
CANADA / JUDGMENT

M.D.F. v. D.O.T.C.

2020 BCSC 522

COURT

Supreme Court of British Columbia

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2020 BCSC 522 M.D.F. v. D.O.T.C.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

M.D.F. v. D.O.T.C.,

2020 BCSC 522

Date: 20200403

Docket: E190854

Registry: Vancouver

Between:

M.D.F.

Claimant

And

D.O.T.C.

Respondent

Before: Master Elwood

(In Chambers)

Reasons for Judgment

Counsel for the Claimant:

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S. Tradewell

Counsel for Respondent:

T. Jackson,

K. Ciric

Place and Date of Hearing:

Written Submissions:

Vancouver, B.C.

December 2, 2019

February 24, 2020

March 20 and 27, 2020

Place and Date of Judgment:

Vancouver, B.C.

April 3, 2020

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I. INTRODUCTION

- [1] The parties to this family law action bring cross-applications concerning the parenting arrangements for two very young children of their relationship.
- [2] At the heart of these applications is whether the best interests of the children require that the father's parenting time be supervised until the mother's concern that he poses a risk to their physical, psychological or emotional safety and well-being can be fully addressed at a trial.
- [3] The cause of the mother's concern is the father's history of depression and suicidal ideation and an attempt to commit suicide following the parties' separation that very nearly killed him. Since the suicide attempt, the mother has required that the father's parenting time with the children be supervised.
- [4] The father argues that the evidence is insufficient to show any risk of harm to the children that would justify continued supervision. He argues that he is doing well and receiving appropriate and on-going treatment for the medical conditions and depression that drove him to attempt suicide. He seeks an order for interim parenting time without supervision and a parenting report to be prepared pursuant to s. 211 of the Family Law Act, S.B.C. 2011, c. 25 (the "FLA"). He says he will apply for increased parenting time following receipt of the s. 211 report.
- [5] The mother argues that the father's mental health issues, distorted thinking and dishonesty concerning his suicidal thoughts create too much of a risk to the safety and well-being of the children to allow unsupervised parenting time. She seeks an order that the father's parenting time be supervised until trial or, alternatively, pending receipt of the s. 211 report sought by the father. The mother's position is that the s. 211 report is unnecessary, but if ordered, should be authored by a specific psychologist. The father does not agree to the mother's preferred author. He has proposed two different authors whom she rejects.

II. FACTS

A. The Parties

- [6] The father is 33 years old. He is a physician, specializing in emergency and critical care medicine. The mother is 39 years old. She is a registered nurse.
- [7] The mother and father began living together in a marriage-like relationship in August 2014. They separated in 2018, in July, according to the father, or October, according to the mother. The father moved out of the family apartment on October 17, 2018.
- [8] The parties have two children: P. is four years old, and M. is approximately one and a half years old. M. was born on November 14, 2018, after his father moved out. The children live with their mother.

