
CANADA / JUDGMENT

J.A.F. v. J.J.F.

2018 BCSC 84

COURT

Supreme Court of British Columbia

DECIDED

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2018 BCSC 84 J.A.F. v. J.J.F.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

J.A.F. v. J.J.F.,

2018 BCSC 84

Date: 20180119

Docket: E043488

Registry: New Westminster

Between:

J.A.F.

Claimant

And

J.J.F.

Respondent

Before: The Honourable Mr. Justice Verhoeven

Reasons for Judgment

Counsel for the Claimant:

G.K. Thomas

The Respondent:

In person

Place and Dates of Trial:

New Westminster, B.C.

November 8-10, 30, 2017

December 1, 2017

Place and Date of Judgment:

New Westminster, B.C.

January 19, 2018

I. Introduction

- [1] These reasons for judgment address custody, guardianship and parenting issues arising out of the reasons for judgment (the RFJ) I released in this matter February 23, 2016, indexed as 2016 BCSC 300, following a lengthy trial, and the subsequent orders made following the release of the RFJ.
- [2] In the RFJ I found that the parties' then 11 year old daughter, K., was severely alienated from the respondent, her father, and that a reunification program was necessary in her best interests.
- [1] The RFJ led to my orders of February 23, 2016, (order no. 1) and March 31, 2016, (order no. 2) in which I ordered that K. be enrolled in the Family Reflections Reunification Program (FRRP) under clinical director Dr. Kathleen Reay for a period of one year, in order to address the alienation of K. from her father. The father was granted interim sole custody and guardianship to the exclusion of the mother, for the purpose of facilitating the reunification program. As will be set out in further detail below, unfortunately Dr. Reay became ill and was unable to continue in practice. FRRP ceased operations effective December 31, 2016, and in practical terms well before that. There were other problems and delays in the reunification program.
- [2] In the RFJ (para. 149) I stated that longer term orders would require further evidence as to K.'s progress, to be provided by the FRRP or otherwise.
- [3] By applications dated February 17 and February 21, 2017 the mother applied for joint custody with equal parenting time, for a further s. 211 report or an update report from Dr. LaTorre, and applied for a hearing to be scheduled. On February 24, 2017 I ordered that Ms. Terri Rypkema, the FRRP counsellor who had in effect been in charge of the program for some months, assume conduct of the reunification program in place of Dr. Reay. I also ordered that Dr. LaTorre provide the court with an updated s. 211 assessment report. Dr. LaTorre provided an updated report dated June 13, 2017. At a trial management conference held June 19, 2017 hearing dates of June 22 and 23 were adjourned, and dates of November 8-10, 2017 were arranged.

- [4] The hearing occurred November 8-10 and November 30-December 1. In effect, the hearing was a combination of a review of the earlier orders, and the hearing of the mother's applications. Witnesses at the hearing were the parties, and Ms. Rypkema. Neither party called Dr. LaTorre, whose evidence was therefore presented through his s. 211 update report in conjunction with his two 2015 reports. Dr. LaTorre testified at the trial in 2015.
- [5] The current issues relate to custody, guardianship, and parenting arrangements for K. The mother seeks joint custody and guardianship, with equal time parenting on a one week on/one week off basis, commencing immediately, and orders relating to child and spousal support. The father seeks an extension of his interim sole custody and guardianship. He proposes that the reunification therapy program be continued using a different provider, under the direction of Robert Finlay. He also applies for orders dealing with financial matters such as spousal support, child support, and other matters.
- [6] Due to lack of time, and the primacy of the custody and guardianship issues, at the conclusion of the hearing, the financial issues were adjourned generally.

II. Background

- [7] The RJF are detailed and lengthy. I do not need to repeat them here. However for convenience, a summary of the more relevant findings and orders is as follows:
1. K. was extremely alienated from her father (paragraphs 13, 85, 91, 116, 138, 142);
 2. While the circumstances of the family may have led to contributing factors the mother had, at least, enabled the alienation: para. 123, and had favoured her own relationship with K. over the father's: para. 133.
 3. I rejected the contention that K's alienation from her father was justified. I said that it was based upon false, distorted views, and if permitted to persist would likely be profoundly harmful to K: para. 138. The mother's insistence on supervised, limited access (based, initially, on the staircase incident) had been very harmful to K: para. 135. Her refusal to cooperate with Dr. LaTorre's further assessment work in connection with his supplementary report was reprehensible: para. 137;
 4. I accepted the recommendation of Dr. LaTorre that participation in a reunification program be ordered. I stated:

142 The fundamental conclusions of Dr. LaTorre are few in number and amply supported by the evidence. That is, there is severe alienation, that it is unjustified and harmful to K, that the father is a competent, loving parent who does not pose a risk to K., and that re-integration is urgently required, and is worth attempting, even through drastic measures. I accept these conclusions.

