
CANADA / JUDGMENT

H.C.F. v. D.T.F.

2018 BCSC 2411

COURT

Supreme Court of British Columbia

DECIDED

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2018 BCSC 2411 H.C.F. v. D.T.F.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

H.C.F. v. D.T.F.,

2018 BCSC 2411

Date: 20181220

Docket: E160037

Registry: Vancouver

Between:

H.C.F.

Claimant

And

D.T.F.

Respondent

Before: The Honourable Mr. Justice Voith

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

P. Daltrop

Counsel for the Respondent:

J.G. McQueen

Place and Date of Hearing:

Vancouver, B.C.

November 29 & December 06, 2018

Place and Date of Judgment:

Vancouver, B.C.

December 20, 2018

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[1] THE COURT: The parties seek various orders in the context of a family law dispute. The parties have agreed to the appointment of a parenting coordinator and to aspects of the issues that that parenting coordinator should oversee. They do not, however, agree on a counselling regime for K., their 13-year-old son.

I. BACKGROUND

[2] There are two distinct chronologies that are relevant to this issue.

A. The Information Available at Trial

- [3] The trial of this matter was heard on November 28 to 30, 2016 and April 10 to 13, 2017. That trial addressed the division of assets between the parties, spousal and child support, guardianship and parenting responsibilities for K., parenting arrangements for K., and counselling for K. At the time of the trial, now almost two years ago, K., who was then 11 years old, was already estranged from his father, Mr. F., and had virtually no relationship with him.
- [4] It is important that the parties had jointly retained Dr. Nicole Aube to provide the court with a s. 211 report. Neither party cross-examined Dr. Aube on her report at trial. It is also important that the parties ultimately agreed during the trial to appoint Dr. Lee Cohene, a psychologist, to work with the family and to help re-establish the relationship between Mr. F. and K. Finally, it is relevant that counsel were able to agree on most terms of a detailed order that addressed each of guardianship, parenting responsibilities, parenting times, and counselling in relation to or for K.
- [5] I rendered judgment in the matter on July 17, 2017. My reasons for judgment are indexed at H.C.F. v. D.T.F., 2017 BCSC 1226 (the "Reasons"). A final order was entered on December 12, 2017 (the "Final Order").
- [6] In the Reasons, I made the following observations and findings:
- [13] Both parties were generally content to accept the conclusions and recommendations of Dr. Aube's s. 211 report. Dr. Aube was not called to give evidence. One of the important recommendations in her report was that the parties retain the assistance of a psychologist to assist in re-establishing the relationship between Mr. F. and K. The parties agreed, during the course of the trial, that that psychologist should be Dr. L. Cohene.
- [14] This particular recommendation is critical because the relationship between Mr. F. and his son has been extremely damaged for more than two years. Though considerable evidence was led by both parties in relation to the severity of this harm that evidence was overwhelmingly consistent.
- [15] There is no doubt that Mr. F. loves his son. Mrs. F. accepts this and says she wants her son to have a positive relationship with his father. There is similarly no doubt that K. refuses to interact, in any meaningful way or to any meaningful extent, with his father. They only exchange pleasantries, if that. K. refuses to spend any time with his father. He refuses to allow him to come to his school or to his baseball games or to watch him compete in sports. On the handful of occasions when the parties have arranged, sometimes with professional assistance, some direct interaction between Mr. F. and K. that interaction has either been very short-lived or ended poorly.

- [16] Conversely, K. is extremely close to his mother. She coaches his baseball team. Both she and K. are extremely avid skiers and they spend virtually every weekend throughout the winter in Whistler.
- [17] Though K. has received and will receive counselling to address his relationship with his father he is, by all accounts, otherwise happy. He has friends, he is athletic and he does well in school.
- [18] To some degree each of Mr. and Mrs. F. sought to explain the difficulties in the relationship between Mr. F. and his son as being the fault, at least in part, of the other. Mrs. F., for example, called several witnesses to describe Mr. F.'s personality and his interaction with his son. These witnesses, for the most part, are the same individuals that Dr. Aube spoke to when preparing her report. Though Mr. F. called no such witnesses at trial, it is clear from Dr. Aube's report that she spoke to several persons who were close to Mr. F. and who provided a different perspective.
- [19] Ultimately I do not consider that I need to develop these matters at length. This is partly because Dr. Aube's opinions, insofar as they relate to Mr. and Mrs. F., align closely with my own observations and conclusions. It is also partly because the parties agreed on many of the detailed terms of a draft order (the "Parenting Order") that addresses the parenting arrangements between them. I am satisfied that these various terms are in K.'s best interests; see the Family Law Act, S.B.C. 2011, c. 25, s. 37, (the "FLA").
- [20] Nevertheless, a few issues remain outstanding. On account of those issues, I have excerpted several central conclusions from Dr. Aube's report which are directly relevant:

In respect to this family, I have no doubt believe that both parents love their son. K. has formed a very tight attachment and actually, an unhealthy partnership with his mother. Ms. F. has been a very nurturing mother and has been, all along, very devoted to her son's physical and intellectual needs and sports interests. I do not have any doubt that Ms. F. dearly loves her son but there are impediments that impact her parenting ability. An important characteristic of a good parent is referred to as "Differentiation of Self" where the parent recognizes the child as separate and unique from themselves and they encourage the child to be autonomous. This aspect is not Ms. F. stronger element of her motherhood. This said, she has been very available to her child and has well organized his life.