B. Parenting Arrangements

- [9] While there is some dispute in the evidence over the extent of the father's contribution to raising the children, the parties generally agree that they are both loving parents who intend to co-parent the children to the extent possible and consistent with their best interests.
- [10] The mother deposes that she has been the primary caregiver, while the father has prioritized his career and, more recently, his health and social life. The mother says that the father was rarely at home during his residency and fellowship, and that his fatherly duties prior to the separation were limited to an occasional play date and overseeing nap times. The mother took maternity leave for a year following the birth of each child, while the father continued working and never finalized any formal leave. Since the separation, the mother says, she has been predominantly responsible for the children's care and all of the major decisions concerning their educational, medical and social activities. Following the separation, and prior to his suicide attempt, the father spent time with P., and then with P. and the baby M., but mostly in her presence.
- [11] The father acknowledges that he worked long hours during the relationship, but maintains that he was an active participant in P.'s life. He deposes that he spent time with P. before and after the relationship broke down in July 2018, both in the presence of the mother and alone. He says he cared for P. on his own for up to 12 hours at a time while the mother was at work during the last three shifts before she began maternity leave on October 20, 2019. After he moved out and the mother began maternity leave, he continued to be a part of P.'s life as before. He spent time with P. in the mornings, dropped her off at daycare and cared for her during her afternoon nap. After M. was born, the father took care of P. on his own for several days while the mother was recovering in hospital. After the mother returned home, he cared for both children in the mornings, drove P. to daycare, picked her up and assisted with dinner, bath time and the bedtime routines.
- [12] On February 13, 2019, the father attempted suicide with an intentional overdose of anti-depressant medication.
- [13] With the agreement of the mother, the father resumed spending time with the children on March 21, 2019, typically twice per week for approximately three hours, but always in the presence of another adult. This supervision was provided primarily by a doctor and a registered nurse who are known to both parties. The mother and father discussed using a professional supervision service, but could not agree on how to pay for the service. The father says that the mother's requirement of supervision and her involvement in approving the supervisors has impeded his parenting time. Nonetheless, he deposes that supervised parenting has gone well and he has spent quality time with his children since being discharged from the hospital.

- [14] Following a court appearance in early October 2019, the father has exercised supervised parenting time three times a week for approximately four hours per visit. The mother submits that these arrangements should continue. She says she is open to using a supervision service, provided that the father is responsible for paying for the services.
- [15] The father seeks an interim order for parenting time of four times per week for a minimum of four hours per visit. He anticipates applying at a future date for an order for overnight time, with a provision for a further review following receipt of the s. 211 report. At the present time, he says, the main obstacle between the parties is the mother's requirement that his parenting time be supervised.
- [16] The parties have not set a trial date for the family law case.

C. The Father's Mental Health

- [17] The father has battled depression for a large part of his life. The symptoms have become dangerously worse in recent years. The father acknowledges that he has had "a very difficult time for the past few years (since 2016) and in particular since early January 2019".
- [18] This is consistent with the mother's evidence that the father expressed suicidal ideations to her for several years prior to the suicide attempt. She deposes that, as early as 2016, the father told her on a flight to England for a fellowship interview that he thought about hanging himself in the bathroom of the airplane.
- [19] In 2017, the father was diagnosed with Chronic Myeloid Leukemia ("CML"). He began chemotherapy and was prescribed medication that made him nauseous. These medical events deepened his depressive symptoms.
- [20] The relationship between the parties broke down in July 2018. There is evidence that the father involved himself in high risk sexual activities around this time. By August 2018, he was sleeping in hospital call rooms or on the couch at home. Also in August 2018, he underwent emergency back surgery.
- [21] The mother deposes that, in August 2018, the father told her that he wanted to kill himself. He told her that he had thoughts of crashing the car into a pole or into oncoming traffic while he was commuting to work, or of stepping off a curb into the path of an on-coming bus.
- [22] On August 24, 2018, the father left the family apartment unexpectedly, telling the mother that he was going to St. Paul's Hospital to acquire drugs with which to give himself a fatal injection. The mother convinced the father to return, provided him with care, and urged him to schedule an appointment with his family doctor.
- [23] The father deposes that he sought mental health treatment through multiple venues, including the physician health program, and that he was prescribed anti-depressant medication.

- [24] On February 3, 2019, the father suffered a severe anxiety attack following a colonoscopy at Lions Gate Hospital. He was diagnosed with a major depressive disorder - severe, and admitted involuntarily under the Mental Health Act to the psychiatric unit of the hospital. The father disclosed these facts to the mother during a couple's counselling session on February 6, 2019. He also acknowledged lying to the medical staff and minimizing the severity and frequency of his suicidal thoughts to obtain a discharge from the hospital.
- [25] The father later told a consulting psychiatrist that his plan to commit suicide was cemented the moment he left Lions Gate Hospital.
- [26] The father's suicide attempt on February 13, 2019 was serious and pre-meditated. He consumed as much as four bottles of medication, and cut his wrist. He would likely have died had the mother not called the police after he failed to show up for a scheduled couple's counselling session. The father was taken to St. Paul's Hospital by ambulance. On route, he suffered a grand-mal seizure. In the emergency department, he suffered further seizures. He was put into a medically-induced coma in which he remained for five days. He was once again admitted involuntarily under the Mental Health Act, and spent a total of three weeks in hospital before he was discharged on March 5, 2019.
- [27] The father was assessed by a psychiatrist at St. Paul's on February 18, 2019. The psychiatrist's consultation report includes the following relevant information:

In brief, [the father] endorsed a history of depression that predated this time for approximately 2 years, if not longer. Although he had not reportedly made any prior suicide attempts, he acknowledged increased suicidal thinking. Possible means had included overdosing on his own antidepressant medication, injecting himself with rocuronium in the ICU setting during one of his shifts, or obtaining a gun from a nearby shop. What had been noted to be a protective factor up until then had been [the father's] relationship with his children.

Unfortunately, as his relationship with his partner was falling apart, he fell into a state of further depression. He expressed to Dr. Murray a lack of control in his life and felt that his ex-partner may be trying to exert control over him. Furthermore, he lamented the loss of his prior identity as an athlete who participated in Iron Man triathlons. I am uncertain as to whether he stopped participating in these activities on account of his depression, his physical illness, or for other reasons.

Regardless, Dr. Murray was rightfully concerned about [the father] and did certify him under the Mental Health Act with a diagnosis of major depressive disorder, severe. Arrangement was made for [the father] to be admitted at Lions Gate Hospital as he is not employed as a physician there. [The father] tells me he was only admitted to Lions Gate for 1 or 2 days prior to discharge. He adds further that he was not entirely forthcoming with the staff there with regard to his thoughts and concerns. He adds that his plan for suicide was solidified the moment he was discharged from that hospital.

...

He repeatedly described 'a void' in his life that he related to many factors, including, first and foremost, his inability to participate in triathlons but also related to his failing relationship. He further knowledge [sic] at losing most, if not all, of his friends but did feel quite supported by those individuals who had come to visit him in hospital.

Although he denied looking for means by which to harm himself in hospital, he clearly expressed 'disappointment' that his suicide attempt had not been successful.

...

Very clearly, [the father] presents as a high risk of repeated suicide. He has a number of risk factors for this including male gender, history of depression, prior suicide attempt, and a number of significant psychosocial factors related to loss of identity, loss of relationship, and potential financial strain. At present, he is unable to see any way of improving his situation. Undoubtedly, his perspective and bias is very much clouded by his current depressive state. That being said, it is also concerning that he was not particularly forthcoming with his recent care providers at another hospital with regard to how he was feeling and coping. (emphasis added)

[28] The father was also diagnosed with post-traumatic stress disorder and anxiety consequent on the invasive life-saving treatments he received in the emergency room at St. Paul's.

[29] The father attributes the deterioration in his mental health, culminating in the suicide attempt, to multiple stressors, including his dysfunctional relationship with the mother, the emergency spine surgery in August 2018, a flare in his Crohns disease in January 2019, nausea and vomiting from his leukaemia treatments, an arduous training program and the stress of the first few months of independent medical practice.

[30] The father deposes that, since his discharge from St. Paul's, he has prioritized his health and is well on the path to recovery. He denies any further suicidal ideation or plans since the attempt on February 13, 2019. He says his depression is in remission. He relies on a progress note by his treating psychiatrist dated August 8, 2019, which includes the following:

While in hospital, there was a significant improvement in depressive symptoms which have subsequently now been fully remitted for several months. There are no concerns at this time about any mood instability, depressive symptoms, or any hopelessness or suicidal ideation or intent. He also readily agreed to see a psychologist at the Vancouver GBT Centre, Dr. Lunt, to facilitate his recovery from posttraumatic stress disorder. This has also been successful, with resolution of nightmares, flashbacks, and phobic avoidance. Specifically, he has been able to return to the St. Paul's Hospital Emergency and Intensive Care Unit without any significant evidence of autonomic hyperarousal or excessive emotional distress.