5. The costs of the program were to be the joint, equal responsibility of both parents: para. 152;

6. Concerning the staircase incident, which had played such a large role in the events and in the behavior and attitudes of the parties, I could not determine whose version of the events to accept, or the true facts. However I formed the view that some sort of physical interaction occurred between them. (I agree with the subsequent comments of Dr. LaTorre in his s. 211 report addendum dated June 13, 2017 that it is possible that each parent truly believes their version of events, although they cannot both be true. While Dr. LaTorre was speaking from a psychological perspective, this is a conclusion I have frequently come to in court cases);
7. I commented (para. 147) that the provisions of the marriage agreement provided a reasonable framework or rough template for a desirable objective for custody, guardianship and parenting of K., subject of course to changes in circumstances. That agreement provided for joint custody and guardianship, and approximately two thirds "regular parenting time" with the mother, and one third with the father, "subject to the age, circumstance and any special needs of [K] in future." The marriage agreement was entered into by the parties in November 2010, when K. was five years of age, at a time when the parties were attempting to reconcile after having separated twice before. They separated for the third and final time in December, 2012. The agreement was closer to a separation agreement than a pre-nuptial marriage agreement: (para. 174). The spousal support provisions of the agreement were set aside.
- [8] The RFJ resulted in orders no. 1 and 2. Order no. 2 focused on implementation of the reunification program. As noted, the order provided for interim sole and exclusive custody and guardianship of K. to the father. The mother was restrained from having contact with K. except for the treatment plan or by further order of the court or agreement of the parties. Dr. Reay was granted certain authority and discretion in order to implement the reunification therapy program. Order no. 2 refined the joint reunification expense term of order no. 1.
- [9] I ordered that the FRRP costs be a first charge on the funds in court. Dr. Reay's first report to the court dated May 31, 2016 stated that the mother had not signed the necessary agreements with FRRP, for financial reasons, and that as a result the program was stalled. On June 16, 2016, (Supplementary RFJ indexed at 2016 BCSC 1114) I ordered that \$18,000 be set aside as security for payment of further FRRP costs. The mother continued to have difficulty funding her share of the costs for various practical reasons, that resulted in some further delays and difficulties.
- [10] Dr. Reay became seriously ill sometime in August 2016. In November 2016, FRRP notified the parties that Dr. Reay was on medical leave, and that in the meantime Ms. Terri Rypkema was acting Clinical Director of FRRP. Ms. Rypkema had been acting as the post retreat counsellor and, in practical terms, the coordinator of the program since May 2016. Ms. Rypkema is a Registered Clinical Counsellor, and has a master's degree in counselling psychology.

- [11] FRRP (in effect Ms. Rypkema) provided a further report dated December 10, 2016 stating that Dr. Reay would be unable to continue in her position as head of FRRP, which was closing effective December 31, 2016. Ms. Rypkema offered to continue the program under her own counselling services firm, Whole Life Counselling, ("Whole Life") operated by Ms. Rypkema and her husband, who is also a professional counsellor.
- [12] Pursuant to the program, the mother had been having contact with K. in the context of counselling sessions with Ms. Rypkema beginning on October 27, 2016. The mother was willing to continue the program with Whole Life, but the father was not. He explored other options. The program stalled again. As a result the mother's contact with K. was suspended.
- [13] On February 24, 2017, I ordered that the reunification program continue under the direction of Ms. Rypkema. I ordered an update report from Dr. LaTorre.
- [14] Since her appointment, Ms. Rypkema has directed the pace of increased contact between the mother and K.
- [15] The mother's contact with K. resumed March 9, 2017, weekly, on a supervised basis, at the offices of Whole Life. In May or June (the evidence conflicts) regular unsupervised contact began. From September 2017 when school resumed, the mother had contact mostly on Sundays, from 9 a.m. to 7 p.m. Overnight contact began November 3, 2017.
- [16] Dr. LaTorre provided the updated s. 211 report on June 13, 2017.
- [17] At the conclusion of the hearing, I re-interviewed K., who I had interviewed more than two years earlier, on October 28, 2015.

III. Discussion and Analysis

A. Dr. LaTorre update report

- [18] In the RFJ, I placed considerable weight on the recommendations of Dr. LaTorre whose reports I referred to many times, and discussed in some detail at paras. 94 to 106, and 111 to 152.
- [19] The update report of Dr. LaTorre is once again thorough and comprehensive. Just as with the prior reports in 2015, I consider the report insightful, fair, and worthy of considerable weight. Helpfully, Dr. LaTorre reviews and summarizes the five FRRP and Rypkema reports available to him at the time of writing of his report, in the context of history of the matter since August 2015, when he wrote his last report. He addresses the concerns of the parties, and updates their personal histories. He interviewed and assessed the father's new partner, including psychological testing. He observed interactions with K and each parent, and interviewed K, twice. He interviewed Ms. Rypkema, and other important collateral contacts such as child care workers, teachers, K's paediatric specialist, and her Certified Behavior Analyst. With one important exception, Dr. LaTorre obtained and considered relevant information, comprehensively.

