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CANADA / JUDGMENT

## F.G.H.C. v. M.L.H.

2009 BCSC 1227

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COURT

Supreme Court of British Columbia

DECIDED

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2009 BCSC 1227 F.G.H.C. v. M.L.H.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

F.G.H.C. v. M.L.H.,

2009 BCSC 1227

Date: 20090908

Docket: E090407

Registry: Vancouver

Between:

F.G.H.C.

Plaintiff

And

M.L.H.

Defendant

Before: The Honourable Mr. Justice Verhoeven

Reasons for Judgment

Counsel for Plaintiff:

C. Linde

Counsel for Defendant:

J.L. Pratt

Place and Date of Trial:

New Westminster, B.C.

July 13-17 and 20-24, 2009

Place and Date of Judgment:

New Westminster, B.C.

September 8, 2009

## I) INTRODUCTION

- [1] This action under the Family Relations Act, R.S.B.C. 1996, c. 128 [FRA], concerns custody, guardianship and access for the three children of the parties. There are three boys, aged 13, 7 and 5. The parties agree that there should be joint custody and guardianship. They differ somewhat on the details of the custody and guardianship order. The major issue is with respect to the residency of the children, and more specifically with respect to the parenting schedule.
- [2] The mother, Ms. H., contends that the children's interests are best met by having them reside with her from Monday to Friday during the school year. She contends that the children should then stay with their father, Mr. C., for three weekends out of four. This schedule was described in the evidence and the submissions as the "school week" schedule and I will adopt that term for the purpose of these reasons.
- [3] Mr. C. contends that it is in the best interests of the children that they reside with each parent for one week at a time. That is, they should alternate weeks; one week with their mother, and one week with their father. I will refer to this proposal as the "week on - week off" schedule.
- [4] On either schedule, the children would continue to attend the same schools. There are no significant geographic constraints. The parties live in close proximity to each other in Abbotsford, British Columbia.
- [5] Ms. H. agrees in principle that parenting for the children should be shared equally, and that the children should spend approximately equal time with each parent. But she asserts that for purposes of the order for joint guardianship on the "Master Joyce model", she should be designated as the parent having primary care of the children, so that in the event of disagreement between the parents, she would have the right to make major decisions with respect to the children, including in particular matters relating to their schooling and activities.

- [6] Mr. C. contends that there ought to be no primary caregiver designation and no primary residency. He proposes that in the event of disagreements between the parties they should mediate the dispute, and failing successful resolution of the issue at mediation, either party would be entitled to apply to the Court for a resolution to the dispute.
- [7] There are, therefore, two primary issues to be decided: (1) the parenting schedule, and; (2) the terms of the joint guardianship.
- [8] There are also minor issues concerning payment for extraordinary expenses, and contributions to registered education savings plans for the children.
- [9] At trial, each party testified and was cross-examined at length. I also had the benefit of hearing from Mr. C.'s wife, Ms. S., and Ms. H.'s husband, Mr. P. I also heard from a number of other witnesses, including Ms. H.'s mother, Mr. P.'s father, Ms. H.'s brother, teachers, friends of the parties, and current or former neighbours.

## II) BACKGROUND FACTS

- [10] The parties were never married. They met in 1995 while residing in Nova Scotia. They were both in their early 20's. Their first child, B., was born in 1996. In 1997, they moved to British Columbia. While in Nova Scotia, Mr. C. had taken training to become a corrections officer. Ms. H. was studying towards a Bachelor of Arts degree.
- [11] After moving to British Columbia, Mr. C. completed his corrections training but was not hired in that field initially. He did a variety of other jobs until being hired in the corrections field in 2002.
- [12] After moving to British Columbia, Ms. H. began working in the field of corrections in 1999.
- [13] Their second child, J., was born in 2002 and their third child, R., was born in 2003. Ms. H. continued her studies part-time. After R.'s birth, she completed her Bachelor of Arts degree.
- [14] Both parents continue to work in corrections for the same employer in the Abbotsford vicinity. Their incomes are approximately equal.
- [15] In late 2005, their relationship ended. Both parents commenced new relationships and both have subsequently married. Mr. C. married Ms. S. in March of 2007. Ms. H. married Mr. P. in May of 2009. Both of their new spouses also work in corrections. Mr. P., the spouse of Ms. H., has four children from his previous marriage. Ms. S. was previously unmarried and has no children. She and Mr. C. are expecting their first child in September 2009.
- [16] Mr. C. And Ms. H. entered into a separation agreement in March 2006, shortly after their relationship ended. The separation agreement was prepared by Mr. C. on the basis of a precedent agreement purchased at a retail store. Neither party had legal advice with respect to the terms of the separation agreement.

