Maintenance Enforcement) (1995), 16 B.C.L.R. (3d) 48, 19 R.F.L. (4th) 320 (C.A.);

- (b) that he cannot pay and will not at any time in the future be able to pay the arrears: *Haisman v. Haisman*; *Fehr v. Fehr* (1994), 157 A.R. 47, 116 D.L.R. (4th) 671 (C.A.), leave to appeal to S.C.C. refused, [1995] S.C.C.A. No. 86; *Earle v. Earle*, [1999] B.C.J. No. 383 (S.C.); and
- (c) that it would be grossly unfair not to cancel or reduce the arrears: *British Columbia (Director of Maintenance Enforcement) v. Wiebe* (1992), 39 R.F.L. (3d) 220 (B.C.S.C.); *C. (L.K.) v. C. (M.I.)* (1993), 77 B.C.L.R. (2d) 52, 44 R.F.L. (3d) 229 (C.A.).
- [128] For reasons which follow, I have concluded that the arrears should be cancelled. The Father cannot now pay the arrears, and it is unlikely that he will be able to do so in the future.
- [129] For the last few months the Father has been paying more than that required by the Guidelines - that is, \$65 more per month. However, I find that that payment was difficult for him to meet and, in my view, is not one that he could likely maintain. Given the fact that the Father appears to be working to his full capacity in that his income remains within the range that it was during the marriage, and the fact that he does not have any savings on which to draw, it would be grossly unfair not to cancel the arrears. The enforcement of the arrears would probably result in him being unable to meet his current child maintenance obligations.
- [130] However, the evidence does not fully explain his failure to pay, as far as his circumstances at the time are concerned.
- [131] With respect to his failure to make payments in 2006, though the evidence proved that the Father was unemployed for much of this year, it did not prove that that situation arose because of a shortage of work. Dr. Elterman opined that, in his assessment, the Father was clinically depressed in the last few months of the relationship and into 2006. However, it is unclear as to the extent, if any, that that situation would have affected his ability to work because he was still working during the last few months of the relationship.
- [132] The evidence also shows that the Father could not work for part of 2006 because he was in jail. This situation was of his own making however, because it arose from his own conduct.
- [133] In any event, assuming that the Father's failure in 2006 to meet his child maintenance obligations arose because of his inability to work due to clinical depression, that situation had changed by the end of that year as the Father had secured employment in Quebec and has been working there continuously ever since.
- [134] During the first 8 months of 2007, however, the Father only paid \$4,150 towards child support, rather than the \$9,600 that he owed. The evidence does not disclose the reason for his failure to make all of the payments for this period. I note that the Father has paid child maintenance regularly since the commencement of the trial in September 2007.

[135] The practical effect of cancelling the arrears is that it means that the Mother has had to assume a greater portion of the financial responsibility for the children. Though his failure to meet his obligations in 2006 may have been as the result of circumstances beyond his control (namely, clinical depression), there has been no explanation provided for his failure in 2007.

[136] Given that situation, I have decided that the arrears should be cancelled because the Father cannot pay. However, I am satisfied that his failure to make child maintenance payments (particularly in 2007) should be considered as a factor supporting the Mother's application for a re-apportionment of the family assets in her favour.

(V) DIVISION OF FAMILY ASSETS

[137] As with all claims for division of family assets, the issues to be addressed are:

- the identification and valuation of the family assets;
- the identification and valuation of any family debts;
- the identification and valuation of monies owed by one party to the other for various reasons including the repayment of family debts; and
- the division of the family assets.

(A) The Identification and Valuation of Family Assets

[138] The family assets consist of the following:

- net proceeds from the sale of the family residence;
- 3 vehicles (one of which is a Town and Country van);
- miscellaneous household items;
- a \$5,000 Income Tax Refund; and
- the Mother's pension from her employment (the Mother contributed to this pension throughout the marriage and continues to contribute to it.)

