
CANADA / JUDGMENT

Forliti v. Forliti

2016 BCSC 743

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Supreme Court of British Columbia

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2016 BCSC 743 Forliti v. Forliti

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Forliti v. Forliti,

2016 BCSC 743

Date: 20160426

Docket: E009867

Registry: New Westminster

Between:

Dawn Irene Forliti

Claimant

And

James Forliti

Respondent

Before: The Honourable Mr. Justice Skolrood

Reasons for Judgment

Counsel for the Claimant:

P.J. Rowlands

The Respondent, James Forliti:

In Person

Counsel for the Public Guardian and

Trustee of British Columbia:

D.J. Herbert

Place and Date of Trial/Hearing:

New Westminster, B.C.

January 4 - 8, 11 - 15, and

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New Westminster, B.C.

April 26, 2016

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Introduction

- [1] Blue Forliti is a young man with significant challenges. He was born with cerebral palsy and a multitude of medical conditions which leave him dependent upon others for all of his needs.
- [2] The parties are his parents. They have been at odds with one another since shortly after Blue was born, largely in respect to issues concerning the care of Blue.
- [3] It is difficult, if not impossible, for someone who has not faced the reality of living with and caring for a child with significant disabilities to understand the challenges that these parties have lived with for the past 18 years. The evidence is uniform that both parents love Blue, are dedicated to his well-being and do what they perceive to be in his best interests.
- [4] However, the evidence is also uniform that the parties disagree on virtually all matters relating to Blue's care and that they are unable to communicate with each other about issues affecting their son. This is due to the significant degree of hatred and mistrust that they harbour for each other.
- [5] The parties' disagreement about Blue is at the heart of this proceeding where the central issues are the current guardianship and parenting arrangements for Blue as well as the appointment of a committee for him when he turns 19.
- [6] Since this proceeding was commenced, the claimant has changed her last name to Davenport and I will refer to her by that name in these Reasons.

Procedural History

- [7] This matter has a lengthy history and it is useful to review some of the key events as they provide important context for the current dispute.
- [8] The parties were married on October 23, 1997 and separated in January 2000. They were divorced in March 2001.
- [9] The sole child of the relationship, Blue, was born on October 18, 1997. He was deprived of oxygen during birth and as a result has significant disabilities and medical challenges which will be discussed in greater detail below.
- [10] Ms. Davenport commenced a family law claim by writ of summons and statement of claim filed in October 2000. A statement of defence was filed in March 2001.
- [11] Since that time, numerous applications have been brought and orders issued, the majority of which deal with the parenting and care of Blue.
- [12] I do not propose to review all of the previous orders. However, a number are relevant to the matters currently in issue and worth noting.
- [13] On October 24, 2000, Ms. Davenport was awarded sole interim custody of Blue and Mr. Forliti was granted supervised access.
- [14] On March 29, 2001, Ms. Davenport was granted sole custody and guardianship of Blue with Mr. Forliti to have reasonable and generous access (the "2001 order"). The 2001 order also required Mr. Forliti to pay child support in the amount of \$343.00 per month and it dealt with various family property and debt issues. The parties were divorced pursuant to the 2001 order.
- [15] On September 27, 2002, the 2001 order was varied by consent to provide for joint guardianship of Blue (the "2002 order"). The 2002 order also provided that the custodial parent, being Ms. Davenport, had final authority with respect to major decisions concerning Blue, but both parties were obligated to discuss such decisions. The 2002 order also provided Mr. Forliti with specified access to Blue.
- [16] On April 29, 2009, following a day-long settlement conference, the parties entered into a detailed consent order (the "2009 order"), the key terms of which include the following:
 - a) the parties are to share joint custody and joint guardianship of Blue;
 - b) a set schedule for both parties' parenting time with Blue was established based on a three week schedule during school time and an alternating week on week off schedule during summer vacations;
 - c) the parties agreed to jointly retain a parenting coordinator;

- d) a protocol for exchanges of Blue was put in place which required the presence of Mr. Forliti's new wife or some other third party to be arranged for by Mr. Forliti;
 - e) as joint guardians of Blue, the parties are required to advise the other party and to discuss any matters of a significant matter affecting the child and, in the event the parties cannot agree, the issue is to be referred to the mutually agreed upon parenting coordinator;
 - f) a detailed plan of care was established for Blue setting out protocols for dealing with care professionals and for exchanging information concerning his health and care needs;
 - g) Ms. Davenport's position as case manager and advocate for Blue was maintained (although the term and the attendant powers and responsibilities were not defined); and
 - h) Mr. Forliti was to pay to the claimant \$330.00 per month in child support.
- [17] In August 2013, Mr. Forliti filed a notice of application seeking, amongst other things, an order that he be granted sole custody and guardianship of Blue. On November 20, 2013, Ms. Davenport brought a cross-application seeking orders that parenting responsibilities pursuant to s. 41 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], be allocated solely to her and that Mr. Forliti's parenting time with the child be suspended or, alternatively, be reduced and supervised.
- [18] Both applications came on for hearing before Madam Justice Fleming on March 7, 2014. I am told by counsel for Ms. Davenport that there was insufficient time to deal with both applications and that Justice Fleming expressed doubt about deciding the issues based solely on affidavit evidence. However, an interim consent order was entered into that addressed a number of pressing treatment issues concerning Blue.
- [19] Thereafter, a number of orders were issued dealing largely with procedural matters. Of note, however, an order was made on July 30, 2014 at a judicial case conference that the parties were to retain Ms. Linda Bonnell as a parenting coordinator and were to cooperate with her in bringing forward issues relating to parenting time and treatment of Blue.
- [20] On December 2, 2014, at a trial management conference, the trial, which had been scheduled for eight days commencing January 12, 2015, was struck. Counsel for Ms. Davenport indicated that the trial was struck due to insufficient time whereas Mr. Forliti says that it was apparent at the time that the matter was not ready for trial which is why it was struck.
- [21] The parties next appeared in court on January 16, 2015 before Mr. Justice Groves. He ordered that a trial be set for 15 days commencing January 4, 2016 to deal with the parties' competing applications described above in paragraph 17 and that any committee application regarding the child be heard at the same time. Mr. Justice Groves also seized himself of the matter up to the trial.

- [22] On February 27, 2015, Mr. Justice Groves issued an order with detailed terms concerning the parties' conduct in relation to dealing with Blue's professional health care providers. The order also established a protocol governing exchanges of Blue and communication between the parties. Further, the order stipulated that a draft memorandum of understanding reached with the assistance of Ms. Bonnell will continue to be followed pending the trial of the matter.
- [23] The key elements of the memorandum of understanding include:
- a) Ms. Davenport would continue as case manager for Blue, meaning that she would coordinate the setting of medical appointments in accordance with a protocol established under the memorandum and would oversee the development of Blue's community and school plan;
 - b) Ms. Davenport would provide any required reports about Blue to the professionals who have requested them and would inform Mr. Forliti at the time of doing so;
 - c) A new protocol for dealing with medications was established under which Ms. Davenport would manage the medications and provide Mr. Forliti with the necessary amounts for when Blue was in Mr. Forliti's care. The protocol also included a plan for tracking Blue's medications;
 - d) The parties agreed on the information that needed to be provided about Blue when he changed homes;
 - e) A protocol was established for parent behaviour and communication while attending Blue's appointments; and
 - f) A protocol for email communication was established that required that all emails be copied to the parent coordinator and that the emails be limited to objective, business exchanges without any venting, sarcasm or blaming.
- [24] Mr. Justice Groves made a number of further orders on November 6, 2015 which were largely procedural in nature.
- [25] The above summary reflects the extent to which this has been a very litigious matter, characterized by a high degree of animosity between the parties. In this regard, it is telling that Mr. Justice Groves saw fit to include the following term in one of the orders made on November 6, 2015:

The parent not having parenting time during appointments for the Child shall have the opportunity to greet the Child without interference at the appointment.

- [26] The various orders are also relevant in the sense that each party alleges that the other has consistently failed to comply with court orders which they both submit is an important factor in determining a future plan for Blue.

- [27] In keeping with the order of Mr. Justice Groves dated January 4, 2016, Ms. Davenport filed a committee petition on November 13, 2015 in which she seeks an order appointing her as committee of the estate and person of Blue. While the application does not state so expressly, it is common ground that any committee order will not take effect until Blue turns 19 years old, which will be on October 18, 2016.
- [28] Counsel for the Public Guardian and Trustee (the "PGT") appeared at the outset of the trial and raised certain procedural concerns about the committee application. Those concerns have since been addressed and accordingly, the committee application was heard at the same time as the trial.

Summary of the Evidence

- [29] Ms. Davenport and Mr. Forliti both testified as did Ms. Davenport's parents and Mr. Forliti's wife. In addition, both parties called a number of witnesses who have been involved in different capacities with Blue and the parties.
- [30] Much of the evidence of the parties focussed on the details of their interactions over many years and was aimed at disparaging the other person, particularly in respect to each person's parenting abilities.
- [31] I do not intend to review the parties' evidence in great detail and, in my view, it is not necessary to resolve their numerous disputes about particular events. This is because all of the evidence can be distilled down to a few key propositions that will inform the analysis of the legal issues that arise. I will return to these key propositions below.

Credibility

- [32] It is useful at the outset to say a word about credibility. In their testimony, both Ms. Davenport and Mr. Forliti provided different versions of many events and different perspectives on the numerous issues that divide them. Each challenged the other's credibility.
- [33] As will be seen below, there are aspects of each party's evidence that I accept and aspects that I reject. Rather than making a sweeping determination of each party's credibility, I have approached their evidence on the various issues in accordance with the framework articulated by Madam Justice Dillon in the well-known decision of *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 186-187, *aff'd* 2012 BCCA 296, leave to appeal *ref'd* [2012] SCCA No. 392, where she suggests that evidence must be assessed on the basis of whether it is consistent with the "probabilities affecting the case as a whole" and with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions".

Blue's Condition

- [34] As noted, Blue was deprived of oxygen during birth as a result of which he has numerous, significant medical challenges. Specifically, as described in various medical reports, Blue's conditions include: mixed spastic dystonic cerebral palsy, gastrostomy tube feeding dependence, severe global developmental delay and symptomatic seizure disorder.
- [35] Blue is dependent upon assistance for all of his daily living needs. Due to his various conditions, his health is fragile and he is susceptible to fluctuations in his level of functioning.
- [36] Blue requires a variety of specialized equipment, including an adapted wheelchair, an ergo dynamic chair, a special commode, a hospital style bed, a standing frame and different splints and orthotics. He also has a specially fitted van which goes with him back and forth between the parties.
- [37] Both parents and some caregivers are able to communicate with Blue. He is capable of conveying things such as happiness, sadness, anger, discomfort and pain. He also has certain communication devices through which he conveys messages by way of pre-programmed words or phrases.
- [38] Based on an assessment done in conjunction with the lawsuit brought in relation to his birth, Blue has a life expectancy of 34 years. It is anticipated that his healthcare needs will continue to be numerous and complex throughout the remainder of his life.
- [39] Blue will turn 19 in October 2016. Up until that time, many of the medical treatments and related services that he receives have been provided through BC Children's Hospital and Sunny Hill Health Centre for Children, as well as through his school. When Blue becomes an adult, he will transition into the adult system. How that transition will occur, and who will facilitate or supervise it, is one of the significant issues in this litigation.

Dawn Davenport

- [40] Ms. Davenport testified for the better part of five days and she produced volumes of documents. As noted above, I do not intend to go over every detail of Ms. Davenport's evidence. However, I will review some of the background facts and will highlight her key concerns about Blue and about Mr. Forliti's care of Blue.
- [41] Ms. Davenport and Mr. Forliti met when they were both working at a group home for troubled youth. They began living together in 1995 and were married in 1997, shortly after Blue's birth. They separated in early 2000 and were divorced in March 2001.
- [42] According to Ms. Davenport, she and Mr. Forliti had a difficult relationship from very early on. She became pregnant shortly after they began living together which she said put stress on the relationship. She described Mr. Forliti as being abusive towards her, both mentally and physically.