- [17] The separation agreement provided for joint custody, joint guardianship, and joint residency of the three children, with the children being resident with each parent for one week at a time. It also provided for reasonable and liberal access to the children at other times, at least three visits of two to three hours during the week, nightly phone calls, and joint participation in all school and extra-curricular activities. It provided that extra-curricular activities would be agreed upon by both parents and the expense would be shared equally. They agreed to sell their home in Abbotsford.
- [18] It can be seen that at the outset, the parties agreed to the week on - week off schedule, as well as maximum contact between the children and their parents.
- [19] Soon after the agreement was entered into, Mr. C. began a relationship with Ms. S. They purchased a home together in Chilliwack, B.C. Ms. H. contends that at the time she entered into the separation agreement she was unaware that Mr. C. was planning to move from Abbotsford to Chilliwack. In her view, this changed the circumstances to such a degree that the arrangements provided for in the separation agreement were no longer appropriate. She commenced an action in the Provincial Court of British Columbia for sole custody. Mr. C. counterclaimed in the Provincial Court proceedings for sole custody. He says that he sought sole custody only in response to the claim for sole custody by Ms. H., and that his position throughout has been in favour of what he described as "equal shared parenting", on the week on - week off schedule.
- [20] An order was made by the Provincial Court on May 24, 2007, for an investigative report into the issues of custody, guardianship and access pursuant to s. 15 of the FRA. Pursuant to that order, a report dated January 9, 2008, was prepared by Dr. L.W. Krywaniuk, Ph.D., a registered psychologist.
- [21] The Provincial Court trial commenced February 6, 2008, at Abbotsford. On the second day of the trial, there was a bomb scare at the courthouse which resulted in the evacuation of the courthouse. During that time, the parties began negotiating, and an agreement was reached. The agreement was embodied in an interim consent order of the Provincial Court dated February 7, 2008.
- [22] As reflected in the order, it was agreed between the parties that there would be joint custody of the children with no primary residency being designated. The order set out a schedule which, according to its terms, was intended to reflect that approximately 50% of the children's time would be spent with each parent.
- [23] In general terms, the order provided that the week on - week off schedule would continue for a few more months and that the parties would engage in a "review" of the parenting schedule in June of 2008 in the presence of a family law mediator. If, upon the review, the parties were unable to agree as to the future parenting schedule, the schedule would change commencing September 2, 2008, to the school week schedule as advocated by Ms. H. Under that schedule, the children would reside with Ms. H. from Monday to Friday, and with Mr. C. on three weekends out of four, with a Wednesday mid-week visit with Mr. C. in each week,

and one overnight visit with Mr. C. in the fourth week.

- [24] The order also provided that a further "review" of the parenting schedule would take place in January 2009 with the assistance of the same family law mediator as was used in June 2008, at which time the parties would again review and discuss which parenting schedule was in the best interests of the children. The order provided that if the parties were unable to agree, then they would be entitled to have the matter determined by the Supreme Court of British Columbia. There was no agreement and hence Mr. C. commenced these proceedings.
- [25] Both parties allege that the other has failed to act entirely in good faith with respect to the February 2008 consent order.
- [26] Mr. C. noted that in the absence of a contrary agreement, by default, the parenting schedule would change to the school week schedule advocated by Ms. H., effective September 2008. He feels that Ms. H. did not sincerely engage in the June 2008 and January 2009 "reviews", and as a result, the schedule was changed to the school week schedule without a fair and genuine review by the parties.
- [27] For her part, Ms. H. contends that Mr. C. did not live up to the spirit of the agreement, in that Mr. C. commenced these proceedings seeking to continue with the week on - week off schedule soon after the consent order was entered into.
- [28] It is not necessary for me to decide whether the parties lived up to the spirit or letter of the consent order. The background is only mentioned in order to provide factual context.
- [29] As can be seen, the children were on the week on - week off schedule from early 2006 until the beginning of September 2008. They have been on the school week schedule since that time. Holidays and vacation times have been divided more or less equally, although there have been numerous controversies. During summer vacations, the children have continued to alternate weeks with each parent.
- [30] Presently, in September of this year, the oldest child, B., will be entering Grade 8, the second child, J., will be entering Grade 2, and the third child, R., will be entering Grade 1. All attend Abbotsford schools. All three children are in French immersion programs. There is no desire by either party to alter the schooling arrangements.

### III) ISSUES

[31] The issues to be decided are as follows:

- 1) the parenting schedule for the three children;
- 2) the terms of the guardianship order; specifically, whether either parent should be designated as the parent having primary care, or otherwise given unilateral decision-making power in relation to the care of the children; and

- 3) payment for extraordinary expenses, and Registered Education Savings Plan (RESP) contributions.

