

CANADA / JUDGMENT

Draheim v. Draheim

2025 BCSC 346

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 346 Draheim v. Draheim

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Draheim v. Draheim,

2025 BCSC 346

Date: 20250303

Docket: E161699

Registry: Vancouver

Between:

Gregory Ulrich Draheim

Claimant

And

Tegan Marie Draheim

Respondent

Before: The Honourable Justice Matthews

Reasons for Judgment

The Claimant, appearing on his own behalf:

G. Draheim

Counsel for the Respondent:

P.S. Virk

Place and Dates of Hearing:

Vancouver, B.C.

November 26-28, 2024

Place and Date of Judgment:

Vancouver, B.C.

March 3, 2025

Table of Contents

Overview.. 3

Orders Sought by Mr. Draheim.. 4

Primary Parenting. 4

E.D. 10

G.D. 15

Holiday and Weekend Parenting Time. 20

Child Support 23

Parental Responsibilities. 27

Conduct Orders. 29

Transfer of the File to Kelowna. 30

Orders Sought by Ms. Chudyk.. 30

Financial Disclosure. 31

Inappropriately Involving the Children in the Parenting Issues. 31

Costs. 34

Disposition.. 36

Overview

- [1] The claimant, Gregory Ulrich Draheim, and the respondent, Tegan Marie Draheim, whose name is now Tegan Chudyk, are the parents of two teenage children, E.D., age 18 and G.D., age 14. The parties have been separated since 2016 and divorced since 2020. The children have resided with Ms. Chudyk since separation. Since 2019, the children's parenting time has been governed by a consent order made November 21, 2019. Since August 2023, there have been problems with the children returning from parenting with Mr. Draheim. According to Mr. Draheim, the children have expressed the desire to stay with him and have refused to

return to their residence with Ms. Chudyk. According to Ms. Chudyk, Mr. Draheim has manipulated the children into taking this position.

- [2] Mr. Draheim sought a Hear the Child Report and Ms. Chudyk took the position that a s. 211 Views of the Child Report would be more appropriate, but only if Mr. Draheim paid for it. On October 24, 2024, Justice Morellato ordered a s. 211 Views of the Child Report, the costs of which were to be shared equally. The s. 211 assessor concluded that each child, without improper influence from any adult in the family or extended family, prefers to live with their father in Kelowna and see their mother, who lives in Chase, every second weekend and on school vacations.
- [3] By application filed July 10, 2024, Mr. Draheim seeks an order to vary the current parenting order so that he has primary parenting time in accordance with the children's wishes; for sole parenting responsibilities; and for variations to the November 21, 2019 order pertaining to travel and holiday time. He also seeks orders to terminate the requirement that he pay child support, and seeks child support to be paid by Ms. Chudyk. He seeks an order permitting him to collect the children's belongings from Ms. Chudyk's residence, a conduct order, an order transferring this file to the Vancouver Registry for all purposes, and costs.
- [4] Ms. Chudyk applies for orders holding Mr. Draheim in contempt of the November 21, 2019 consent order pertaining to financial disclosure requirements made in it, the order of Justice Basran made January 5, 2021 pertaining to financial disclosure and inappropriately involving the children in parenting issues, and the order of Justice Masuhara made April 12, 2021 for inappropriately involving the children in parenting issues. She also applies for orders adverse to Mr. Draheim pursuant to ss. 228 and s.230 of the Family Law Act, S.B.C. 2011, c. 25, based on the same conduct.
- [5] At the conclusion of the hearing of the applications on November 28 2024, I made orders regarding the relief sought on items 1 and 6-12 of Mr. Draheim's July 10, 2024 notice of application with reasons to follow. I ordered that as of January 25, 2025, the children are to be primarily resident with Mr. Draheim, I made orders for parenting time for Ms. Chudyk on an interim basis pending further consideration of the parties' submissions on that topic; I ordered shared parental responsibilities, and I made a conduct order.
- [6] I advised the parties that I was reserving my decision and reasons on items 2-5 and 15-19 of the orders sought on Mr. Draheim's July 10, 2024 notice of application and on items 8, 9 and 10 of the orders sought on Ms. Chudyk's March 26, 2024 notice of application.
- [7] These reasons are the reasons for the orders I made November 28, 2024 and contain my decision and reasons for the other matters on which I reserved.

Orders Sought by Mr. Draheim

Primary Parenting

- [8] The November 21, 2019 order provides that the parties will equally share Spring Break and Christmas Break with the children, that Mr. Draheim will have two weeks of parenting time with the children in each of July and August and all other parenting time of Mr. Draheim shall be as agreed between the parties.
- [9] The order does not specifically provide that Ms. Chudyk will be the primary parent. The order provides for the parties to have joint custody of the children pursuant to s.16(4) of the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.) (a provision that was in place before the Divorce Act was amended in 2021).
- [10] However, since the November 21, 2019 consent order allocates parenting time to Mr. Draheim that is less than 40%, and provides that all other parenting time shall be as agreed upon by the parties, absent agreement, Ms. Chudyk was the de facto primary parent under the consent order. The consent order also provides for Mr. Draheim to pay monthly child support to Ms. Chudyk, and not vice versa, which is an indication that the parties expected that Ms. Chudyk would have primary parenting. In addition, the evidence is not contradicted that at the time the parties made the November 21, 2019 consent order, the children were living primarily with Ms. Chudyk in the Lower Mainland, while Mr. Draheim lived in Kelowna, making shared parenting practically impossible.
- [11] Taking into account the language of the order, reading the order holistically, and considering the context in which the order was made, I am of the view that the order provides that, unless the parties agreed to parenting time for Mr. Draheim that amounted to 40% of parenting time, Ms. Chudyk is the primary parent.
- [12] The legal principles pertaining varying orders depends on whether the provision at stake is made pursuant to the Family Law Act or the Divorce Act.
- [13] Section 17(5) of the Divorce Act requires an application for an order varying parenting time to demonstrate a material change in the circumstances of one or both of the children. A material change in the circumstances of a child is one that alters the child's needs or the ability of the parents to meet those needs in a fundamental way: *Gordon v. Goertz*, [1996] 2 S.C.R. 27 at para. 12, 1996 CanLII 191. The change must be one that was not foreseen and could not be anticipated: *Gordon* at paras. 11, 13.
- [14] An order made pursuant to the Family Law Act pertaining to child support, spousal support or parenting may be varied, suspended or terminated pursuant to s.215 or s. 47 of the Family Law Act both of which require a "change in circumstances since the order was made". These provisions have been interpreted to require a material change in the circumstances of the child: *Williamson v. Williamson*, 2016 BCCA 87 at paras. 29-35.
- [15] The November 21, 2019 consent order provides that some of the provisions are made pursuant to the Divorce Act and other are made pursuant to the Family Law Act. As noted there is a provision for joint custody which is stated to be pursuant to the Divorce Act. The

provisions pertaining to parenting time are otherwise not made with reference to either statute. Since the variation test does not differ between the two statutes this does not create difficulties. But to be clear, I view the governing legislation on parenting time as the Divorce Act, and the variations I am making are made pursuant to the amended Divorce Act.