In addition to the pharmacotherapy and psychotherapy, he has strived to engage in sustaining activities and healthy lifestyle choices, to help him manage any residual stresses in his life. These have included multiple social, recreational, and athletic outlets, as well as relaxation and meditative techniques.

In my capacity, I have not been in a position to conduct parenting assessment. But, am [sic] clear that I have not witnessed any residual symptoms of mood disorder, PTSD, or characterological factors that would interfere with his parenting ability. He has been consistently motivated to increase the permitted contact with his children, and coping well with the separation process. (emphasis added)

[31] Through counselling, the father says, he has recovered from the symptoms of PTSD. On July 31, 2019, his treating psychologist recommended that he be allowed to return to work without restrictions.

[32] On August 9, 2019, the father's treating hematologist reported that he was responding well to his chemotherapy, although he should not work nights:

. . . I am pleased that [the father] is currently doing very well on dasatinib, in terms of both good tolerability and response. However, it is my opinion that it would be best that [the father] not work nights at this time. While he is doing well now, he has dealt with an incredible burden of medical and psychiatric illness over the past few years. He has shown incredible and admirable resilience in fighting to recover from these problems, but for his overall health maintenance, I really do not think that working nights [is] in his best interest. (emphasis added)

[33] In September 2019, the father returned to work, after being cleared to do so by the College of Physicians and Surgeons. He has voluntarily enrolled in a health monitoring program provided by the College which requires routine follow-ups and reports from his treating physicians. He is currently working on a reduced schedule that does not include night shifts.

D. Application to Adduce Additional Evidence

[34] The father filed the original application and supporting evidence in this matter on September 18, 2019. On October 3, 2019, Mr. Justice Groves adjourned the application to a full-day hearing. The mother filed the cross-application on January 23, 2020. The joint application record for the hearing was voluminous. The combined applications required two days to be heard, on December 2, 2019, and February 24, 2020.

[35] After the hearing was completed, the father asked to appear to make further submissions based on a new affidavit attaching updated records from his treatment providers. I asked the parties to address the use, if any, of the new affidavit evidence in written submissions.

[36] The new affidavit attaches a summary update dated March 3, 2020, from the treating psychiatrist who provided the progress note referred to above, along with his clinical notes and a letter to the College dated December 3, 2019. In the summary update, the psychiatrist confirms that the father remains under his care as an outpatient, the father's depressive disorder remains in remission and his PTSD symptoms are now limited to transient anxiety.

- [37] The new affidavit also attaches clinical notes of the father's treating psychologist, both pre and post-dating the hearing. The notes include a letter from the College's health monitoring program.
- [38] The father argues that the new affidavit provides helpful information from his treating physicians which confirms that he is doing well and his depressive disorder and PTSD are in remission.
- [39] The mother argues that the new affidavit should be excluded because it fails to satisfy the test for the introduction of fresh evidence, consists of inadmissible opinion evidence and contravenes Rule 10-6(13) of the Supreme Court Family Rules.
- [40] The mother relies on the "Palmer test" for the admission of evidence that existed at the time of a trial but was not presented to the court: *Palmer v. The Queen*, [1980] 1 SCR 759. She argues that the clinical notes attached to the father's affidavit could have been obtained by the father prior to the conclusion of the hearing; indeed, she says, her counsel requested updated medical disclosure on November 28, 2019 and February 21, 2020, and the father did not respond.
- [41] In my view, the full Palmer test, which is generally applied on appeals, does not apply to evidence which is submitted to the court for consideration while an application such as this is under reserve. That being said, the rule against splitting one's case applies to applications as well as trials. As a general rule, an applicant should not be permitted to split his or her case by leading evidence by way of a supplementary affidavit which the applicant should have known would be necessary to counter a position advanced during the hearing: *Ulrich v. Ulrich*, 2004 BCSC 95, at para. 42-43 and 45.
- [42] Moreover, Rule 10-6(13) prohibits additional affidavit evidence following the deadline for reply affidavits without leave of the court. Although the court has discretion to consider further evidence prior to judgement, that discretion should be exercised sparingly to avoid an injustice: *No Limits Sportswear v. 0912139 Ltd.*, BCSC 999, at para. 13; *Muller v. Muller*, 2015 BCSC 370, at para. 15.
- [43] In this case, the mother made a point of the fact that, in her submission, the father had not made full disclosure of his medical records. In response to a question from the court, the father's counsel represented that the father had produced all of the discharge records from Lions Gate and St. Paul's and all of the documents in his possession relating to his mental health since his discharge.
- [44] The clinical records attached to the new affidavit were obtained by the father following the conclusion of the hearing. It is only appropriate, in my view, that they be produced now, if for no other reason than to ensure there is no mistaken impression in the mind of counsel or the court that the father had already produced all of the relevant documents following his discharge from hospital.