#### IV) ANALYSIS

- [32] The parents agree in relation to many more issues than those for which they disagree. Each agrees that the other is a fit and capable parent. Each has no serious issue or concern with respect to the new spouse of the other. They agree that the children should remain in French immersion schooling in Abbotsford, in their present schools. They agree that it is beneficial for their children to have maximum contact with the other parent, and that it is important for their children to benefit from a positive and full relationship with the other parent.
- [33] I have no doubt that each party is sincere in their expressed wish to do what is best for their children, and that they both love their children very much. I have no concern regarding parental fitness of the mother or the father, or of their spouses.
- 1) Parenting Schedule
    - a) Positions of the Parties
- [34] The position of Mr. C. is straightforward: he wants to be a full and equal parent in every sense. He does not want to be a "weekend dad". He wants to be involved with the children's daily activities, including school and extra-curricular activities, to the fullest extent possible, consistent with equal sharing of parental responsibilities with Ms. H. He wants an equal say with respect to all significant matters affecting the children. He wants equal time with his children. He says this is the way it was prior to separation and he thinks it should continue to the greatest extent possible.
- [35] Ms. H. agrees in principle that the parents should be equal in relation to their parenting responsibilities and that there should be equal time between the parents. However, she believes that the children's functioning at school is enhanced if the children remain with her during the school week; in other words, from Monday to Friday. In her view, the time should be compensated for by way of the children spending three weekends out of four with Mr. C. She believes in equal sharing of all other non-school days such as statutory holidays, professional development days, and vacations. Recognizing that her favoured school week schedule does not in fact provide 50% of the time with the children's father, she proposed, at one time, a further overnight stay for the children with their father during the week.
- [36] Ms. H. is also of the view that her proposed schedule is less disruptive than the week on - week off schedule. She says it provides more stability for the children and there will be less conflict between the parents over activities that take place during the school week as well as less conflict if she has the final say on activities.

- [37] The position of Ms. H. is somewhat inconsistent. While agreeing in principle to equal time and fully shared parenting, she in fact wishes to have the children view her home as their primary residence. Ultimately, in terms of guardianship, she would like to have the final say in the decision-making for the children.
- [38] While each party acknowledges that the other is a capable and fit parent, Mr. C. is more positive concerning the parenting skills of Ms. H. than is Ms. H. with respect to him. Mr. C. has no criticism of Ms. H.'s parenting at all, and simply says that she is a "wonderful mother". Ms. H. is more critical of Mr. C.'s parenting skills. She believes she is more academically-oriented and is better able to supervise, manage and promote the academic training of the children. She believes that she is more organized and is better able to ensure that their homework assignments and other school activities are properly done by the children.
- [39] There is no doubt, however, that she recognizes the importance to the children of a full and positive relationship with their father. She believes that Mr. C. has different parenting skills than she does, and that the school week schedule allows her to promote and manage the school week activities that she thinks she is best equipped for, and allows the children to have a relationship with Mr. C. that takes advantage of his capabilities.
- [40] In the view of Ms. H., the week on - week off schedule that was in effect from the time of the break-up of the relationship in 2006 until September 2008 was detrimental to the children, and the school week schedule that has been in effect since September of 2008 has been an improvement.
- [41] Ms. H. has pointed to a number of issues and events that have occurred since the end of the relationship to support her contention that her proposed schedule is the most beneficial for the children.
- b) Evidence of Dr. Krywaniuk
- [42] As stated previously, Dr. Larry Krywaniuk prepared a report dated January 9, 2008, upon an order of the Provincial Court pursuant to s. 15 of the FRA. Dr. Krywaniuk testified at the trial and was cross-examined by both parties.
- [43] Dr. Krywaniuk's report was prepared just prior to the Provincial Court trial which commenced February 6, 2008, but did not conclude, for the reasons discussed above.
- [44] Neither party sought an updated report from Dr. Krywaniuk prior to commencement of this Supreme Court trial. At the opening of the trial, neither party took the position that Dr. Krywaniuk's report was no longer valid due to it being out of date. At the close of the trial, however, Ms. H. submitted that the report was no longer of any assistance to the Court because Dr. Krywaniuk did not have information as to how the change to the school week schedule in September 2008 had affected matters.

- [45] In my view, if Ms. H. was going to take the position that the report was no longer of assistance to the Court because it had not been updated, then that position ought to have been taken well before the trial commenced. It was open to Ms. H. to apply to the Court, if necessary, to seek an updated report.
- [46] More importantly, however, after having reviewed the report and hearing the evidence of Dr. Krywaniuk, and hearing all of the other evidence in this case, I have no hesitation in concluding that the report and the evidence of Dr. Krywaniuk remains of valuable assistance to the Court.
- [47] At the time of Dr. Krywaniuk's report, the children were on the week on - week off schedule. The positions of the parties as conveyed to Dr. Krywaniuk were essentially the same at that time as at the trial before me. Ms. H. was arguing for a change in the joint custody, guardianship and residential arrangements (week on - week off) that were in place at that time. She was seeking custody of the children and primary residency with her. Mr. C. was seeking joint custody and guardianship, and equal shared parenting on the week on - week off schedule.
- [48] Dr. Krywaniuk concluded that the situation was quite suitable for a shared parenting arrangement. He noted distrust and reluctance largely on the part of Ms. H. I am satisfied that he carefully considered the views of Ms. H. and gave them full and proper consideration in making his recommendations. He did not recommend that the week on - week off schedule that was then in effect be changed. He suggested that the three mid-week visits that the parties were then engaged in were excessive and created too many complications and too much confusion. He recommended one mid-week visit which could be an overnight stay.
- [49] Following the receipt by the parties of Dr. Krywaniuk's report, the parties agreed to reduce the mid-week visits from three to one per week.
- [50] Dr. Krywaniuk suggested that consideration could also be given to having slightly different arrangements for each child, although not to the extent that it would create major complications. He thought that the younger children, particularly R. and possibly J., could benefit from an occasional extra visit with the non-accessing parent. The schedules could then merge once the children were in school.
- [51] At this point, however, all of the children will be in school commencing in September 2009. Therefore, this part of Dr. Krywaniuk's recommendation is no longer effective.
- [52] At trial, neither party submitted that there ought to be any difference in the parenting schedule or any other formal arrangements as between the three children.