- [43] Ms. Davenport said that she had a normal pregnancy. She read lots of resource materials and had hired a doula to assist with the birth. However, Blue's birth was difficult and he was deprived of oxygen, as a result of which he has significant challenges that I have described above.
- [44] According to Ms. Davenport, during the first year of Blue's life, she and Mr. Forliti followed the advice of the professional caregivers but it was apparent that Blue was not meeting typical milestones. After about a year, Mr. Forliti became frustrated with the advice they were receiving and he started to explore alternative treatments. According to Ms. Davenport, this placed additional stress on their already strained relationship.
- [45] Ms. Davenport described Blue's personality as being delightful. She said that he is very kind and has a gentle spirit. She said he is playful, loving, funny and mischievous. He is very social.
- [46] Physically, Blue needs assistance with every aspect of his daily life and personal care. Ms. Davenport said his condition involves issues of dual tone, meaning sometimes his body is very rigid and other times it is very loose or slack. He has a seizure disorder as well as a swallowing disorder. He has digestion problems and is fed through a tube. He is often in pain and discomfort.
- [47] Cognitively, Ms. Davenport said that Blue has been diagnosed as significantly impaired.
- [48] He also needs someone to interpret his communication. Ms. Davenport said that she understands his communication better than anyone. For example, she can interpret his non-verbal cues. She said that Blue has learned to express himself well.
- [49] Ms. Davenport testified about how time is spent when Blue is in her care. He usually spends four hours per day at school then the balance of the day is spent with Blue resting, running errands, play time and some physiotherapy or massage. Blue often also attends several medical appointments per week. He enjoys movies, music and engaging in playful banter. He is conscious of his appearance, for example what he wears.
- [50] According to Ms. Davenport, when Blue is in her care, he takes up all of her time. When Blue is not in her care, her time is spent getting organized, for example buying groceries, organizing medications, communicating with caregivers and taking care of matters around the home. She said that she has very little free time.
- [51] Ms. Davenport said that since Blue was born, she has tried to work outside of the home once, on a part-time basis. It did not work out, however, as she is too consumed with Blue. Apart from that one instance, she has not had outside employment since Blue's birth.
- [52] A central concern for Ms. Davenport is that Blue is often injured while in Mr. Forliti's care. Ms. Davenport introduced a number of photographs showing bruises, marks and abrasions on Blue's body which she said she observed when Blue returned home from being with Mr. Forliti. She said that Blue does not get these types of markings when in her care and that she

has raised the issue with the Ministry of Child and Family Development ("MCFD") numerous times. She attributes these "injuries" to unconventional exercises and therapies that Mr. Forliti subjects Blue to.

- [53] According to Ms. Davenport, Mr. Forliti has long been an advocate for the use of a technique known as Conductive Education ("CE") for Blue. CE is a program developed for people with motor disorders like cerebral palsy which involves a number of components, including certain physical exercises and therapies. Ms. Davenport says that despite CE not being approved by any of Blue's doctors or therapists, Mr. Forliti has often employed CE techniques with Blue that have contributed to many of the injuries that she sees. She also believes that Mr. Forliti pushes Blue to do more than he is capable and fails to read or understand Blue's cues when he indicates pain or fatigue.
- [54] Ms. Davenport testified about the involvement of MCFD with respect to Blue and the parties. There have been in excess of 20 reports made to MCFD about concerns with Blue, the majority coming from Ms. Davenport. She testified about a meeting organized by MCFD in March 2012, referred to as an Integrated Case Management ("ICM") meeting. The meeting was attended by MCFD representatives, members of Blue's school team, members of his care team and both parents. Ms. Davenport said the purpose of the meeting was to define what was a true child protection issue and what was not. According to Ms. Davenport, she did not get much clarity out of the meeting and she also took issue with the minutes of the meeting that were subsequently circulated. In her view, the minutes did not accurately record what she said at the meeting but MCFD refused to amend them. Ms. Davenport thought that MCFD viewed her as a troublemaker.
- [55] While Ms. Davenport acknowledges that MCFD has never identified any child protection concerns with respect to Mr. Forliti's care of Blue, she said that the MCFD's ability to intervene is limited to severe situations and the fact that they have not intervened here does not undermine the validity of her concerns.
- [56] Ms. Davenport said that Mr. Forliti has also reported her to MCFD. She described one recent occasion when MCFD contacted her about a report made by Mr. Forliti that Ms. Davenport had overdosed Blue on melatonin which he thought had caused Blue to have a seizure. Ms. Davenport explained that melatonin had been recommended by a nurse and nothing more came of the incident.
- [57] MCFD also got involved around the time that Blue was scheduled for hamstring surgery in June 2014. Ms. Davenport testified that in preparation for the surgery, they needed to find a private physiotherapist. She said that they got a list of possible people from the hospital and she thought she and Mr. Forliti would each do some research and then try to agree. She said that Mr. Forliti arranged to meet one of the therapists on the list and made arrangements for that therapist to meet with Blue's school physiotherapist. She says that she continued to do some research on her own, which included speaking to the therapist that Mr. Forliti had contacted. That therapist then removed herself from consideration.

- [58] MCFD then called a meeting because the delay in getting a physiotherapist in place was delaying Blue's surgery. MCFD then provided the parties with a list of three therapists and ultimately Julie Leswal was chosen. Ms. Leswal continues to work with Blue currently.
- [59] Ms. Davenport cites this as an example of Mr. Forliti acting unilaterally and failing to communicate or consult with her.
- [60] Ms. Davenport describes Mr. Forliti as often being angry and aggressive towards her. One place where this often manifests itself is at exchanges of Blue. She testified about one particular incident that occurred in September 2013 when she arrived at Mr. Forliti's house with her mother to pick up Blue. According to Ms. Davenport, Mr. Forliti's wife, Roxana Forliti, and one of Blue's caregivers drove into the driveway in Blue's van. As the van is specially equipped, it goes with Blue on the exchanges. Mr. Forliti's wife got out of the van and removed some things then Ms. Davenport got into the driver's seat. Before she could back out, however, Mr. Forliti drove in behind her and prevented her from leaving.
- [61] Ms. Davenport said that Mr. Forliti was very angry and aggressive towards her. He wanted her to get Blue out of the van so that he could be taken inside and toileted. According to Ms. Davenport, she had asked Blue if he need to go to the toilet and he indicated no so Ms. Davenport did not think it necessary.
- [62] Ms. Davenport's mother tried to speak to Mr. Forliti but he was also very aggressive towards her. Ultimately, Ms. Davenport called the police who attended and escorted Mr. Forliti into his house. Ms. Davenport said that this is typical of the behaviour exhibited by Mr. Forliti at exchanges.
- [63] She testified about another exchange when Mr. Forliti told his dog to attack her and then later said that he was joking.
- [64] According to Ms. Davenport, Blue often appears despondent or upset when he leaves her care for Mr. Forliti's. She says that Mr. and Ms. Forliti often just whisk him away and she doesn't even have a chance to hug him goodbye. In contrast, she says that Blue is always happy to see her when she picks him up on an exchange.
- [65] Another incident that figured prominently in both parties' evidence concerned Blue's hamstring surgery in June 2014. During Blue's post-surgery recovery, Ms. Davenport and Mr. Forliti split time with him in the hospital. According to Ms. Davenport, this was a very traumatic time in that Blue was in a great deal of pain and when Mr. Forliti came to be with him, he yelled at her and ordered her out of the room. She said that he did not seem interested in Blue's condition.

- [66] Ms. Davenport said that Blue was discharged on a Saturday and that it happened quite suddenly, as they were originally told he would be discharged the following week. She said that she had a lot to do to get ready so she was late getting to the hospital. Mr. Forliti accused her of neglecting her parenting responsibilities and he refused to tell her and her parents where Blue's van was parked. When they finally found the van, many of Blue's things had been removed.
- [67] Another serious area of contention for Ms. Davenport concerns the scheduling and attendance at medical appointments. Ms. Davenport generally deals with scheduling routine medical appointments. She will obtain dates from the medical office and then will present options to Mr. Forliti. Pursuant to a protocol established by Linda Bonnell, Mr. Forliti has two days to respond and if he fails to do so, Ms. Davenport may set the appointment. Ms. Davenport said that she often has difficulty getting a response from Mr. Forliti. In her view, it is not practical to have two people involved in scheduling or attending every appointment.
- [68] Ms. Davenport testified that when they both attend appointments, Mr. Forliti is often rude to her and when Blue is in his care, he will point Blue's wheelchair away from her so that she and Blue cannot interact. She said that she often brings things for Blue, for example, his DVD player, some books or some music but Mr. Forliti refuses to give them to Blue.
- [69] Ms. Davenport said that there are often problems when she and Mr. Forliti both attend appointments. She said that while she tries to focus on the issue at hand, he often wants to raise parenting issues and he regularly complains that she doesn't meet with the parenting coordinator. Ms. Davenport said she tries not to engage with Mr. Forliti because she is afraid of him.
- [70] Ms. Davenport said that she and Mr. Forliti often give different versions of events. For example, she will say that she has seen Blue experiencing high tone and Mr. Forliti will say that he has not witnessed that. She said that makes it difficult for the experts who rely on information from the parents. She also said that Mr. Forliti sometimes tries to arrange private meetings with the experts.
- [71] Ms. Davenport also takes issue with the type and amount of information that Mr. Forliti provides her about Blue when he is in Mr. Forliti's care, which she describes as often incomplete and misleading. For example, she said that he will not provide important health information when Blue comes home to her unwell, but he will describe the stretching exercises he has done with Blue or Blue's bowel movements.
- [72] She said that Mr. Forliti often actively impedes the exchange of information. For example, he refuses to permit any caregivers that he employs to speak directly with Ms. Davenport, even when the caregivers are involved in the exchange of Blue.
- [73] Despite these challenges, Ms. Davenport said that she tries to communicate with Mr. Forliti in an open and business-like manner. During exchanges and other face-to-face meetings, she does not raise her voice and she attempts to minimize conflict.

- [74] According to Ms. Davenport, in September 2013, Mr. Forliti removed Blue from school unilaterally during his parenting time because he wanted to home school Blue. Mr. Forliti also refused to provide her with any information about the home school program he was using with Blue.
- [75] Ms. Davenport said that Mr. Forliti has often refused to consent to different treatments or therapies recommended for Blue. For example, in April 2011, it was recommended that Blue undergo a detailed review of his overall physical therapy plan but Mr. Forliti did not agree. Similarly, she said that there was an almost two year delay in getting Blue in for a follow-up at the tone management clinic because Mr. Forliti would not consent.
- [76] A significant cause of friction between the parties relates to the involvement of a parenting coordinator, something that has been ordered twice, once in the 2009 order and then again in the JCC order dated July 30, 2014. Mr. Ted Kuntz was the first parenting coordinator and Ms. Linda Bonnell was the second one.
- [77] Ms. Davenport testified about the services of Ted Kuntz as parenting coordinator. He was retained pursuant to the 2009 order. In Ms. Davenport's view, Mr. Kuntz's involvement did not make things better but rather worse.
- [78] For example, she said she tried to raise the issue of Blue's injuries with Mr. Kuntz but the issue was never really addressed. She also thought that Mr. Kurtz did not do enough to control Mr. Forliti in meetings as Mr. Forliti would often yell at her.
- [79] Ms. Davenport referred to a letter written by Mr. Kuntz dated November 8, 2010 where he recommended that both parents be case managers with equal responsibility and authority and that Blue attend a school equidistant between the parents' houses. Ms. Davenport considered these recommendations to be wholly impractical. In her view, Mr. Kuntz was trying to make things better for the parents and not for Blue.
- [80] Ms. Davenport also testified about Ms. Bonnell's involvement as a parenting coordinator. She became involved around the time of Blue's surgery. Ms. Davenport signed the Parenting Coordination Agreement on June 20, 2014. Ms. Davenport testified that she thought that Ms. Bonnell was there to help them through the surgery process and that she was a "stop gap" measure, put in place until the parties could get into court.
- [81] Ms. Bonnell developed a memorandum of understanding that addressed a number of key issues between the parties including establishing behaviour and communication protocols for Ms. Davenport and Mr. Forliti. Under the memorandum, Ms. Davenport was to book all of Blue's medical and associated professional appointments and then to inform Mr. Forliti. The memorandum also established a new protocol for dealing with Blue's medications.
- [82] According to Ms. Davenport, Ms. Bonnell ultimately withdrew from the parenting coordinator role because she wanted Ms. Davenport to halt the court process which she did not want to do. Ms. Davenport also said that she could not afford Ms. Bonnell's services.

- [83] Ms. Davenport testified about her involvement with the PGT. She said that the lawsuit brought in connection with Blue's birth was settled for \$2.8 million in 2003 and an annuity was purchased which provides a monthly payment of approximately \$8,500.00. In addition, a lump sum was placed in trust. That money was used to pay the down payment on Blue's house as well as renovations to that house and Mr. Forliti's house.
- [84] Ms. Davenport initially managed Blue's trust funds. However, as a result of concerns expressed about Ms. Davenport's inability to adequately account for expenditures, management of the funds was transferred to the PGT in 2007. Ms. Davenport said that she did the best she could but it was difficult keeping up with the record-keeping as she was consumed with caring for Blue and she got no guidance from the PGT on what was required.
- [85] In 2009, the PGT decided to divide the monthly annuity payment, which is intended to cover Blue's cost of care, between Ms. Davenport and Mr. Forliti according to the percentage of time in which Blue is in each parent's care. That resulted in Ms. Davenport receiving 57% of the monthly annuity payment and Mr. Forliti receiving 43%. From Ms. Davenport's share, \$1,900.00 is withheld by the PGT as rent for her living in Blue's house.
- [86] Ms. Davenport expressed the view that the PGT has often been adversarial towards her and that it has not always acted in Blue's best interests. For example, she notes that the PGT has suggested numerous times that Blue's house needs to be sold in order to free up money to pay for Blue's care needs. However, Ms. Davenport says that would be very destabilizing for Blue.
- [87] Ms. Davenport testified that Blue is scheduled for further surgery, likely in the summer of 2016. She expressed the view that once he is released from hospital, it would be best if he remained in her care for a period of time. She said that Mr. Forliti could come to her house to visit Blue but there should be a third party present to facilitate and supervise the visits.
- [88] Ms. Davenport believes that she is the person best able to act as Blue's committee of person when he turns 19 because she has been primarily responsible for managing his case throughout his life. She also believes that she should be appointed committee of Blue's estate so that she can manage his money to best meet his needs. She said that she would retain professional help to fulfill this role.