- [16] The ability to vary a consent order has been described as "very limited": *Chin v. Hegarty*, 2016 BCSC 1767 at para. 3, citing *Shackleton v. Shackleton*, 1999 BCCA 704 at para. 12 because of the interests of finality based on agreements made between the parties. In my view, that limiting feature is overtaken by the requirement to consider the best interests of the child. If there is change that pertains to the best interests of the child, then it will be material, and it will trump considerations of finality in relation to consent orders.
- [17] Both children have stated a preference to live with their father and have weekend parenting time with their mother. There is some similarity in their circumstances, and there is some preference to having them have the same or similar arrangement. That preference only goes so far because E.D. will be 19 this year and so beyond a parenting time order. In addition, there are also differences in their circumstances, so I will consider them separately, bearing in mind the similarities and the desirability that they have the same home.
- [18] Before addressing the views expressed by the children, I will set out the background to the application.
- [19] At the time of separation in 2016, the family was living in Kelowna in a home in which Mr. Draheim's parents also lived. Ms. Chudyk and the children moved to Cloverdale and lived with Ms. Chudyk's parents. They moved on more than one occasion since then and have lived in Surrey, Langley, Golden and Chase. Ms. Chudyk married her current partner in December 2020. According to Ms. Chudyk, they made the move from Golden to Chase in the summer of 2024 so that the children would be closer to their father, to the detriment of Ms. Chudyk's husband's career development.
- [20] Mr. Draheim has remained in Kelowna in the home he shared with his parents, and now with his father (his mother has passed away). Mr. Draheim remarried in 2023. His wife, Tuesday Rudolph, has four children, two of whom live with her and Mr. Draheim and two of whom do not.
- [21] I understand from the evidence that generally speaking, the parties have followed the parenting time expressly allocated to Mr. Draheim in the November 21, 2019 consent order. Mr. Draheim deposes that he has requested additional time but Ms. Chudyk has refused. Ms. Chudyk has deposed that Mr. Draheim has rarely, and only recently, requested additional parenting time and when he does so it is usually at the last minute. Both of these positions could be true in whole or in part. It is not necessary to determine which.

- [22] According to Mr. Draheim, in March of 2023, the children began requesting to live with him. He and Ms. Chudyk did not agree about this. Ms. Chudyk discussed it with E.D., who was in grade 11 and wanted to move in with her father for grade 12. Ms. Chudyk deposed that she and E.D. agreed that E.D. could move after graduating from grade 12. E.D. told the s. 211 assessor that she wanted her grade 12 year to be in Kelowna but she nodded and agreed when her mother suggested that she moved after graduating.
- [23] In August 2023, the children had parenting time with Mr. Draheim. At the end of the parenting time, Mr. Draheim emailed Ms. Chudyk advising her that the children did not want to leave, and that he supported their wishes. He proposed they discuss it, but if that Ms. Chudyk would not agree, he would bring a court application. When Ms. Chudyk's counsel pointed out to Mr. Draheim that he would be in breach of a court order, the children returned to their mother in Golden.
- [24] In March 2024, during a 10 day visit with Mr. Draheim over spring break, E.D. emailed her mother to say that she wanted to start living with her father in Kelowna starting at that time because her anxiety decreased while with her father and she felt it was getting worse while living with her mother in Golden. During that time, G.D. and E.D. had a telephone conversation with their mother about changing the arrangement in which Ms. Chudyk advised them any change had to be done the right way which was through the court system. G.D. replied that Ms. Chudyk would not let them change it if they did it the right way and that she does not listen to them.
- [25] Mr. Draheim emailed Ms. Chudyk to advise that the children would not be leaving. He sent the email within half an hour of the pickup time when Ms. Chudyk was on her way from Golden to Kelowna to pick up the children. When she arrived for the pickup, she was not permitted to speak to the children. Both Ms. Chudyk and Mr. Draheim called the police. The police attended, but would not take any enforcement action because there was no enforcement clause in the order. Ms. Chudyk brought an application on short leave for return of the children. On March 26, 2024, Associate Judge Krentz ordered that the children be returned. In his reasons, Krentz A.J. accepted that the children were communicating their wishes and a court would listen to that, but it was wrong for Mr. Draheim to withhold them instead of taking steps to vary the November 21, 2019 order.
- [26] Mr. Draheim filed his application to vary the November 21, 2019 order on July 10, 2024, including seeking a Hear the Child Report. On August 14, 2024, Associate Judge Vos ordered a Hear the Child Report be completed by a family justice counsellor. Mr. Draheim realized that the order was too restrictive, as a family justice counsellor was not available, and went back to court to obtain an order that an assessor on the Hear the Child Roster could complete the report. However, Ms. Chudyk's lawyer was not available for that second application and did not attend. Mr. Chudyk went to court to get the order despite having been told that, the order was made, and the Hear the Child Report was completed.

- [27] Mr. Draheim's application then came on for hearing before Morellato J. There was not enough time to hear the applications. The parties agreed there should be a s. 211 Views of the Child Report. Justice Morellato made a consent order including that a s. 211 Views of the Child Report be prepared.
- [28] I have read the Hear the Child Report, however in the circumstances that the Views of the Child Report was ordered by consent, I have based my decision on it. I note that the views expressed by the children do not differ substantively from the Hear the Child Report to the Views of the Child Report.
- [29] The s. 211 assessor met with Mr. Draheim, Ms. Chudyk, E.D., and G.D. She concluded that both parents provide nurturing and stable home environments for the children.
- [30] The Views of the Child Report is very helpful in deciding the parenting issues. It is not clouded by the rancor that is contained in the many affidavits that each of Mr. Draheim and Ms. Chudyk have made and filed in which they make accusations against each other and then respond to the accusations made by the other.
- [31] Mr. Draheim deposed that he believes that Ms. Chudyk subjects the children to mental and emotional abuse including control and threats. As I will discuss below, while E.D. describes her mother as "controlling" in the Views of the Child Report, the s. 211 assessor, a trained professional, addresses the dynamic between E.D. and her mother in a manner that is far from mental and emotional abuse. There is no support in the evidence for Mr. Draheim's assertions in this regard.
- [32] I reach the same conclusions regarding Mr. Draheim's accusations that Ms. Chudyk manipulates, intimidates and over-medicates the children.
- [33] Ms. Chudyk has expressed in affidavit evidence that Mr. Draheim undermines her parenting authority with the children. For example, with regard to the children's poor attendance at school, she deposed that regular "attendance is hard to enforce when the children . have been repeatedly told by the Claimant that they do not need to listen to me". There is no evidence that Mr. Draheim has told the children that. The Views of the Child Report does not report anything that would support that type of behaviour or dynamic.
- [34] Ms. Chudyk deposed that she believes that Mr. Draheim speaks negatively about her around the children and manipulates the children into believing they should fear her, it is okay to disrespect her and they do not have to listen to her. There is no evidence to support this.
- E.D.
- [35] E.D. has health issues including severe anxiety.
- [36] E.D. told the s. 211 assessor that her problems with attending school and completing the requirements to graduate, which she has not done, started in grade 10 when she was attending secondary school in Golden. Some of the courses were online. According to E.D., she does not do well with online courses. She advised about problems scheduling the

courses she was supposed to complete. She advised that she had anxiety, and had been diagnosed with General Anxiety Disorder, but had not yet started taking medication. She missed a lot of school. She passed some courses but not others.