- [53] Dr. Krywaniuk encouraged the parents to work in a cooperative fashion. He noted that it appears that the conflict, rather than the specific arrangements, is the factor that potentially creates the most stress for the children. I most strongly concur with this comment. While the question of the parenting schedule is undeniably important, it is the conflict between the parents that has caused the most harm to the children to date, and the elimination or at least reduction of the conflict would do more than anything else to benefit the children.
- [54] Dr. Krywaniuk stressed the importance of good communications between the parents. He suggested that if the parents continued to have difficulties with respect to communication, they might need to involve a third party on occasion in order to assist in resolving disputes that might occur. He stressed the need for both parents to support the image of the other parent to the children. He also noted the importance of both parents maintaining the image of solidarity between them as the children grew older.
- [55] The recommendations of Dr. Krywaniuk are fully supported in his report by a careful, thorough and insightful assessment and analysis of the parties, their history, test results, and interviews with other witnesses, including, most importantly, the new partners of each parent.
- [56] In general, there is nothing of significance in the report of Dr. Krywaniuk or in his evidence that I can fault or criticize. I found his report and evidence accurate and insightful. I have no hesitation in relying on his overall recommendations.
- [57] At trial, Dr. Krywaniuk elaborated upon his professional views concerning optimal parenting after separation. He is a proponent of fully shared parenting with equal involvement of both parents where that is possible. He testified that the more contemporary view is that fathers ought to be fully involved in the day to day lives of their children and that there should be no distinction based on the gender of the parents in this respect. Both parents should be involved with the daily activities, the good and bad times, the issues that arise, the schooling, and so on. As a result, the child will learn that he or she can rely on both parents. He said that this helps to counter the child's sense of abandonment or guilt that can sometimes occur after separation. Shared parenting or joint parenting is best even where there is parental conflict.
- [58] In Dr. Krywaniuk's view, the ideal situation is that the parenting of the children remain the same as it was before separation to the extent possible, except that the children will, of necessity, live in separate homes. He indicated that the current literature suggests that it is best if both parents are involved in all of their parental responsibilities and in all of the activities that the children typically engage in. Equal time and contact between children and parents is optimal.

- [59] With respect to the week on - week off schedule vs. the school week schedule, Dr. Krywaniuk was careful to avoid treading upon the ultimate issue for the Court in this respect. However, he acknowledged that the week on - week off schedule would be one way to achieve equal shared parenting. He said that the week on - week off schedule was not the only solution. There were many different schedules that could work. What will work is what people want to work and will make work. He emphasized the need for accommodation and compromise.
- [60] He pointed to historical trends that have influenced current research in this area. Changes with respect to women in the workplace and the emancipation of women financially and professionally have resulted in both parents working in most families and this has changed the home environment accordingly. The realities of family life have changed. These trends have resulted in fathers taking on much greater roles with respect to their children and domestically. All of these trends have influenced ideas about parenting after separation, towards equal parenting.
- [61] Dr. Krywaniuk was cross-examined by counsel for Ms. H. on the question of the school week schedule. He did not concede that the school week schedule might be a better schedule. In his view, even if the time between the parents were equal, this would not translate to equality in the parenting experience. He did not agree that the children might benefit from having Ms. H. take a predominant role with respect to schooling. He noted that this would affect the children's perception of the roles of their parents. Children would perceive that one parent, the "school week parent", was primary, and the other parent, the weekend parent, was secondary.
- [62] He said that in terms of the literature, it was clear that it was best for the children if both parents were involved in the lives of their children. Shared parenting will work if the parents want it to work. He noted that every problem that comes up requires communication between the parents to resolve it. In this case, he noted that the parents might need outside assistance in resolving issues.
- [63] In summary, Dr. Krywaniuk was clearly in favour of shared parenting if at all possible, and was in favour of it in this case in particular.
- [64] Generally, he said that in his view, in this case, the parties had the makings of a good co-parenting arrangement.
- [65] I am satisfied that Dr. Krywaniuk carefully considered the views of the children, and most particularly that of the oldest child, B., now 13 years of age.
- [66] Dr. Krywaniuk interviewed B. as well as the other children. In his view B. feels caught in the middle between his parents and his main hope is that his parents will stop fighting and arguing. B. has a strong sense of helplessness in the situation and probably does not know how to deal with it effectively. This creates a substantial level of stress for him, as he wants to be loyal to both parents. B. may align himself somewhat more with his mother, Ms. H., as he sees her as being more vulnerable. He is quite conscious of the competition between the

parents and this probably has the effect of putting additional stress on him.

c) Discussion of Specific Issues

i) Homelife Stability

[67] As noted, Ms. H. contends that the school week schedule offers more stability for the children. In her view, the children ought to view her home as the primary residence. She contends that having the children shuttle back and forth between the two homes is unstable, disruptive, and generally detrimental to them.