- [20] The exception is in relation to the mother's new male partner, R.M. R.M. is reasonably expected to be in a step-parent role for K., given the mother's stated desire for equal parenting time of K. with the father, and the information available about the relationship. When she was initially asked about this topic by Dr. LaTorre, she dissembled. When pressed, she refused to identify the person to Dr. LaTorre. In substance she refused to allow Dr. LaTorre to assess R.M. The mother's lack of candor and refusal in this respect to cooperate fully with the court appointed s. 211 assessor is wrongful and problematic. At trial she testified that she could not recall if she provided R.M.'s name to Dr. LaTorre as he requested. I do not accept her testimony about this.
- [21] The father alleges that R.M. attempted to intimidate him on March 2, 2016. I am not in a position to make any findings about this and it is not necessary that I do so.
- [22] I will not attempt to summarize Dr. LaTorre's lengthy report. The most pertinent current findings and recommendations of Dr. LaTorre are as follows:
1. K. is no longer being exposed to alienating behaviour or behaviour that enables or encourages her to act out violently against her father. FRRP intervention and continued reunification counselling appears to be successfully addressing these concerns;
 2. Practically speaking, the most important points are (1) K. is no longer alienated from her father; and (2) the need to establish a plan to reduce the likelihood that the behaviors that caused the alienation will recur, so that (3) K. can ultimately have a healthy relationship with her parents;
 3. Although K.'s comments to Dr. LaTorre in his interviews with her appeared rote at times, nonetheless in contrast to her earlier reported views, there has been a remarkable change. K. stated that she loves both parents equally, expresses admiration for her father, and would like to see her parents about equally; that is, for about the same amount of time. She would like her parents to get along and have a "healthy relationship".
 4. K. loves and respects both her parents. She has a strong bond with both of them. She has a good relationship with Ms. Rypkema and, within limits, the father's new female partner. Her relationship with her father is still marked by volatility and periodic outbursts, and could be described as a love-hate relationship. However, that is a significant improvement from two years ago when K.'s only professed emotion toward her father was hatred;
 5. The mother now supports co-parenting with the father;
 6. Dr. LaTorre noted the mother's comments to him that she had developed a good working relationship with Ms. Rypkema, and Ms. Rypkema's report that the mother had made significant progress, and that she wanted to move to a co-parenting relationship, and wanted to put the parents' difficult relationship behind them;

7. He was concerned about the "potential partner" in the mother's life, particularly in view of the mother's prior relationship with D.S. and the role that had played in K.'s alienation from her father. (I referred to that at para. 130 of the RFJ; where I was highly critical of the mother's conduct);
8. K. requires greater stability than do other children her age. This includes stability in terms of parental figures such as stepparents;
9. Not untypically, the parents have a tendency to dwell upon perceptions of past injustices and wrongs.
10. The collateral contacts were very positive regarding their impressions of the father's parenting efforts. The father's choices, during the time he has had sole guardianship, have been without reported fault;
11. The father has largely demonstrated that he can responsibly exercise his responsibilities as K.'s guardian. An exception is that he has not been able to put behind him the hostility and resentment he feels towards the mother for causing the alienation. In this respect, the mother's acknowledgment is limited. She stated to Dr. LaTorre that, "the family dynamics at that time may have led to alienating behavior but it wasn't purposeful." The mother is more positive on the staircase incident, in saying to Dr. LaTorre that, "We had our time [in court] and that is done."
12. Dr. LaTorre suggested that the father should consider counselling to address the anxiety and hostility he feels around the mother, and so that he might better discharge his parental responsibilities. He notes that, "[the father's] guardianship of K. has been described as all consuming. It is doubtful he can keep up that pace." (In addition to the demands of work and parenting, he has no legal counsel.) He noted that some respite will come as the mother's contact time or, eventually, parenting time, increases. He recommended that in the meantime, the father should consider an independent counsellor or therapist to address his stress and frustration and to serve as an independent source of support throughout the remaining reunification process. (At the hearing, the father testified that he has accepted this advice, and commenced counselling);
13. The parents are presently unable to effectively cooperate on issues affecting K.;
14. It is in K.'s best interests that the father continue having decision making authority. An extension of his interim sole guardianship would be appropriate. He noted that Dr. Reay's initial expectations for these cases was a period of up to 2 years of modified guardianship and after-care, and that "this may be one of the more severe cases of alienation";
15. Joint guardianship could be returned to both the parents, if a point is reached where the parents are able to discuss K.'s best interests civilly, perhaps with the aid of a moderator, mediator or referee. (In his 2015 reports, he endorsed using the services of a parenting coordinator such as Dr. Elterman.)