[139] I move now to the valuation of these assets. As of the end of August 2008, the balance of the net proceeds from the sale of the family residence was \$63,908.84. The initial value of the net proceeds had been \$126,197.01 - that is, just after the sale of the residence. However, by agreement, a number of payments have been made from these monies - including the payment of the outstanding balance of the credit line (\$24,784.89); the payment of the outstanding balance of the consolidation loan (\$18,169.00); and the payment of about \$10,000 for the s.15 Reports. In addition, all of the supervised access visits for the last year have been financed through payments from these proceeds.

- [140] The Father contends that there should be adjustments made to the valuation of this asset and that the difference should be attributed to the Mother as an advance against her interest.
- [141] Specifically, the Father submits that the Mother made a unilateral decision to sell the home and that if this asset had been retained for a year longer, it could have been sold for \$75,000 more than the amount for which it was sold. In addition, the Mother received \$9,700 in rental income from the suite in the home prior to its sale.
- [142] With respect to the Father's contention that the Mother unilaterally sold the family residence, the evidence shows that the Father had his own listing agent and that it was the Court who ordered that the Mother complete the sale. In addition to the evidence failing to prove that the family residence could have sold for \$75,000 more a year later, the evidence also failed to prove that the parties could financially afford to retain this asset for that long. During that year following separation, the Father contributed little, if anything, towards the preservation of this asset.
- [143] Given these findings, I dismiss the Father's application that the value of these sale proceeds should be increased by \$75,000 and that I should attribute that \$75,000 as having been advanced to the Mother.
- [144] As far as the rental monies are concerned, the Father says that the rent generated from the rental suite was \$900 per month and that that is the amount that the Court should calculate as being generated through until March 2007. On her 2006 Income Tax, the Mother calculated the rental income as \$9,700 for the year which is just over \$800 per month.
- [145] Regardless of whether this income should be calculated at \$900 per month or just over \$800 per month, the evidence establishes that it was used to preserve this joint asset - that is, these payments were used to pay the mortgage on the family residence.
- [146] Having reached these conclusions, it would be inappropriate to attribute the payment of these rental monies as payments made to the Mother for own benefit. This application is dismissed.
- [147] As far as the vehicles are concerned, the Mother retained and subsequently sold the Town and Country van. The Father retained the other vehicles.
- [148] The net proceeds of the sale of the Town and Country van were \$3,351.56.
- [149] The Father argues that this van was sold to a friend or close family member for less than its fair market value. The Mother denies both of these allegations. The Father submits that it should have sold for \$14,000 as similar vehicles were valued at \$10,000 to \$18,900, but that it sold for \$8,700. The Father contends that the Mother not only sold it for less than the amount for which she should have sold it, but that she should have sold sooner. The Mother kept this vehicle for 10 months.

- [150] The Father has failed to prove that the vehicle was sold for less than its value. Rather, the evidence proved that the sale price of \$8,700 was the best offer that the Mother received. The evidence also proved that these proceeds were used to pay \$5,348.44 in family debts - these debts being a \$2,500 loan incurred on December 15, 2005; a \$89 loan incurred on December 31, 2005; a \$869 loan incurred on January 7, 2006; a \$1,920.44 bill for miscellaneous repairs done to the van; and a \$150 bill for detailing and gas for the van.
- [151] As far as the postponement of the sale is concerned, the evidence showed that a significant amount of time was spent putting everything in place so that the Father could assume ownership of the van, but that he subsequently decided not to do that. Given these circumstances, if the postponement did indeed result in a reduction of the value of this family asset, the evidence falls short of proving the Father's allegation that that loss should be attributed to the Mother.
- [152] With respect to the remaining 2 vehicles, there was no evidence led with respect to their value. Though the Father contends that they are of little, if any value, as neither is driveable, the Mother argues that one of them has some value as the Father did indeed drive it.
- [153] I have concluded that the total value of these two vehicles should be set at \$1,500, as there was evidence presented that at the very least, they each could have garnered \$750 under the government program.
- [154] There was also no valuation tendered with respect to the household items. These family assets have already been distributed.
- [155] The Father is seeking \$10,000 for the payment of his interest in the household items. Though he presented a list attributing values to the various household items, there was no evidence presented as to the basis for these valuations.
- [156] The Mother says that the Father was asked on various occasions which household items he would like to have. Offers were made to help him move the items. The only items that he indicated that he wanted were his computer and his books - all of which were delivered to his friend's home. In addition, he received the digital camera and the car-top carrier.
- [157] The Mother contends that most of their household items were of little value. Many items were given to charity. Some were refused because of poor condition and had to be thrown out. None were sold for money.
- [158] The evidence fails to support the valuations of the household items presented by the Father. To the contrary, the evidence shows that these items had little market value and that the parties divided them at the time to their satisfaction.
- [159] With respect to the \$5,000 Tax Refund, the evidence proved that the Father received this payment after the parties separated, but that it was attributable to an overpayment that occurred during the parties' marriage.