As mentioned, Ms. F.'s mental health is of serious concern; she is psychologically fragile and she has not been able to shield her son from her own anxiety. She has fostered a co-dependency relationship with K. Stress from the litigation has exacerbated Ms. F.'s anxiety, which I suppose was too often shared with K. I am also tempted to argue that completing all aspects of the divorce might lighten her anxiety, but it will not fundamentally lift her out of the underlying anxiety disorder.

As aforementioned, Mr. F. has not given full psychological energy to his parental relationship because: 1) he opted to spend considerable time at work; 2) he was not permitted by Ms. F to be alone and to nourish a relationship with his son; 3) he has difficulty being an emotional person; he relates to K. more on a cognitive level, he was at times unable to attune to his son's feelings and preference; 4) K. was given ambivalent messages by Ms. F. that his dad was unsafe. Mr. F. communication with his son appears also impaired; now, he needs to re-establish two-way open communication with his child in an atmosphere of clarity and respectfulness. Despite these parameters, I have no doubt that Mr. F. can be a devoted father and I am confident that he can offer a great deal of stability to his son. He is a resourceful man and can bring a vast array of experience and challenges to K. I do believe that he has K.'s best interests at heart.

Consequently, with the essential conclusion that both parents are generally able and willing to act in the best interest of their son, I recommend that both parents share equally the guardianship of K.F. This child has 2 biological parents, who have good potential and excellent recourses. It would be ill-advised not to permit him to benefit from the potential of each parent. Ms. F. and Mr. F. both should make sound decisions about their child's education, health care, religion and extracurricular activities. Mr. and Ms. F. should be involved in every aspect of their son's life. They also should share equally their parenting responsibilities. Although, Ms. F. has asked to be the last decision maker, I posit it will send a wrong message to K. if one parent can overpower the other parent. Considering the opinion expressed in the clinical opinion section, it would be counter-therapeutic to continue the same pattern that exists now between K. and his mom; for the best interests of K., his dad needs to have and to take on a significant role.
(underlining in original)

Considering that the relationship between K. and his father has been tarnished for at least 2 years, I agree with Ms. F. that a progressive schedule of contact between K. and his father needs to be first put into place, before the implementation of a full and regular parenting schedule. The premise that needs to be stipulated is that hopefully in the near future K. will share his time equally between his father and his mother. There is an actual emotional distance and a healing process that needs to precede this step. With the implicit and essential participation of Ms. F. in this process, and the regular attendance of K. in therapy, I propose implementation steps for K. I recommend Dr. Lisa Ferrari to assist K. to implement a tailored schedule that will take into consideration his emotional state and respect his pace.

[21] In the next four pages of the report, from pages 31-34, Dr. Aube makes various short-term and longer-term recommendations that relate to re-establishing the relationship between Mr. F. and K., to dividing time between the parties and their son evenly, to sharing information about K. and to interacting with each other better. Many of these recommendations are incorporated into the draft Parenting Order that I was provided with. I have attached at paragraphs 1-13, the terms of the Parenting Order, which are either consented to or are unopposed, as Appendix "A" to these reasons for judgment. I do, however, make an order that confirms its various terms.

[22] There are four issues that the parties do not agree about.

[23] First, Mrs. F. continues to assert that she should be the last decision-maker in instances where the parties cannot agree on some issue relating to K. Dr. Aube addressed this issue specifically and she disagreed with this suggestion. For the various reasons expressed by Dr. Aube, I too disagree. Indeed I would say that Mrs. F.'s insistence on this matter, in light of Dr. Aube's comments and more particularly the basis for those comments, is disconcerting.

[7] I do not consider it necessary to address my conclusions in relation to the other issues that were then outstanding as between the parties and that related to K. I also do not consider it necessary to quote at length from the report of Dr. Aube in relation to her concerns with Mrs. F. and how those concerns impacted on K. However, because these are recurring themes and because they are relevant to the issues before me, I have included two further excerpts from Dr. Aube's report. It is relevant that Dr. Aube's assessment was based on her meeting with various individuals, including each of Mr. and Mrs. F., K., and with several counsellors who had interacted primarily with Mrs. F., but also with Mr. F. and with K.