- [37] In grade 11, E.D. was trying medications and contracted COVID-19; she attributes these health problems to failing two courses. E.D. told the s. 211 assessor that in grade 12, still in Golden, "she just was not there mentally" due to continuing to find the right dosage and type of medication, including ADHD medication.
- [38] E.D. described her anxiety as better on her current medication, including allowing her better sleep. But she reported that some days she just sits "in the anxiety the entire day".
- [39] In April 2024, Mr. Draheim deposed that E.D. is on a "high dose" of anti-anxiety medication. He deposed that E.D. said it causes her emotional blunting and makes her feel worse and that E.D. "routinely" expresses that she would like to seek medical guidance to see if she can have the dosage lowered to more suitable levels. There is no support for this hearsay evidence in the material. E.D.'s statement to the s. 211 assessor undermines this statement although it was made 6 months after Mr. Draheim swore his affidavit, and so the situation with her medication could have improved in the meantime.
- [40] I will address this further below in regard to parental responsibilities, but this is a worrying approach by Mr. Draheim that he is also pursuing with regard to G.D. He has not been involved in the children's medical care for many years, pursuant to a court order in which he agreed that Ms. Chudyk would have sole parental responsibilities. Both with E.D. and G.D. he is second guessing their medical care, and blaming Ms. Chudyk for them being over-medicated. E.D.'s statements to the s. 211 assessor demonstrate how difficult it has been for her to find the right medications at the right dosage. There is no evidence that difficulty has been due to any shortcoming of Ms. Chudyk.
- [41] The move to Chase occurred in the summer after E.D. did not complete grade 12. In Chase, she attended high school for another attempt at grade 12. In November 2024, when this application was heard, she was continuing to struggle with attending school. E.D. told the s. 211 assessor that she would like to graduate, and should be able to if she passes the courses she is currently registered in. She told the s. 211 assessor she does not like to leave the house, and she finds going from point A to B hard, although she finds she is okay once she gets there. She told the s. 211 assessor that she makes it to school two or three days a week.
- [42] As discussed above, Ms. Chudyk believes that her attempts to get E.D. to go to school have been undermined by Mr. Draheim. Ms. Chudyk also deposed that E.D.'s attendance suffered after the March 2024 incident because Mr. Draheim had spoken negatively about Ms. Chudyk and the school. There is no evidence that supports Ms. Chudyk's beliefs in this regard.
- [43] In oral submissions, Mr. Draheim asserted that he does not believe that Ms. Chudyk tries to get the children to go to school. There is no evidence that supports Mr. Draheim's belief in this regard.

- [44] E.D. told the s. 211 assessor that she attributes her anxiety to a previous girlfriend of Mr. Draheim's, although she also stated that she jokes about that. She described the girlfriend as an alcoholic whom she did not like.
- [45] E.D. described her relationship with her mother as "not great some of the time". She described her mother as quite controlling. She told the s. 211 assessor that she thinks she has been trained by her mother to live her life in a way that will not upset her mother. She also described that being with her mother is a good thing. E.D. told the s. 211 assessor that she gets along fine with Ms. Chudyk's husband, that they have shared interests and that she likes spending time with him.
- [46] Not surprisingly, Ms. Chudyk does not see herself as a controlling parent. As the s. 211 assessor points out, parents generally try to guide their children. That may be seen by a child as controlling at certain points in their lives, especially when they are teenagers. Some parents might offer too much guidance out of love and the instinct to protect, especially when a child is struggling as E.D. is. As I have said above, there is no evidence that this mother/daughter dynamic, not an uncommon one, amounts to mental or emotional abuse. However, the fact that 18-year-old E.D. is struggling against her mother's guidance and that struggle is playing a role in her desire to live with her father where she does not have to struggle that way every day, cannot be sidestepped.
- [47] E.D. told the s. 211 assessor that if she could change her life to make it better, she would move to her dad's but if she could not do that, she would like to be more mentally stable. She told the s. 211 assessor that her mother has told her that she will have the same problems, in particular with attending school, in Kelowna. E.D. told the s. 211 assessor that she knows that moving to Kelowna will be a big adjustment especially going to school every day. She talked about the necessity of getting up in time to get the bus, otherwise she will not be able to get there.
- [48] E.D. told the s. 211 assessor she speaks to Ms. Rudolph about her problems and finds that helpful because of Ms. Rudolph's experiences as a daughter in a challenging mother/daughter relationship.
- [49] Due to E.D.'s mental health, she is a year behind in graduating from high school and she has many missed days at her current second attempt at grade 12.
- [50] E.D. reports that she feels less anxiety while at her father's house. That does not guarantee anything about how E.D. would do while attending school there, or attempting to attend school. Her lower anxiety may be due to the fact that she does not attend school during the times she is staying with her father. On the other hand, despite what appear to be huge efforts from her mother to guide her through the school years and obtain the medical and educational resources to assist with her health troubles, she continues to struggle. While there is no evidence that moving to Kelowna will improve her health or her school attendance, she says she feels better there and believes she can improve there, despite acknowledging that she will have to work on going to school.

- [51] The s. 211 assessor is of the view that E.D. has not been able to individuate, a process of forming a sense of self, independent from one's parents, and that E.D. attributes her frustrations to her mother's protective parenting. The s. 211 assessor is of the view that at her father's house, E.D. feels more supported to figure out who she is and to be that person. The s. 211 assessor is of the view that it is healthy for E.D. to be pushing away from her mother because she wants to be herself and not lose her mother's love.
- [52] The s. 211 assessor concluded that E.D. has not been alienated from her mother or inappropriately influenced by either parent or by any adult member of the family regarding where she will live.
- [53] I am of the view that E.D.'s health and troubles attending school are a material change from the circumstances in which the November 21, 2019 consent order were made.
- [54] Most significantly, E.D. is now 18 years old and has formed the view that she wants to live with her father full time and spend time with her mother every other weekend. She appears to be caught in an emotional bind: she says being with her mother is a good thing, but she also believes that her relationship with her mother is not great. She sees her mother as controlling; that is not an unusual perspective of a teenage girl becoming a young woman who has a mother who has worked hard to guide her child. E.D. may well have a different perspective of this relationship with the benefit of more maturity. The s.211 assessor has opined that the struggle is developmentally appropriate.
- [55] I conclude that at this stage and age, it is in her best interests to allow her to try to improve her mental health and complete her high school education in an environment where she thinks she can do both.
- [56] I have one concern and that is Mr. Draheim's view that Ms. Chudyk overmedicates the children and that E.D. would be better off on a lower dose of anti-anxiety medication. As I stated above, this is view on a very challenging issue on which he has, by his own agreement, not had involvement for many years is very concerning. I will return this below when addressing parental responsibilities. Because it can be addressed through parental responsibilities, and because the other factors weigh in favour of a change to parenting time for E.D., it does not overtake my conclusion that E.D. should be able to live full time with her father. But I wish to make it very clear that this does not give Mr. Draheim authority to influence E.D.'s health care in a manner inconsistent with what E.D.'s physicians have advised or prescribed.
- [57] I conclude that the combination of E.D.'s clearly stated wishes, her age, and her health issues and her developmental imperatives, as described by the s. 211 assessor, amount to material changes such that her best interests are served by an order varying parenting in accordance with her wishes. For these reasons, on November 28, 2024 I ordered that November 21, 2019 consent order is varied so that E.D. is resident with Mr. Draheim commencing January 25, 2025 other than at the times that she has parenting time with Ms. Chudyk. Mr. Draheim may attend at Ms. Chudyk's residence in Chase to collect E.D.'s belongings.

G.D.

[58] G.D. is 14 years old and in grade 8.

[59] G.D. describes his mother as good, and always working. He told the s. 211 assessor that sometimes his mother forces them to do things that he does not want to do but could not give an example.

[60] G.D. told the s. 211 assessor that he likes his mother's husband, and that they are working on his BMX bike together.

[61] G.D. told the s. 211 assessor that his dad's wife is really nice, is an artist, and they do art together. G.D. told the s. 211 assessor that before his dad met his wife, there were no rules, but now there are rules, and things go a lot better when his dad found his wife.

[62] G.D. told the s. 211 assessor that he really wants to live with his dad because he wants more time with him, and when he asks his mother for more time with his dad, she says no but does not explain why. He is not worried about missing his mum because it is only a 2-hour drive and his dad will let them go to see their mum whenever they want. He also said that if he lives with his dad, he wants more time with his mum than he currently has with his dad. He would like to be with his mother every other weekend as well as sharing the holidays.