James and Irma Minshull

- [89] Mr. and Mrs. Minshull are Ms. Davenport's parents. Both testified that Ms. Davenport is a loving and dedicated parent to Blue and that Blue is her number one concern. Mrs. Minshull said that Ms. Davenport understands Blue's cues and is able to communicate with him.

- [90] Both Mr. and Mrs. Minshull testified about problems they have observed at exchanges with Blue. Mr. Minshull said that there have been times when they have come to pick up Blue's van and things have been missing from the van. He also testified about the incident at the hospital in June 2014 when Mr. Forliti refused to tell them where the van was parked. When they finally found the van, Blue's clothes, food pump and other personal items were missing.
- [91] Mr. Minshull acknowledged that Mr. Forliti clearly cares about Blue but described him as being "more hands on" and "rougher" in his care of Blue.
- [92] Mrs. Minshull has been very involved with Blue since his birth and she said that initially she and Mr. Forliti had a good relationship. That relationship has become strained in recent years. For example, in 2012, Mr. Forliti began objecting to her attending meetings and appointments involving Blue. If she did attend, he would be rude and aggressive towards her, often making vulgar gestures. He told her that she was not permitted to speak to any of Blue's caregivers. Mrs. Minshull also said that when Mr. Forliti brings Blue to appointments, he will often turn Blue's wheelchair away so that he cannot see or communicate with her or Ms. Davenport.
- [93] Mrs. Minshull testified about the exchange incident when the police were called. She said that when she and Ms. Davenport arrived at Mr. Forliti's house, they weren't home. Ms. Forliti and a caregiver then arrived with Blue in the van. Ms. Forliti indicated that she wanted to take Blue into the house before he left with Ms. Davenport, however Ms. Davenport said no.
- [94] Mr. Forliti then arrived and parked behind the van, blocking its exit. Mrs. Minshull said that Mr. Forliti was irate and started yelling. He was insisting that Blue be permitted to go inside the house. Mrs. Minshull said that Mr. Forliti lunged at her a couple of times and that she called the police.
- [95] Mrs. Minshull also testified about the incident with the van when they were leaving the hospital in June 2014 following Blue's surgery. Her evidence was similar to that of her husband.

James Forliti

- [96] Mr. Forliti is a high school teacher at Purpose School which focusses on troubled youth. He has been with the school for 17 years, primarily teaching English as well as a few other subjects.
- [97] He said that he has cut back his work about 10% because of all the time he takes with Blue, both when Blue is in his care and attending appointments. He currently is paid about \$58,000.

- [98] Mr. Forliti agreed that in the early years he did not attend many of Blue's appointments as he was working. He acknowledged that Ms. Davenport generally attended the appointments, often with her mother.
- [99] According to Mr. Forliti, Ms. Davenport has repeatedly reported him to MCFD over the years and MCFD has repeatedly found no child protection issues. The MCFD has also repeatedly recommended that the parties work with a mediator to address their communication issues.
- [100] In an email to Ms. Davenport's counsel and Mr. Forliti's former counsel dated April 16, 2014 from an MCFD team leader, in response to a request from Madam Justice Fleming that MCFD report on any child protection concerns, the following summary was taken from a previous report dated March 6, 2014:

MCFD has investigated Mr. Forliti on multiple occasions, including home visits, observations, multiple collaterals, attendance at school/medical meetings and arranging an ICM which included 12 people. At no time has MCFD found that Mr. Forliti's actions regarding his son, Blue, are abusive, malicious, or inappropriate. Mr. Forliti does physical exercises with Blue that have often resulted in injury. As described by Dr. Horvath, children with cerebral palsy do not build up the fat or muscle behind the skin and over the bone, in order to protect them from injury. So very often a small bump or fall will cause a much larger bruise than on a healthy child. In all of the reports, no Doctor or professional lodged an objection to Mr. Forliti's use of CET therapy or his physical stretching and exercising of Blue. There have been concerns that Mr. Forliti may not be reading Blue's physical cues that he is tired or in pain, or that he needs to be more careful as interventions should not be causing injury. These are framed as recommendations and not findings of abuse.

- [101] In the April 16, 2014 email, the team leader also noted that she had met with both Mr. Forliti and Ms. Davenport and, with respect to Ms. Davenport, she noted:

Ms. Davenport's focus was primarily on discrediting Mr. Forliti despite my attempts to refocus the meeting onto Blue's needs.

- [102] Mr. Forliti testified about Ted Kuntz's involvement as parenting coordinator. Mr. Forliti referred to a "Parental Coordinator Report" dated April 15, 2011 addressed to both parties in which Mr. Kuntz made the following observation:

At the core of the impasse is the belief held by Ms. Davenport that James Forliti is incompetent as a parent and that his judgment in Blue's care cannot be trusted. This core belief is a significant impediment in allowing for shared care and decision-making.

- [103] In Mr. Forliti's view, this accurately captures the core issue at the heart of the dispute between the parties.

- [104] According to Mr. Forliti, it was Ms. Davenport's intransigence that led to the termination of Mr. Kuntz's services.

[105] Similarly, it was Ms. Davenport who later brought about the termination of Ms. Bonnell's services as parenting coordinator. Mr. Forliti referred to a form filed by Ms. Bonnell in the New Westminster court registry in which she indicated her intention to withdraw as parenting coordinator. The reasons recorded in the form are that the claimant i.e. Ms. Davenport:

- a) is no longer communicating with me;
- b) is refusing to work with me;
- c) is refusing to follow our Parenting Coordination Agreement;
- d) is refusing to follow the terms of the Order dated July 30, 2014; and
- e) is refusing or unable to pay my retainer, in the amount of \$1,000.00, as per our PC Agreement.

[106] This was a significant issue for Mr. Forliti who repeatedly suggested that Ms. Davenport had breached a court order by refusing to utilize a parenting coordinator.

[107] Mr. Forliti also said that Ms. Davenport breached a court order by unilaterally changing the parenting schedule and by failing to inform him when Blue was hospitalized for a week while in Ms. Davenport's care.

[108] Mr. Forliti said that Ms. Davenport refuses to discuss with him any ideas he has for Blue's care or education. For example, he wanted to explore the idea of home school for Blue but he says that Ms. Davenport refused to consider it or even discuss it with him. He acknowledges that he took Blue out of school for a period of time but says that was in response to Ms. Davenport refusing to discuss the issue with him. Mr. Forliti said that the home school idea did not work because Blue was registered at Clayton Heights School and Ministry of Education rules do not allow a child to be registered in two places.

[109] Mr. Forliti gave his version of events concerning the September 2013 exchange when the police were called. He said that the exchange took place on a Sunday evening and that this was the first time that Ms. Davenport had come to do an exchange on a Sunday in a number of years. He said that he did not see any email from her in advance indicating that she was coming that evening so when Ms. Forliti and their caregiver returned with Blue, they were caught by surprise.

[110] Mr. Forliti acknowledges blocking the driveway with his car but says it was because Ms. Forliti was upset and Ms. Davenport would not permit them to take Blue inside to go to the bathroom. He denies lunging at Mrs. Minshall.

[111] Mr. Forliti testified about the incident at the hospital when Blue was being released following his June 2014 surgery. He said that Blue was supposed to be released in the morning but Ms. Davenport did not show up until 8:00 p.m. and the hospital was unable to get ahold of her all day. He said that by the time she arrived, he had been at the hospital

with Blue for 50 hours and was exhausted. He acknowledged that he did not respond when asked where the van was parked but said that it was in the same spot where it had been parked all week.

- [112] With respect to Blue's time in the hospital, Mr. Forliti said that Ms. Davenport involved her lawyer in trying to prohibit Ms. Forliti from being present during Blue's post-operative care. The hospital had to intervene to resolve the issue and to ensure that Ms. Forliti was entitled to be there.
- [113] Mr. Forliti testified that he regularly provides Ms. Davenport with information concerning Blue's health. He said he uses a spreadsheet to record various aspects of Blue's health and what occurs while Blue is in his care, such as Blue's food intake, temperature, bowel movements and sleep. He also produced samples of the activity log that he keeps with respect to what Blue does during his time in Mr. Forliti's care.
- [114] Mr. Forliti played some videos and showed photographs of some of the things that he does with Blue. For example, he showed Blue sitting in a chair and holding on to a bar to hold himself up. He also showed him walking with Blue. It is apparent from the evidence that Mr. Forliti is more active with Blue and tries to get Blue to do more physically. In his words, he said that he "just can't believe anyone wouldn't want their child to do this if they could".
- [115] Mr. Forliti addressed Ms. Davenport's concern that she is not permitted to communicate with Blue's caregivers hired by him. He said that this is because Ms. Davenport would often report things to him allegedly said by the caregivers and then the caregivers would disagree. According to Mr. Forliti, in order to avoid such situations, his view is that Ms. Davenport should report thing only to him.
- [116] Mr. Forliti agrees that there have been some delays in getting things done for Blue. However, he says any delays have been due to Ms. Davenport's refusal to discuss things with him.
- [117] Mr. Forliti said that many of the communication issues between the parties could be addressed by using an online communication tool called "Co-Parently". He said that he proposed it but Ms. Davenport refused. On this point, Ms. Davenport said that she was open to the idea of using it but that it would need adaptation to deal with Blue's particular needs and Mr. Forliti refused to pay for the adaptation.
- [118] Mr. Forliti denied that he interferes with Blue greeting Ms. Davenport when he brings Blue to medical appointments. However, he acknowledges that on one occasion when Ms. Davenport showed up with DVDs and other things for Blue, he did not allow her to give them to Blue. According to Mr. Forliti, it was his time with Blue and he had his established routine.

- [119] Mr. Forliti was cross-examined at length about his use of CE. While he acknowledged using elements of CE early on, he also agreed that it was a term of the 2009 order that he not use it with Blue. He said that some of what he continues to do with Blue in terms of stretching and exercise is taken from CE, but he has shown everything to the occupational and physiotherapists.
- [120] Mr. Forliti took issue with Ms. Davenport's evidence that he uses unauthorized equipment and therapies on Blue. He said that his house is not a "therapy trap". According to Mr. Forliti, he does things for Blue that make a difference for Blue's quality of life. Mr. Forliti was more detailed in terms of what he does with Blue when Blue is in his care, whereas Ms. Davenport's evidence was rather vague on this point. As Mr. Forliti noted, there is an imbalance in terms of activities and therapy between the two houses.
- [121] Mr. Forliti agreed that the 2009 order required him to get advance approval for all equipment to be used with Blue. He said, however, that it is impossible to get advance approval without first trying something out. He then reviews it with the professionals. He said that Blue's current physiotherapist, Julie Leswal, is well aware of what he does with Blue and has no concerns.
- [122] Mr. Forliti acknowledges that he has on occasion cancelled appointments for Blue, for example an appointment in April 2011 with the tone management clinic. He said that he did so because the parenting coordinator process had broken down and he did not want to place the professionals in the middle.
- [123] Mr. Forliti acknowledged that he has become agitated during meetings with professionals. He says that occurs when Ms. Davenport purports to speak for him or talk about what goes on in his home. He suggests one way of resolving this issue is for him to meet with professionals on his own.
- [124] When asked about his views on the parenting coordinator, Mr. Forliti said that the parenting coordinator should be involved in everything, for example he/she should be copied on correspondence concerning medical appointments.
- [125] Mr. Forliti gave his thoughts on Blue's committee's role. He said that Ms. Davenport should not be the committee of estate because there have been issues about her management of Blue's money and she is in a conflict given her dependence on Blue's money as her only income and the fact that she refuses to address the issue raised by the PGT about the need to sell Blue's house.
- [126] He said that while he is willing to be both committee of person and estate, he thinks that would simply lead to more fighting as Ms. Davenport would constantly drag him into court. He said that he wants the fighting to stop but that he is not prepared to walk away from Blue. He thinks both parents should be involved in Blue's life, but he also thinks that Blue's housing needs have to be resolved and that Blue's money should not be used to support Ms. Davenport.