[8] At page 27 of her report, Dr. Aube said:

(Mrs. F.) is also very vulnerable to the opinion of others; she is very preoccupied that she will not be understood and she fears manipulation. She is dubious of others' intentions to her and does not trust easily. Control has been her foremost tool to alleviate her anxiety and to suppress her deep-rooted sense of insecurity. Deep down, she is a frightened woman filled with anxiety. Clinically, Mrs. F. meets the criteria for General Anxiety Disorder. The anxiety is quite elevated, stemming from her childhood, and this is actually the hallmark of her personality. She is a very anxious person, in constant need of reassurance to appease a chronic feeling of insecurity. When anxious, she becomes oversensitive and suspicious. Progressively, over the years of her marriage, when the emotional distance between her husband became obvious, she spent all of her energy and resources to be K.'s mother. It seems to me that because of issues from her childhood when she felt she was a nuisance to her parents and not useful to her husband, Mrs. F. over focused her attention on K. and essentially did not allow him to be away from her. As mentioned, she uses control as a method to decrease her anxiety and becoming the sole guardian/caretaker of K. reduced and/or alleviated her anxiety. I also posit that she will encounter a major crisis when K. becomes a teenager and starts to break away; at the present time she has nothing with which the resulting void can be filled when her son grows up.

Mrs. F.'s attachment to her son is solid and clearly unconditional. She is a devoted mother and her child has been the core of her life. This being said, if cognitively she is somehow aware that her anxiety can be transferred to K., emotionally she has failed to shield K. from her own apprehension. She is a frightened individual, who sadly has shared her anxiety with her son. K. has endorsed his mom's cause by distancing from his dad. I am confident that even if she has not provided exclusive messages, she has surely given K. implicit messages that a relationship with dad was unsafe and consequently to distance himself from dad. Regrettably, she has fostered a co-dependency with K.

[9] In relation to K.'s needs, Dr. Aube, at pages 28 and 29 of the report, said:

In a very practical and idiosyncratic way, K. needs to be shielded from his mom's anxiety. She needs to promote a relationship between her son and his father. He needs to be allowed and encouraged to love his father, without feeling that he might betray his mother. K. needs to be encouraged to perceive his father as the safe adult, that he is, one who is able to nurture him.

K. also needs psychologically healthy parents; he needs his mother to feel stronger and to let go and permit him to build a safe relationship with his dad. I suspect that this aspect will only happen when she feels safer, which might happen through therapy, return to work, interest in hobbies, and/or the development of a good network of friends. K., who is a very sensitive child needs to perceive that his mom's distance is not a rejection, but a process to allow him to gain some independence. K. is a very astute youth and he has not only absorbed his mom's apprehension, but he has also picked up on her negative feelings towards his dad. I need to point out that Mrs. F. is not a malevolent person; she is a woman in great pain.

[10] I do not say that Mr. F. is without fault. At trial he was described as emotionally distant. He put in long hours at work and he was often absent from the home. Dr. Aube said:

Mr. F. is a very bright and resourceful person. He comes from a healthy background and reported a safe childhood. Clinically, Mr. F. does not present with any sign of psychopathology. Mr. F. is, generally speaking, a well-balanced individual. He presented as a kind and affable person, with no history of depression or anxiety. He is thoughtful and tends to keep his emotions private. He is assertive, social and definitely tenacious with at times an overtone of superiority. Although he is a caring person, he expresses his empathy towards others with reserve. He admits to his weaknesses with difficulty. He is a hard worker and clearly has spent a great deal of his energy building his career. Mr. F. who is a savvy businessman, is not psychologically sophisticated. A long time ago, he has abdicated on his relationship with his wife, opting to spend his energy on his career. It seems that he has had a very limited ability to read the emotional state of his wife and to understand how she was doing. Mr. F.'s relationship with K. has become progressively strained after he announced the end of his relationship with his wife.

[11] It is worth noting that although Mr. and Mrs. F. struggle to interact and communicate, there is nothing in the record at trial or at present to suggest that Mr. F. is violent, angry or threatening or that he struggles with any alcohol or drug addiction. In the Reasons at para. 24, I observed that communications between the parties, though conducted by email, were civil.

[12] Other aspects of Dr. Aube's report are relevant and important to the application before me. At the time of her interview with Dr. Aube, Mrs. F. described K. as having trouble falling asleep, being anxious and unhappy, and sometimes being angry. Mr. Stabler, a psychologist who had seen K., described K. as being "really in pain". K., in his interview with Dr. Aube, acknowledged morbid ideation and that he had felt suicidal in the recent past. I repeat that Dr. Aube was not cross-examined on any of these various conclusions.