[68] In my view, the fact that the children have two separate homes after separation is an inevitable consequence of the separation. The fact that the parents have separated and now reside in separate homes is an unalterable fact affecting any schedule.

[69] I do not view the school week schedule as being more beneficial for the children than the week on - week off schedule in this respect.

[70] As noted previously, shortly after the separation, Mr. C. and Ms. S. purchased a home in Chilliwack where it was suggested average housing prices were somewhat lower than they were in Abbotsford. Ms. H. continued to reside in Abbotsford, where the children have remained in school. Ms. H. alleged that Mr. C.'s move to Chilliwack was contrary to the expectations she had when she entered into the separation agreement in March of 2006, and that the new arrangements were detrimental to the children. On that basis, among others, she took the position that she should have sole custody in the Provincial Court proceedings she commenced in 2006. As a result of her position, Mr. C. and Ms. S. sold their home in Chilliwack and moved to Abbotsford where they purchased a home within close proximity to the home in which Ms. H. and Mr. P. now reside, and to the schools that the children attend.

[71] There was no doubt a significant financial sacrifice made by Mr. C. and Ms. S. in this respect. This laudable action on the part of Mr. C. and Ms. S. demonstrates their sincerity and willingness to accommodate themselves to the best interests of the children. It also enhances the practicality of shared parenting and provides for the maximum stability of domestic arrangements that can be arranged.

[72] The children are on a week on - week off schedule during vacation periods currently. There was no suggestion at trial that the vacation arrangements are unstable or disruptive in this respect.

[73] I do not view the school week schedule as providing for more stability and less disruption to the children than the week on - week off schedule. Indeed, I view the week on - week off schedule as being probably simpler, more practical, and very "stable".

ii) Schooling

- [74] Ms. H. contends that the school week schedule in effect since September 2008 has enhanced the children's schooling. She argues that the eldest child, B., had a difficult year in Grade 5 in 2006/2007, which was the first full school year after the separation. During that year, the week on - week off schedule was in effect.
- [75] B.'s report cards for Grades 4, 5, 6 and 7 show very little change in academic performance over the years in question. Nonetheless, it was argued that B. had a particularly difficult year in Grade 5 and that the disruptive week on - week off schedule and lack of due attention by Mr. C. to B.'s schooling resulted in many missed assignments and a substandard performance by B. during that year.
- [76] B.'s final report card and the comments from the teacher were generally very positive at the end of Grade 5. His teacher noted in his report card that he struggled with completing work on time. In her evidence at trial, B.'s Grade 5 teacher reviewed his daily agenda for that year and noted there were 15 instances in which assignments were not done. She testified that 15 missed assignments out of the hundreds that are issued each year was not so bad. This was not the worst she had seen by far. The issue of missed assignments never rose to the point that she took it upon herself to make a note or write a letter to the parents about it. B. managed to get all of his assignments done by the end of the year, with the cooperation and assistance of Ms. H., Mr. C. and Ms. S. His grades showed that he completed the assignments well.
- [77] It was clear to me from this evidence that during Grade 5, B. was having some trouble getting his homework done on time, but ultimately, with the assistance of his parents, Ms. S., and the teacher, the work was done and B.'s performance during Grade 5 was more than adequate, notwithstanding the recent separation of his parents and the resulting stress and trauma.
- [78] His performance during Grades 6 and 7 was not markedly different than the previous years. The school week schedule was implemented for Grade 7.
- [79] The Grade 1 teacher for J. in 2008/2009, the school year just completed, testified. She has 26 years of teaching experience, with 19 years at her current school. She has a Masters degree in early childhood education. She noted that J. was a typically energetic young boy who was prone to becoming distracted in the classroom and to distracting others as well. Similar difficulties were encountered on the playground. She had meetings with his parents and Ms. S. concerning the issues. Together, plans and systems were developed to deal with the difficulties. She noted that children often have difficulties with focus, attention and completing work at that age. The difficulties J. demonstrated were very typical of his age group. She felt that by the end of the year, things had improved. There was growth in his schoolwork and his behaviour improved during the year. She felt that J. was receiving good support at home from both parents, and that both parents seemed involved in his education. The meetings involving the parents were very cordial.

- [80] The teacher thought that the improvements in J.'s behaviour were attributable to the procedures implemented and she also noted that children mature during the course of the year and that applied here as well.
- [81] In my view, on all of the evidence, Ms. H. and Mr. C. are both strongly supportive and engaged in the education of their children, and equally capable and willing to support and promote their education. There is no significant difference between them in this respect. I also find that the implementation of the school week schedule during the past year has not made any significant difference or improvement to the schooling of the children during the past year. In my view, reverting to the week on - week off schedule would not have any detrimental effect upon the schooling of the children.

