
CANADA / JUDGMENT

Dhillon v. Kumar

2014 BCSC 2366

COURT

Supreme Court of British Columbia

DECIDED

15 December 2014

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2014 BCSC 2366 Dhillon v. Kumar

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Dhillon v. Kumar,

2014 BCSC 2366

Date: 20141215

Docket: E045488

Registry: New Westminster

Between:

Baldeep Dhillon

Claimant

And

Arnold Ashik Kumar

Respondent

Before: Master Keighley

In Chambers

Reasons for Judgment

Counsel for Claimant:

C.S. Flerlage

Counsel for Respondent:

L.K. Donaldson

Place and Date of Hearing:

New Westminster, B.C.

November 28, 2014 and

December 1, 2014

Place and Date of Judgment:

New Westminster, B.C.

December 15, 2014

[1] This is a family law proceeding. Both parties have applications before me.

The applications

[2] The respondent seeks the following orders:

1. that the applicant, Arnold Ashik Kumar, have parenting time with the children of the marriage, Emira Kumar ("Emira"), bom April 2, 2009 and Ehla Dhani Kumar ("Ehla"), bom on July 15, 2011 as follows:
 - a) every weekend from 3 p.m. on Friday afternoon until Monday morning, when he will drop Emira off at school and Ehla at pre-school if she is scheduled to attend that day;
 - b) subject to the foregoing, with respect to Ehla, from Monday to Friday, from the time the Claimant leaves for work until 6 pm, unless Ehla is in preschool, in which case the applicant will pick Ehla up from preschool and return her to her mother's residence at 6 pm; and
 - c) Monday through Thursday from after school until 6 p.m. with respect to Emira.
2. that the respondent, Baldeep Dhillon, pay spousal support to the applicant, Arnold Ashik Kumar.

[3] The claimant seeks the following orders:

1. An Order that the Respondent, Arnold Ashik Kumar, pay to the Claimant, Baldeep Dhillon, child support for the children:
 - a. Emira Kumar, born April 2, 2009; and
 - b. Ehla Dhani Kumar, born July 15, 2011

(collectively, the "Children")

pursuant to the Federal Child Support Guidelines, commencing December 13, 2013 and continuing on each month thereafter until further Order of the Court or agreement of the parties;

2. An Order that the Respondent contribute \$50.00 per month towards the children's Section 7 extraordinary expenses;
3. An Order pursuant to Sections 182, 183 and 184 of the Family Law Act that:
 - (a) The Respondent is restrained from directly or indirectly communicating with or contacting the Claimant, except for the sole purpose of arranging parenting time or any medical emergency regarding the Children;
 - (b) The Respondent is restrained from attending at, nearing or entering any residence where the Claimant resides;
 - (c) The Respondent shall not attend the place of employment of the Claimant;
 - (d) The Respondent is restrained from following the Claimant;
 - (e) The Respondent is restrained from possessing a weapon or firearm;
 - (f) Any police officer, including any RCMP officer having jurisdiction in the Province of British Columbia, who is provided with a copy of any Order made is directed to immediately remove the Respondent from the Claimant's residence or any other such location upon determining that the Respondent has refused or neglected to obey the Order;
 - (g) Any police officer, including any RCMP officer having jurisdiction in the Province of British Columbia, who is provided with a copy of any Order made, is directed to seize from the Respondent any weapons or firearms and related documents;
 - (h) The Protection Order will expire on November 29, 2015;
4. An Order that the property located at #104, 14355 - 103rd Avenue in Surrey, British Columbia (the "Surrey Property") be listed for sale forthwith and sold, with the Claimant having sole conduct of the sale;
5. The Respondent's signature on the listing agreement(s), renewals and on any contracts of purchase and sale and addendums relating to the Surrey Property be dispensed with;
6. The net proceeds of the sale of the Surrey Property be applied as follows:
 - (a) in payment of any real estate commission;
 - (b) in payment of property taxes;
 - (c) in payment of any encumbrances registered against the Surrey Property;
7. An Order that the net sale proceeds of the sale of the Surrey Property be held in trust with McQuarrie Hunter LLP until further Order Of the court or agreement between the parties;

8. An Order that all of the investments registered in the joint names of the Claimant and Respondent be immediately liquidated, with the balance of the investments being held in trust by McQuarrie Hunter LLP until further Order of the court or agreement between the parties; and
9. An Order that the Claimant have her special costs of and incidental to this application payable forthwith.