- [160] As far as the Mother's employment pension is concerned, there was no valuation given for it.
- [161] The total value of the parties' family assets, excluding the Mother's pension, is \$141,397.01. This includes \$126,197.01 in net proceeds from the sale of the family home; \$8,700 from the sale of the Town and Country van; \$1,500 for the remaining vehicles, and \$5,000 for the Tax Refund.
- [162] Of this total, \$77,488.17 has already been distributed to pay various family debts, expenses and payments to the parties - namely, the credit line payment of \$24,784.89; the consolidation loan payment of \$18,169; the s.15 Reports payment of \$10,000; the payment of \$9,334.28 for supervised access and other costs; the payment of \$5,348.44 for various loans and expenses related to the Town and Country van; the payment of \$3,351.56 to the Mother for the sale of the van; the imputed payment of \$1,500 attributed to the Father for the other two vehicles; and the \$5,000 Tax Refund to the Father.

(B) The Identification and Valuation of Family Debts

- [163] Although the parties have paid some of their family debts, there are still a number of outstanding debts. The total value of those outstanding debts is \$98,500.06. These debts are composed of a debt to the Canada Revenue Agency of \$5,072.38; the outstanding balance of \$7,037.47 on the consolidation loan; a \$46,390.21 debt owed to the Mother's parents; and a \$40,000 debt owed by the parties to a friend.
- [164] As far as the debt to the Canada Revenue Agency is concerned, this debt was originally \$6,620. It was reduced to \$5,072.38 as a result of a payment of \$1,547.77 made by the Mother. Though this debt was incurred in the name of the Mother, it was incurred during the marriage and is a family debt. The family had the benefit of these monies that should have been paid to Canada Revenue, but were not.
- [165] The debt of \$7,037.47 is for the balance owing on the consolidation loan that the parties used to pay out outstanding credit card debts and other debts. The original amount of this debt was \$25,197.01. A payment of \$18,169.00 was made by consent from the net proceeds of the sale of the family home.
- [166] The Father submits that this remaining balance should not be characterized as a family debt but, rather, as a debt of the Mother because it was used to pay off her credit cards.
- [167] The evidence did not support this submission. Therefore, this outstanding balance will remain as a family debt.
- [168] With respect to the debt owed to the Mother's parents, this debt is composed of three loans: (1) a loan of \$16,000 made on April 8, 2004, that was to be interest-free until April 12, 2007, at which time the full principal was repayable; (2) a loan of \$30,000 made on July 30, 2004, that was to be interest-free until July 30, 2007, at which time the full principal was repayable; and (3) \$390.21 in expenses paid by the Mother's parents for the maintenance of

the property which comprised the purchase of garden soil, cleaning of drains, and the installation of a new lock.

[169] The debt of \$40,000 to the parties' friend is for a loan that he made to them during their marriage.

[170] Both parties made allegations of additional family debts, but these debts were not proven. Moreover, there was no explanation provided as to the failure to tender this evidence.

[171] Therefore, to conclude, the parties have family debts of a value of \$98,500.06.