[127] Mr. Forliti acknowledges that after Blue's upcoming surgery, he will need to stay in one place for a period of time. He accepts that it may make sense for that to be Ms. Davenport's house but he says that he should then get make-up time with Blue.

Roxana Forliti

[128] Roxana Forliti is Mr. Forliti's wife and Blue's stepmother. She and Mr. Forliti have been married for eleven years.

[129] Ms. Forliti said that when she first met Mr. Forliti, she was impressed with him as a father and she admired how committed he was to Blue.

[130] Ms. Forliti testified about how, when they went to purchase a house, they looked for something that would accommodate Blue's needs. They bought a one-level rancher and adapted it for Blue, for example, renovating the bathroom to make it accessible.

[131] Ms. Forliti testified that she and Blue have a close relationship, although she said that it developed over time. She said that she talks to him, plays with him and they read together. At bed time, they have a regular routine of reading together and saying a prayer.

[132] Ms. Forliti gave her version of what occurred at the September 2013 exchange when the police were called. She said that she and Blue's caregiver had taken Blue to the mall. When they returned, they saw that Ms. Davenport had arrived to pick up Blue. She was surprised because it was a Sunday and they had not exchanged Blue on a Sunday for a number of years.

[133] According to Ms. Forliti, Blue had indicated to her that he needed to go to the bathroom so she told Ms. Davenport that they would just take him inside to the toilet. Ms. Davenport refused to allow that, saying "I am the mom" and "it is my access time".

[134] Mr. Forliti arrived and tried to talk to Ms. Davenport but she had locked herself in the van. Ms. Forliti said that Mr. Forliti and Mrs. Minshull had an exchange in raised voices because Mrs. Minshull came to their porch and refused to leave. Ultimately the police arrived and spoke to each of Ms. Davenport and Mr. Forliti.

[135] Ms. Forliti testified that, at the suggestion of Linda Bonnell, she would read emails from Ms. Davenport before giving them to Mr. Forliti. She described Ms. Davenport's emails as abundant, long and complex, and often full of accusatory statements about Mr. Forliti.

[136] Ms. Forliti denied that Mr. Forliti is often angry with Ms. Davenport during exchanges or that she tried to calm him down or stand between them.

[137] When asked how Blue gets bruises and scrapes at her and Mr. Forliti's house, she said that it doesn't happen all the time but sometimes Blue had painful contact points with his wheelchair. She said that Blue also occasionally returns from Ms. Davenport's house with bruises and marks. However, she made the point that they don't document everything and assume that something has gone wrong at the other house.

Independent Witnesses Called by Ms. Davenport

[138] As noted, both Ms. Davenport and Mr. Forliti called as witnesses a number of the professionals who have worked with Blue and the parties over the years. As can be seen from the summary below, there is considerable uniformity in the evidence of many of these witnesses.

Elana Schuller

[139] Ms. Schuller is a child protection worker with MCFD. She has been involved with Blue's file since April 2013.

[140] Ms. Schuller said that, based on her personal experience and her review of the file, there have been 22 MCFD reports concerning Blue over the past number of years which have resulted in 17 investigations or family development responses. She said that an investigation occurs when there are immediate issues that need to be addressed whereas family development responses involve MCFD working with the family to deal with concerns.

[141] Throughout MCFD's involvement, no findings have ever been made that Blue requires protection.

[142] Ms. Schuller testified about a number of particular MCFD involvements. For example, a concern was raised about Mr. Forliti using certain equipment with Blue so MCFD arranged for a physiotherapist to assess the equipment. On another occasion, Mr. Forliti complained that Ms. Davenport had refused to return Blue's braces so MCFD intervened. There was also an issue about the parents not agreeing on a physiotherapist for Blue in respect of his June 2014 surgery so again MCFD got involved.

[143] According to Ms. Schuller, all of the professionals involved in Blue's care have expressed a concern about the constant and ongoing disagreements between Ms. Davenport and Mr. Forliti about Blue's care. She also noted the consistent recommendations of MCFD that the parties use a mediator or parenting coordinator to help resolve their many differences. However, she also noted that none of the professionals have expressed concern about Blue being in either parent's care.

[144] It was Ms. Schuller's observation, based on her involvement with Blue and both parents, that they both are loving parents who are concerned with Blue's well-being. However, they have different styles. At Mr. Forliti's home, Blue is more active whereas he tends to rest more at Ms. Davenport's home. Both disagree with the other's approach and this is a source of considerable tension. However, these different approaches do not amount to child protection issues.

[145] Ms. Schuller said that MCFD did investigate Ms. Davenport's reports of Blue being injured. It was determined that Blue may have been bruised from Mr. Forliti's stretching exercises but there was no intentional physical abuse and no child protection concerns.

Ellen Comba

- [146] Ms. Comba is a registered nurse employed by the Fraser Health Authority who was involved with Blue and his family between 2009-2011. Her role was to train people at Blue's school how to deal with Blue's various needs, for example how to administer his food and medications.
- [147] Ms. Comba testified that she dealt with both parents and that she had a good working relationship with Ms. Davenport. They communicated well and she found Ms. Davenport to be helpful in dealing with any issues that arose.
- [148] That was not the case with Mr. Forliti. As an example, Ms. Comba said that best practices required that Blue be fed using a food pump but Mr. Forliti often used a syringe. Also, Mr. Forliti would often send Blue with homemade snacks whereas Ms. Comba preferred to use a commercial product to ensure consistency.
- [149] Ms. Comba said that she would develop an annual care plan for Blue which she would ask the parents to sign. Ms. Davenport signed the plans but Mr. Forliti did not. However, she agreed in cross-examination that Mr. Forliti never tried to interfere with or stop a care plan despite not signing it. She also agreed that feeding Blue by syringe might work well in Mr. Forliti's home, although she had no direct knowledge of that.

Ann-Maree Foxe

- [150] Ms. Foxe is an augmentative and alternative speech pathologist employed by the Surrey School Board. She has worked with Blue as part of his school team since 2007. Her role is to help develop a communication program for Blue.
- [151] According to Ms. Foxe, Blue has two main communication devices. One is a partner-assisted pod book which uses symbols to convey different meanings. The other is an electronic device called novachat which Blue controls using head switches, as he is unable to use his hands. The novachat has various items programmed in which Blue then chooses using the head switches.
- [152] Ms. Foxe described Blue as very communicative. She said that it is possible to have a conversation with Blue if you understand how his devices work, however his responses are relatively limited. She said that Blue's ability to communicate is affected by his health and his condition at any given time. For example, in order to use the novachat head switches, he has to be sitting upright which is difficult if he is ill or fatigued.
- [153] Ms. Foxe said that in 2011, Mr. Forliti proposed getting an iPad so that Blue could have a communication system that was less cumbersome. An iPad was purchased and Ms. Foxe loaded it with Blue's pod book symbols. Ms. Foxe indicated that there have been some problems with the iPad, for example it would come to school with Blue and she would discover that some programs or links had been removed. However, she said that was not unusual given that the iPad was being passed through two different homes as well as the

school.

- [154] Ms. Foxe said that she has no problem working with either of the parents, although she noted that there is a lot of tension when they are together which impacts her ability to do her work. It was her observation that both parents love their son and want what is best for him but they do not trust one another.
- [155] It is Ms. Foxe's view that as Blue gets older, he will continue to need different devices to communicate and that there will need to be someone to monitor and program the devices.

Jacomyntje Park

- [156] Ms. Park currently works as a program manager with the Surrey Association for Community Living. She has approximately 30 years' experience working with children and adults with developmental difficulties.
- [157] Ms. Park worked as a respite worker with Blue for approximately five years from 2005-2010. She worked two days per week, normally in Ms. Davenport's home although she did attend Mr. Forliti's home a couple of times.
- [158] She testified that she worked well with Ms. Davenport but less so with Mr. Forliti. She also testified about how uncomfortable it was to be in the same room with the two parents, for example at team meetings.
- [159] Ms. Park's evidence was of minimal value other than to note, as have many of the witnesses, the tension between Ms. Davenport and Mr. Forliti.

Roslyn Livingstone

- [160] Ms. Livingstone is an occupational therapist employed at Sunny Hill Health Centre. She has been Blue's seating and mobility therapist since April 2014. In this capacity, she deals primarily with Blue's equipment, including his specialized wheelchair. According to Ms. Livingstone, the principal objective in terms of Blue's equipment is to maximize his functionality and his ability to be involved in activities of daily life.
- [161] Ms. Livingstone agreed that Blue's tone is important in terms of his functionality. For example, when his tone is high, it is more difficult for Blue to sit in his wheelchair. However, she said that Blue's current equipment is adapted to meet Blue's needs and condition.
- [162] Ms. Livingstone said that it is critical for Blue's parents to be aware of Blue's equipment, for example to know when things are missing or parts need adjusting.
- [163] Ms. Livingstone said that she often attends meetings when both parents are present but the team tries to minimize their interaction. She said that while there have been times when the interaction has been tense, they have been able to reach agreements. She said that nothing inappropriate occurred between the parents when she was present. She also said that both parents communicate well with her.

[164] Ms. Livingstone agreed that Mr. Forliti has made a number of suggestions about modifications to Blue's wheelchair to make it more functional. For example, he suggested angling in the head supports more to provide better head support.

Julie Leswal

[165] Ms. Leswal is a physiotherapist who has worked with Blue and his parents since March 2014. Ms. Leswal was retained in connection with Blue's impending surgery, which ultimately took place in June 2014. As discussed in Ms. Davenport and Mr. Forliti's evidence, Ms. Leswal was hired once MCFD intervened because of the parent's inability to agree on a physiotherapist.

[166] Ms. Leswal provided both pre- and post-surgery physiotherapy for Blue. Subsequently, she has continued to work with Blue and she divides her appointments equally between Ms. Davenport and Mr. Forliti's homes. Ms. Leswal expressed the view that the treatments be evenly balanced between the two.

[167] Ms. Leswal developed a treatment plan for Blue that both parents signed. She said that both parents have followed the exercises she prescribed.

[168] When asked by Ms. Davenport's counsel about specific therapies used by Mr. Forliti, for example rice bags and certain aspects of CE, she said that such therapies can be effective.

[169] Ms. Leswal made the useful point that it is not uncommon for parents to have different approaches to treatment and exercise and, provided common sense and good judgment are used, parents can make their own choices.

[170] It was Ms. Leswal's observation that both parents love their son and both are doing what they believe is best, but they are very different in their approaches. She believes that it would be beneficial to Blue going forward to continue to have a third party physiotherapist involved in Blue's care to strike a middle ground between the parents.

[171] Ms. Leswal's observations about the parents echoed what many of the other professionals have said; that both parents love Blue and do what they believe is in his best interests. In her experience it is not unusual for parents to have different approaches, and it is not a matter of one approach being better or more appropriate than the other. While the question was not asked of her directly, it is apparent that she does not have any concerns about Blue being in the care of either parent.

Independent Witnesses Called by Mr. Forliti

Sheri Montgomery

[172] Ms. Montgomery is a special education teacher at Clayton Heights School and has been Blue's primary teacher since 2011. She works with both of Blue's families as well as with the various other professionals involved in Blue's education and care.

- [173] Ms. Montgomery testified that in the 2014-2015 school year, Blue was absent from school for four days while in Mr. Forliti's care and 73 days while in Ms. Davenport's care. Ms. Montgomery has a concern about the high number of absences as it impacts Blue's education. According to Ms. Montgomery, considerable effort goes in to coordinating Blue's education and care with other professionals and she has taken to scheduling appointments with outside professionals during the times when Blue is with Mr. Forliti given the uncertainty about whether Blue will be at school when in Ms. Davenport's care.
- [174] Ms. Montgomery has visited both homes. At Mr. Forliti's home, she got a sense of the stretching and exercises that Mr. Forliti does with Blue whereas at Ms. Davenport's home, Blue was in bed.
- [175] Ms. Montgomery testified that, at Mr. Forliti's request, the school attempted to get Blue to do a pivot transfer for the purpose of sitting on the toilet but it did not work due to problems with his orthotics. Ms. Montgomery said that the school has not revisited this as her focus is more on Blue's communication. However, it is her view that Blue is toilet-trained and that it is good for him to use the toilet rather than be in a diaper at all times.
- [176] Ms. Montgomery said that she has worked with the caregivers who help out at Mr. Forliti's home and that they have been helpful at school for things like transfers, feeding and toileting.
- [177] Ms. Montgomery said that there have been times when the school has picked up Blue or dropped him off at Ms. Davenport's home, for example to take him to music therapy. She said that the school does not do this for any other students, however she was willing to do it for Blue to maximize his school time given the high number of absences when in Ms. Davenport's care.
- [178] According to Ms. Montgomery, the current schedule under which Blue moves back and forth between the two homes is difficult for the school.
- [179] Ms. Montgomery said that she has no concerns about Blue when in Mr. Forliti's care. Her principal concern when Blue is in Ms. Davenport's care is the number of absences, which she says impacts his education and, in particular, is impeding the necessary planning for Blue's transition into adulthood and adult services.
- [180] Ms. Montgomery said that she recalled the dispute between the parents about whether Blue should attend school or be home schooled. Ms. Montgomery contacted MCFD about the dispute and her concern about the family dynamics which in her view were impacting Blue. She thought that a third party advocate should be appointed to speak for Blue but that service was not available.