16. The simplest approach, and one that does not incur unanticipated risks, is for the father to retain interim sole guardianship until the parents are at the stage envisioned by Ms. Rypkema, that they can discuss issues about K. and until the point that the mother has extended contact time with K. without adverse consequences for K. or a relapse of alienation. At that point, a conservative approach would be to endorse joint guardianship but allow the father to retain final decision-making authority in the event of a disagreement. If Ms. Rypkema's family therapy goals are realized with the parents, they could use mediation to resolve disputes regarding decisions about K.;
17. He endorsed Ms. Rypkema's plan, noting that it was encouraged by the father, of gradually increasing the mother's contact time (eventually parenting time if and when guardianship is restored).
18. He noted the father's view that the gradual increase in the mother's contact time has been too slow in the past. While not being in a position to endorse or criticize the pace, he would endorse any step-up in the pace. He states that he sees value in the mother, as quickly as is safe, spending more contact time or parenting time with K.
19. There should be close monitoring of the process so that, at first indication of any relapse of K.'s alienation, Ms. Rypkema can intervene in a timely manner and re-set the process to an earlier step;
20. His expectation for the reunification program was that, following the FRRP Penticton "retreat" of one week, there would be a team approach. (In actual fact, perhaps as matters developed (illness of Dr. Reay, and the closing of FRRP), Ms. Rypkema has served all functions alone, essentially. A team approach is needed. Ms. Rypkema might retain the position of Director, that Dr. Reay was to have had, or she may continue to work in another capacity;
21. K. has reported a self-harmful act and self-harmful ideation. Dr. LaTorre recommends professional treatment with, preferably, a Registered Psychologist (R. Psych) or Psychiatrist for the purpose of assessing and monitoring self-harmful ideation and behavior, and to become an independent source of support for K. as she continues through the remaining unification process. [The father has accepted this advice. Commencing in July 2017 K. has been seeing a cognitive behavioural therapist and registered psychologist, Dr. Karimiha, every two weeks.]
22. Regarding the matter of the mother's partner, Dr. LaTorre states that he is concerned about overnight visits or prolonged visits at the mother's home given his uncertainty about the mother's partner and her relationship with that person. Therefore, there should be a prohibition on the mother allowing K. to have contact with any significant person (e.g., family member, boyfriend) unless there is previous approval in writing by the father as sole guardian and by Ms. Rypkema in her role as director of the reunification process. If, at some point, the mother determines that this is a possibly lasting relationship and one that will not unnecessarily expose K. to yet another disappointment, then the mother's partner should be

assessed just as was the father's current partner was;

- [23] As can be seen, Dr. LaTorre makes no current or specific recommendation regarding parenting time, other than endorsing increased time with the mother, as quickly as is safe. He makes no suggestion for longer term contact or parenting time allocation. He suggests that joint guardianship may be possible in future.
- [24] In his initial 2015 report, as I noted in para. 96 of the RFJ, Dr. LaTorre suggested that in due course parenting time could be implemented as contemplated by the marriage agreement, (that is, as noted, broadly, two thirds mother, and one third father). He suggested that the parenting coordinator be given authority to decide parenting time. However in his supplementary 2015 report he recommended the reunification program and reiterated that opinion at the trial.

B. Other developments and circumstances

- [25] In her May 24, 2017 report Ms. Rypkema stated that she and the father were having trouble communicating. He declined to utilize individual counselling to address his hostility towards the mother. He exhibited a visceral reaction when speaking of the mother or her parents. As noted, following receipt of Dr. LaTorre's report soon after this, the father accepted Dr. LaTorre's recommendations and instituted counselling for himself, independent of Whole Life and Ms. Rypkema.
- [26] Ms. Rypkema provided another report dated July 19, 2017. This report stated that there were two urgent matters for the court's consideration: (1) K.'s manner and mood vary significantly depending upon which parent she is with and during transitions between parents, and (2) she had become increasingly concerned about the father's mental health, in that he had become agitated, hostile, and confused. As to confusion, she referred in particular to email communications from the father. She stated that he was hostile to her, as well as to the mother. She recommended a change in custody so that parenting be shared, and the appointment of a parenting coordinator.
- [27] Ms. Rypkema accurately described her reports as clinical progress reports. She did not prepare them as expert's reports for court purposes within the meaning of the Rules of Court, nor in ordering them did I intend that they be admissible as such. At trial I declined to allow admission of Ms. Rypkema's opinions on custody and some of her other opinions as expert opinions. I ruled that her reports were admissible as factual reports, only, as I intended them to be, although inevitably and as expected they carried with them a large degree of professional impression and inference.
- [28] Some of Ms. Rypkema's concerns about the father set out in her July 19, 2017 report are not well founded, in my view. She criticized the father for refusing to allow the mother's partner from being present during the mother's contact time. This was entirely in accordance with Dr. LaTorre's recommendation and is not inappropriate. Ms. Rypkema placed herself in a difficult position by taking the mother's side and accepting her excuse for refusing to