- [45] I do not view the clinical notes and correspondence with the College as fresh evidence so much as additional production in accordance with the father's on-going obligation to produce relevant documents. It would have been preferable if the father had disclosed the records in existence prior to the hearing in response to the mother's requests. However, the mother has now had an opportunity to review the documents and comment on them. I will allow the clinical notes and correspondence with the College into evidence for the purpose of ensuring that the record is complete and the representation by the father's counsel is accurate.
- [46] I agree with the mother, however, that it is essential the father ensure that his production of relevant medical records is, and remains, complete and unfiltered. I will return to this point below.
- [47] The mother objects to the admissibility of the treating psychiatrist's summary update, or any opinion in the clinical notes, because the documents do not comply with the requirements for expert evidence under Rule 13-6.
- [48] The requirements of Rule 13-6 apply to expert reports that are introduced into evidence at a trial. Although the common law rule against opinion evidence also applies to the evidence on an application, the procedural and substantive requirements for expert evidence are applied more flexibly than at trial. In this case, it should be noted that both parties relied on consultation reports and progress notes that would not be admissible as expert reports at trial.
- [49] The summary update from the psychiatrist is consistent with the progress note the father relied on during the applications. By the time the applications were heard, that evidence was somewhat dated. I will allow the update into evidence for the purpose of updating the existing medical evidence and confirming that the father has not relapsed into depression or suicidal behaviour.
- [50] I have not placed any weight on the content of the father's new affidavit.

III. ANALYSIS

- [51] The central issue on these applications is whether the children's best interests require that parenting time with their father be supervised. All other issues in this family law case are secondary at this time. The parties agree that they are each guardians of the children. The mother consents to an interim order that they will share parental responsibilities equally, with the proviso that in the event the parties are unable to reach agreement on a significant issue, she will be entitled to make the final decision and the father will have the right to apply for directions from the court. The basis of the mother's argument for final decision-making authority is essentially the same as her argument that the father's parenting time must be supervised.

A. Statutory Provisions

[52] Section 37(1) of the FLA provides that the only consideration to be taken into account in making an order for parenting arrangements is the child's best interests. Section 37(2) stipulates that, to determine the child's best interests, the court must take into account "all of the child's needs and circumstances," including:

- (a) the child's health and emotional well-being;
- (b) the child's views, unless it would be inappropriate to consider them;
- (c) the nature and strength of the relationships between the child and significant persons in the child's life;
- (d) the history of the child's care;
- (e) the child's need for stability, given the child's age and stage of development;
- (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
- (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
- (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs.

[53] Section 37(3) of the FLA prescribes what might be described as a precautionary principle whenever the court is asked to make an order that may have an effect on the physical, psychological or emotional safety or well-being of a child:

An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.