- [13] Section 211 reports are often a useful source of information for the courts: *T.N. v. J.C.N.*, 2013 BCSC 1870 at para. 15 and *Keith v. MacMillan*, 2014 BCSC 1352 at para. 68. Nevertheless I am mindful that it is for a court to decide the usefulness of a s. 211 report in the context of the particular circumstances before them: *A.P. v. J.C.*, 2018 BCSC 1381 at para. 118 and *Plant v. Kempton*, 2011 BCCA 171 at paras. 7 and 11.
- [14] Dr. Aube had access to more information than I had at trial. Dr. Aube had also met with K. Nevertheless, I considered that Dr. Aube's views aligned with the impressions and conclusions that I formed during the trial: Reasons at para. 19.
- [15] Several paragraphs of the Final Order are relevant. Paragraphs 1 to 9 of the Final Order address guardianship and decision-making for K. Paragraph 1 of the Final Order confirms that both Mr. and Mrs. F. are to remain as joint guardians of K. Paragraphs 4 and 7 respectively provide:
4. The claimant and respondent shall jointly make any major decisions regarding K.'s medical care and treatment including but not limited to decisions regarding surgery, long-term medication, immunizations, major diagnostics, counselling or therapy in consultation with K.'s current physicians, dentists, or other healthcare providers.
 7. The claimant and the respondent shall immediately advise the other of all important information relating to K. including any medical emergency or accident, the date and time of important events, functions, or appointments.
- [16] Paragraphs 10 to 13 of the Final Order address counselling for K. Paragraph 10 directed that K. was to immediately commence regular counselling with Dr. Cohene: "for the purposes of reestablishment of the relationship between K. and the respondent with a goal of implementing a parenting plan in which K. spends equal time in the care of each parent."
- [17] Paragraphs 14 to 17 address the issue of parenting time and, subject to the direction of Dr. Cohene, established a regime of increasing time between K. and his father. None of this anticipated interaction between K. and his father has come to pass.

B. The Events since the Trial

- [18] The second chronology pertains to various events that have occurred since the trial of this action concluded and which are relevant to three issues raised by the parties on the application before me. First, Mr. F. has brought the present application because Dr. Cohene has reported he cannot assist the parties. Second, there continues to be no interaction of any kind between Mr. F. and K. Finally, there is good reason to be significantly concerned with the well-being and mental health of K. Each of these assertions, which I accept, require further development.

- [19] On the first issue, the materials of Mrs. F. indicate that between April 2017 and May 2018, either she or K. or Mr. F., or some combination of them, interacted with Dr. Cohene on 14 occasions. Several of these interactions were phone calls between Mrs. F. and Dr. Cohene. Only five of these interactions involved K. K. has not seen or spoken to Dr. Cohene since December 2017 or for more than a year. The last interaction Mrs. F. had with Dr. Cohene was in May 2018.
- [20] On September 27, 2018, Dr. Cohene emailed the parties. A portion of his email stated:
- My impression is that there has been little, if any, progress over the summer in helping your son to prepare for developing a better relationship with his father. Nevertheless, you both seem to agree that it would be in your son's best interests to have a healthy relationship with his father. Certainly, the research literature is clear about advocating for reconciliation and reunification of children with their parents. I have given your family situation much thought and I have also consulted with a colleague who has many years of experience in dealing with these dilemmas. I have concluded that a team approach is much more suited to your situation. Accordingly, I am commending that you consult with, and agree upon, seeing one of the following psychologists who are each in a position to access colleagues to form a team to deal with your family. I am copying your lawyers as they were the ones who initiated this referral to me.
- [21] As to the second issue, Mr. F.'s materials indicate that he has had virtually no interaction of any kind with K. He has texted K. from time to time without any response. He has periodically sent K. a gift without any apparent acknowledgment of receipt or thanks.
- [22] Finally, the application materials of Mrs. F. reveal that in November 2017, K. had several interactions with his school counsellor who described K. as being at the point of "cracking". The materials suggest K. would periodically yell and scream and that he would sometimes kick and throw things. He also used car seats as punching bags. The counsellor described K. as "being in crisis". She further described K. as angry. She expressed concern about K. and how he was handling stress, pressures, and his emotions. Mrs. F. was told to take K. to Children's Hospital if he said things such as "I wish I were dead".
- [23] On January 22, 2018, Mrs. F. took K. to Children's Hospital because he could not be calmed down and because he expressed feelings of sadness and hopelessness. Mrs. F. was advised to have K. participate in the Link Program at Children's Hospital, to set up a counsellor for K., and to have him see a psychiatrist for depression evaluation. The next day, Mrs. F. was told K. would have to be waitlisted with the Link Program. Mrs. F. then set up a meeting with her family doctor. Following an evaluation of K., the family doctor apparently recommended that K. would benefit from his own counselling, rather than from seeing Dr. Cohene, and she recommended that K. not be required to see Dr. Cohene and Mr. F.