[63] G.D. described his father as the person he would like to be with him if he was hospitalized and could only chose one person, because he does not get to see his father very much. He told the s. 211 assessor that if he goes to live with his dad, he will miss his mum. He told the s. 211 assessor he likes to be at his dad's because there is more family there.

[64] G.D. described disliking having to talk to people, including a counsellor his mother arranged for him to see while they lived in Golden and the Hear the Child assessor whom his father arranged for him to see. He told the s. 211 assessor that as a result of the Hear the Child interviews, he did not want to attend the meeting with the s. 211 assessor.

[65] G.D. told the s. 211 assessor that he thinks he started having anxiety around age 10. He said he had felt a lot of anxiety since moving to Chase, especially with regard to missing his friends. He said he had been missing a lot of school due to his anxiety.

[66] As discussed above, Ms. Chudyk believes Mr. Draheim undermines her parenting in a way that has spilled over into school attendance. She deposed that G.D. had a bad experience at school one year in Golden, but had a good experience the following year, but his attendance started to fall after the March 2024 incident because Mr. Draheim had spoken negatively about Ms. Chudyk and the school. There is no evidence that supports Ms. Chudyk's beliefs in this regard.

[67] As related above, Mr. Draheim asserts that Ms. Chudyk does not try to get the children to go to school. There is no evidence that supports this.

- [68] G.D. told the s. 211 assessor he does not receive treatment for his anxiety, but they recently got a dog to help with the anxiety. He told the s. 211 assessor he does not have anxiety at his dad's house and he thinks that is because he has friends there and step siblings to hang out with. He also told the s. 211 assessor that he has moved with his mother a lot, and he does not want to move again. He told the s. 211 assessor that if he lives with his dad, he will not be moving.
- [69] G.D. takes medication for attention deficit disorder. Ms. Chudyk believes it helps G.D. with his anxiety also.
- [70] Ms. Chudyk accuses Mr. Draheim of ignoring both children's medications and actively encouraging G.D. to not take his medication when he has parenting time with Mr. Draheim. Mr. Draheim accuses Ms. Chudyk of withholding G.D.'s medication when he is with Mr. Draheim. Mr. Draheim also deposed that G.D. focuses fine when G.D. is with him, so perhaps he does not need the medication.
- [71] Mr. Draheim's evidence corroborates Ms. Chudyk's concerns to a certain extent. Mr. Draheim deposed that G.D. is medicated for attention deficit disorder and is suffering adverse consequences due to the medication including a low body weight. Mr. Draheim deposed that Ms. Chudyk over medicates the children. There is no medical evidence or other evidence to support Mr. Draheim's hypotheses. They appear to be manifestations of his own views, which has formed despite, by his own choice, not having any involvement in G.D.'s medical care since at least when the November 21, 2019 consent order was entered.
- [72] Ms. Chudyk deposed that at G.D.'s choice, he does not take his medication with him when he goes to his father's because the dosage is in the morning so he can focus at school and so it wears off by night time when he should be winding down for bed. She deposed that when he is at his father's he gets up late, and the medication timing will be off. Ms. Chudyk also deposed that G.D.'s pediatrician has advised that if G.D. feels that he does not need the ADHD on weekends and school breaks, then he does not need to take it at those time. This seems counter to her assertion that Mr. Draheim discourages the medication but nevertheless, Mr. Draheim's own evidence demonstrates that.
- [73] Mr. Draheim deposed that he believes that Ms. Chudyk has manipulated the pediatrician. There is no evidence of that and it is a very concerning position to take, since it seems like Mr. Draheim simply dismisses the view of anyone who disagrees with him, when objectively, he does not have the experience with G.D.'s health issues nor the medical training to express the view of whether G.D. should take medication or not.

- [74] The s. 211 assessor concluded that G.D.'s clearly expressed desire to live with his dad is an age appropriate preference to know his dad better, and wanting to move less so he does not have to make new friends. The s. 211 assessor stated that G.D.'s responses to questions hypothesizing who he would like to have with him in hospital or if he is sick at home are designed to discern attachment to parents. G.D.'s responses demonstrated attachment to his father.
- [75] The s. 211 assessor concluded that G.D. has not been alienated from his mother and his preference to live with his father has not been inappropriately influenced by any adult. However, the s. 211 assessor indicated that the March 2024 incident when he wanted to stay with his father but was not permitted to and the police became involved had upset him. The s. 211 assessor believes this incident is part of the reason why G.D. believes his father will be more flexible.
- [76] I conclude there is also a material change in G.D.'s circumstances. When the November 21, 2019 order was made, G.D. was too young to express his preference, and likely too young to have a preference. He is now old enough to express one, and he has expressed it clearly. The factors that must be considered when assessing the best interests of the child include the child's expressed views. When those views are expressed in a way as clear as G.D. has expressed them, free from inappropriate influence, and do not accord with the terms of the current order, then a material change has been established.
- [77] G.D. wants to know his father better, and he wants to live in a household and a community where he has stable friendships and is not subject to moving. He wants to see his mother more than he currently sees his father; in other words, he wants more balance in his parental relationships. He believes that if he lives primarily with his father, he will have more flexibility.
- [78] G.D.'s attendance at school in the first term of the current school year has been very poor. He told the s. 211 assessor that he does not feel as anxious when he is at his father's home. Again, this could be because his is at his father's home during school holidays, and that might change when the situation is reversed. But if there is an opportunity to interrupt what could be a trend of not going to school when he feels anxious, that is also a reason to make the change.
- [79] As with E.D., I am concerned that Mr. Draheim's view that Ms. Chudyk overmedicates the children is not in the best interests of G.D. when he is taking physician prescribed medication and Mr. Draheim was not involved in G.D.'s medical care for many years. I will address this below in parental responsibilities. Because it can be addressed through parental responsibilities, and because the other factors weigh in favour of a change to parenting time for G.D., it does not overtake my conclusion that G.D. should be able to live full time with his father. As with E.D., I wish to make it very clear that this does not give Mr. Draheim authority to influence G.D.'s health care in a manner inconsistent with what G.D.'s physicians have advised or prescribed.

[80] I conclude that the combination of G.D.'s clearly stated wishes, his age, his age appropriate preference to spend more time with his father and have more time with his mother than he does with his father, amount to material changes such that his best interests are served by an order varying parenting in accordance with his wishes. For these reasons, on November 28, 2024 I ordered that November 21, 2019 is varied so that G.D. is resident with Mr. Draheim commencing January 25, 2025 other than at the times that he has parenting time with Ms. Chudyk. I ordered that Mr. Draheim may attend at Ms. Chudyk's residence in Chase to collect G.D.'s belongings.