[54] Section 40(4) provides further guidance, by stipulating that there must not be a presumption that parental responsibilities or parenting time should be shared equally:

In the making of parenting arrangements, no particular arrangement is presumed to be in the best interests of the child and without limiting that, the following must not be presumed:

- (a) that parental responsibilities should be allocated equally among guardians;
- (b) that parenting time should be shared equally among guardians;
- (c) that decisions among guardians should be made separately or together.

[55] Also relevant on these applications is s. 211, which authorizes the court to appoint an expert to prepare a report for the purpose of resolving a dispute over parenting arrangements:

- (1) A court may appoint a person to assess, for the purposes of a proceeding under Part 4 [Care of and Time with Children], one or more of the following:
 - (a) the needs of a child in relation to a family law dispute;
 - (b) the views of a child in relation to a family law dispute;
 - (c) the ability and willingness of a party to a family law dispute to satisfy the needs of a child.
- ...
- (5) The court may allocate among the parties, or require one party alone to pay, the fees relating to an assessment under this section.

B. Family Violence

[56] The mother submits that the father's statements that he wanted to kill himself, the suicide attempt itself, and the blame which she says he has placed on her for his attempt to commit suicide, are all acts of family violence within the meaning of the FLA, and should be considered as such in the analysis of the best interests of the children.

[57] Section 1 of the FLA defines family violence to include:

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a family member,
- (c) attempts to physically or sexually abuse a family member,
- (d) psychological or emotional abuse of a family member, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
 - (iii) stalking or following of the family member, and
 - (iv) intentional damage to property, and
- (e) in the case of a child, direct or indirect exposure to family violence.

[58] In *J.S.R. v. P.K.R.*, 2017 BCSC 928, Madam Justice Arnold-Bailey found, in the context of a physically and emotionally abusive relationship, that threats by a spouse to kill himself constituted family violence as a form of psychological abuse:

[169] I find that there has been a history of family violence in this case perpetrated by the Claimant upon the Respondent.

- [170] The term "family violence" as defined in s. 1 of the FLA includes physical abuse, such as assault, but it also encompasses psychological and emotional abuse. Subsection (e) of the definition includes exposure of a child to the behaviour included in subsections (a) to (d) of the definition in s. 1, as commented upon in *S.(K.H.R.) v. A.(J.V.)*, 2015 BCSC 25. The broad nature of the definition is intended to provide protection to a very broad range of vulnerable people: *B.(C.A.) v. B.(M.S.)*, 2015 BCPC 12.
- [171] I find it is more likely than not that the Claimant has struck the Respondent on a number of occasions when they were arguing. The lack of clarity in the Respondent's testimony as to the frequency or intensity of the incidents when the Claimant struck her prevents the Court from making any further or more specific findings. In some of her answers on cross-examination she may also have exaggerated aspects of the frequency of Claimant's physical abuse directed towards her. However, I find that such events likely did occur, although perhaps not with the frequency she claimed.
- [172] I also find that the Claimant on several occasions threatened to kill himself, directing his threats at the Respondent, but also delivering them in a manner that they became known to H., and possibly to A. as well. This too, constitutes family violence as a form of psychological abuse, which is included in the definition of "family violence" (at ss. (d), s.1 of the FLA). It is behaviour that is particularly terrifying to children.
- [173] I find the evidence of Ms. Dhanoya in particular supports these findings. It is also clear that she and other members of the Respondent's family, and the Respondent herself tried to address the issue of the Claimant's violence on a number of occasions, albeit not in a manner that remedied the situation. At this point, the most important aspect of this finding is its effect on the children, and what will be in their best interests in the future. (emphasis added)
- [59] I have no difficulty accepting the mother's proposition that a threat to commit suicide may constitute family violence, particularly where the threat is used as a form of psychological weapon in a family dispute. However, I think it would be a mistake for the court to label every disclosure of suicidal ideation as family violence. To do so risks stigmatizing people who struggle with mental illness and suicidal thoughts as violent or abusive. Telling a spouse about suicidal thoughts is not, in-and-of-itself, abusive. Context is important.
- [60] Characterizing every disclosure of suicidal ideation as family violence would also risk discouraging those who need help from seeking that help and deprive their spouses of important information. As the mother herself argues, former spouses and medical professionals must rely on self-reporting by a suicidal spouse to recognize a potentially dangerous situation.