- [24] Mrs. F.'s application materials go on to say that she tried to convince K. to see a therapist, in or about January 2018 and again in or about June 2018, but he refused both times. He did see his school counsellor in the spring of 2018 until the end of the school year. He also participated in an art therapy program at Quilchena Elementary School.
- [25] Several troubling conclusions emerge from this chronology. Remarkably, none of this information was disclosed to or shared with Mr. F. at the time. It was only in the context of this application that Mr. F. learned, for example, that his son had been taken to Children's Hospital. This is both incomprehensible and unforgiveable. Furthermore, it is inconsistent with paragraph 7 of the Final Order which placed a positive obligation on Mrs. F. to share such important information with Mr. F.
- [26] Still further, Mrs. F. thereafter appears to have made all decisions in relation to K.'s well-being and mental health unilaterally and without Mr. F.'s input. She took K. to their family doctor and she concluded, with the family doctor's input, that K. should not see Dr. Cohene and Mr. F. She has largely deferred to K.'s wishes not to see a therapist. She has not had K. see a psychiatrist for depression evaluation as advised by Children's Hospital. Though Mrs. F. consulted with other counsellors, it does not appear that K. has received any counselling since the end of the last school year. This was done despite the fact that paragraph 4 of the Final Order placed a positive obligation on Mrs. F. to make all such decisions with the input of Mr. F.
- [27] Mrs. F.'s materials suggest that Mr. F. has not been responsive in relation to some of her communications to him about K. Mr. F.'s materials generally refute these assertions. Even if, however, this were true, it would not relieve Mrs. F. of her obligation to inform Mr. F. of matters of such import and to seek his input in order to make the decisions for K. that they jointly consider to be in his best interests. If they were unable to communicate or if they struggled to do so, they could have involved the assistance of the parenting coordinator that was provided for in the Final Order. If they were unable to agree, they should have returned before me for some resolution of the impasse they were in. It was not open to Mrs. F., however, to act unilaterally and to make such decisions for K. as she considered appropriate. Indeed, this is the very issue that was foreshadowed at trial when Mrs. F. asked that she, in the event of an inability to agree with Mr. F., have final decision-making authority in relation to K.'s well-being. Dr. Aube expressly addressed this issue in her report and I determined that such ultimate decision-making authority should not rest with Mrs. F. alone: Reasons at para. 23.
- [28] A similar issue also arises in a different way. At trial, Mrs. F. had proposed that Mr. Stabler, a counsellor who Mrs. F. and K. had some history with, also see K. in relation to his difficulties with his father. Mr. F. opposed this and, for various reasons, I agreed with him. The parties thereafter agreed on the appointment of Dr. Cohene. In spite of this, Mrs. F.'s materials on this application reveal that, after her son stopped seeing Dr. Cohene in December 2017, she took him to see Mr. Stabler. This, again, appears to have been done without Mr. F.'s knowledge or agreement. It is telling that, on this application, Mrs. F. is yet again proposing

that K. see Mr. Stabler for assistance.

- [29] There is further reason for concern. Mrs. F. kept detailed notes of her various interactions with Dr. Cohene. Those notes were attached to her affidavit. Mr. F.'s counsel, at the application before me, argued that those notes reflected a suspicion of Dr. Cohene. I agree and would go further. Mrs. F.'s notes, which are often pages long, reflect a fundamental negativity about the process the family was engaged in with Dr. Cohene. More importantly, for present purposes, neither Mrs. F.'s affidavit nor her notes suggest that she told Dr. Cohene that K. had been to the hospital in January 2018 or that the personnel at the hospital had recommended K. be assessed by a psychiatrist. Mrs. F. met with Dr. Cohene on January 30, 2018, which was about a week after K. had been to the hospital. Her failure to relay this information to Dr. Cohene is inexplicable. Indeed, Mrs. F. appears to not have been forthright with Dr. Cohene and Mr. F. Her notes of a meeting on February 15, 2018 with Dr. Cohene and Mr. F. state:

I mentioned that I just took K. to see his doctor for a check up as she wanted me to bring him in. K.'s doctor agreed on this approach/also recommended to hold off until things settle down for K ...

- [30] Based on Mrs. F.'s affidavit materials, K.'s attendance with his doctor was not a mere checkup. It was the direct result of his being to Children's Hospital the week before for mental health reasons. At best, Mrs. F.'s conduct reflects a serious lack of judgment. At worst, it reflects a form of manipulation that is disconcerting.
- [31] There is still another matter that provides some insight into the issues before the court. Mr. F. deposes that K. has also become alienated from his grandparents. Both Mrs. F.'s mother and father and Mr. F.'s father have filed materials on this application indicating that, notwithstanding their efforts, they have been unable to see or interact with K. in any meaningful way for several years. Mrs. F.'s response materials speak to the difficulties she had in her relationship with her parents and with Mr. F.'s father and she asserts that none of them have displayed any interest in K. That latter assertion, which Mrs. F. also makes consistently against Mr. F., is inconsistent with the content and tenor of the materials that were filed by K.'s grandparents. More importantly, it is concerning that K., an only child, is growing up without any interaction with anyone in his immediate or extended family other than his mother. Whether this is by design or otherwise will be something for the parties' counsellors to consider.

II. THE LEGAL FRAMEWORK

- [32] Though I have expressed concerns about the behaviours of Mrs. F., this application is not about her or about Mr. F. Their respective shortcomings are not relevant except in so far as those shortcomings interfere with K.'s well-being and best interests or are inconsistent with existing orders of this Court.