Background

- [4] The parties were married on January 23, 2005. They have two children: Emira Kumar, born April 2, 2009 (aged 5 years) and Ehla Dhani Kumar, born July 15, 2011 (aged 3 years).
- [5] The parties separated on July 3, 2012, at the time of the respondent's involuntary committal to a mental health facility. They did not resume cohabitation.
- [6] Since separation, the children have resided with the claimant and the respondent has had occasional parenting time with them. On May 15, 2014 the parties attended a Judicial Case Conference ("JCC") before Master Caldwell. The Case Management Plan (no order was entered, it appears) indicates that with respect to parenting, the parties agreed on the following terms:
 - Parenting time commencing this Saturday, the Respondent will have the children from 12:00 p.m. to 4:00 p.m. alternate Saturdays and Sundays until June 14, 2014.
 - Commencing June 14, 2014, the Respondent will have the children from 9:00 a.m. to 5:00 p.m. alternate Saturdays and Sundays until July 6, 2014.
 - Parenting time to be reviewed in 60 days at a four way meeting.
 - The defendant to buy new car seats for the children.
- [7] Pursuant to the terms of this order, the respondent has enjoyed parenting time with the children on alternating Saturdays and Sundays from 9:00 a.m. to 5:00 p.m.
- [8] Throughout the marriage, the claimant has been employed by Fraser Health Authority as a pharmacy manager.
- [9] The respondent qualified as an automotive mechanic in 1997 and from that year until 2009 was employed by British Columbia Automobile Association ("BCAA") as an emergency road service technician.
- [10] In September of 2008, the respondent was involved in a head-on motor-vehicle collision. The accident resulted in injuries to the respondent's neck, back and shoulders and he initially was off work for four months. After this initial period of disability he was able to return to work gradually, at first working shorter hours and performing lighter duties.

- [11] In February of 2009, the respondent returned to work full-time but experienced a great deal of pain and discomfort.
- [12] In August of 2009, the respondent was involved in another motor-vehicle accident. He found himself unable to perform the physical tasks demanded by his employment and in September of 2009, he was terminated by BCAA.
- [13] After some months of unemployment, the respondent was able to find work with Fraser Health working on-call in their hospital warehouse. He continued in this work until in or about April of 2011 when pain, he says, once again prevented him from working full-time. He gradually reduced his hours until he found himself unable to carry on in December of 2011. He has not worked since one shift in December of 2013.
- [14] At present, his diagnosis is:
- a) Osteoarthritis in his shoulders.
 - b) Arthritis in his neck.
 - c) Possible arthritis in his hips.
 - d) Depression.
 - e) Post-Traumatic Stress Disorder (PTSD).
 - f) Jaw misalignment.
 - g) Fibromyalgia in various parts of his body including his chest, legs, hip and back.
- [15] The respondent says as a result of fibromyalgia and osteoarthritis he has difficulty sleeping and performing physical activities such as vacuuming and dusting. He says that any repetitive or strenuous physical activity causes pain for days afterwards. He says that he is easily fatigued. As a result of his various physical complaints, the respondent takes a broad suite of medications including:
- a) Marihuana (obtained from a dispensary);
 - b) Teva-Lorazepam (Benzodiazepine);
 - c) Mar-Zopiclone (sedative);
 - d) Trazodone (anti-depressant);
 - e) Supedol (Oxycodone - narcotic pain reliever);
 - f) Amitriptyline (anti-depressant);
 - g) Statex (Morphine - narcotic pain reliever);
 - h) Mylan-Topiramate (Topamax - anti-seizure);
 - i) Mylan-Baclofen (muscle relaxant);

j) Sildenafil (for erectile dysfunction); and

k) Tylenol #3 with codeine (narcotic analgesic).

[16] At the time of separation, the parties owned two properties; a home at 4284 Kitchener Street, Burnaby (the "Burnaby Property") and a condominium property located at 104-14355 103rd Avenue, Surrey (the "Surrey Property"). Following the separation of the parties, the respondent continued to reside in the Burnaby Property until it was sold on September 30, 2014; the net proceeds of sale, approximately \$276,000, being held in trust.

[17] The Surrey Property was purchased as a rental and has never been occupied by the family. The claimant now wishes to sell it.