Holiday and Weekend Parenting Time

- [81] Both children told the s. 211 assessor that they would like to have more parenting time with their mother than they currently have with their father. G.D. wishes to continue to share school holidays as they currently do, but also to spend every other weekend with his mother. E.D. seeks the same, but with flexibility as to whether she will spend a given weekend with her mother depending on what social plans she may have.
- [82] Mr. Draheim agrees with this approach but he wants some changes to the summer parenting schedule and some more ability to travel with the children outside the country.
- [83] Ms. Chudyk submitted that if the children are primarily resident with Mr. Draheim, they should have parenting time with her three of four weekends per month, all of spring break, and 6 weeks of the summer. The parties currently split the school vacation times equally, and alternate Christmas.
- [84] On November 24, 2024, I ordered that once the children began primarily residing with their father on January 25, 2025, they shall have parenting time with Ms. Chudyk over holidays as described in paras. 10-13 of the November 21, 2019 consent order, and until any further order on parenting time under reserve on these applications, parenting time with Ms. Chudyk every other weekend each month commencing at 6 pm on Fridays and ending at 7 pm on Sundays, unless the weekend is a long weekend and if so, ending at 7 pm on the Monday of the long weekend. I advised the parties that I was reserving on the submissions that Ms. Chudyk made about weekend parenting time for her and both parties' submissions on holidays and summer parenting time.
- [85] The s. 211 Views of the Child Report contains statements for both children, but more so G.D. than E.D., that one of the reasons they want to live with their father is the other family members in the house and nearby, including children of Ms. Rudolph. Both of them also are of the view that their ability to make friends in Kelowna, at a bigger school and in a bigger community, will be easier than they have found to be the case in Chase, where they moved in the summer of 2024.

- [86] I am of the view that this social aspect of their well being will be undermined if the vast majority of school holidays and weekends are spent with their mother. E.D. is at an age where it is natural for her to want to socialize more with friends than with her parents and G.D. is growing into that stage. They enjoy time with their step siblings. If all of their school vacation time is away from their Kelowna family members, they will not be able to participate in something they have said is important to them.
- [87] Mr. Draheim wants the summer holidays to be one month with each, instead of at least two weeks in each of July and August. The order provides for them to agree on the dates and times within that framework. Mr. Draheim reports once incident when Ms. Chudyk asked for it to be one month on, one month off, to which he agreed, and then changed it when her preference changed due to changes in her extended family's travel plans. I am of the view that the parties should be able to agree on these types of things, keeping in mind that if one is difficult, the other probably will be too, but I see no evidence of a material change that mandates a change to this term of the order. Accordingly, I vary to the November 21, 2019 consent order by adding to para. 12 the words "unless the parties otherwise agree in writing".
- [88] Other than that, I am of the view that the school holidays should be continued to be shared as set out in the November 21, 2019 court order.
- [89] With regard to additional parenting time between Ms. Chudyk and E.D. and G.D. on weekends, for the same reasons I am of the view that there should not be a change to the essentially equal split of school vacation time, the children should have half their weekends in Kelowna where they have step siblings and will be establishing friendships at school and in the community.
- [90] With regard to E.D., she wishes to have some flexibility to stay in Kelowna on weekends if she has social commitments. This is appropriate given her age.
- [91] Accordingly, with regard to weekend parenting time, the order I made on November 24, 2024 shall continue, with the addition that E.D. may decide not to have weekend parenting time with Ms. Chudyk on weekends when she has other commitments.
- [92] With regard to picking up and dropping off the children for parenting time, the November 21, 2019 order provides that Mr. Draheim shall do that unless the parties otherwise agree. It appears that there has been some agreement, or the order has not always been complied with, because when the children were supposed to return to Ms. Chudyk after the March 2024 spring break, she drove from Golden to Kelowna to pick them up and Mr. Draheim told her 30 minutes before the pick up time that she would not be able to pick up the children.

[93] The continuing discord between the parties, the relativeness closeness of the parties' residences compared to when the November 21, 2019 consent order was made, and the age of the children are material changes that relate to this. I am of the view that each party shall pick up the children for their parenting time. This will divide the travelling equally. I vary para. 9 of the November 21, 2019 consent order to read:

The parties will each be responsible for pick-up of the Children for their respective parenting times unless otherwise agreed between the parties.

[94] Mr. Draheim is of the view that both parties should be able to travel outside of the country with the children for up to two weeks at a time. The November 21, 2019 consent order provides for Ms. Chudyk to travel with the children to the United States of America for up to 14 days without permission from Mr. Draheim. The November 21, 2019 consent order provides that Mr. Draheim may travel with the children to the United States of America for a period of up to 7 days without permission so long as 14 days notice has been given.

[95] It is not apparent to me why the provisions were different for Mr. Draheim than for Ms. Chudyk, nor is it apparent why travel to the United States of America is referred to by no other travel. Ms. Chudyk did not push back on a change to the order. Accordingly, I vary the November 21, 2019 consent order by replacing paras. 15 and 18 with the following:

Either party may travel outside of Canada with the children for up to 14 days without the permission of the other so long as 14 days notice is given to the other party.

Child Support

[96] Given the change in primary parenting, the usual order, and the one required by the Federal Child Support Guidelines, SOR/97-175, unless the court gives a reason for not following it, is that Ms. Chudyk pays child support based on two children and her 2024 income commencing February 1, 2025. The usual corollary order would be to vary the term of the November 21, 2019 to not require Mr. Draheim to continue to pay basic child support, but to require him to continue to pay a share of special and extraordinary expenses.

[97] However, Mr. Draheim has failed, since 2020, to make financial disclosure in a manner that makes it unclear as to whether the usual orders ought to be made. That is for two reasons, first, a party who is not in compliance with court orders is not usually permitted to seek relief from the court on the same subject matter until the party brings themselves into compliance. The second is it is not possible to know what Mr. Draheim's actual child support obligations should have been between 2020 and January 2025 or to know what his obligations with regard to special and extraordinary expenses were and are. It would not be appropriate to make an order that he no longer has to pay basic child support if he has not paid the basic child support and special and extraordinary expenses he ought to have paid for some or all of the past five years.

- [98] The November 21, 2019 consent order provides that the parties provide each other with income tax returns and notices of assessment each year. Mr. Draheim has provided notices of assessments and tax summaries for some years, but he has not provided his full income tax returns for 2019, 2020, 2021, 2022 or 2023. i.e., for any year since the order was made.
- [99] The November 21, 2019 consent order requiring annual exchange of financial information including income tax returns and notices of assessment is a typical feature of court orders pertaining to child support. The annual exchange of information provides up-to-date income information to adjust child support in accordance with actual income and the Federal Child Support Guidelines. These typical provisions reflect the well-established family law principles that child support is the right of the child, and each parent has an obligation to ensure that appropriate child support is paid. Accurate, up-to-date information is key to ensuring parents meet their obligations.
- [100] Ms. Chudyk has had to involve her lawyer in requesting these documents, including bringing applications, of which her application heard at the same hearing as Mr. Draheim's application, is the latest.
- [101] On January 5, 2021, Basran J. ordered that Mr. Draheim produce his full 2019 T1 Income Tax and Benefit return, including his T4 and all attachments. He has not done so. He did not cooperate in having the order entered, requiring Ms. Chudyk to have her counsel attend at a Registrar's hearing to have it entered. Registrar Nielson ordered costs of that hearing in favour of Ms. Chudyk.
- [102] According to Mr. Draheim's 2019 notice of assessment (but not his T1 Income Tax Return, which he was supposed to produce), his income was \$87,487.11. Although he agreed to increase child support payments in 2020, he did not increase it to an amount that accords with that statement of his 2019 income. Ms. Chudyk had to have her counsel apply to the court to have it increased, an order that Justice Groves made on March 9, 2021.
- [103] Ms. Chudyk has asked Mr. Draheim to contribute to special and extraordinary expenses for the children including schooling costs. He ignored those requests and Ms. Chudyk had to bring an application. On April 12, 2021, Masuhara J. ordered that Mr. Draheim pay 60% of certain special and extraordinary expenses.
- [104] At the hearing before me, Mr. Draheim handed over what he claimed were his income tax returns for these years. What he actually handed over were his 2020, 2021, 2022 and 2023 notices of assessment, his 2020, 2021, 2022 and 2023 T1 summaries, his 2020, 2021, 2022 and 2023 T1 slip summary, and two year summaries for 2019-2020, 2020-2021, 2021-2022 and 2022-2023. He seemed surprised when counsel for Ms. Chudyk pointed out that this is not compliance with the November 21, 2019 court order.
- [105] Mr. Draheim stated that he would make up any shortfall in child support that he is owing within 30 days. The problem is that he has not made the financial disclosure to determine that. His failures to do so are been in breach of the November 21, 2019 consent order and

the order of Basran J. The failures continued and were compounded right into the hearing of these applications when Mr. Draheim told the court he had handed over the financial disclosure that was owing when he had not. Given all of his conduct, I simply do not accept his commitment to make good on child support within 30 days.