cooperate with Dr. LaTorre about this. At trial I did not detect any sign of confusion or hostility on the part of the father, even during his cross-examination of the mother and Ms. Rypkema. I infer that his counselling has been beneficial. In the hearing he sought to be charitable about Ms. Rypkema, stating that it was not her fault and she was a victim of circumstances, essentially.

- [29] At the hearing the father denied feelings of hostility to the mother's parents and stated that he accepted that they should be part of K.'s life. Given the history between the father and her parents, this was a positive sign, in my view. Ms. Rypkema testified that the mother's parents are supportive of the father and seem very appropriate as grandparents.
- [30] The father has a poor relationship with Ms. Rypkema. They do not communicate effectively. He questions her neutrality. From the outset he questioned her qualifications and roles. He has had great difficulty dealing with the change in providers and rightly points out, as Dr. LaTorre does, that the program has not aligned with expectations. The father's view that a team approach was intended and that Ms. Rypkema could not or did not provide that is accurate.
- [31] I observe that the father's criticisms of Ms. Rypkema's work tend to emphasize issues of process rather than substance. This likely reflects a characteristic of his personality.
- [32] A problem is that the father's relationship with FRRP and with Ms. Rypkema was fractured then broken with the withdrawal of Dr. Reay, who had no meaningful involvement since perhaps August 2016.
- [33] The mother has no confidence in Dr. LaTorre, but that is not surprising, and of lesser significance, in that he is the court's assessor, not a treatment provider.
- [34] When I appointed Ms. Rypkema in February 2017 to carry on with the program, and again at trial, the father argued for the appointment of another therapist, Robert B. Finlay, to replace Ms. Rypkema. In February 2017 I did not consider it wise to remove Ms. Rypkema from the process and to start anew with someone else. The circumstances were urgent in that the mother had not had any contact with K. since early December due to FRRP's closure.
- [35] Although circumstances have now changed somewhat, I remain of the view that switching program providers is not in K.'s best interests, if it can be avoided, and it can be avoided.
- [36] Despite the fact that Ms. Rypkema has had to operate in difficult circumstances largely not of her making, significant progress has been achieved.
- [37] Dr. LaTorre recommended that Ms. Rypkema continue, although it appears that he was not asked to consider changing providers. Nevertheless had he thought that was advisable I expect he would have said so.

- [38] I do not have a C.V. from Mr. Finlay. His email to the father of January 3, 2017 provides a brief description of the program offered by his agency, called ReConnect. He indicates that like FRRP ReConnect adheres to a four stage model. ReConnect has a team approach. A retainer of \$15,000 would be needed.
- [39] Despite the problems that the father has had with Ms. Rypkema, he is continuing to follow her directions regarding the schedule and pace of the mother's contact time, as is evident by the fairly recent introduction of overnight contact. He continues to provide her with email reports as to K.'s condition before and after each visit with her mother. There are 29 such reports in evidence, spanning June 13, 2017 to October 29, 2017, or in other words, right up to the hearing dates.
- [40] Contrary to my order, I have no meaningful updated reports from Ms. Rypkema after July 19, 2017. A brief report of September 21, 2017 advises that the father has is refusing to communicate with her other than the email reports. However, I had the advantage of her testimony at the hearing during November, 2017.
- [41] The father describes his relationship with K. as being "marginally improved" but not "repaired". The improvement is much more than marginal in my view, but I accept that it is not "repaired". He testified that K.'s volatility has declined. Her medications have been adjusted. Her physical aggression directed towards him has been dramatically reduced from 2016 levels, but continues. She remains verbally aggressive to him frequently. Dr. Karimiha is working with her on his. The father also encourages her to speak to Ms. Rypkema about her issues with him, or to Dr. Karimiha.
- [42] K. does not engage in any such behaviours in relation to her mother. K. continues to have a close, warm relationship with her mother.
- [43] K. continues to receive behavioral consulting assistance from Sarah Pastrana. Dr. LaTorre recommends that the mother be introduced to Ms. Pastrana. I do not know whether this has now occurred.
- [44] As noted, I re-interviewed K., privately, in court, with only a court clerk present. The recording is sealed. My conversation with K. was dramatically different than the conversation I had with her in 2015. Now, she was cheerful and cooperative, although somewhat impatient. She said that she was getting along well with both parents, loved them both, and wanted to spend equal time with them. She agreed that having a good relationship with both parents was good, and healthy. She wanted to avoid conflict between her parents. In 2015, she could not say anything the slightest bit positive about her father, or his family. She did not want to see him. She denied that he loved her. She claimed that he hurt her, and bruised her, and pushed her mother down the stairs. By contrast her mother was the best, awesome, etc. I commented about this in para. 91 of the RFJ, where I said that K.'s views of her father were profoundly negative, while her views of her mother were the polar opposite. In general my impressions of K. and her views are in line with those reported by Dr. LaTorre.