Child support and spousal support

[18] The respondent has no income. He says that he is not presently entitled to social assistance and that he has applied for a Canada Pension Plan Disability Pension. His application for the latter was dismissed but he has appealed that decision. He expects to learn the outcome of his appeal in the next few weeks.

[19] In the circumstances, it is inappropriate to deal with the issue of child and spousal support at this time given this uncertainty. Both the respondent's application for spousal support and the claimant's application for child support are adjourned generally.

Restraining orders

[20] The claimant says that the respondent's involuntary committal in July of 2012 resulted from his threats to kill himself. Leading up to the incident which led to his committal, the claimant says the respondent was not sleeping or eating and had been abusing both prescription and non-prescription drugs and medications. She says that he appeared to be experiencing hallucinations and was delusional. The claimant says the respondent told her to call the police as there was "going to be a murder tonight".

[21] The claimant says that she feared for her safety and the safety of the children and left the Burnaby property at that time, never to return.

[22] The claimant says the respondent is aggressive and emotional towards her whenever they exchange the children. She says that he has repeatedly entered her vehicle, refusing to leave when she asks him to. The claimant says that she does not feel safe when the respondent is near her. She says that his aggression has been escalating and that in addition to the fear she feels, she does not wish the children to witness the respondent's anger towards her.

- [23] For his part, the respondent denies that he said there "would be a murder tonight" or words to that effect. He also denies that he is aggressive or emotional towards the claimant at the time of exchanges. He does admit to having taken pictures of the children and the claimant from a distance when he says that she is late in dropping off the children because "the picture will indicate the time."
- [24] In his Response, the respondent nevertheless consents to orders in the terms of paras. 3(b), (c), (d), (e) and (f) of the claimant's application. He opposes the balance of the restraining order as sought.
- [25] I am satisfied that the claimant's fears are justified. The respondent has experienced at least one psychotic event, possibly as a result of medications but possibly as a result of some other cause. His conduct towards the claimant suggests a significant degree of hostility and a lack of empathy. Given the convenient mechanisms for communication available to parents these days, there would seem to be no reason why face-to-face communication should be necessary.
- [26] Restraining orders will therefore go in the following terms:
- (a) The respondent is restrained from directly or indirectly communicating with or contacting the claimant, except by email or text for the sole purpose of arranging parenting time or dealing with any medical emergency regarding the Children;
 - (b) The respondent is restrained from attending at, nearing or entering any residence where the claimant resides;
 - (c) The respondent shall not attend the place of employment of the claimant;
 - (d) The respondent is restrained from following the claimant;
 - (e) The respondent is restrained from possessing a weapon or firearm;
 - (f) Any police officer, including any RCMP officer having jurisdiction in the Province of British Columbia, who is provided with a copy of any Order made, is directed to immediately remove the respondent from the claimant's residence or any other such location upon determining that the respondent has refused or neglected to obey the order;
 - (g) Any police officer, including any RCMP officer having jurisdiction in the Province of British Columbia, who is provided with a copy of any order made, is directed to seize from the respondent any weapons or firearms and related documents.

The sale of the Surrey Property

- [27] The claimant says that since the separation of the parties, she has been solely responsible for the payment of all debts and costs associated with raising the children. She has received no financial assistance whatsoever from the respondent since the parties separated.

[28] The claimant's application for the sale of the Surrey Property is brought pursuant to Supreme Court Family Rules 15-8(1) which reads:

Court may order sale

- (1) If in a family law case it appears necessary or expedient that property be sold, the court may order the sale and may order a person in possession of the property or in receipt of the rents, profits or income from it to join in the sale and transfer of the property and deliver up the possession or receipt to the purchaser or person designated by the court.
- [29] It is well settled that the Rule confers a discretionary power and that where necessity is not an issue, the Rule requires that the proposed sale be expedient in that it is advantageous to both parties: *Reilly v. Reilly* (1992), 99 D.L.R. (4th) 47 at para. 35 (B.C.C.A.)
- [30] Apparently, the Surrey Property was listed with the mutual consent of the parties in June of 2014 for \$180,000. In July, the listing price was reduced by agreement to \$170,000 and was further reduced to \$150,000 in October of 2014.
- [31] On October 26, 2014 the parties received an offer of \$130,000. The realtor, a Mr. Chiu recommended to the claimant that the parties counter-offer at \$142,000.
- [32] Mr. Chiu's summary of what then occurred is found in a letter from him dated November 17, 2014 summarizing his efforts in marketing both the Burnaby and Surrey properties. With respect to the Surrey Property, he says:

October 23 2014: Contacted Mr. Kumar and had requested his forwarding address in case I may need to get in touch with him. He would not provide that to me. Besides from his cell phone and email address, there was no other way for me to get ahold of him.