[106] At this time, it is not possible to know whether the amounts he has been paying for child support are close to what he should have been paying or not, but given his breaches of court order in refusing to make financial disclosure, I readily infer that his payment of child support has not kept up to his actual earnings. Such an inference is permitted by s. 228(1)(b) of the Family Law Act.

[107] In my view, the conduct of Mr. Draheim that I have described above frustrates the court process and his parental obligation to make financial disclosure for the purposes of paying appropriate child support. In my view his conduct in seeking that Ms. Chudyk pay child support in these circumstances is conduct in this court proceeding that is a misuse of the court process.

[108] Section 221 of the Family Law Act provides remedies for frustrating the court process and misusing the court process as follows:

221 (1) A court may make an order prohibiting a party from making further applications or continuing a proceeding without leave of the court if satisfied that the party

- (a) has made an application that is trivial,
 - (b) is conducting a proceeding in a manner that is a misuse of the court process, or
 - (c) is otherwise acting in a manner that frustrates or misuses the court process.
- (2) If an order is made under subsection (1), the court may do one or more of the following:
- (a) make the order apply
 - (i) for a specified period of time, or
 - (ii) until the party has complied with an order made under this Act;
 - (b) impose any terms and conditions respecting the granting of leave to make further applications or to continue a proceeding;
 - (c) require the party to pay
 - (i) the other party for all or part of the expenses reasonably and necessarily incurred as a result of the party's actions, including fees and expenses related to family dispute resolution,
 - (ii) an amount not exceeding \$5 000 to or for the benefit of the other party, or a spouse or child whose interests were affected by the party's actions, or
 - (iii) a fine not exceeding \$5 000.

- [109] In my view, it is appropriate to order to dismiss the the portion of Mr. Draheim's application seeking to vary the November 21, 2019 order that he no longer pay child support and the order he seeks that Ms. Chudyk pay child support, with leave to reapply. However, he is not permitted to reapply or make an application regarding child support until the parties have agreed, or he can demonstrate to the court as a pre-condition for his application, that he has made all financial disclosure required of him, paid all child support, including special and extraordinary expenses, required of him, paid any outstanding costs order such as the order made by Registrar Neilson, and paid the costs and penalty I have levied below.
- [110] Since the children will be primarily living with Mr. Draheim as of January 25, 2025, and child support is a benefit of the child, not the parent to whom it is paid, I vary the November 21, 2019 order to not require Mr. Draheim pay child support to Ms. Chudyk. Rather, he is to use the child support he otherwise would have been required to pay effective February 1, 2025 for the support of the children while living with him. That will ensure that they benefit from continuing monthly child support until orders that might be made once Mr. Draheim can demonstrate that he has fulfilled his past responsibilities are made.
- [111] Ms. Chudyk is at liberty to make applications regarding child support matters at any time.
- [112] For these reasons, I depart from the Federal Child Support Guidelines for the period commencing February 1, 2025 pertaining to an order that Ms. Chudyk pay child support.

Parental Responsibilities

- [113] The November 21, 2019 consent order provides that Ms. Chudyk has sole parental decision-making pursuant to s.41 of the Family Law Act.
- [114] In his notice of application, Mr. Draheim sought sole parenting authority. Orally, he revised this position to joint parental responsibility.
- [115] The evidence demonstrates that both children have challenges, including health and educational challenges, that Ms. Chudyk has been navigating with them.
- [116] E.D. reported to the s. 211 assessor that she feels like she is on the right dose of anti-anxiety medication. Her father believes it should be reduced. Similarly, Mr. Draheim questions whether G.D. should be on medication for attention deficit disorder.
- [117] Mr. Draheim's statements and assertions about the children's medications, especially that Ms. Chudyk overmedicates the children and has manipulated G.D.'s pediatrician, are very concerning especially given that he has had no involvement in their health care by his own agreement. His expressed views appear to be motivated by the discord between the parties as opposed to by an informed view on the children's well-being.

- [118] With regard to education, both children have an individual education plan in place. These plans take time and parental effort to develop. Expecting Mr. Draheim to step into this process and be effective is naïve, even though one of Ms. Rudolph's children has an individual education plan. I agree with Ms. Chudyk, that Mr. Draheim relies extensively on Ms. Rudolph in this regard. She is not the person who will be assigned parental responsibilities and so Mr. Draheim's plan is not acceptable.
- [119] Mr. Draheim somewhat gratuitously submitted that he does not think that Ms. Chudyk tries to get the children to go to school. This is also concerning, since he has no first hand knowledge of this. The children clearly are struggling. To blame this on the other parent when Mr. Draheim has not had to contend with this difficult issue is inappropriate.
- [120] While neither of the children have good school attendance, there is no evidence that this is a result of any shortcoming on the part of Ms. Chudyk. With regard to E.D., the evidence is clear that her anxiety, is the major issue. She asserts she has less anxiety when at Mr. Draheim's home. She also acknowledges that she is going to have to work on going to school. At no time has she attributed her problems with school attendance to her mother.
- [121] The change in primary parenting practically calls for Mr. Draheim to have a role in parenting responsibilities but it does not mandate excluding Ms. Chudyk from parental responsibilities. There are issues that can be managed by Ms. Chudyk from Chase and if she needs to be in Kelowna from time to time, it is not a prohibitive distance to drive. I am of the view that shared parental responsibilities are appropriate.
- [122] Given the concerns that I have expressed about Mr. Draheim's view on medications, I have made an express order that neither party shall encourage or permit the children to take or not take medication except as prescribed or recommended by the children's treating doctors.
- [123] For these reasons, on November 28, 2024 I ordered that the November 21, 2019 consent order is varied to substitute the following pertaining to parental responsibilities for para. 3 of the order:

Para. 3 is varied to read: "Pursuant to s.41 of the Family Law Act, the parties shall share parenting responsibilities for the Children on the Modified Joyce Model as follows:

In the event of the death of either party, the surviving party will be the only party with decision-making responsibility for the children.

Each party will have the obligation to advise the other party of any matters of a significant nature affecting the children and to give advance notice of any medical appointments, educational appointments including parent/teacher meetings and counselling appointments in which parents may participate.

Each party will have the obligation to discuss with the other party significant decisions that have to be made concerning the children, including significant decisions about the health (except emergency decisions), education, religious instruction and general welfare.

Neither party shall encourage or permit the children to take or not take medication except as prescribed or recommended by the Children's treating doctors.

The parties will have the obligation to discuss significant decisions with each other and the obligation to try to reach agreement on these decisions.

In the event that the parties cannot reach agreement on a significant decision despite their best efforts, either party may apply for directions.

Each party will have the right to obtain information concerning the children directly from third parties, including but not limited to teachers, counsellors, medical professionals and third party care givers.

Conduct Orders

[124] Mr. Draheim seeks an order that neither party defame the other.

[125] Mr. Draheim's major complaint is a social media post that someone named Kris Martin, apparently a friend of Ms. Chudyk's, made when the children did not return home at the end of their spring break parenting time with Mr. Draheim in March 2024. The post accurately reports that Mr. Draheim refused to return the children and that RCMP were involved. It does not include that the children expressed the view that they did not want to return. It asserts that Mr. Draheim was abusive, manipulative and had been found by the court to be an unfit parent.