Cindy Leland

- [181] Ms. Leland is an occupational therapist who has worked with Blue as part of his school team since grade six.

[182] She has visited both homes and said that she has no concerns with anything that Mr. Forliti does with Blue. In her view, neither family is doing anything wrong with Blue, and Blue is fine in the care of both families.

[183] According to Ms. Leland, she does not approve equipment for use in either home. She makes recommendations and discusses things with the families but it is up to each family to decide what they want to do, provided there are no safety concerns.

Carolyn Chowne

[184] Ms. Chowne is a nurse clinician at the Sunny Hill Health Centre tone management clinic. She has worked with Blue for about 15 years.

[185] Ms. Chowne said that there are differences in the parents' philosophies about Blue and his treatment but those differences do not impact on the clinic's ability to care for Blue. She also said that, in her experience, it is not unusual for there to be such differences in philosophy between parents. She did agree, however, that she wishes communication between the parents was better.

[186] Ms. Chowne recalled that there was an issue in 2012 about Blue getting a follow-up assessment at the clinic. Letters were sent to the parents saying that the clinic needed both parents' agreement to treat Blue and asking for the most up-to-date court documents to determine who had authority to make decisions. Ms. Chowne said, however, that there was nothing urgent at the time and that more recently there have been no delays in treatment.

[187] Ms. Chowne did agree that when Blue returned to the clinic after that absence, he had more significant tone than previously.

[188] When asked if the parents provide her with conflicting information, Ms. Chowne said that in fact what the parents tell her is often quite similar. However, she did agree that there have been tensions at some meetings. For example, at the last appointment, she agreed that Mr. Forliti got quite agitated and Blue had to be removed from the room.

[189] Ms. Chowne said that she has recommended the use of melatonin to both parents to help Blue sleep.

Dr. Min Phang

[190] Dr. Phang is a pediatrician who has seen Blue a few times. Dr. Phang had little to offer in the way of relevant evidence, other than to agree that he has received conflicting information at times from the parents. He said that is not unusual that individuals such as Blue may function differently in different environments. However, he did agree that it can present difficulties for the physician.

- [191] Dr. Phang agreed that there have been adversarial moments between the parents in meetings. However, he made the good point that it can be difficult to distinguish between anger and frustration and that frustration is quite common in cases of complex care needs for children.
- [192] Dr. Phang said that as Blue gets older, it will be important to have a coordinating physician in place to act as a case manager for him.

Keo Simpraseuth

- [193] Ms. Simpraseuth is a child protection social worker who was involved with Blue and his family in mid-2014 around the time of his hamstring surgery. She got involved when the MCFD intervened to ensure that a physiotherapist was put in place for the surgery.
- [194] Ms. Simpraseuth's evidence added little, other than to reinforce that the MCFD has not determined there to be any child protection issues.

The PGT

- [195] Mr. Mel Ferrabee testified on behalf of the PGT. Mr. Ferrabee is a guardian and trust officer employed by the PGT. He has been involved in overseeing Blue's file since January 2009. When Mr. Ferrabee became involved with Blue's file, the PGT had already assumed management responsibility for Blue's trust funds.
- [196] Based on his review of the file, however, he was aware that the PGT assumed responsibility as a result of a concern that Ms. Davenport, who previously managed the funds, could not adequately account for various expenditures. When the PGT assumed responsibility, it was agreed that when Blue reached the age of majority he, or his committee, could require an accounting, or the accounting could continue to be deferred indefinitely. It was also established that once Blue turns 19, his annuity will be directed to Blue's committee. Title to Blue's house will also be transferred to Blue's committee.
- [197] Mr. Ferrabee said that decisions concerning Blue's funds are based on the amount of the available funds and the nature of the requested expenditure. The PGT makes its decisions solely in the best interests of Blue.
- [198] He said that parents are expected to provide for regular day-to-day expenses such as food and clothing, and also to contribute to medical expenses if they are able.
- [199] Out of Blue's original settlement, in addition to funding Blue's annuity, the PGT received a lump sum amount of about \$290,000 which is held in trust for Blue. The balance of Blue's trust fund as of December 31, 2015 was \$32,733.45. According to Mr. Ferrabee, the balance has fluctuated between \$20,000-30,000 since about 2010. He said that this is not an ideal balance as it does not allow for contingent expenses that might arise, for example the replacement of Blue's van, which would likely cost \$70,000-80,000.

- [200] Mr. Ferrabee has at various times expressed concern about the static nature of Blue's trust fund and the lack of contingency funds. He has noted that one of the largest expenses is Blue's cost of housing, specifically the mortgage and related expenses on the house. Mr. Ferrabee has suggested that the house may need to be sold in order to access the equity and to obtain further funds that can be available for Blue's care. He has raised this issue a number of times with Ms. Davenport but he said that there has been little follow-up on her part, other than some vague and ill-defined suggestions about establishing a business in the house or taking in a foster child to generate income. In his view, the current situation is not financially sustainable.
- [201] That said, Mr. Ferrabee agreed that the original intention when Blue's lawsuit was settled was that Ms. Davenport was to purchase suitable accommodation for Blue in which she could also live as his primary caregiver. He also agreed that it remains a priority that Blue have accessible, affordable housing.
- [202] Mr. Ferrabee referred to a cost of care report done in 2009 which provides an assessment of Blue's care needs and the cost of the necessary services and equipment. This report is generally used as a guide by the PGT when making funding decisions.
- [203] Mr. Ferrabee said that Blue's annuity provides a monthly cost of care allowance which is divided between Blue's parents according to the percentage of time that Blue is in their care. It currently works out to a 57/43 split between Ms. Davenport and Mr. Forliti.
- [204] From the amount allocated to Ms. Davenport, the PGT claws back \$1,900.00 as rent which reflects the fact that she lives in Blue's house. That amount was arrived at based on a market survey of rental rates in the area.
- [205] Ms. Davenport holds Blue's house in trust for him and Mr. Forliti holds Blue's van in trust for him.
- [206] Mr. Ferrabee attended the MCFD ICM meeting in March 2012. That meeting was attended by many people involved with Blue and the object of the meeting was to determine if there were any care concerns for Blue. According to Mr. Ferrabee, the general consensus at the meeting was that both Ms. Davenport and Mr. Forliti love Blue and are devoted to him and that while they have an acrimonious relationship, there are no concerns about Blue's care with either parent.
- [207] Mr. Ferrabee said that despite the acrimonious relationship between Ms. Davenport and Mr. Forliti, he has a professional relationship with both.

- [208] Evidence of the PGT's involvement was also introduced through an affidavit of Greg Nielsen sworn September 2, 2008 which was prepared in connection with the PGT's application to transfer management responsibility of Blue's funds to it from Ms. Davenport. The affidavit was entered into evidence with the consent of all parties. Mr. Nielsen was a lawyer employed by the PGT. The affidavit explains why the PGT was not satisfied with Ms. Davenport's accounting of her management of Blue's funds.
- [209] Ms. Davenport agreed to transfer management responsibility to the PGT. As part of that agreement, the PGT agreed to defer the passing of Ms. Davenport's accounts indefinitely. Mr. Nielsen states in his affidavit:

The Public Guardian and Trustee and Blue's family have agreed that it is not in Blue's best interest that Ms. Davenport be obliged to account at this time for her administration of Blue's annuity from May of 2004 to the present. Therefore, it is the Public Guardian and Trustee's intention to defer the passing of Ms. Davenport's accounts indefinitely. When Blue turns 19, he or his committee may demand a passing of accounts, or the passing of accounts may continue to be deferred indefinitely.

At age 19, Blue or his committee may also demand that the Public Guardian and Trustee pass the accounts for the administration of the annuity funds. Alternatively, the Public Guardian and Trustee's accounts may be waived as responsibility for ongoing administration passes to Blue or his committee.

Findings of Fact

- [210] As set out at the outset of my summary of the evidence, despite the extensive testimony of Ms. Davenport and Mr. Forliti and their divergent views on virtually everything that has gone on between them for almost the entirety of Blue's life, there are certain key facts that emerge.
- [211] First, both Ms. Davenport and Mr. Forliti clearly love Blue and are committed to his well-being. Not only is that the view of virtually all of the professionals who have worked with them and Blue, it was readily apparent from both of their evidence.
- [212] It bears emphasizing that while Blue is dependent upon the numerous medical, therapeutic and educational professionals who work with him regularly and that he benefits from their efforts, the two most important people in his life are his parents. In addition, he has loving grandparents, Mr. and Mrs. Minshull, and a loving stepmother, Ms. Forliti, all of whom are also integral people in his life.
- [213] Mr. Forliti seems to recognize the importance of these relationships more so than Ms. Davenport. At various times in the trial, he emphasized the need for Blue to have all of his family members in his life, despite their obvious differences. Ms. Davenport is less generous in her views. In her written submission, she describes Mr. Forliti as a devoted and dedicated father, "although misguided," and she seeks to reduce his contact with Blue. With

respect to Ms. Forliti, Ms. Davenport acknowledges in a somewhat backhanded way that "it is reasonable to accept that Roxana Forliti loves Blue" but she dismisses Ms. Forliti's evidence as "generally lacking in credibility".

- [214] Second, Ms. Davenport and Mr. Forliti have very different approaches to caring for Blue and different opinions on what is in his best interests. Again, that is the uniform view of the professionals and was demonstrated in their respective testimony. Without intending to oversimplify, Ms. Davenport is more inclined to accept conventional treatment and a more passive approach to therapy. In contrast, Mr. Forliti is interested in at least considering alternative treatments and favours more aggressive therapies. This stems in part from the fact that Mr. Forliti believes that Blue is capable of doing more than what Ms. Davenport believes.
- [215] This is the crux of the issue between them. As noted by Mr. Kuntz in his observation set out at para. 102 above, it is apparent that Ms. Davenport does not trust Mr. Forliti to properly care for Blue. Indeed, she believes that Blue's care is compromised by Mr. Forliti.
- [216] I reject this position. As noted, the numerous investigations by MCFD have found no child protection concerns about Blue's care by either parent. While I agree with Ms. Davenport that MCFD findings are not conclusive for the purposes of guardianship and parenting time issues in a family law matter, the consistent views expressed by MCFD carry considerable weight, particularly when viewed alongside all of the other evidence.
- [217] In this regard, I note again the evidence of the various independent professionals who, while recognizing the different approaches of the two parents, are not concerned about the care provided by either.
- [218] This leads me to the third key fact that emerges from the evidence. While Ms. Davenport and Mr. Forliti have different approaches to Blue, neither approach is better or worse than the other and, most importantly, Blue is well cared for by both parents.
- [219] I acknowledge that Ms. Davenport has had concerns at various times about bruising and other marks that she has observed on Blue when he returns from being with Mr. Forliti. While accepting that Ms. Davenport's concerns are valid, it is apparent to me that she overstates the issue by characterizing Blue as having been "injured" while in Mr. Forliti's care. It may be that Mr. Forliti has at times pushed Blue too hard in terms of his exercises, but I do not find that Mr. Forliti has in any way abused or been neglectful of Blue. Nor has MCFD made such a finding despite Ms. Davenport's numerous reports.
- [220] Fourth, it is clear on the evidence that the biggest issue between the parties is their enmity towards one another and their inability to communicate.
- [221] Each blames the other for the problems, but it is clear on the evidence that both are at fault.

- [222] Ms. Davenport presents as being more calm and reasonable but it is also apparent that she is unable to accept opinions that do not coincide with her own, as evidenced by the strained relationship that has developed between her and the two parenting coordinators, as well as with MCFD and the PGT.
- [223] For his part, while Mr. Forliti denied being rude or aggressive towards Ms. Davenport, this was belied by his conduct on the witness stand where he was consistently angry, insulting and dismissive towards Ms. Davenport. I have no doubt that his temperament has been a significant contributing factor to the communication issues.
- [224] I agree with Mr. Forliti that the more regular involvement of a parenting coordinator would have been of some assistance to the parties. It is also apparent on the evidence that the use of the parenting coordinators came to an end due to Ms. Davenport's failure to participate fully in the parenting coordination process.
- [225] However, I am also of the view that Mr. Forliti overstates the role of the parenting coordinator and the ability of a parenting coordinator to resolve all issues between the parties. That process can only succeed if there is a common desire on the part of the parents to find solutions that are in the best interests of Blue, something that is sadly lacking in this case.