October 26 2014 1:46 pm: I had presented a written offer on #104-14355 103 Ave Surrey. I only received correspondence and instructions from Mrs. Dhillon, but nothing from Mr. Kumar. Left voice messages and repeatedly tried to contact him for the rest of the day and into the evening.

October 27 2014 1:30 pm: Attempted again to contact Mr. Kumar, had no answer, nor reply.

October 29 2014: I attempted to resuscitate the EXPIRED offer, but still had no viable cooperation from Mr. Kumar. In contrast to his instructions since July 17, 2014, Mr. Kumar implied that he did not want to entertain the initial offer price but suggested that he did not want to entertain anything less than \$142,000. Despite Mrs. Dhillon's instructions and correspondence, both Sellers could not come into agreement on a counter offer.

During the listing term, Mr. Kumar's actions and deconstructive behaviour suggested to me that he did not want to sell the above-mentioned properties. In turn, this made my job extremely difficult. With both of the properties, worth approximately \$1 million dollars together, one might expect to exercise a bit more caution. Rather than that, it became clear to me that he had no comprehension on the financial responsibilities and risks carried forth with such considerable assets.

[Emphasis added].

- [33] I am not satisfied that a sale of the Surrey Property is necessary. Although the claimant has been solely responsible for the maintenance of this Property since the separation of the parties, I am not satisfied that a sale is necessary as a result of financial circumstances. On the other hand, there appears to be some acknowledgement from the respondent by his past conduct that a sale at this time is appropriate and I am satisfied that a sale is expedient in that it may assist in expediting agreement with respect to property division.
- [34] As to whether the claimant should be given sole conduct of sale, while there is no singular test for granting sole conduct of sale, the Court should consider all factors including the willingness of a party to facilitate sale, the inability of the parties to agree on routine aspects of sale and the inability of the parties to cooperate: *McLachlan v. McLachlan*, 2013 BCSC 1733.
- [35] By his conduct since July, the respondent has not acted in a consistently responsible attitude towards the sale. Whether his failure to cooperate results from antipathy for the claimant, confusion as a result of his prescription drug use or other cause I am unable to say but it does seem to me that the sale of the Surrey Property will proceed in a more orderly and efficient manner if the claimant is given sole conduct.
- [36] Accordingly, I will order that the Surrey Property be listed for sale forthwith with the claimant having sole conduct of sale. I will dispense with the respondent's signature on the listing agreement or renewals and on any contract of purchase and sale and/or addenda relating to the subject property. Any proposed sale will be subject to approval by this Court unless otherwise agreed to in writing between the parties.
- [37] The proceeds of sale will be dealt with in the manner reflected in any agreement between the parties or order of this Court.

Liquidation of the joint investments

- [38] I am not satisfied that liquidation of the parties' jointly held investments is presently necessary or expedient. The claimant may re-apply on the basis of new material should this issue become urgent.

Parenting time

- [39] The issue of parenting time is by far by most contentious one between these parties.

[40] At the time of the JCC, the respondent was living in a suite in the Burnaby Property and travel consumed a large part of his "access" day. As the respondent says at para. 7 and 8 of his affidavit number 2 sworn September 24, 2014:

7. On Saturdays my typical access is as follows:

- I drive from my residence at 4284 Kitchener Street in Burnaby to my wife's parents home in Cloverdale, where I pick up the children. This drive takes approximately 45 minutes;
- I then drive to the Temple located at Royal Oak and Marine in Burnaby which takes approximately 30 minutes. Generally we spend about 10 minutes there;
- From there we drive to my parents home located at 5480 Sherbrooke Street, Vancouver, which takes approximately 15 minutes;
- We generally spend the rest of the day at my parents, where I play with the children. Occasionally we also go to the park;
- My brother lives downstairs and often will visit with the Children and quite often my sister comes by.