- [33] Section 37(1) of the Family Law Act, S.B.C. 2011, c. 25 [FLA] confirms that in making an order respecting parenting arrangements or contact with a child, the parties and the court are only to consider the best interests of the child. Section 37(2) establishes a non-exhaustive list of relevant considerations. Several of those considerations are directly relevant in this case. Others, such as the provisions dealing with family violence or legal proceedings that are relevant to a child's safety or well-being, are not directly relevant based on the record before me.
- [34] Section 37(2)(a), (c), and (f) are somewhat interconnected and each is important. It seems clear that K.'s health and emotional well-being are at risk. While Mrs. F. emphasizes that K. does well at school and engages in various sports, these considerations are much diminished by his apparent anger and sadness. Dr. Aube expressed a serious concern with K.'s well-being two years ago. The record and history I have described since that time confirms these concerns. A young boy who is on the verge of "cracking" or who has been taken to Children's Hospital on account of his low mood is in need of assistance.
- [35] Furthermore, it is in the best interests of K. to establish a long-term relationship with his father. This was the view of Dr. Aube. It is the view of Dr. Cohene. It is a view that Mrs. F. purports to share. It is also a view that has been repeatedly and consistently confirmed by the courts of this province: see *J.C.W. v. J.K.R.W.*, 2014 BCSC 488 at paras. 78 and 80; *L.G. v. R.G.*, 2012 BCSC 1365 at paras. 270, 273, and 275; *Marquez v. Zapiola*, 2013 BCCA 433 at paras. 67 and 68. At this point, Mr. F. has not had a meaningful relationship with K. for four years. He has effectively not seen his son for two years.
- [36] In order to determine what is in the best interests of a child, s. 37(2)(b) requires the court to consider the views of the child unless doing so would be inappropriate. I will return to this issue further because it is one of the bases on which Mrs. F. opposes this application. For present purposes, the following guidance from a recent decision of the Court of Appeal is relevant. In *J.E.S.D. v. Y.E.P.*, 2018 BCCA 286, a 17-year-old sought to be added as a party to the litigation. Justice Groberman said:
- [50] I do not suggest that the child's wishes are to be ignored in assessing what is in the child's best interest. Under s. 37(2)(b) of the Family Law Act, the views of children are a relevant consideration in determining their best interests, unless it would be inappropriate to consider them. This consideration, however, is only one among many that helps a court determine what is in the best interests of the child.
- [51] In *A.C. v. Manitoba (Director of Child and Family Services)*, 2009 SCC 30, the Supreme Court of Canada considered the concept of "best interests of the child" in the context of legislation that permitted a court to authorize medical treatment, even against a child's wishes. Justice Abella, writing for the majority, noted that as children gain maturity, their wishes become proportionately more important in determining what is in their best interests. She stated:

- [87] The more a court is satisfied that a child is capable of making a mature, independent decision on his or her own behalf, the greater the weight that will be given to his or her views when a court is exercising its discretion under s. 25(8). In some cases, courts will inevitably be so convinced of a child's maturity that the principles of welfare and autonomy will collapse altogether and the child's wishes will become the controlling factor.
- [92] The statutory factors reflect decades of careful study into children's needs and how the law can best meet them. With our evolving understanding has come the recognition that the quality of decision making about a child is enhanced by input from that child. The extent to which that input affects the "best interests" assessment is as variable as the child's circumstances, but one thing that can be said with certainty is that the input becomes increasingly determinative as the child matures.
- [52] Inherent in the Court's analysis in A.C. is the recognition that circumstances will exist when the child's wishes do not conform to what is in his or her best interests. Children are sometimes incapable of identifying what is in their own best interests.

See also *Fox v. Fox*, 2018 BCCA 359 at paras. 18 to 27.

III. POSITIONS OF THE PARTIES

- [37] With this legal and evidential framework in mind, I turn to the position of the parties. Mr. F.'s position is straight forward. He simply asks that Dr. Cohene's recommendations be given effect and that the court direct that one of the two groups of counsellors that Dr. Cohene identified be appointed to assist both K. and the parties and to help re-establish a relationship between Mr. F. and K.
- [38] Mrs. F. opposes my making such an order on four distinct bases. First, Mrs. F. argues that the question of what counselling regime is appropriate for K. should be delegated to and determined by the parties' parenting coordinator. Second, Mrs. F. says that significant weight should be given to K.'s wishes. Third, Mrs. F. submits that Dr. Cohene has not adequately explained the basis for his recommendations, with the result that the court cannot consider his recommendations in assessing what, if any, counselling regime would be appropriate for K. Finally, Mrs. F. argues that the cost of counselling using a team approach is excessive.

IV. ANALYSIS

A. Can a parenting coordinator determine what counselling regime is appropriate for a child?

- [39] Mrs. F.'s position is that the choice of counselling regime for K. should be delegated to the parties' parenting coordinator. I do not consider that to be correct. First, I do not consider it to be appropriate in the circumstances of this case. Second, I do not consider that parenting coordinators have such jurisdiction. Because this legal issue does not appear to have been expressly addressed in earlier decisions, I have addressed the question in some detail.

1. The Language of the FLA

[40] Section 15(2) provides:

A parenting coordinator may assist only

- (a) if there is a parenting coordination agreement or order in place, and
- (b) for the purpose of implementing an agreement or order respecting parenting arrangements, contact with a child or other prescribed matters.

[Underlining added.]

[41] Section 17 provides that parenting coordinators may assist the parties in relation to the matters in subparagraph (a), which is not relevant to this issue, or in relation to subparagraph (b) which provides:

by making determinations respecting the matters prescribed for the purposes of section 18

[Underlining added.]