Issues

- [226] Broadly speaking, there are two main issues to be determined:
1. Should the 2009 order be varied to provide for more limited and supervised parenting time for Mr. Forliti and/or to give Ms. Davenport final authority to make significant decisions with respect to Blue?
 2. Who should be appointed the committee of person and committee of estate for Blue when he turns 19?
- [227] Within these two general issues are numerous sub-issues, for example issues concerning the conduct and communication between the parties. These will be addressed as part of my consideration of the two main issues.
- [228] There is also a third, more minor issue, regarding child support that I will also address.

Legal Framework

- [229] As Ms. Davenport is seeking to vary the 2009 order with respect to parenting matters, s. 47 of the FLA applies. That section states:

Changing, suspending or terminating orders respecting parenting arrangements

47 On application, a court may change, suspend or terminate an order respecting parenting arrangements if satisfied that, since the making of the order, there has been a change in the needs or circumstances of the child, including because of a change in the circumstances of another person.

- [230] The "change of circumstances" test was considered by the Court of Appeal in *Powell v. Levesque*, 2014 BCCA 33, albeit in the context of an application brought under s. 17(5) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), the language of which is very similar to s. 47 of the FLA.
- [231] In that case, Madam Justice Smith summarized the key principles established by the Supreme Court of Canada in *L.M.P. v. L.S.*, 2011 SCC 64 [L.M.P.]. She said in *Powell* at para. 23:
- [23] In *L.M.P. v. L.S.*, 2011 SCC 64, [2011] 3 S.C.R. 775, a decision that was rendered after the decision under appeal, the Supreme Court of Canada reiterated the two-fold test for variation of a support order under the Divorce Act, R.S.C. 1985, c. 3 (2d Supp.) from *Willick v. Willick*, [1994] 3 S.C.R. 670 (for child support orders) and *G.(L.) v. B.(G.)*, [1995] 3 S.C.R. 370, (for spousal support orders). The Court stated:
- [31] *Willick* described the proper analysis as requiring a court to "determine first, whether the conditions for variation exist and if they do exist what variation of the existing order ought to be made in light of the change in circumstances" (p. 688). In determining whether the conditions for variation exist, the court must be satisfied that there has been a change of circumstance since the making of the prior order or variation. The onus is on the party seeking a variation to establish such a change.
- [32] That "change of circumstances", the majority of the Court concluded in *Willick*, had to be a "material" one, meaning a change that, "if known at the time, would likely have resulted in different terms" (p. 688). *G.(L.)* confirmed that this threshold also applied to spousal support variations.
- [232] More recently in *Dedes v. Dedes*, 2015 BCCA 194 [Dedes], Madam Justice Bennett said at para. 25:
- [25] As articulated in *L.M.P.*, the test for material change is based not on what one party knew or reasonably foresaw, but rather on what the parties actually contemplated at the time the order was entered by agreement. A function of the material change threshold is to prevent parties from re-litigating issues that were already considered and rejected; in such cases, an application to vary would amount to an appeal of the original order (see *Gordon* at para. 15). As was stated by L'Heureux-Dube J. in *Willick* at p. 734, "the diversity of possible scenarios in family law dictates that courts maintain a flexible standard of judicial discretion which does not artificially limit the adaptability of the Divorce Act provisions". See also *G. (L.) v. B. (G.)*, [1995] 3 S.C.R. 370 at paras. 49–51 and *Jakob v. Jakob*, 2010 BCCA 136 at para. 40.

[233] On any application involving children, the overriding concern for the court is always the best interests of the child. Section 37 of the FLA sets out a number of factors that will inform the assessment:

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

- (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
- (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;
 - (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - (d) the history of the child's care;
 - (e) the child's need for stability, given the child's age and stage of development;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
 - (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
 - (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
 - (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.
- (3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.
- (4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.

[234] On the second issue, the appointment of a committee is governed by the Patients Property Act, R.S.B.C. 1996, c. 349 [PPA]. Section 6 of the PPA provides:

Appointment of committee

- 6 (1) Subject to section 13, on application by the Attorney General or any other person, the court may appoint any person to be the committee of the patient.
- (2) On application by the Attorney General, the Public Guardian and Trustee or any other person, the court may, subject to section 13, rescind the appointment of a person appointed as committee.
- (3) Subject to section 16, except during the time that a person appointed under subsection (1), other than the Public Guardian and Trustee, is the committee of a patient, the Public Guardian and Trustee is the committee of the patient.
- (4) An application under subsection (1) and an application under section 2 may be made as one application.

[235] Sections 15-18 deal with the powers of a committee:

Powers of committee

15 (1) Subject to section 16,

- (a) the committee of a patient as defined in paragraph (a) or (a.1) of the definition of "patient" in section 1 has all the rights, privileges and powers with regard to the estate of the patient as the patient would have if of full age and of sound and disposing mind, and
- (b) the committee of a patient
- (i) declared to be incapable of managing his or her affairs has all the rights, privileges and powers with regard to the estate of the patient as the patient would have if of full age and of sound and disposing mind,
- (ii) declared to be incapable of managing himself or herself has the custody of the person of the patient, and
- (iii) declared to be incapable of managing himself or herself or his or her affairs has all the rights, privileges and powers with regard to the estate of the patient as the patient would have if of full age and of sound and disposing mind, and as well the custody of the person of the patient.
- (2) For investing money, a committee is a trustee within the meaning of the Trustee Act.

Special direction limiting powers of committee

16 (1) On the appointment of a committee, the court may, by the same order, attach conditions or restrictions on the committee's exercise of certain rights, privileges or powers specified in the order, including requiring the written consent of the Public Guardian and Trustee prior to the committee's exercise of any right, privilege or power.

- (2) If, under subsection (1), the court has attached a condition that the consent of the Public Guardian and Trustee is required prior to the committee's exercise of any right, privilege or power, the registrar of the court must send a copy of the court's order to the Public Guardian and Trustee.

Rights, powers and privileges included

17 The rights, powers and privileges vested in the committee include all the rights, powers and privileges that would be exercisable by the patient as a trustee, as the guardian of a person, as the holder of a power of appointment and as the personal representative of a person, if the person were of full age and of sound and disposing mind.

Exercise of powers

18 (1) A committee must exercise the committee's powers for the benefit of the patient and the patient's family, having regard to the nature and value of the property of the patient and the circumstances and needs of the patient and the patient's family.

- (2) A committee must, to the extent reasonable, foster the independence of the patient and encourage the patient's involvement in any decision making that affects the patient.

[236] Of note, s. 16 authorizes the court to impose restrictions on the committee's exercise of certain rights, powers and privileges.

Guardianship and Parenting Time of Blue

[237] To recap, under the 2009 order, the parties are joint guardians of Blue and are required to attempt to agree on significant matters affecting Blue. In the event they cannot agree, the order contemplates the involvement of a parenting coordinator.

[238] Ms. Davenport submits that it is clear on the evidence that the parties cannot cooperate, let alone agree, and she therefore seeks a return to the "Joyce" model under which she has final decision-making authority.

[239] In her submissions, Ms. Davenport did not address the "change of circumstances" test set out in s. 47 of the FLA. Instead, she focussed on why it is in Blue's best interest to grant the relief sought. Specifically, she submits that given Blue's many and specialized medical needs, and given the parties' inability to communicate, it is essential that one parent have authority to make necessary and timely decisions about his medical, educational and other needs. She says that this is particularly important at this critical time in Blue's life when plans need to be made to transition him into the adult care system.

[240] Blue's needs and the parties' communication problems are not new issues and do not constitute a change in circumstances as contemplated in cases such as L.M.P. and Dedes. Indeed, those very issues were well-known to the parties at the time the 2009 order was issued and are addressed in that order.

- [241] Moreover, the evidence has not established that Blue's interests have been harmed because of the parties' inability to communicate or as a result of any actions taken, or not taken, by Mr. Forliti. While it is true that on occasion there have been delays in moving forward with certain treatments due to Mr. Forliti wanting to explore alternatives, I do not find that Blue has been harmed by these delays as alleged by Ms. Davenport. Rather, I accept the evidence given by the majority of Blue's treating professionals, in particular Ms. Leswal, Ms. Chowne and Ms. Leland, that Blue is well cared for by both parents.
- [242] That said, what has changed since the 2009 order, is the fact that Blue is turning 19 in October 2016 and that the services available to him will change when he transitions into the adult system. It is not evident this was specifically contemplated by the parties in the 2009 order.
- [243] Both parties acknowledge that plans need to be made in advance of his 19th birthday for this transition. However, given their dysfunctional relationship, that process has been stalled. For example, Mr. Forliti refused to attend a joint meeting with Ms. Davenport and Community Living British Columbia and has refused to discuss plans for Blue with her.
- [244] There is also the fact that Blue is to undergo further surgery on his hips, known as a varus derotation osteotomy (VDRO), in the near future. Decisions about the surgery, and about post-surgery recovery, will have to be made in conjunction with Blue's treating professionals.
- [245] In the circumstances, I have come to the conclusion that it is necessary and appropriate for one person to have final decision-making authority on significant matters affecting Blue. I have also come to the conclusion that the appropriate person to exercise that authority is Ms. Davenport.
- [246] In coming to these conclusions, I am guided by the factors set out in s. 37 of the FLA that inform the court's assessment of the best interests of the child, in particular the following factors that are particularly relevant in this case:
- a) the child's health and emotional well-being (s. 37(2)(a));
 - b) the history of the child's care (s. 37(2)(d));
 - c) the ability of each parent to exercise parental responsibilities (s. 37(2)(f)); and
 - d) the appropriateness of an arrangement that would require the parties to cooperate (s. 37(2)(i)).
- [247] Given Blue's challenging condition, his health and emotional well-being are paramount considerations. While, as I have found, both parents are committed to caring for him, the evidence establishes that Ms. Davenport has been Blue's principal advocate throughout much of his life and her status as Blue's case manager has been confirmed several times, including in the 2009 order (albeit that term is undefined).

- [248] The evidence is also clear that it is Ms. Davenport who has been primarily responsible for scheduling Blue's routine medical appointments, something that was set out in the draft memorandum of understanding prepared by Ms. Bonnell in July 2014 and confirmed by the order of Mr. Justice Groves dated January 16, 2015.
- [249] Lastly, I accept that Ms. Davenport has been better at trying to communicate with Mr. Forliti about matters affecting Blue's well-being. In contrast, Mr. Forliti has often actively inhibited communication, one obvious example being his refusal to permit the caregivers that he employs to speak directly to Ms. Davenport.
- [250] Ms. Davenport cites a number of cases in support of her position that she should be given final decision-making authority, including *Crick v. Crick*, [1997] B.C.J. No. 1646, 1997 CarswellBC 1683 (S.C.) [Crick]; *Larkin v. Glase*, 2008 BCSC 387 [Larkin]; *M.J.B. v. S.A.A.*, 2003 BCSC 286; and *Ciutcu v. Dragon*, 2015 ONCJ 659 [Ciutcu].
- [251] These authorities are of little assistance in the circumstances of this case. They involve situations where one parent, generally the father, was found to have engaged in behaviour detrimental to the children's best interests. For example, in *Larkin*, the court found that the father's anger towards the mother caused him to say derogatory things about her in the presence of the children and to limit the children's access to counselling and learning aids (at para. 410). In *Ciutcu*, the court found that the father had put his own needs and priorities above those of the children (at para. 67). Similarly, in *Crick*, the court found that the father's hostility towards the mother negatively impacted the child and that he was more interested in asserting his parental rights than in attending to the child's interests (at para. 23).
- [252] Ms. Davenport's reliance on these cases reflects her belief that Mr. Forliti is the one at fault for the dysfunction in their relationship and that only she is capable of properly caring for Blue. Again, neither of those beliefs is accurate.
- [253] My conclusion that Ms. Davenport should have final decision-making authority is not based so much on the conduct of Mr. Forliti but rather on the practical reality that, at this critical juncture in Blue's life, there needs to be one person with the authority to make important decisions impacting his welfare and that Ms. Davenport is best situated to play that role.
- [254] In concluding that person should be Ms. Davenport, I want to stress that this is not a licence for her to impede Mr. Forliti's access to Blue or to impose her views as to what should and should not happen when Blue is in Mr. Forliti's care. To ensure that Mr. Forliti continues to play a central role in Blue's life, he will continue to have joint custody and joint guardianship of Blue as set out in the 2009 order. However, I would delete para. 2(f) and vary para. 2(e) of that order to provide as follows:

In the event that the parties cannot reach agreement on a significant decision despite their best efforts, Ms. Davenport will be entitled to make those decisions, subject to Mr. Forliti's right to apply to the court for directions pursuant to s. 49 of the FLA.

[255] All of the other terms set out in para. 2 of the 2009 order will remain in place, including para. 2(g) that:

Each party shall have the right to obtain information concerning the Child directly from third parties, including teachers, counsellors, medical professionals and third party caregivers.