- [45] It may be that to some degree K.'s current statements reflect what she believes she should say. I do not believe this to be wholly the case. However, even if that were the case, it would still represent very real and significant progress.
- [46] K. is doing well in other spheres of her life. Her father made a unilateral decision to change schools, effective September, 2017, thus after Dr. LaTorre had completed his report. At trial he recognized that he ought to have had discussions with the mother about that. I do not accept his excuses for not doing so. K. is enrolled in a Catholic private school. However he presented cogent reasons for reaching the conclusion that a change of schools would be beneficial. K. reported to me that she is happy with her new school. The mother says she "raves" about her new school.
- [47] K. travelled to Ireland with her father in May 2016 immediately after the FRRP retreat and again in January, 2017, for a wedding. These trips seem to have had beneficial effects. K. now speaks positively about her father's family, locally and those in Ireland. This is a dramatic change from her previous attitude.
- [48] Although the mother obviously did not agree with Dr. LaTorre's 2015 reports and with my decision to impose the reunification program, and all that has been entailed with that, to her great credit she has in general been fully supportive of the program. She clearly has been supportive of the father's relationship with K. There is no evidence that she has or wishes to undermine the program. While she may be driven by necessity, this does not change the positive and beneficial consequences of this for K.
- [49] Dr. LaTorre noted that the mother told him: "It sounds like [the father has] done a really good job" regarding setting limits such as with the television. She said, "[K. is] very proud she has a cow at her grandfather's place" in Ireland. Dr. LaTorre also reported that "When she talks about her Dad she's enthusiastic about it." For example, K. has said, "He's really good at math" and she talks about what her father has taught her.
- [50] These comments reflect remarkable progress.
- [51] As noted by Dr. LaTorre, the father is a very methodical and analytical person. The father expects rules and procedures to be followed. Excessive rigidity in this regard can cause problems. In its August 2016 report setting out a four stage reunification plan, FRRP (Dr. Reay) stated that positive stage one indicators included "[the mother's] understanding of alienation strategies used is clear and she is able to articulate them." Also, "[the mother] is expected to understand and acknowledge that alienation has taken place and agree not to participate in those behaviours during the meetings", and "[the mother] will be required to sign an agreement to follow the rules and expectations." In her first report of December 2016, Ms. Rypkema went well beyond this in adding a recommendation not in the August treatment plan, that in sessions with Ms. Rypkema the mother will "work on writing letters to [the father and K.] outlining her understanding of how the alienation occurred, apologizing, and describing how she will ensure that it won't happen again." This has not occurred.

[52] Regrettably this recommendation has reinforced a roadblock. The father has demanded that the mother take responsibility for her actions, and points to her failure to comply with this recommendation. As noted by Dr. LaTorre, her acceptance of personal responsibility has been limited. However Dr. LaTorre states that the "letter of apology" idea is overly draconian, and that it may not be an absolute requirement for the mother to overtly admit her wrongdoing in order for her to change sufficiently to insure she will not engage in similar behavior in the future. He notes that the goal of reunification is to achieve a healthy relationship with both parents. The attribution of fault is possible a step toward that ultimate goal but is itself a goal. I endorse these comments. The father now acknowledges that he has to put aside his emotions about what he sees as the mother failure to take responsibility for causing the alienation and the consequences.

C. Analysis

[53] I agree with and accept the recommendations of Dr. LaTorre.

[54] Once again, as in 2015, the mother does not agree with his recommendations, but that is not surprising. I found previously that her criticisms were unfounded. Nothing has changed. Recognizing reality perhaps, as noted, he was not cross examined.

[55] Dr. LaTorre's report reviews each relevant consideration under s. 37(2) of the Family Law Act in assessing the only issue, which is what is in the best interests of the child. It is unnecessary that I review those considerations here.