(C) Miscellaneous Matters

[172] Since the parties separated, both of them have made payments on family debts and have received monies which were family assets. In addition, there is an outstanding court order that the Father pay the Mother \$850 in court costs.

[173] Specifically, the Father has received (or has been imputed to have received) \$6,500 in family monies - that being \$1,500 for the 2 vehicles and \$5,000 for the Tax Refund. Moreover, he has made \$1,896.98 in interest payments on the parties' credit line, which is a family debt.

[174] The Mother, on the other hand, has received a benefit of \$3,351.56 (the net proceeds from the sale of the Town and Country van). She has also made \$8,502 in payments on family debts, being \$5,200 on the tax debt and \$3,302 in interest payments on the consolidation loan.

[175] Because these benefits constituted family assets and the debts were family debts, each of the parties are entitled to benefit equally in these family assets and each of them are equally responsible for these family debts.

[176] In particular, the Mother is entitled to \$3,250 of the \$6,500 that was paid or imputed to the Father. However, as she was also responsible for \$948.49 of the \$1,896.98 in interest payments made by the Father, the balance owed by him to her as a result of these transactions is \$2,301.51.

[177] The Father, however, is entitled to \$1,675.78 of the \$3,351.56 received as the net proceeds from the sale of the Town and Country van. That amount must be set-off against the \$4,251 that he owes her for the \$8,502 that she made in payments towards the family debt. This calculation results in the Father owing the Mother \$2,575.22.

[178] The total amount owed by the Father to the Mother as a result of the above transactions is \$4,876.73. To this amount should be added the remaining debt of \$850 for court costs, resulting in a total debt owed by the Father to the Mother of \$5,726.73.

- [179] The Mother also alleged that the Father had a tax debt of \$38,000; that that debt was not a family debt but, rather, a debt for which he was solely responsible; that that debt had been paid from joint funds; and that the Father repay her for her interest in the joint funds used to pay this debt. The evidence fell short of proving this allegation and for that reason, this debt was not included in these calculations.
- [180] In addition to these matters, there is an issue with respect to the family funds that were used to finance the supervision costs and the s.15 Report. During the trial, I ordered that these costs be paid from the net proceeds of the sale of the family home with the proviso that I would decide the apportionment of these costs between that parties after all of the evidence had been tendered.
- [181] It has been the Mother's position throughout this trial that these costs (in particular, the supervision costs) should be borne solely by the Father as he is responsible for them being incurred.
- [182] The evidence supports her contention. The initial access order required that the access be supervised at least until the Father underwent the Anger Management Course and the Psychiatric Evaluation ordered by the Provincial Court. It was not until November 2007 (more than 1½ years after the order was made) that the Father participated in two Anger Management sessions. As was touched on earlier, the Father's conduct towards the Mother did not change after these sessions indicating either that he needed to participate longer or that the problem was not one of anger management. The significant point however with respect to the apportionment of supervision costs is that the Father did not even attempt to address the problem for 1½ years.
- [183] Moreover, the parties eventually had to incur the costs of hiring a professional supervisor because of the conduct of the Father. Initially, mutually agreed-upon friends and family members provided this service free-of-charge to the parties. However, after 6 months or so, they refused to continue because of the abusive behaviour of the Father.
- [184] Though the Father proposed alternative people, the Mother would not agree to their appointment as, in her view, they were not impartial. Most, if not all, of them had written letters to be tendered in court supporting the Father and criticizing her.
- [185] In addition, the Father chose to ignore the information that he received from the psychologists who evaluated him during the criminal proceedings. Both Dr. Speth and Dr. Kropp identified the Father's obsession with and anger towards the Mother and advised him that it needed to be addressed. Dr. Speth opined that the Father was addressing it. Dr. Kropp, however, recommended at the end of November 2006 that he seek counselling and treatment to address this situation. The Father chose not to follow this advice. The problem was not addressed and the requirement for supervision continued.