8. On Sundays my typical access is as follows:

- The morning is spent in the same way as on Saturdays but pursuant to the order which we agreed to I must take the children back to Cloverdale for gymnastics. This requires me to leave at 11:30 as gymnastics goes from 12:30 until 1:45 p.m.;
- I then take the children for lunch in Cloverdale and then to a park or to relatives in Surrey.

[41] The respondent is now living on the main floor of a Surrey residence recently purchased by his parents. He does not say what amenities he has for the children beyond the indication that the residence has three bedrooms. A Google search indicates that depending on the route taken, the parties are now some 15 km or 20 minutes or so apart. This proximity means that the respondent will now be able to spend more meaningful time with his children and more easily access their activities than was earlier the case.

[42] As for the rationale for additional parenting time, the respondent simply says that the 60 day review provision in the JCC order clearly contemplated a reconsideration of this issue and that he now wishes to have more time with his children.

[43] The claimant says that the respondent, by reason of his mental and physical afflictions, presently "has all the parenting time he can handle". She says that materials placed before the court by the respondent himself confirm that he has a major depressive order, bipolar disorder and that he is unable to perform daily activities without difficulty.

[44] The claimant refers to a letter dated September 23, 2014 from Dr. Colin Leech-Porter, a psychiatrist treating the respondent. Dr. Leech-Porter was asked to consider whether the respondent was capable of caring for his children during a parenting regime such as that sought by him on this application.

[45] Dr. Leech-Porter says, in the final three paragraphs of that letter:

Mr. Kumar currently uses "Tegretol" for mood and pain and the occasional Oxycodone 5 mg for pain. He only uses Oxycodone occasionally for severe pain. He uses marijuana periodically but never while his children are there or when he is going to pick them up.

Mr. Kumar is unable to work because of "ongoing pain" that prevents him from doing a sustained job. He assures me that even if he were to need medication while he has custody of his children, the medications have never made him drowsy or non-responsible. Mr. Kumar assures me that he is able to refrain from the use of marijuana whenever he is to have the responsibility of the children although he will continue to use it for pain. In my opinion, he will assume that responsibility and will not use marijuana when he will have the children.

In my opinion, Arnold Kumar would like to have more access to his children and is capable and will act responsibly in order to do so.

[46] The claimant says that Dr. Leech-Porter's opinion is based largely on the respondent's "self-reporting" and that it does not represent an objective assessment of the respondent's capabilities. Further, she says that although Dr. Leech-Porter accepts the respondent's assertion that he only uses Oxycodone "occasionally" his prescription records indicate that he fills a prescription for this medication monthly. With respect to Dr. Leech-Porter's statement that the respondent uses marijuana "periodically" but "never when his children are there or when he is going to pick them up" she says that the respondent's marijuana use is daily and frequent and that he often arrives to pick up the children smelling strongly of the drug, suggesting that he has recently used it.

[47] The claimant also refers to a letter dated November 28, 2013 from Dr. Sundeep Thinda, a psychologist, which correspondence was drafted to assist the respondent with his application for a Canada Pension disability pension. At para. 4 of that letter, Dr. Thinda says as follows:

Mr. Kumar described mood symptoms which are consistent with the experience of an individual with significant pain issues, who has experienced a related depression and bipolar diagnosis following the disability (MVA). He reports continued increased irritability, sadness and frustration, a sense of helplessness regarding his pain, social withdrawal, decrease in motivation and previously enjoyed interests, and the guilt associated with his inability to work which has caused his family significant financial difficulties and negative impact to their lifestyle. He also described general symptoms of anxiety which tend to vacillate with his pain symptoms such as worry, sweating, jitteriness, and bad dreams.

[48] The final sentence of Dr. Thinda's letter provides: "In my opinion Mr. Kumar is functionally debilitated by the chronic pain and emotional difficulties to the level that is difficult to see this man returning to any work at present or in the near future."

[49] Dr. Simon Fap Phin Ngui also provided a report to assist the respondent with his pension application. Dr. Ngui's letter dated March 27, 2014 includes the following:

Mr. Kumar has informed us he still suffers from severe musculoskeletal pain, neck, shoulders and lower back. He is also severely depressed and requires help with many of the activities of daily living. He is handicapped by his bioplar disorder and fibromyalgia and he is at present unfit to be gainfully employed.