[56] The mother argues, in effect, that Dr. LaTorre has somehow favoured the father. I have not detected any unwarranted indication of that. I have no doubt that all of his recommendations reflect well founded considerations of what is in K.'s best interests.

[57] The major issue is whether, at this time, the reunification program, entailing severe limitations on the mother's contact with K. and her authority as a parent, should be terminated, and replaced with a joint parenting model of some sort, and a more balanced parenting schedule.

[58] I had hoped that by this time objectives of that kind could have been achieved. However in my view the time has not yet arrived. That is essentially the view of Dr. LaTorre, which I accept.

[59] At the same time, despite delays and problems, the program is working. Dramatic, positive changes have occurred. The focus now is on continued progress, avoiding the risk of setbacks, and doing what is needed to enhance the chances for long term success. The goals of course are for K. to have lasting positive and healthy relationships with both parents, and to the extent possible, between them, insofar as K. is affected by their relationship with each other.

- [60] It is premature to curtail the reunification program at this time. In my view the relationship between K. and her father clearly remains very fragile. While it is highly desirable to disengage the parties from ongoing legal processes as soon as possible, that is not yet possible.
- [61] While it is premature to make long term custody, guardianship and parenting orders at this time, I think it may be helpful for me to indicate again (as I did in the RFJ) what I see as feasible and desirable.
- [62] I agree with Dr. LaTorre that ultimately it may be possible to return to joint guardianship. As to parenting time, I think it likely that approximately equal time would be best. This is a change from my thinking as I signalled it in the RFJ. Equal parenting time accords with K.'s views. It has the advantage of not seeming to favour either parent, in K.'s eyes. A week on and week off schedule as sought by the mother may be simplest and should reduce friction between the parents. It could best serve K.'s strong need for stability. It would provide each parent with ample respite and time to focus on other aspects of their lives.
- [63] The parents are not able to co-parent in any true sense and as long as that remains the case, it is best that one of them have the primary decision-making authority, with processes for mediation and court intervention as last resort. On all of the vast amount of evidence available to me, I consider that the father is better suited to having primary major decision-making authority. It is unnecessary that I set out in full detail once again the instances in which the mother's decision making as it has affected K. have been poor. Two matters stand out: her decision to favour the relationship with D.S. and K. over that of K. and her father, and her insistence on limited supervised access at a time when K.'s relationship with the father was at great risk. Her recent decision to exclude R.M. from Dr. LaTorre's assessment is lamentable to say the least. She has introduced R.M. to K. against the advice of Dr. LaTorre and the wishes of the father, and contrary to her agreement with him. This was manifestly unwise. She maintains at trial that she and R.M. are "just dating" but that is not consistent with the length of the relationship so far and the information provided by Ms. Rypkema about R.M. Ms. Rypkema recently advised the father that R.M. is "an important person in [the mother's] life and part of her family - in a sense."
- [64] On the other hand, the father is a demonstrably capable decision maker for K., as, for example, in relation to such matters as schooling, and medical and other professional treatment. Here his thorough and methodical approach is helpful.
- [65] An exception to this is with respect to the father denying contact time between the mother and K. from December 2016 to March 2017, due to the closure of FRRP. The mother's contact with K. ought to have continued during this time, through Ms. Rypkema, while the issue of control of the reunification program was pending.
- [66] In general accordance with the Joyce model joint guardianship, the order would provide that the father is obliged to discuss any significant decisions regarding K. with the mother, and the parents would be obliged to reach agreement if possible. The mother would have the

right to seek directions from the court under s. 49 of the Family Law Act for any decision she considers contrary to K.'s best interests or an issue affecting K. Prior to such court proceedings the parties would be obliged to attempt to mediate the issue. The mother would have the right to obtain information from third parties pursuant to s. 16(5) of the Divorce Act and s. 41(j) of the Family Law Act.