[186] Dr. Elterman has made essentially the same recommendation that was made by Dr. Kropp. The Father did not provide an explanation during this proceeding as to the reason why he had not addressed this situation other than that he did not consider it necessary and that the Mother (and the system) were responsible.

[187] Given that the need for supervision (and in particular, the need for a professional supervisor) was the result of the behaviour of the Father, which he could have addressed or controlled had he chosen to do so, I am satisfied that these costs should be borne solely by him.

[188] The costs of the s.15 Report, however, should be borne equally by the parties as it was helpful to me in understanding all of the children's circumstances.

[189] As far as the quantum of the supervision costs are concerned, it was unclear which portion of the balance of \$9,334.28 in expended funds was used for that purpose. I would anticipate that it would have been at least half of these costs that would have been used for supervision. The costs of supervision are therefore fixed at \$4,600.

[190] To summarize, as a result of various transactions that have occurred after the separation of the parties, the Father owes the Mother at least \$10,326.73.

(D) Division of Family Assets

[191] There is no dispute that family assets are to be divided equally unless that division would be unfair upon consideration of the factors set out under s. 65 of the Family Relations Act.

[192] Under this provision, there are six factors to be considered:

- the duration of marriage;
- the duration of separation;
- the date when property was acquired or disposed of;
- the extent to which the property was acquired by one spouse through inheritance or gift;
- the needs of each spouse to become or remain economically independent and self sufficient; or
- any other circumstances relating to the acquisition, preservation, maintenance, improvement or use of property or the capacity or liabilities of a spouse.

[193] The Mother contends that an equal apportionment would be unfair as her liabilities pertaining to the children are and will continue to be greater than the Father's liabilities. In particular, since the parties separated, for the most part, she has been the sole caregiver of the children. Moreover, she submits that this situation will probably continue forever even if the Father is able to address the present problem and access is varied to eliminate the supervision requirement.

- [194] The Mother contends that the Father will probably permanently reside in Quebec given his new relationship. As was disclosed in the evidence, the Father and his new partner appeared to be committed to their new relationship. His new partner has strong ties to Quebec as her children and extended family live there. Furthermore, she has just purchased a new home.
- [195] Given the liabilities that she has already incurred and the ones that she will probably incur in the future, the Mother argues that the family assets should be apportioned so that she is granted a 100% interest in her employment pension.
- [196] The Father, on the other hand, contends that an equal division is not unfair.
- [197] For reasons which follow, I have concluded that it would be unfair to equally apportion the parties' family assets. I am satisfied that the Mother should be granted a larger portion than the Father. Specifically, the Mother is granted a 60% interest in the family asset portion of her employment pension while the Father is granted a 40% interest in it. With respect to their remaining assets, the parties are granted an equal interest.
- [198] An equal apportionment is unfair, in my view, because the liability of the Mother for the care of the children (both financially and time-wise) has been and probably will continue to be significantly more than the liability borne by the Father.
- [199] This situation has occurred not only because of the fact that the Father is living in a different province and has less income than the Mother, but also because he has chosen not to address his attitude which, in turn, has resulted in him having a more limited role in the lives of the children.
- [200] After he addresses his attitude, his involvement with the children will increase. However, it will probably still be less than the Mother's involvement because he is located in a different province.
- [201] Furthermore, the parties' debts are greater than their family assets. The Father does not have the financial means to repay the Mother for the monies that he owes her as a result of transactions that have occurred since the parties separated, including the arrears of child maintenance.
- [202] It is for all of these reasons that an equal apportionment is unfair. However, these circumstances do not call for a reapportionment of 100% of the Mother's pension to her. The parties were married for a long time (11½ years) before they separated. Throughout the marriage and for the last year, the Father has been contributing his share to the support of the children.
- [203] With respect to the division of the remaining assets, the remaining asset of the parties is the \$63,908.84 net proceeds from the sale of the family residence. From that amount, the parties are to pay out the balance of the consolidation loan and Canada Revenue Agency debt - \$7,037.47 and \$5,072.38 respectively. It may be that these amounts are wrong or even

that these debts no longer exist. There was an indication during the trial that the Canada Revenue Agency debt may be cancelled. As long as they agree and that agreement is reduced to writing, the parties may adjust the amounts to accurately reflect the amount, if any, of the debt.