[126] It is an unfortunate post, albeit made in a time when Mr. Draheim did not return the children when he ought to have done so. There is no evidence that Ms. Chudyk wrote the post or was behind it. I cannot see how making a court order that the parties not defame each other will address this sort of issue.

[127] In addition, as I have related, the parties each say similar things about each other in affidavits in this proceeding including calling each manipulative, dishonest and hypothesizing about bad parenting on the part of the other parent. On November 28, 2024 I made a conduct order of the type that might be effective if the parties are able to control their behaviour that stems from their ongoing discord, or at least recognize that involving their children in that discord makes matters worse for the children.

[128] Ms. Chudyk has sought orders pertaining to Mr. Draheim's conduct including her assertions that he has inappropriately involved the children in parenting matters and this litigation. I address that below.

Transfer of the File to Kelowna

[129] Mr. Draheim sought an order transferring this file to Kelowna for all purposes but did not make any submissions on it. I dismiss this.

Orders Sought by Ms. Chudyk

[130] Ms. Chudyk seeks to orders to address Mr. Draheim's failure to comply with the November 21, 2019 consent order to provide updated income information annually, and by inappropriately engaging the children in the parties' disputes contrary to the orders of Basran J. made January 5, 2021 and Masuhara J. made April 12, 2021.

Financial Disclosure

[131] As I have described above, Mr. Draheim has consistently and woefully fallen below his obligations at law and what he agreed to do in the November 21 2019 consent order and what he was ordered to do in the January 2021 order of Basran J.

[132] Nonetheless I view contempt as a blunt instrument to deal with this misconduct at this time, given the circumstances as a whole and the order I have already made pertaining to child support. I do not foreclose future contempt applications if the misconduct continues or there is new misconduct.

[133] Similarly, an order for imprisonment pursuant to s.231 would be counter productive, and not in he best interests of the children.

[134] In addition to the order I have made, above, I order, pursuant to s.221 (2) (c) (ii) or s. 228 (1) (c), that Mr. Draheim pay to Ms. Chudyk \$5,000 for his failures to comply with his financial disclosure obligations. I have ordered the maximum amount because the failures have been over five years, there are more than five separate failures for each year he should have made financial disclosure but did not and his failure to respond to requests for contribution to special and extraordinary expenses, the failures are ongoing, he misrepresented to the Court that he had made the required disclosure when he had not, and he had the audacity to seek child support from Ms. Chudyk when his failures prevent her and the court from knowing whether, and the extent to which, his child support obligations have been met.

Inappropriately Involving the Children in the Parenting Issues

[135] On January 5, 2021, Basran J. ordered that Mr. Draheim should not communicate directly with the children with respect to arranging parenting time.

[136] On April 12, 2021, Masuhara J. made an order that neither party shall discuss matters pertaining to this litigation and parenting time with the children.

[137] Ms. Chudyk asserts that Mr. Draheim has consistently involved the children in matters pertaining to parenting time and the litigation.

- [138] The evidence on this is not strong. For example, Ms. Chudyk deposed that children told her that Mr. Draheim asked them to come live with him. This is hearsay evidence given at a level of imprecision that does not allow the court to determine whether Mr. Draheim initiated the conversations referred to. The evidence demonstrates that for some time, at least since 2023, the children have been expressing to both parents that they wish changes to the parenting arrangements. Of necessity, both parents have had to discuss this with the children.
- [139] The record is replete with both parents having multiple discussions with the children about parenting time. Ms. Chudyk, who is not expressly subject to an order that parenting and/or the litigation not be discussed with the children, has discussed the court orders and the litigation process with them on many occasions. While it has not necessarily been inappropriate, if Mr. Draheim had the exact same discussions with the children that Ms. Chudyk has had, he would technically be in breach of the orders of Justices Basran and Masuhara while Ms. Chudyk is not because the orders do not apply to her. That does not make sense.
- [140] The orders must be interpreted contextually. It is not possible to not discuss any parenting time matters with the children. They have to know where they are going and when so the orders cannot be interpreted to prohibit that. In addition, given the children have been voicing dissatisfaction with the current arrangements it would not be appropriate to simply ignore them or shut them down. Even if Mr. Draheim had said to them, "a change right away is not possible because there is a court order and it has to be varied first", that could be interpreted to be in breach of these orders. Such an interpretation is inappropriate with the law that the best interests of the children require their views to be heard.
- [141] I have found that neither parent has inappropriately influenced the children. It is not clear to me that Mr. Draheim has engaged the children in the dispute over parenting other than discussing and addressing their views.
- [142] The problematic element of this is that both parties believe and depose, without substantiating evidence, that the other has manipulated the children, inappropriately influenced their views, and sought to bad mouth the other. Both have engaged and continued this unfortunate discord.
- [143] The fact that the children wanted to express their views about their parenting, given their ages, is not inherently bad and indeed is envisioned under the terms of the Divorce Act and the Family Law Act pertaining to the best interests of the children. Mr. Draheim's intention to have their views heard in the court process was appropriate but the way he went about it, by agreeing with them that they could stay with him instead of bringing an application, and then once bringing the application, applying for the order that Vos A.J. made at a time when Ms. Chudyk's counsel was not available, was inappropriate.

[144] Ms. Chudyk's position that the process for having the children heard would only occur if Mr. Draheim would pay for it, was misguided but somewhat understandable given his behaviour around financial disclosure and child support that surely increased her mistrust of him.

[145] Having considered all of this, there should not be orders that completely prohibit discussion of the parenting orders since the children's views have been sought, expressed, and considered in the current order. The children are now undergoing a major change in parenting, and the parents need to be able to understand how they are coping. It is to be hoped that on a go forward basis these parents will take into account that their views of each other's behaviour have not met hurdle of being substantiated by evidence and appear to be mostly due to their subjective distrust and disrespect for each other.

[146] Accordingly, on November 28, 2024 I ordered as follows:

Conduct orders made in previous orders of the court are varied to provide that the parties will not:

1. question the children about the other parent, or time spent with the other parent, beyond simple conversational questions in circumstances where one of the children raises the topic;
2. discuss with the children any inappropriate, adult, court or legal matters except to advise the children of the content of the order of the Court and to hear the children if the children or either of them expresses a desire for a change;
3. blame criticize or disparage the other parent to the children.

Costs

[147] Mr. Draheim seeks costs of his application to vary the November 21, 2019 order. He asserts that he has had to be an advocate for the children's views to be heard. Mr. Draheim asserts that the if Ms. Chudyk had listened to the children and talked to him, they could have agreed on this matter and this application would have been unnecessary.

[148] While it was appropriate for the children's views to be heard and their views were the factual basis for my decision to vary the parenting time order, Mr. Draheim was not successful on all orders he sought in his application, including his application for exclusive parental responsibilities, child support, conduct orders and transferring the file to Kelowna.

[149] With regard to parenting time, Mr. Draheim's position on costs is too simplistic given the circumstances. Both parents believed and asserted that the other was manipulating the children and this mutual distrust and wrongly held beliefs meant that the parties do not agree on many things, including parenting.