[42] Section 18(1)(a) provides that parenting coordinators:

may make determinations respecting prescribed matters only, subject to any limits or conditions set out in the regulations

[Underlining added.]

[43] Section 18(1)(b) provides that parenting coordinators:

must not make a determination respecting any matter excluded by the parenting coordination agreement or order, even if the matter is a prescribed matter

[44] Section 18(2) provides that parenting coordinators must consider only the best interests of the child as set out in s. 37 in making a decision respecting parenting arrangements or contact with a child.

2. Prescribed Matters for Determination by Parenting Coordinators

[45] The "prescribed" matters in relation to which a parenting coordinator may make a determination are set out in s. 6 of the Family Law Act Regulation, B.C. Reg. 347/2012 [Regulations]. Sections 6(3) and (4) are particularly relevant: see *Silverman v. Silverman*, 2013 BCSC 601 at para. 24 and *Alhashimi v. Alhashimi*, 2016 BCSC 1545 at para. 29.

[46] Section 6(3) of the Regulations provides that:

The following are the matters in respect of which a parenting coordinator may make determinations:

- (a) parenting arrangements;
- (b) contact with a child.

[47] Section 6(4) of the Regulations provides a more detailed list of the matters that fall under s. 6(3). Specifically, under s. 6(4)(a), a parenting coordinator:

may make determinations in respect of

- (i) a child's daily routine, including a child's schedule in relation to parenting time or contact with the child,
- (ii) the education of a child, including in relation to the child's special needs,
- (iii) the participation of a child in extracurricular activities and special events,
- (iv) the temporary care of a child by a person other than
 - (A) the child's guardian, or
 - (B) a person who has contact with the child under an agreement or order,
- (v) the provision of routine medical, dental or other health care to a child,
- (vi) the discipline of a child,
- (vii) the transportation and exchange of a child for the purposes of exercising parenting time or contact with the child,
- (viii) parenting time or contact with a child during vacations and special occasions, and
- (ix) any other matters, other than matters referred to in paragraph (b), that are agreed on by the parties and the parenting coordinator

[48] Section 6(4)(b) of the Regulations expressly provides that a parenting coordinator must not make any determination in respect of:

- (i) a change to the guardianship of a child,
- (ii) a change to the allocation of parental responsibilities,
- (iii) giving parenting time or contact with a child to a person who does not have parenting time or contact with the child,
- (iv) a substantial change to the parenting time or contact with a child, or
- (v) the relocation of a child.

3. Relevant Case Law

[49] Although parenting coordinators may make determinations in respect of parenting arrangements, under s. 6(3) of the Regulations, that role is limited to assisting with the "implementation" of parenting arrangements. Parenting coordinators do not themselves establish parenting arrangements: D.E.E. v. W.L.E., 2015 BCSC 612 at paras. 29, 39, and 49; ss. 15(2), 17 and 18(1)(b) of the FLA.

[50] This is clear from the language of s. 15(2) of the FLA, reproduced above, where the legislature has restrained the scope of a parenting coordinator's authority to assisting only where a parenting coordination agreement or order is in place and only for the purpose of implementing such agreement or order.

[51] Where such parenting coordination agreements are silent or contain terms that are consistent with the FLA, the scope of the parenting coordinator's mandate is essentially determined by s. 17 and 18 of the FLA: see D.E.E. at para. 41 and *Odgers v. Odgers*, 2014 BCSC 717 at para. 38.

4. Application

[52] Based on the foregoing authorities and legislative provisions, I do not consider that a parenting coordinator can make a determination regarding the appropriate therapy regime for a child, even if they account for the best interests of the child. I say this for two reasons.

[53] First, deciding the appropriate therapy regime for a child does not fall within the parenting coordinator's facilitator role as set out in s. 17(a) of the FLA. Parenting coordinators assist with the implementation of parenting arrangements and contact. They do not, however, establish such parenting arrangements: see *M.H. v. C.S.*, 2013 BCSC 2232 at para. 36; *Geary v. Geary*, 2017 BCSC 1063 at para. 136; *Law v. Cheng*, 2017 BCSC 328 at para. 36. Thus, s. 17(a) of the FLA, when describing how a parenting coordinator may assist the parties, uses language that describes how to facilitate cooperation between the parties. This can occur, for example, by "building consensus", by "creating guidelines respecting communication", or by "identifying and creating strategies [to resolve] conflicts between the parties". By extension and in a similar vein, I do not consider that the language of the provisions of the FLA that I have identified, particularly s. 15(2), extend to allow parenting coordinators to establish appropriate counselling regimes for a child. Instead their role is limited to the implementation of a regime that a court has decided is necessary or appropriate.