[204] Once those debts are paid, the remaining balance is to be divided between the Mother's parents and the parties' friend. The division is to be in proportion to the amount that the parties owe these people - \$46,390.21 and \$40,000 respectively. That is, 54% of the remaining amount is to be paid to the Mother's parents and 46% is to be paid to the parties' friend.

[205] The Court does not have the jurisdiction to divide, between the parties, the remaining debt that will still be owed to these people. The parties will have to make their own arrangements for repayment with them.

(VI) SPOUSAL MAINTENANCE

[206] At the commencement of these proceedings, the Father sought an order that the Mother pay him \$35,000 retroactively for maintenance for 2007 and that she pay him \$20,000 a year until 2010 or until he is deemed to be financially self-sufficient.

[207] During the trial, he amended this claim to add an alternative order for retroactive spousal support in the amount of \$2,000 per month for the period extending from January 10, 2006 until May 15, 2006, a period during which he submitted that he was looking for work but was not able to find any.

[208] In addition to these alternative claims, the Father seeks an order that the Mother maintain dental, medical, and medication coverage for him until January 2009.

[209] In my view, this last application for a continuation of dental, medical, and medication coverage on the Mother's insurance plan is an application for spousal maintenance and therefore is governed by the same principles as the alternative claims.

[210] As was set out by the Supreme Court of Canada in such cases as *Moge v. Moge*, [1992] 3 S.C.R. 813, [1993] 1 W.W.R. 481, and *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, 169 D.L.R. (4th) 577, assuming that evidence proves that the paying spouse has the financial capacity to pay, entitlement to spousal maintenance may arise in three ways - namely, because of an agreement between the parties; because of economic need arising from the role that the applicant spouse played during the marriage; or because of financial need (unrelated to the marriage) of the applicant spouse.

[211] Applying these principles to the facts in this case, I find that the evidence does not prove (nor did the Father allege) that there was an agreement between the parties that the Mother would pay the Father spousal maintenance.

- [212] Further, the evidence does not prove that the Father had an economic need arising from his role during the marriage. The Mother and the Father worked throughout the marriage. Although there were some periods when the Father was unemployed, that unemployment arose as a result of the contractual nature of his work, not his role in the household. Furthermore, though the Mother did secure her Master's Degree during the marriage, she continued to work full-time. The only time that Mother did not work full-time was when she was on maternity leave.
- [213] As far as entitlement based on economic need is concerned, the Father has been working full time since late 2006 - that is, since he moved to Quebec. He is economically self-sufficient.
- [214] Even if he was able to prove that he was in need earlier in 2006 because he was so distraught with the separation that he was not able to work for a portion of that period, the evidence shows that the Mother did not have the capacity to pay him spousal maintenance. During that very difficult time, she was bearing almost the full financial responsibility for the children.
- [215] Given these findings, all of the Father's applications for spousal maintenance are dismissed.

(VII) DIVORCE

- [216] This application was made on the grounds that the parties had been separated for over a year. Though other grounds were included initially, those grounds were withdrawn during this hearing.
- [217] As all of the procedural requirements of the Divorce Act, R.S.C. 1985 (2nd Supp.) c. 3, have been met (including the finding that I am satisfied that reasonable arrangements have been made for the children), the parties are granted a divorce. That divorce is to take effect 31 days after the issuance of these Reasons for Judgment.

(VIII) COSTS

- [218] As costs were not addressed during the hearing, if the parties cannot reach an agreement with respect to the payment of costs they are granted leave to set down an application at any mutually convenient time.