iii) Extra-curricular Activities and Decision-Making

- [82] Both parents are strongly in favour of keeping their children active with respect to various extra-curricular activities. B. has been taking piano lessons for the past two years. His piano teacher testified at trial. She testified that for the first year, B. took lessons once every two weeks, during the week that he was residing with Ms. H. During the second year, which was this past year, he received a piano lesson each week. Ms. H. contends that B.'s musical training has been enhanced by the school week schedule. In my view, any improvement in his piano training is more likely attributable to doubling of his lessons. Mr. C. supports the piano lessons and there is no reason to think that they cannot continue on whatever schedule is adopted.
- [83] Mr. C.'s view is that the number of activities that the children are engaged in needs to be limited so that the schedules of all concerned do not become unduly strained. Clearly, there are practical limits in terms of extra-curricular activities. The parties have three children, Mr. C. and Ms. S. are about to have a child, and Mr. P. has four young children of his own.
- [84] The question of extra-curricular activities is clearly a difficult area where there can be much room for disagreement and conflict.
- [85] In general, the attitudes of the parents towards these activities are quite similar. They are both supportive and have been able to agree on most activities. There will always be a large amount of communication and compromise required. These matters can be a source of great conflict and friction in intact families as well. Separation and the involvement of new partners and other children only make the circumstances that much more difficult.
- [86] Ms. H. proposes that conflict should be resolved, ultimately, by giving her the final decision-making authority, on the basis of the Master Joyce model of guardianship. That is, in the event of a disagreement regarding significant issues affecting the child, she as the parent having primary care, shall have the right to make the decision. Mr. C. proposes mediation if required, and in the event that mediation is unsuccessful, that either party have the ability to apply to the Court for directions.

[87] Ms. H. argues that the school week schedule will allow her to make more of the decisions pertaining to the children's activities unilaterally and therefore, there will be less conflict between her and Mr. C. concerning these matters.

[88] In my view, this is not really a scheduling issue. The real question is how the parties will come to an agreement concerning the activities, and how they will manage the activities that the children are engaged in.

iv) Communications and Cooperation

[89] The parties have had difficulties communicating effectively. Because face to face and telephone communications have led to conflict and hostility, the parties have resorted to e-mail communications for the most part. From the evidence that I have seen, the e-mail communication strategy has been ineffective. Part of this is caused by the fact the parties have been engaged in litigation for several years. The result is the creation of e-mails that may be intended to put the writer in a good light or the other party in a bad light, and then potentially be used later in the litigation.

[90] Soon after the Provincial Court consent order was entered into in February of 2008, Ms. H. and Mr. C. met together with B. in order to explain their agreement to him. Mr. C. secretly tape-recorded that conversation. I understand that other conversations may also have been secretly tape-recorded by him. Clearly, secret tape-recording of a conversation is destructive to any element of trust, confidence and good faith. In my view, it should be prohibited.

[91] Likewise, I suggest that the parties avoid writing self-serving e-mails created in whole or in part for the purpose of potential use in litigation.

[92] The parties are clearly in need of communications counselling to improve their ability to cooperate with each other.

[93] In the past, Mr. C. has, on several occasions, suggested that they jointly engage in communications counselling. Ms. H. has so far been reluctant, on the basis of advice that she has received indicating that such counselling will be ineffective so long as the parties remain in litigation. I expect that the parties will now engage in appropriate communications counselling.

[94] Ms. H. has been reluctant to allow the children to travel with Mr. C. She refused to allow the children to attend the marriage of Mr. C. and Ms. S. in Mexico in March 2007. She refused to sign a passport application to allow the children to go to Phoenix, Arizona, during spring break of 2009. Mr. C. was compelled to apply to the Court for an order granting him temporary sole custody of the children so that he could obtain passports for them and take them to Phoenix. Ms. H. testified that she declined to allow the children to travel out of the country with Mr. C. and Ms. S. because she was concerned the children would be abducted. This concern is quite groundless. It demonstrates the level of distrust and lack of confidence that Ms. H. has vis-à-vis Mr. C. That distrust and lack of confidence is a major impediment to a proper parenting relationship between the parties.

- [95] Overall, however, I accept the conclusion of Dr. Krywaniuk that these parties have the makings of a successful shared parenting regime.
- [96] I was impressed by the new partners of both Ms. H. and Mr. C. They demonstrated very positive attitudes and genuine willingness to assist the parties with respect to raising the children. I have heard evidence of some episodes of hostility and friction between Mr. P. and Mr. C., and between Ms. S. and Ms. H. I am confident that all four individuals have the capacity and maturity to get along for the benefit of all concerned once the present litigation is concluded.
- [97] I suggest that Mr. P. and Mr. C. meet together with one another, and Ms. S. and Ms. H. also meet together with one another, face to face, once these proceedings are concluded, in order to reach common understandings as to how they will get along in future. It is imperative, for the sake of the three children, that they find a means to do so.
- v) Allegations of Inappropriate Behaviour
- [98] Each party has made some allegations of inappropriate behaviour on the part of the other party in relation to their parenting of the children. I found that the allegations either had no substance or were not relevant to the issues before the Court. For example, Ms. H. has alleged that Mr. C. has anger management issues. In other words, that he has an explosive temper. She points to an episode around the time of their break-up when he allegedly yelled at her and insulted her very offensively. I am satisfied that even if the events occurred as Ms. H. described them, they were out of character for Mr. C. who is otherwise an even-tempered and emotionally stable individual. The circumstances at the time of the alleged incident were difficult and highly charged emotionally and the episode, if it occurred, has no bearing on the issues currently before the Court.
- [99] Mr. C. produced a report from a registered clinical counsellor, Dr. Frank Groenewold, who gave the professional opinion that Mr. C. does not have an "anger management" issue. I accept that evidence.
- [100] In February of 2007, J. suffered a dislocated elbow as a result of Mr. C. tugging on J.'s arm. Immediately after it happened, Mr. C. reported by e-mail to Ms. H. that as he was lifting J. up, J. twisted to get away and his arm was hurt as a result. Ms. H. refused to accept that the incident was not as a result of abuse on the part of Mr. C. and she reported the matter to the Ministry of Children and Family Development. The Ministry received a report from the doctor who treated J. The doctor confirmed that they frequently saw that type of injury and never considered them reportable injuries in the absence of a background of other more suspicious injuries. The Ministry took no further action.
- [101] There is no evidence whatsoever of physical abuse on the part of either parent towards any of the children.