[256] I turn now to the issue of parenting time and Ms. Davenport's submission that Mr. Forliti's time with Blue should be reduced and should be subject to supervision.

[257] I reject both propositions.

[258] Ms. Davenport's position is largely premised on her belief that Blue's health is endangered when he is in Mr. Forliti's care. However, as I have found, the evidence does not lead to that conclusion nor does it support Ms. Davenport's contention that it is in Blue's best interests that he reside primarily with her.

[259] In terms of parenting time, Blue has had significant time in the care of Mr. and Ms. Forliti since well before the date of the 2009 order. Their home is Blue's home every bit as much as is Ms. Davenport's. I agree with Mr. Forliti's submission that Blue has two dedicated families both of whom have well-modified homes to meet Blue's needs.

[260] In my view, to remove or diminish Mr. Forliti's involvement in Blue's life is not warranted and is not in Blue's best interests. Indeed, I find that it would be detrimental to Blue's best interests.

[261] Mr. Forliti submits that parenting time with Blue should move to a 50/50 week on/week off schedule. While that has some intuitive appeal, particularly given the evidence about difficulties that often arise during exchanges, there was insufficient evidence as to how such a schedule would work in practice. There was also minimal evidence about how a change in Blue's current schedule would affect him.

[262] Accordingly, the current schedule, established under the 2009 order, will continue.

[263] Similarly, there is also no basis to require supervision of Mr. Forliti's parenting time.

[264] On this issue, Ms. Davenport cites *F.K. v. M.K.*, 2010 BCSC 563, where Madam Justice Griffin set out a number of factors that will be considered when determining whether parenting time should be terminated or supervised, taken from *V.S.J. v. L.J.G.*, [2004] O.T.C. 460 (S.C.J.) at para. 135. Those factors include:

1. Long term harassment and harmful behaviours towards the custodial parent and the child stress and or fear.
2. History of violence; unpredictable, uncontrollable behaviour; alcohol, drug abuse which has been witnessed by the child and/or presents a risk to the child's safety and well being.
3. Extreme parental alienation which has resulted in changes of custody and, at times, no access orders to the former custodial parent.

4. Ongoing severe denigration of the other parent.
5. Lack of relationship or attachment between noncustodial parent and child.
6. Neglect or abuse to a child on the access visits.
7. Older children's wishes and preferences to terminate access.

[265] While there is no doubt that the parties' relationship has been tumultuous, and that there has been poor behaviour on both sides, none of the circumstances identified by Justice Griffin exist in this case. There is therefore no basis for requiring supervised parenting time.

[266] Ms. Davenport submits in the alternative that, if supervision is not required, the court should impose detailed conditions governing Mr. Forliti's time with Blue. In this regard, she provided a draft order setting out over 20 terms intended to control virtually every aspect of Mr. Forliti's time with and care of Blue. The draft order also addresses interactions with professionals. For example, it provides that Ms. Davenport will have sole responsibility for obtaining information from Blue's caregivers, such as teachers, medical professionals and community supports.

[267] I decline to impose the terms sought. To my mind, the level of detail proposed by Ms. Davenport again reflects her lack of trust in Mr. Forliti and her belief that only she knows best how to care for Blue. Further, it is an attempt to, in effect, impose supervision on Mr. Forliti but without a supervision order.

[268] Moreover, rather than reducing the likelihood of conflict between the parties, as submitted by Ms. Davenport, the degree of micro-management sought to be imposed by her is, in my view, a recipe for continuous disputes between them. That has been the pattern of behaviour to date by both parties as each has accused the other of breaching the terms of previous orders.

[269] Further, the evidence again of Blue's treating professionals is that although the parties have different approaches to caring for Blue, they are both committed to his well-being. While Ms. Davenport has had concerns about bruising and other marks on Blue which she attributes to exercises and other treatments utilized by Mr. Forliti, she acknowledges that these concerns have lessened in recent times with the regular involvement of Ms. Leswal.

[270] Lastly, it bears noting that the 2009 order in particular included detailed terms for the care of Blue, many of which were intended to address Ms. Davenport's concerns. Despite this, the acrimony between the parties has continued largely unabated.

- [271] The problem is not with the court's order. What this case illustrates is that no matter how many court orders are issued and no matter how detailed the terms, the court cannot regulate the behaviour of people who are too stubborn, too entrenched in their respective positions and too blinded by their hatred and mistrust of one another to step back and put the interests of their child first.
- [272] In my view, the best approach in the circumstances of this case is to simply order that the parties follow the advice and recommendations of Blue's medical and educational professionals and otherwise exercise their best judgment, in consultation with those professionals, when caring for Blue. In this regard, I note again the evidence of Ms. Leswal and Ms. Leland that they do not approve equipment used in either home but rather, they consult with the parents and make recommendations. However, it is up to the respective parents to choose what they wish to do with Blue, provided there are no safety concerns.
- [273] In addition to treatments, equipment and therapies employed by either parent, this term will also apply to any caregivers employed by one or both of them. More specifically, each will exercise their best judgment when hiring a caregiver to ensure that the caregiver is properly qualified and able to properly care for Blue. The other parent will be provided with the name and qualifications of the caregiver. Beyond this, however, I decline to impose the numerous and specific conditions sought by Ms. Davenport concerning the qualifications and training of any caregivers hired by Mr. Forliti.
- [274] The last issue to address in terms of the guardianship and parenting time of Blue is the question of communication between the parties.
- [275] The 2009 order contains a term, at para. 3, that the parties will communicate through emails or a written communication book, text, written letter or voice-mail. Both parties complain about the manner in which the other communicates or, in the case of Mr. Forliti as alleged by Ms. Davenport, does not communicate.
- [276] Mr. Forliti submits that many of the communication issues can be resolved through the use of an online communication tool, such as Co-parently. Ms. Davenport is concerned that Co-parently will not work given Blue's complex needs.
- [277] Once again, it must be noted that no means of communication will resolve the issues between the parties unless both make good faith efforts to make it work. That said, given the difficulties the parties have in communicating, it is worth trying a new approach.
- [278] Unfortunately, there was not enough evidence about how Co-parently works for me to determine whether it will in fact work for the parties. However, a trial period is in order. Accordingly, I order that the parties engage in a three month trial period using Co-parently or some other online communication tool to be agreed between them.
- [279] After the three month trial, if both parties do not agree to continue with the online tool, communication will be in accordance with the terms of the 2009 order.

[280] In summary, on the issue of guardianship and parenting time of Blue, the 2009 order will continue in place subject to the following variations:

- a) para. 2(e) is deleted and the following is substituted:

In the event that the parties cannot reach agreement on a significant decision despite their best efforts, Ms. Davenport will be entitled to make those decisions, subject to Mr. Forliti's right to apply to the court for directions pursuant to s. 49 of the FLA.

- b) para. 2(f) is deleted;
- c) paras. 3 and 5(c) are varied to provide that the parties will the parties engage in a three month trial period using Co-parently or some other online communication tool to be agreed between them. After the three month trial, if both parties do not agree to continue with the online tool, communication will be in accordance with the terms of the 2009 order;
- d) para. 4 dealing with the parenting coordinator is deleted;
- e) para. 5(b) is deleted and the following paragraph is substituted:

The parties will follow the advice and recommendations of Blue's medical and educational professionals and will otherwise exercise their best judgment, in consultation with those professionals, when caring for Blue.

- f) In para. 5(g) the phrase "with the parenting coordinator present when deemed necessary" will be deleted;
- g) The balance of para. 5 will remain in place and the following sub-paragraph will be added:

Each party will exercise their best judgment when hiring a caregiver to ensure that the caregiver is properly qualified and able to property care for Blue. The other party will be provided with the name and qualifications of the caregiver;
- h) para. 7 will be amended to delete the reference to "child" as defined by the Family Relations Act" and to add in its place "child" as defined by s. 146 of Part 7 of the FLA"; and
- i) para. 9 which provides for a review of this matter in one year is deleted.

[281] The parties did not address para. 8 which concerns access to Blue for Mrs. Minshull. Therefore, unless the parties agree otherwise, that term will remain in place.

Committeeship of Blue

[282] While the guardianship and parenting time issues are important, Blue, as noted, will soon turn 19 and thus the more critical issue is his committeeship when he does.

- [283] Pursuant to s. 3 of the PPA, the court may make an order declaring that a person is incapable of managing himself or herself and/or his or her affairs. Procedurally, s. 3 requires affidavit evidence from two medical practitioners providing their opinions to this effect.
- [284] At the opening of the trial, the PGT raised the issue that it had been served with only one affidavit. That procedural defect was however remedied and I was provided with affidavits from Dr. Lucy Nee, Blue's family doctor, and Dr. Min Phang, a pediatrician who has treated Blue and also testified at trial.
- [285] Both are of the opinion that Blue is incapable of managing himself and his affairs. The parties agree with this assessment as does the PGT. Accordingly, pursuant to s. 3(1) of the PPA, I declare that Blue is incapable of managing himself and his affairs.
- [286] The issue then becomes who should be appointed as Blue's committee of person and/or estate.
- [287] On this issue, it should first be noted that the court can make an order appointing a committee while a person is still a minor, however the appointment will not take effect until the minor turns 19: *Macdonald v. British Columbia (Public Guardian and Trustee)*, 2003 BCCA 428 at para. 67.
- [288] In terms of the appropriate person, the courts have long expressed a preference for appointing family members over an outsider: *Kong v. Kong*, 2010 BCCA 298 at para. 17; *Patients Property Act* and *Neville Calvin Watson*, 2007 BCCA 91 at para. 5.
- [289] In *Stewart (Re)*, 2014 BCSC 2321, Mr. Justice Masuhara provides a useful summary of the principles that will inform the selection of a committee at paras. 27-30:
- [27] The application for an appointment invokes the *parens patriae* jurisdiction of the court and is governed by an assessment of who will serve the patient's best interest.
- [28] Section 18 of the Act states that:

A committee must exercise the committee's powers for the benefit of the patient and the patient's family, having regard to the nature and value of the property of the patient and the circumstances and needs of the patient and the patient's family.

- [29] As has been observed in other cases, the Act does not prescribe criteria for the selection of an appropriate committee. However, cases have identified various considerations; see for example: *Vranic (Re)*, 2007 BCSC 1949; *Bowman (Re)*, 2009 BCSC 523; *Palamarek (Re)*, 2011 BCSC 563; *Re Matthews*, 2013 BCSC 1045; and *Sangha (Re)*, 2013 BCSC 1965. They include:
- (a) whether the appointment reflects the patient's wishes, obviously when he or she was capable of forming such a wish;
 - (b) whether immediate family members are in agreement with the appointment;

- (c) whether there is any conflict between family members or between the family and the patient, and whether the proposed committee would be likely to consult with immediate family members about the appropriate care of the patient;
- (d) the level of previous involvement of the proposed committee with the patient, usually family members are preferred;
- (e) the level of understanding of the proposed committee with the patient's current situation, and will that person be able to cope with future changes of the patient;
- (f) whether the proposed committee will provide love and support to the patient;
- (g) whether the proposed committee is the best person to deal with the financial affairs and ensure the income and estate are used for the patient's benefit;
- (h) whether a proposed committee has breached a fiduciary duty owed to the patient, or engaged in activity which diminishes confidence in that person's abilities to properly handle the patient's affairs;
- (i) who is best to advocate for the patient's medical needs;
- (j) whether the proposed committee has an appropriate plan of care and management for the patient and his or her affairs and is best able to carry it out; and
- (k) whether a division of responsibilities such as between the patient's estate and the patient's person to different persons would serve the best interests of the patient, or would such a division be less than optimal for the patient.

[30] The above listing is of course non-exhaustive or in any particular order. The inquiry is fact specific and a particular factor may or may not be applicable and may attract different weight depending on the circumstances of a case.

[290] Given the circumstances of this case, it is also worth noting the observation of Madam Justice Kloegman in *Simons v. Simons*, 2013 BCSC 650, *aff'd* 2014 BCCA 132:

[42] As another principle of law, a family member as committee is preferable to the Public Guardian and Trustee: *Kong v. Kong*, 2010 BCCA 298. Mutual suspicion and hostility amongst family members is not a bar to the application of this principle, although it is obviously an important factor to consider: *Watson (Re)*, 2007 BCCA 91; *Palamarek (Re)*, 2011 BCSC 563.

[291] Ms. Davenport submits that she should be appointed as committee of both Blue's person and estate. In support of her position, she advances many of the same arguments that she makes with respect to the guardianship and parenting time issues, namely that she is the person best situated to care for both Blue's personal and financial needs.

[292] Mr. Forliti opposes Ms. Davenport being appointed committee of either person or estate. With respect to Blue's person, he submits that Ms. Davenport has made it clear that she wants to reduce his involvement in Blue's life and he fears that she will use her position as

committee to accomplish that objective. In terms of Blue's estate, Mr. Forliti submits that Ms. Davenport has proven herself incapable of managing Blue's finances, as evidenced by the fact that responsibility for Blue's trust funds was transferred from her to the PGT. He submits further that Ms. Davenport is in a position of conflict given that she is wholly dependent upon Blue's money for her income.