(IX) SUMMARY

- [219] For ease of reference, I shall summarize the orders that I have made in these Reasons for Judgment:

General

- (a) I will remain seized of all applications for the next year.
- (b) The parties are granted liberty to set a matter down through the Registry at any mutually convenient time and to appear by telephone.

Custody

- (c) The Mother will be granted sole custody of the children.

Access

- (d) The Father will have supervised access to the children. Access will remain supervised until the Father receives the recommended counselling and addresses his present attitude towards the Mother.
- (e) The Father will pay the costs of supervision.
- (f) A parenting co-ordinator will be appointed.
 - a. The parenting co-ordinator will be selected through the written agreement of the parties. If the parties are unable to reach an agreement, I will appoint a parenting co-ordinator.
 - b. The parenting co-ordinator will be subject to the duties, responsibilities, terms and authority as outlined in these Reasons for Judgment.
 - c. Each party will pay their proportional share of the parenting co-ordinator's fees.
- (g) The parties will set up a drop-box system through which they may communicate with the children. The location of each party's drop-box and their passwords should be communicated through the Mother's counsel.
- (h) The Father is granted liberty to communicate with the children through the drop-box at any time and by web-cam twice a week at a pre-arranged time. Communication via the web-cam will be supervised.
- (i) The Father may have supervised access with the children when he visits the Lower Mainland, provided reasonable notice is given. Generally, reasonable notice will be a week. These access visits may last for as long as eight hours. The visits may be shortened or lengthened at the agreement of the parties.

Guardianship

- (j) There will be an order for joint guardianship.

Child Support

- (k) Based on a Guidelines income of \$46,166, the Father is ordered to pay \$920.00 per month in child support and \$246 per month for special and extraordinary expenses. Those payments are to be made in two equal instalments of \$583 per month, commencing on December 15, 2008, and payable on the 1st and 15th of each and every month thereafter.
- (l) The Father is to provide the Mother with post-dated cheques in these amounts for the period extending until the end of July 2009.

- (m) On July 1st of every year thereafter, the Father will provide the Mother with post-dated cheques for the upcoming year. The "year" will run from July 1 to June 30.
- (n) The parties are to exchange copies of their most recent Income Tax Returns on or before June 15th of each year, commencing with June 15, 2009. This documentation is to include their Notice of Assessment and copies of the underlying documentation.
- (o) The Mother will be responsible for 65% (or \$5,481) of the annual special and extraordinary expenses. The Father will be responsible for 35% (or \$2,951). These amounts may be adjusted if other expenses are incurred or if the quantum of existing expenses changes.
- (p) The parties will meet with the parenting co-ordinator before June 15th of every year, commencing with June 15, 2009, to determine the activities in which their children will participate in during the upcoming year and the amount of the contribution to be made by each of them.

Arrears

- (q) The arrears owed by the Father will be cancelled.

Division of Assets

- (r) The Mother is granted a 60% interest in the family asset portion of her employment pension while the Father is granted a 40% interest in it.
- (s) As a result of various transactions that occurred after the separation of the parties, the Father is ordered to pay the Mother \$10,326.73.
- (t) The remaining family asset of \$63,908.84 from the net proceeds from the sale of the family residence is to be divided in the following order:
 - a. The parties are to pay out the balance of the consolidation loan (\$7,037.47) and the Canada Revenue Agency debt (\$5,072.38). If these debts no longer exist, then the parties may agree by way of written agreement to adjust these amounts to accurately reflect the debt.
 - b. Once those debts are paid, the remaining balance is to be divided as follows: (1) 54% of the remaining amount will be repaid to the Mother's parents; and (2) 46% of the remaining amount will be repaid to the parties' friend.

Spousal Maintenance

- (u) There will be no order for spousal maintenance.

Divorce

- (v) The parties will be divorced, effective 31 days after the issuance of these Reasons for Judgment.

Costs

- (w) There will be no order for costs at this time. If the parties cannot reach an agreement with respect to the payment of costs, they are granted leave to set down an application at any mutually convenient time.

"Sinclair Prowse, J."

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