- [150] In addition, Mr. Draheim inappropriately threatened to withhold the children in August 2023 and inappropriately withheld them in March 2024, instead of seeking the orders he now seeks. Mr. Draheim's behaviour with regarding to financial disclosure and parenting time over the years are some of the reasons that Ms. Chudyk neither trusts nor respects him and was not likely to agree with Mr. Draheim's proposal.
- [151] With regard to the other orders that Mr. Draheim sought, he has not been entirely successful on any of them and unreasonably took the position that he should have sole parental responsibilities (up to the actual hearing of the application when he changed his position to shared parenting responsibilities), should cease paying child support despite his failure to meet his obligations in that regard, and that Ms. Chudyk should pay child support despite his ongoing failure to meet his obligations pertaining to child support.
- [152] I am of the view that the parties should bear their own costs of Mr. Chudyk's July 10, 2024 application.
- [153] Ms. Chudyk seeks special costs of the hearing on the relief sought in paras. 8, 9 and 10 of her March 26, 2024 application.
- [154] Special costs are only awarded in exceptional circumstances where the conduct of the party against whom they are awarded has engaged in reprehensible conduct, a term that encompasses conduct on a spectrum from "milder forms of misconduct deserving of reproof or rebuke" to "scandalous or outrageous conduct": *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242, 1994 CanLII 2570 (C.A.) at para. 17.
- [155] Improper conduct in the proceeding itself can be reprehensible: *Garcia* at paras. 23, 25. Egregious conduct is "something more" than a weak case. The courts often describe the conduct with words such as "improper", "persistent", "abuse", "misleading" or "egregious": *Garcia* at paras. 23, 25; and *Westsea* at para. 73.
- [156] An award of special costs both compensates and disciplines for egregious conduct: *Bradshaw v. Stenner* 2012 BCSC 237 at para. 9, citing *Garcia* paras. 12, 17 among other cases.
- [157] Mr. Draheim's conduct regarding financial disclosure and child support easily meets the definitions of egregious. It is improper, it is persistent, it amounts to misuse of the courts process, and it included telling the Court that he, at the application itself, turned over all of the outstanding financial disclosure when he had not.
- [158] I have already ordered Mr. Draheim to pay Ms. Chudyk \$5,000 with regard to this conduct. That is to demonstrate to him how serious it is and to compel compliance because the failure to meet his obligations is ongoing. The \$5,000 payment is a not a substitute for a costs award which, as stated above, compensates and disciplines.
- [159] I order that Mr. Draheim pay Ms. Chudyk's costs of the orders she sought under items 8, 9 and 10 of her March 26, 2024 application as special costs.

Disposition

[160] On November 28, 2024, I made orders on items 1 and 6-12 of Mr. Draheim's July 10, 2024 notice of application as follows:

- a) The issue of parenting time over holidays and parenting time for Ms. Chudyk other than over the holidays is under reserve as part of the other matters on this application under reserve, but shall be as set out below in the meantime.
- b) The parties' consent order dated November 21, 2019 is varied as follows:
 - i. Para. 2 is varied to read: "Pursuant to s.16.1 of the Divorce Act, the Children shall be resident with the claimant Gregory Ulrich Draheim commencing January 25, 2025 other than at the times that they have parenting time with the respondent, as provided for in this order";
 - ii. Para. 14 shall be varied to read: "other than parenting time over holidays as described in paras. 10-13 of the November 21, 2019 consent order, and until any further order on parenting time in the Court's decision under reserve on this application, the respondent Tegan Chudyk shall have parenting time every other weekend each month commencing at 6 pm on Fridays and ending at 7 pm on Sundays, unless the weekend is a long weekend and if so, ending at 7 pm on the Monday of the long weekend."
 - iii. Para. 3 is varied to read: "Pursuant to s.41 of the Family Law Act, the parties shall share parenting responsibilities for the Children on the Modified Joyce Model as follows;
 - (1) In the event of the death of either party, the surviving party will be the only party with decision-making responsibility for the children;
 - (2) Each party will have the obligation to advise the other party of any matters of a significant nature affecting the children and to give advance notice of any medical appointments, educational appointments including parent/teacher meetings and counselling appointments in which parents may participate;
 - (3) Each party will have the obligation to discuss with the other party significant decisions that have to be made concerning the children, including significant decisions about the health (except emergency decisions), education, religious instruction and general welfare;
 - (4) Neither party shall encourage or permit the children to take or not take medication except as prescribed or recommended by the Children's treating doctors;
 - (5) The parties will have the obligation to discuss significant decisions with each other and the obligation to try to reach agreement on these decisions;
 - (6) In the event that the parties cannot reach agreement on a significant decision despite their best efforts, either party may apply for directions; and

(7) Each party will have the right to obtain information concerning the children directly from third parties, including but not limited to teachers, counsellors, medical professionals and third party care givers. "

iv. Para. 9 is varied to read: "the parties will be responsible for the pick up of the children when their parenting time is commencing or resuming unless otherwise agreed by the parties."

c) Ms. Chudyk shall have reasonable telephone and/or electronic communication with the children while they are in the care of Mr. Draheim subject to the children's wishes.

d) Ms. Chudyk shall provide Mr. Draheim with the documentation, children's identification and medical records necessary for Mr. Draheim to enrol the children in school commencing January 28, 2025 and to make arrangements for any appropriate educational accommodations including individual education plans.

e) Conduct orders made in previous orders of the court are varied to provide that the parties will not:

- i. question the children about the other parent, or time spent with the other parent, beyond simple conversational questions in circumstances where one of the children raises the topic;
- ii. discuss with the children any inappropriate, adult, court or legal matters except to advise the children of the content of the order of the Court and to hear the children if the children or either of them expresses a desire for a change;

iii. blame, criticize or disparage the other parent to the children.

f) Mr. Draheim may attend at Ms. Chudyk's residence to collect the belongings of the children on January 25, 2025 or another date mutually agreed to by the parties.

[161] With regard to parenting time for Ms. Chudyk and holiday time on a go forward basis, I order as follows:

- a) the November 21, 2019 consent order is varied by adding to para. 12 the words "unless the parties otherwise agree in writing".
- b) the order I made on November 24, 2024 shall continue with regard to weekend parenting between the children and Ms. Chudyk, with the addition that E.D. may decide not to have weekend parenting time with Ms. Chudyk on weekends when she has other commitments.

[162] With regard to travelling with the children, I vary the November 21, 2019 consent order by replacing paras. 15 and 18 with the following:

Either party may travel outside of Canada with the children for up to 14 days without the permission of the other so long as 14 days notice is given to the other party.

[163] With regard to child support, I order that:

- a) the relief sought by Mr. Draheim in paras. 2-5 of his July 10, 2024 notice of application is dismissed with leave to reapply;
- b) Mr. Draheim may not reapply or make any application pertaining to child support until the parties have agreed, or he can demonstrate to the court as a pre-condition for his application, that he has made all financial disclosure required of him, paid all child support, including special and extraordinary expenses, required of him, paid any outstanding costs order such as the order made by Registrar Neilson, paid the \$5,000 amount to Ms. Chudyk that I have ordered, and paid the costs I have levied.
- c) I vary para. 4 of the November 21, 2019 consent order to not require Mr. Draheim pay child support to Ms. Chudyk but to use the child support he otherwise would have been required to pay effective February 1, 2025 solely for the support of the children while living with him;
- d) Ms. Chudyk is a liberty to make applications regarding child support issues at any time.

[164] I dismiss the relief sought in para. 15 of Mr. Draheim's July 10, 2024 notice of application for an order transferring this file to Kelowna for all purposes.

[165] I order Mr. Draheim to pay to Ms. Chudyk \$5,000 for his failures to comply with his financial disclosure obligations.

[166] The parties shall bear their own costs of Mr. Draheim's July 10, 2024 application.

[167] Mr. Draheim shall pay Ms. Chudyk's costs of the relief sought in paras. 8, 9 and 10 of her March 26, 2024 application as special costs.

"Matthews J."

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