- [67] As Dr. LaTorre states, each parent has their own strengths. The mother has strengths the father does not have, such as facilitating K.'s social life and skills. The father may be over-involved. Dr. LaTorre observes that K. might do well to have some down time for herself. Dr. LaTorre notes that while K. is excelling, comparatively to last year, in academic work, her peer relations are not doing as well. He suggests that the parents should both turn some attention to play dates or other means of involving K. socially with different peer groups. The mother seems better equipped to do this. The evidence at trial in 2015 about play dates with other children that she arranged supports this inference.
- [68] The mother and K. have a good relationship with Ms. Rypkema. K. needs stability. The father is receiving counselling elsewhere. K. is receiving other supports as well. Dr. LaTorre was aware of Ms. Rypkema's roles and endorsed continuation, with suggested modifications. There is an obvious risk that changing providers at this stage could be detrimental. There are real cost concerns. Therefore in my view Ms. Rypkema should carry on as the overall director of the reunification program.
- [69] I emphasize as did Dr. LaTorre that Ms. Rypkema consider accelerating the pace of increases in the mother's contact time. The father also supports this.
- [70] Dr. LaTorre recommends that K. have no contact with the mother's new partner, R.M., until he is professionally assessed. Ms. Rypkema states that she has done so via an hour long session and she has no concerns. She testified that the mother's relationship with R.M. does not present a risk. I am not satisfied that Ms. Rypkema's assessment of this issue is sufficient. Ms. Rypkema seems to have uncritically accepted the mother's inadequate excuse for refusing cooperation with Dr. LaTorre in this respect. The assessment carried out by Ms. Rypkema seems to have been relatively casual, and lacking the rigour and accountability that Dr. LaTorre would have provided. She is not a psychologist. The question is not so much whether R.M. himself poses any risk as there is no evidence that he might. The question is the effect on K. of introducing another potential father figure. My concern is that even without any meaning to do so in any way, the involvement of another potential father figure could impair the bond between K. and her father, as in fact happened previously. Dr. LaTorre's concern is well-founded. I am not satisfied that this concern has been addressed.
- [71] Ms. Rypkema informed the father that R.M. would have participated with Dr. LaTorre if he had been asked. If so, it is all the more regrettable that this was not allowed to occur.

- [72] Therefore, there will be an order that K. not be exposed to contact with the mother's partner R.M. (or any person who is likely to be in a step-parent role for K.) without agreement of the parties, or further order of the court. It may be that Dr. LaTorre would be prepared to assess R.M. and provide a further brief addendum to the court on that matter, as part of the existing s. 211 authority he has.
- [73] In my view there is no need or role for a parenting coordinator at this time. However a parenting coordinator may be of value if and when joint guardianship is restored.
- [74] Interim sole guardianship and custody of the father will continue. K. will continue to reside primarily with her father. The mother's contact time will continue to be as directed by Ms. Rypkema, as part of the reunification program, which will continue. These orders will remain in place until further order of the court.
- [75] Ms. Rypkema is ordered to provide status reports to the court with copies to the parties every three months until the reunification process or her services end.
- [76] It may be that, depending on progress, the parties are able to agree on long term custody, guardianship and parenting orders, that align with the views I have expressed. If so I would be pleased to consider a consent order in due course.
- [77] If there is no agreement, then there will be a review of the order made as a result of these reasons in one year from the date of the reasons.
- [78] I will remain seized of interim applications and the review to occur, subject to any contrary order that I might make.
- [79] The existing reunification cost allocation order may need reconsideration, since the father is not utilizing Whole Life (Ms. Rypkema's agency) for counselling, and the parties' financial circumstances have changed, including the fact that the funds held in trust have been distributed. I do not know whether anything remains in trust. Ms. Rypkema states that the father has not fully paid her account, although the unpaid amount is only \$68. The account should be paid. The prior order remains in place and applicable until if and when it is varied.
- [80] At this juncture I am not sure whether a further addendum or update report from Dr. LaTorre is necessary for purposes of the review, should it be required. Such reports are costly and intrusive, and of course I already have a significant body of evidence from Dr. LaTorre. Therefore I make no order at this time for an updated s. 211 report, but the parties are at liberty to apply in relation to this.

D. Financial Matters

- [81] As noted, financial issues raised by the parties were not fully dealt with in the evidence and submissions. The parties have liberty to apply in respect of these matters.

[82] However I note one particular financial matter. Paragraph 13 of order no. 1 directed that the mother repay the sum of \$7,500 from K.'s educational savings account. I expected that she would do so out of her share of the funds in trust. There is no evidence she has complied with my order. At the hearing she testified that she could not be entirely sure if she had done so or not. I do not accept this. I order that the mother provide the father with documentary evidence that she has complied with the order within 30 days. Obviously, failure to comply with my earlier order or this order carries the risk of contempt proceedings and findings.

IV. Conclusion

[83] Orders are made in accordance with these reasons.

[84] The parties continue to have liberty to apply respecting this or any other order I have made in these proceedings.

[85] In the RFJ, I ordered that each party bear their own costs. I view these proceedings as being essentially a continuation of the trial. While the father could be seen as having been successful at this time, he has (quite effectively) represented himself, while the mother has borne the costs of legal counsel. Having at least one legal counsel involved in the proceedings has been very helpful to the court. For these reasons I order no costs to either party of the present proceedings.

[86] However, as I have indicated, I am hopeful that the parties will in future be able to agree on long term orders. Future costs orders will be made based upon the usual rule, which means that the unsuccessful party usually pays costs. The parties should be deterred in this way from unnecessary court proceedings. This comment applies to the outstanding financial matters as well.

"Verhoeven J."

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