[102] In my view, the allegations of inappropriate behaviour made by each party against the other have been driven by the disagreements and litigation between them.

vi) Views of the Children

[103] Ms. H. directs me to the factors listed in s. 24(1) of the FRA, which sets out that the Court must give paramount consideration to the best interests of the child in relation to custody, access and guardianship issues, and the Court must consider the five factors set out in s. 24(1)(a) through (e) in assessing the best interests of the child. Section 24(1)(b) says that "if appropriate, the views of the child" must be considered.

[104] I am urged to find that B.'s views are that he would prefer residing primarily with his mother, on the school week schedule.

[105] The contention that B. prefers to live primarily with Ms. H. is not supported by the opinion of Dr. Krywaniuk, the author of the Court-ordered s. 15 report. I accept his opinions as summarized above in this respect.

[106] Ms. H. points to a letter that B. wrote while at counselling with Dr. Susan Goldsmith over 13 sessions between September 2006 and May 2007. Dr. Goldsmith testified at trial. B. was, as Dr. Goldsmith noted in a written report, suffering from stress, anxiety and grief regarding parental separation. It is now two years since the counselling sessions. All indications are that B. is now coping much better. Clearly, he continues to seek an end to the parental conflict. That is his overriding wish. I am not satisfied that B. wishes to reside with one parent more than the other. He wants his parents to get along and he wants to stop being caught in the middle of their conflict.

d) Conclusions re Parenting Schedule Issue

[107] I conclude that shared parenting with equal time to both parents is beneficial and in the best interests of the children in this case. I also conclude that, as Dr. Krywaniuk says, the parties here have all of the tools necessary to make that work for the benefit of the children. I do not agree that either parent should have an upper hand in decision-making or that either residence should be considered a primary residence.

[108] Here, both parents work full-time. They have similar work demands. They each have about the same amount of time to devote to their children.

[109] I concur with the views of Dr. Krywaniuk that the week on - week off schedule may not be the only shared parenting schedule that can work. However, in this instance, I view that schedule as being a practical and reasonable approach. There is no reason why it cannot be made to work, and work well. I see no real advantage to the school week schedule advocated by Ms. H. I see a number of disadvantages to it. Those disadvantages were already referred to in relation to the evidence of Dr. Krywaniuk. Specifically, however, it places the parents in an unequal position as regards their responsibilities for the children. It makes equal time between the parents difficult and impractical. It relegates the position

of one parent, in this case Mr. C., to being primarily a "weekend parent", which then results in significant differences in the things that can be done during the time that each child is with each parent. It results in an unequal and different perception of the parents in the eyes of the children.

[110] Here, Mr. C. contends that he wishes to be an equal parent in all senses. In my view, it is beneficial that he does so.

[111] Prior to their separation, as was conceded by Ms. H., Mr. C. was fully involved as a parent. There is no reason that should not continue post-separation.

## 2) Primary Care - Terms of Guardianship Order

[112] For the reasons set out in the foregoing section, neither household should be considered the primary residence of the children in this case. Furthermore, neither parent should be designated as primary caregiver.

## 3) Extraordinary Expenses and RESP's

[113] Costs for extraordinary expenses and RESP contributions should be divided equally between the parties.

## V) SUMMARY AND CONCLUSIONS

[114] During the course of the trial, I asked the parties to consider whether they would benefit from the assistance of a parenting coordinator. I referred the parties to the decision of Justice Macaulay in *Hunter v. Hunter*, 2008 BCSC 403, 52 R.F.L. (6th) 109, in that respect. During argument, neither party objected to the appointment of the parenting coordinator. Dr. Krywaniuk stated in his evidence that it might be of assistance. As noted, his report refers to the possibility that the parties could benefit from third party involvement in the event of disputes.

[115] Notwithstanding that the parties have been in litigation for in excess of three years in two Courts and have now undergone a ten day Supreme Court trial, I am not certain that their relationship is properly characterized as high conflict. It seems to me that in most respects they are able to get along, and that both truly have the best interests of their children at heart. The problems they have encountered stem in significant measure from a lack of confidence and mistrust on the part of Ms. H. towards Mr. C. However, at trial, both parties stated that they would accept the decision of the Court, no matter what that decision was. I believe the parties were sincere in saying this.