[54] Second, determinations on the appropriate therapy regime for a child do not fall within the "prescribed" matters set out in either s. 17 and 18 of the FLA or s. 6 of the Regulations. Section 6(4)(a)(v) of the Regulations does provide that a parenting coordinator may make determinations in respect of "the provision of routine medical, dental or other health care to a child". However, I do not consider the assistance of counsellors or medical professionals, who are needed to help a child in crisis or who is estranged from a parent, constitutes the provision of such "routine" care. Furthermore, I do not consider the remaining subparagraphs of s. 6(4) of the Regulations to be relevant to this issue.

B. How much weight should be attributed to the child's wishes?

[55] The second issue raised by Mrs. F. is that significant weight should be given to K.'s wishes. Mrs. F.'s application response suggests that Dr. Cohene's recommendations do not give sufficient weight to K.'s views and that K. should be permitted to consult his own therapist.

- [56] I have earlier addressed s. 37 and the various considerations that are pertinent to a child's best interests, including consideration of the child's views or wishes. Section 37 is expressly directed to agreements and orders respecting guardianship, parenting arrangements, or contact with a child. One aspect of this application pertains to advancing or re-establishing K.'s contact with his father. Another, however, pertains to his health and mental well-being. When a child's health is, or potentially is, involved, the importance of the views of the child can take on different significance. As Groberman J.A. said at para. 52 of J.E.S.D., "circumstances will exist when the child's wishes do not conform to what is in his or her best interests".
- [57] In this case, K., when he was 12 years old, was so distraught that Mrs. F. took him to Children's Hospital where it was recommended that he see an individual counsellor and a psychiatrist for depression evaluation. Mrs. F.'s materials state that K. showed increasing signs of low mood, sadness, and hopelessness. Those same materials indicate that she tried to convince K. to see a therapist privately, but that he refused. Elsewhere, Mrs. F. indicates that some months later when K. was still 12 years of age, she again tried to set up counselling for K. but that he responded that he was not yet ready.
- [58] These are not decisions that can or should be left to a 12-year-old. The views of a child of 12 or 13 years of age, in relation to the treatment they require for their physical or mental health, have diminished importance. In such circumstances, the issue is not whether the child requires professional assistance, but how best to provide that assistance.

C. Can the Court rely on Dr. Cohene's recommendations?

- [59] The third issue raised by Mrs. F. is that Dr. Cohene has not adequately explained the basis for his recommendations. It is relevant that one aspect of Mr. F.'s application contemplated having the parties and K., if necessary, go back to Dr. Aube for further assistance and a further report. Mr. F.'s counsel proposed this option in the event that the court considered that it lacked sufficient information to address the questions before it. Mrs. F., through her counsel, opposed the parties returning before Dr. Aube. I was also advised that when Mr. F. sought to have Dr. Cohene prepare a report, Mrs. F. opposed his doing so. In such circumstances, the assertion that Dr. Cohene's recommendations are insufficiently explicit loses some force.
- [60] Be that as it may, I am satisfied that I have sufficient information to make a decision as to an appropriate counselling regime for K. The options being advanced or the proposals being made by Mr. F. are not dramatic or drastic. They are simply necessary. Furthermore, the concept of requiring a group of counsellors to help K. makes perfect sense.
- [61] K.'s views and attitudes are influenced by his parents and their respective shortcomings. This is clear from the earlier report of Dr. Aube. It seems clear that K. is significantly influenced by his mother's anxieties. When Dr. Cohene sought to speak to Mrs. F.'s counsellor, she declined to permit this. Mrs. F. may well wish to continue to see her own existing counsellor, but I consider that some open and honest exchange between the parties

through their counsellors or otherwise will both advance K.'s mental well-being and increase the prospect of K. establishing a relationship with his father.

- [62] One of the two groups that Dr. Cohene recommended, described as the Reach Team, and for whom I was provided with additional information, operates on the West Side of Vancouver in an area that will facilitate access by K. and his mother. Furthermore, the senior members of this group are all individuals with significant experience. Many of them are well-known to this Court.

D. Is the cost of such counselling an obstacle for the parties?

- [63] The fourth issue raised by Mrs. F. is the cost of counselling using a team approach. Mr. and Mrs. F. are comparatively affluent individuals. A parallel application I recently addressed dealt with the sale of a Whistler ski home that had been valued at approximately \$1.5 million. Furthermore, in the Reasons, I awarded Mrs. F. \$16,000 per month in spousal support and more than \$7,000 per month in child support. I do not consider that the cost of counselling for K. is, in the circumstances, a meaningful consideration or concern.

V. CONCLUSIONS

- [64] I am satisfied that K. should receive further counselling. I am satisfied that that this counselling should be done using a team approach. I am satisfied that the senior members of the Reach Team have the skills and experience to assist K. and I am satisfied that the parties should retain this group of counsellors. I do not consider that I can or should designate specific counsellors within this group that should be retained. This may turn on their availability and on other factors.
- [65] I am further directing that Mrs. F. not speak to K. about these matters until the parties have approached the Reach Team and received guidance on how best to raise and introduce the matter to K.
- [66] Finally, I am directing that the members of the Reach Team who are engaged to assist be provided with Dr. Aube's report, with the Reasons, with the application materials for this specific application, and with the reasons from this application.

"Voith J."

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