- [293] Mr. Forliti says that while he would be prepared to act as Blue's committee, he thinks that would lead to further conflict with Ms. Davenport and additional court proceedings. He prefers an alternative that will provide some measure of certainty and peace between the parties. It is his view that the PGT should be appointed as committee of both Blue's person and estate.
- [294] The PGT notes that the appointment of it as a committee is typically a last resort measure where there is no person available or appropriate to act. However, it is prepared to act as committee of both person and estate if the court determines that appointment of a family member would lead to escalated conflict or would otherwise not be in Blue's best interests.
- [295] The PGT does not take a strong position as to who should be appointed as Blue's committee of person but it does oppose Ms. Davenport being appointed sole committee of estate. The PGT submits that Ms. Davenport was replaced as the manager of Blue's annuity funds because she was unable or unwilling to account for her use of those funds. Moreover, it too raises the issue of conflict given Ms. Davenport's reliance on Blue's money for her income.
- [296] Turning first to the appointment of a committee of person, I am sympathetic to Mr. Forliti's concerns about how Ms. Davenport would use that authority. As has been noted elsewhere in these Reasons, she is unwavering in her belief that only she knows what is best for Blue and that Mr. Forliti is "misguided" in his approach to caring for Blue.
- [297] However, I am not persuaded that the PGT presents a viable alternative. Blue's needs are complex and decisions often must be made on a daily basis about how best to address those needs. Blue has numerous medical appointments which involve considerable organization. When he turns 19 and transitions into the adult system, decisions will be needed about new treating professionals, new support mechanisms and a host of other issues.
- [298] While the PGT employs professional case managers who deal with a range of different clients, there was minimal evidence about how it would meet Blue's personal needs on a day-to-day basis.
- [299] I have already found, with respect to the guardianship issues under the FLA, that Ms. Davenport is best positioned to exercise final decision making authority on significant matters affecting Blue's health and well-being. That should not change when Blue turns 19.

- [300] However, to appoint her as the sole committee of person for Blue would give her sole decision-making power over all aspects of Blue's health and personal care. This is troubling given the history of the parties, and Ms. Davenport's demonstrated desire to limit Mr. Forliti's time with Blue.
- [301] The evidence presented in this trial demonstrates that Blue's interests are best served by having both families actively involved in his life. The careful balance that has been established by previous court orders and as modified by these Reasons should not suddenly be abandoned when Blue turns 19.
- [302] Such an abrupt shift would be contrary to the best interests of Blue, which is the primary consideration here as well as under the FLA. As stated in *British Columbia (Public Trustee) v. Pollen* (1996), 15 E.T.R. (2d) 154 at para. 6, "[t]he power of the court to appoint a committee is a power exercised under the *parens patriae* jurisdiction of the court as well as the authority of the Patients Property Act. It is a broad power which may be exercised only in the best interests of the person in need of protection: *Re Eve* (sub nom. *E. v. Eve*) [1986] 2 S.C.R. 388" (emphasis added). As stated above, the removal of Mr. Forliti from Blue's life is not in Blue's best interests but rather would be injurious and detrimental.
- [303] I am therefore of the view that a custody arrangement similar to that put in place under the FLA should be carried forward and applied to Blue's committee ship under the PPA. The objective of such an arrangement will be to permit both parties to continue to play important roles in Blue's life.
- [304] In my view, this objective is best achieved by appointing Mr. Forliti and Ms. Davenport as co-committees of Blue's person. This will enable each party to continue to function in a similar manner to what they currently do as joint guardians. However, for the same reasons set out above concerning Blue's guardianship, it is necessary that there be one person with final decision-making authority on significant matters affecting Blue's health and well-being. That person will be Ms. Davenport, although her authority will be subject to similar restrictions to those that will apply to her role as guardian.
- [305] The appointment of the parties as co-committees will therefore be subject to the same conditions set out in the 2009 order, as amended by these Reasons, that govern the parties' joint guardianship of Blue under the FLA. These conditions and restrictions will come into effect on Blue's 19th birthday along with the appointment of Blue's committees and are pursuant to the PPA and not the FLA, given that the FLA only allows for custody orders for children under the age of 19.

[306] The authority to impose conditions and restrictions on the "rights, privileges or powers" of a committee is found in s. 16 of the PPA. In the alternative, if s. 16 is not broad enough to authorize these conditions and restrictions, I would invoke my *parens patriae* jurisdiction to include such provisions in the committee scheme pursuant to a legislative gap. In *Temoin v. Martin*, 2011 BCSC 1727, *aff'd* 2012 BCCA 250, Madam Justice Fisher applies the *parens patriae* jurisdiction in a separate issue in the PPA. She summarized:

[45] In a case such as this, I consider the Court's *parens patriae* jurisdiction to be more appropriate to the issues raised by the Petitioner. Its origins, while unclear, stem from the need to protect those who are unable to make decisions or to care for themselves. In *Re Eve*, [1986] 2 SCR 388, LaForest J. (for the Court) noted that the jurisdiction is founded in necessity and is to be exercised in the best interest of the protected person. He stated that the situations under which it can be exercised are "legion" and never closed. He described the jurisdiction as "of a very broad nature", which can be invoked in matters such as custody, protection of property, health problems and protection against harmful associations. He went on to say (at para. 75):

What is more ... a court may act not only on the ground that injury to person or property has occurred, but also on the ground that such injury is apprehended. I might add that the jurisdiction is a carefully guarded one. The courts will not readily assume that it has been removed by legislation where a necessity arises to protect a person who cannot protect himself. [emphasis added in *Temoin*]

[46] Overriding all of this is the requirement of proof of incompetency: *Re Eve* at para. 36.

[47] As with the Court's inherent jurisdiction, *parens patriae* jurisdiction can only be exercised where legislation has not "occupied the field" and where the exercise would not conflict with the governing statute. There must be a gap in the legislative framework that provides for the protection of incompetent persons. Even if there is a gap, the jurisdiction must only be exercised in the best interests of the incompetent person: *Johnston v Johnston*, 2003 BCSC 110 at para. 20, citing *L.M. v D.F.* (1999) 68 BCLR (3d) 132 (SC).

[307] In summary, I appoint Mr. Forliti and Ms. Davenport co-committees of person when Blue turns 19. These appointments will take effect when Blue turns 19 and will be on the following terms:

Conditions and Restrictions of Co-committees of Person

Dawn Davenport and James Forliti shall be co-committees of person of Blue Forliti as a patient pursuant to the Patients Property Act, R.S.B.C. 1996, c. 349, subject to the following terms:

1. Blue shall reside with the co-committees in accordance with the schedule established under the 2009 order, unless otherwise agreed by the parties;

2. Each co-committee shall have the obligation to advise the other co-committee of any matters of a significant nature affecting Blue, including significant decisions regarding health (except emergency decisions), education, religious instruction and the general welfare of Blue, and the co-committees shall have the obligation to try to reach agreement on those major decisions, subject to the following terms:
 - a) Both co-committees must engage in such discussions in a good faith manner;
 - b) In the event that the parties cannot reach agreement on a significant decision despite their best efforts, Ms. Davenport will be entitled to make those decisions;
 - c) Each co-committee shall have the right to obtain information concerning Blue directly from third parties, including teachers, counsellors, medical professionals and third party caregivers; and
 - d) Ms. Davenport has the sole power as Blue's case manager and sole power to make medical appointments. This restriction of Mr. Forliti's powers does not apply to emergency decisions.
3. The co-committees shall communicate for the above purposes regarding significant decisions concerning Blue through emails, Co-parently, a written communication book, text written letter or voicemail, in accordance with the terms of the 2009 order, as amended by these Reasons, and subject to the following:
 - a) The co-committees shall communicate respectfully with each other and Blue's team members;
 - b) The co-committees shall provide a detailed exchange letter to the other co-committee via email (or written letter, text or voicemail, only if email is not available) and this shall be the primary method of communicating facts regarding Blue; and
 - c) Each co-committee shall provide to the other co-committee notification of illnesses of Blue, and a full explanation of all injuries, bruises and marks sustained by Blue while in that co-committee's care, in the exchange letter.
4. The co-committees will follow the advice and recommendations of Blue's medical and educational professionals and will otherwise exercise their best judgment, in consultation with those professionals when caring for Blue.
5. Either or both co-committees shall be entitled to attend medical and educational appointments regarding Blue, and shall provide two weeks notice of attendance at an appointment to the other co-committee;
6. Mr. Forliti shall not provide instructions to Blue's medical or educational team without prior discussion with and agreement of Ms. Davenport;

7. Each co-committee shall notify the other co-committee of appointment and meeting dates and times, and shall report the outcome of each appointment together with the relevant information pertaining to Blue's care, if the other co-committee does not attend the relevant appointment or meeting; and
8. Each co-committee will exercise their best judgment when hiring a caregiver to ensure that the caregiver is properly qualified and able to properly care for Blue. The other co-committee will be provided with the name and qualifications of the caregiver.

[308] Turning to the issue of the committee of Blue's estate, I agree with Mr. Forliti and the PGT that Ms. Davenport is not the appropriate person to perform that role. I arrive at this conclusion for the following reasons:

- a) There were issues in the past about Ms. Davenport's ability to manage and account for Blue's funds. While I accept that she received little guidance from the PGT about how to do so, her explanation for the shortcomings in her record-keeping were vague and unconvincing;
- b) Ms. Davenport has an inherent conflict in that although the committee must manage Blue's financial affairs in his best interest, Ms. Davenport is dependent upon Blue's resources for her income and for her accommodation; and
- c) Despite numerous warnings from the PGT about the state of Blue's trust fund and the need to develop a back-up plan, Ms. Davenport has not formulated a clear plan for addressing Blue's future financial needs.

[309] In addition to the above, I am also concerned that Ms. Davenport would exercise her authority in a way that would give rise to further conflict with Mr. Forliti. For example, she has questioned why the PGT allocated a portion of Blue's monthly annuity payment to Mr. Forliti and it is likely that she would reverse that if she had authority to do so.

[310] Mr. Forliti did not push strongly to be appointed as Blue's committee of estate. Again, he favours the PGT for this role.

[311] In the circumstances, I am satisfied that it is the PGT that should be appointed as Blue's committee of estate and I so order, with the appointment to take effect when Blue turns 19.

Child Support

[312] Under the 2009 order, Mr. Forliti is required to pay child support in the amount of \$330.00 per month pursuant to s. 9 of the Federal Child Support Guidelines, SOR/97-175. Section 9 provides for a set off where a child of the marriage is with each parent for at least 40% of the time, which is the case here.

[313] Mr. Forliti submits that his child support obligation should be reduced or terminated and he relies on the fact that his income is approximately 10% less than what it was at the time of the 2009 order, which he attributes to the amount of time he takes off to care for Blue.

- [314] Ms. Davenport submits that child support should be paid on more than a straight set off basis given the higher standard of living that Mr. Forliti enjoys, due in part to the fact that Ms. Forliti is also employed and contributes to their family finances. In contrast to Mr. Forliti, Ms. Davenport submits that her income is limited to her share of Blue's monthly care payment and that she has no significant savings or investments.
- [315] While s. 9 of the Guidelines provides for a set off, it also contemplates that the court may determine child support by taking into account the "conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought."
- [316] While it would be open to me to reduce Mr. Forliti's child support payments due to his reduced income, given the difference in the parties' financial circumstances, I am concerned that such a change would adversely affect Blue. Accordingly, the reasonable solution in my view is to continue with the child support payments established under para. 7 of the 2009 order. Mr. Forliti will therefore continue to pay support in the amount of \$330.00 per month, payable in two instalments on the 1st and 15th day of each month.

Summary and Concluding Observations

[317] In summary:

- a) the parties will continue as joint guardians of Blue in accordance with the 2009 order, as varied by these Reasons;
- b) the parties will be appointed as co-committees of Blue's person subject to the terms and conditions set out in these Reasons, with the appointments to take effect when Blue turns 19;
- c) the PGT will be appointed as committee of Blue's estate with the appointment to take effect when Blue turns 19; and
- d) Mr. Forliti will continue to pay child support of \$330.00 per month, payable in two instalments on the 1st and 15th day of each month.

[318] Success in this matter has been divided and the parties will therefore bear their own costs.

[319] I close with the following observation, which reflects a theme that runs throughout these Reasons. Blue has numerous challenges in his life but, in many respects, he is lucky to have two loving families who care deeply for him. At the same time, to the extent that Blue is capable of understanding what is occurring around him, his reality is that the two people most important to him have been at war for almost his entire life, with him in the middle—two people who have shown themselves incapable of looking beyond their own differences and working cooperatively in order to put Blue's needs first. This has to stop. Blue deserves better.

"Skolrood J."

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