It will be difficult for Mr. Kumar to be retrained for another profession because of this thought disorder and depressed state of mind. He is unable to tolerate prolonged standing and walking because of his fibromyalgia and easy fatigue.

[50] Finally, the claimant refers to a letter from Dr. Hershler, a physiatrist, dated August 28, 2014 in which he says in part:

He has complained of persistent pain in the low back referring into his hips as well as fleeting pains in different parts of the body and a very poor interrupted and unrefreshing sleep pattern. He is constantly fatigued during the day and catches brief snatches throughout the day.

Currently he is on Topamax 100 mg, 4 times a day and OxyContin as needed. He also developed a depressed mood and has in fact seen a psychologist and psychiatrist. He has been diagnosed with depression. He has not however been treated with anti-depressants.

Over the years, he has tried a variety of treatment modalities including acupuncture, massage therapy, exercise training, shiatsu etc. None of these treatments have helped, if anything they seem to make him worse. Arnold self-assesses his pain at almost 9/10 on a daily basis (0/10 is no pain and 10/10 excruciating intolerable pain).

[51] Dr. Hershler goes on to say:

I would suggest that he utilize the Medical Cannabis Program more optimally than smoking. I would suggest that he obtain a cannabis cream that is higher in cannabidiol (CBD) and low in tetrahydrocannabinol (THC). He should apply the cream to the affected painful regions of the body three times a day.

Ideally, he should meet with a personal trainer and develop an individualized program of exercises that he can do on his own every day. With the aid of the exercise prescription he should obtain a membership to a community centre or gym and go to this gym daily and start a graduated program of core strengthening.

If he finds that the cannabis cream is helping to a degree then he can obtain the cannabis in the form of oil which can be mixed into juice or tea and used at night to improve sleep and fatigue.

For the time being and in the foreseeable future, however, he is disabled by pain and, if possible, should obtain support.

As a result of the chronic pain and its effect on his ability to work, Arnold has developed depression. He has seen a psychiatrist (Dr. Colin Leech-Porter). I was able to review a letter written by Dr. Leech-Porter on August 11, 2014. In this letter, Dr. Leech-Porter notes that Arnold developed a post-traumatic stress disorder from the accident in 2008 and that he still has ongoing symptoms related to that.

His current situation of chronic pain and stress has led to depression. This compounds his fibromyalgia.

This is a significant compounding factor. Arnold Kumar is a not only having to deal with his existing chronic pain and his inability to work but the secondary psychological effects and past issues such as post-traumatic stress disorder. All of these factors make it important for him to obtain some form of disability benefit. At the very least, this benefit will allow him to focus more positively on rehabilitation.

Discussion on the issue of parenting time

[52] The respondent's application does not indicate whether his application for "access" or "parenting time" is brought pursuant to the provisions of the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.) or the provisions of the Family Law Act, S.B.C. 2011, c. 25. As to the factors to be applied under the Divorce Act, ss. 16(8), (9) and (10) read as follows:

16. (8) In making an order under this section, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.
- (9) In making an order under this section, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of a child.
- (10) In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

[53] With respect to an application under the provisions of the Family Law Act, s. 37(1) provides:

Best interests of child

37 (1) In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only.

[54] Section 37(2) goes on to provide:

- (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
- (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;
 - (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - (d) the history of the child's care;
 - (e) the child's need for stability, given the child's age and stage of development;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
 - (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
 - (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
 - (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.
- [55] With respect to the circumstances of this family, I have particular concerns with respect to items 37(2)(f) and (h). It seems to me that the respondent presently "has a lot on his plate" being obliged as he is to deal with bipolar disorder, depression and chronic pain. I suspect that he medicates himself more intensively and more frequently than he admits: both on this application and to the physicians who have provided opinions. This would seem to be borne out by the frequency with which he purchases Oxycodone, for example. He apparently has difficulty sleeping and requires naps during the day. He has limited physical capabilities as a result of pain and weakness. I am simply not satisfied that the respondent has the capacity to care for his children unassisted for lengthy periods of time and certainly not for overnight visits at this time.
- [56] I am not satisfied that the regime sought by the respondent reflects the best interests of these children. Some further analysis of the arrangement agreed upon in May of this year seems in order before changing it. Accordingly, the respondent's application for parenting time beyond the scope of the current consent order is dismissed.
- [57] The claimant will have the costs of both applications in the cause.

"Master Keighley"

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