[116] Ms. H. expressed concern about the cost of a parenting coordinator. Clearly, the cost is less than the cost of further litigation. To the extent the parties are able to come to agreements themselves, having the effect of minimizing the involvement of a parenting coordinator, cost will be saved.

[117] There will be an order for the appointment of a parenting coordinator to be retained by the parties. The cost will be shared equally between them. If the parties are unable to agree as to the parenting coordinator to be retained by them, they will be at liberty to apply to Court to resolve the issue. The parenting coordinator will be retained for a period of two years, or more if the parties agree or if the Court so orders. The duties and responsibilities of the parenting coordinator will be as follows:

- (a) to promote the best interests of the children;
- (b) to schedule and conduct meetings of the parents at such times and places as the parenting coordinator may direct;
- (c) to help the parties resolve parenting issues and in a way that is intended to minimize parental conflict, in a child-focused manner;
- (d) to help with the implementation, maintenance and monitoring of the parenting schedule set out in the order of Court;
- (e) to help the parties settle actual or anticipated conflicts in the children's schedule;
- (f) to help clarify and resolve different interpretations of the parenting schedule;
- (g) to help the parties communicate more effectively;
- (h) to help with the exchange of information about the children and their routines; and
- (i) to report to the Court as may be necessary.

[118] In the event that the parties return to Court to litigate issues concerning the children, the work of the parenting coordinator is not privileged or confidential, and the parenting coordinator may be compelled to give evidence concerning any matter relating to the discharge of the parenting coordinator's duties and responsibilities.

[119] The parties will continue to be joint guardians of the children, on the following specific terms:

- (a) the parties are to be the joint guardians of the estate of the children;
- (b) in the event of the death of either parent, the remaining party shall be the sole guardian of the person of the children;
- (c) the parties shall each have the obligation to advise the other parent of any matters of a significant nature affecting the children;
- (d) the parties shall have the obligation to discuss with each other any significant decisions which have to be made concerning the children, including significant decisions concerning the health (except emergency decisions), education, religious instruction and general welfare of the children. Each party shall have the obligation to try to reach agreement on those major decisions;

- (e) in the event that the parties cannot reach agreement with respect to any major decision despite their best efforts, they shall utilize the services of the parenting coordinator to assist them in reaching agreement;
- (f) in the event that the parties cannot reach agreement after utilizing the services of the parenting coordinator, then the parties may but are not obliged to mediate the dispute in the Family Justice Centre or with a Family Justice counsellor;
- (g) in the event that the parties are unable to resolve a disagreement with the aid of the parenting coordinator, or via mediation, either party shall be entitled to apply to the Supreme Court of B.C. for review, directions or relief;
- (h) each parent shall 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 caregivers; and
- (i) each parent will keep the other parent informed of the children's appointments (i.e. medical, dental, psychological, etc.).

[120] There were other issues with respect to the proposed form of order which I will now deal with.

[121] Mr. C.'s position is that the children may be taken from British Columbia upon 7 days' notice to the other party. Ms. H. says that it should be 21 days.

[122] The order will provide that the children may be taken from British Columbia on a minimum of ten (10) days' notice to the other party.

[123] There were some disagreements between the parties concerning sharing of professional development days. Ms. H. was of the view that the professional development days should not be pre-allocated, that there should be some flexibility and that the children should generally remain with the parent that they are with at the time in question. I agree with that view. If the parties are unable to resolve the precise terms of the order in this respect, they will have liberty to apply to the Court for direction.

[124] Mr. C. proposed that commencing with the year of 2011, summer vacations be divided on a two week on and two week off basis, without overnight visits unless the children request the same. Mr. C. wishes the flexibility to take the children on out of province vacations, for example. Ms. H. was of the view that two weeks was too long. I will direct that commencing in the summer of 2011, the children will remain with each parent for one consecutive two week period during the months of July and August. Commencing in the summer of 2011, Ms. H. shall have the first choice of which two week period the children will remain with her, and for each odd numbered year thereafter. On even numbered years, commencing with 2012, Mr. C. shall have the first choice for the two week period that the children shall be with him.

- [125] There were other minor issues relating to the form of the order that I have not specifically dealt with herein. To the extent that the parties are unable to resolve such issues, they may apply to the Court to settle the terms of the order.
- [126] Ms. H. contended that Mr. C. had not made the full RESP contributions called for in their separation agreement. My understanding is that Mr. C. paid the RESP contributions once he obtained the children's Social Insurance numbers, as was required. If there continues to be an issue regarding RESP payments, the parties are at liberty to apply to the Court for resolution of the terms of the order in that respect.
- [127] I will remain seized of further applications in these proceedings for a period of two years from the date of this judgment, subject to further order of the Court reducing or extending that period.
- [128] The order will contain the following additional terms:
- (a) secret recordings of conversations between the parties are prohibited;
  - (b) the parties will engage in communications counselling.
- [129] I do not view this decision as being one where either party has been victorious. The parties have contended for their differing but sincere and legitimate views as to what is in the best interests of their children. Each party shall bear their own costs.

"The Honourable Mr. Justice Verhoeven"

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