- [61] There is no evidence in this case that the father used the statements about his suicidal thoughts as a form of psychological abuse. His disclosures began before the relationship broke down. Although they escalated in August 2018, when the parties were separating, there is no evidence that he used the disclosures as leverage or retaliation against the mother. If anything, the father knowingly weakened his position on parenting arrangements by disclosing these thoughts to the mother.
- [62] With one exception, there is no evidence that the father talked about suicide in the presence of the children. The exception is a telephone conversation while the father was in St. Paul's Hospital and spoke to the mother about his suicidal thoughts, when he knew or ought to have known that P. was on the speakerphone with her mother. This is troubling, because the conversation was clearly inappropriate for a young child; but I see no evidence of a pattern of exposing P. to statements that would scare her, as was the case on the facts in J.S.R.
- [63] The father's suicide attempt itself was not directed at the mother or the children. The father was alone at the time he attempted suicide. There is no evidence that he sought to take his life as an act of retribution against the mother. The suicide note the police found in his apartment expressed regret and compassion for the mother and the children, and purported to leave everything to the mother. I do not consider the father's suicide attempt to be an act of family violence.
- [64] There is no evidence before me of any specific statement by the father blaming the mother for the suicide attempt. The only specific statement referenced by the mother in her submissions was a passage in the father's affidavit in which he deposes that during his treatment it was determined that multiple stressors "including my dysfunctional relationship with [the mother] may have contributed to my symptoms". I do not consider this statement to be an allegation that the mother was to blame for the suicide attempt.
- [65] The mother also argues that the father's communications with her about parenting arrangements should be characterized as family violence. The mother's counsel took me to a number of e-mails which she described as condescending, badgering, abusive and manipulative. I have reviewed the e-mails. While the tone of some of the father's e-mails might fairly be described as condescending, I do not consider them badgering, abusive or manipulative. The correspondence at issue concerned childcare, supervised parenting and the potential use of a supervisor service. The parties were discussing difficult issues in difficult circumstances. They were both assertive and fully able to defend their positions. I would not describe the father's communications as family violence.

C. Supervised Parenting

- [66] Madam Justice Griffin reviewed the law on supervised parenting when she was a judge of this court, in *F.K. v. M.K.*, 2010 BCSC 653:
- [145] Numerous legal authorities have commented on the appropriate considerations for imposing terms of supervision on a parent's access.

[146] In *K.M.E. v. D.M.Z.* [1996] B.C.J. No. 464 (S.C.), Quijano J. stated at para. 21:

...Although previous authorities have held that, as a rule, supervised access ought not to be employed as a long-term access arrangement, this is not a firm rule as the court must always be concerned to achieve a result that is in the best interest of the child, and therefore each case will turn on its own facts.

[147] In *V.S.J. v. L.J.G.*, [2004] O.T.C. 460 (S.C.J.), the court found that an order for supervised access, like termination of access, requires evidence of exceptional circumstances as it is just one small step away from a complete termination of the parent-child relationship: at para. 1. At paragraph 135, the court set out factors most commonly considered by the courts in terminating access:

1. Long term harassment and harmful behaviours towards the custodial parent causing that parent and the child stress and or fear. See *M.(B.P.) v. M.(B.L.D.E.)*, supra; *Stewart v. Bachman*, [2003] O.J. No. 433 (Sup.Ct.); *Studley v. O'Laughlin*, [2000] N.S.J. No. 210 (N.S.S.C.) (Fam.Div.); *Dixon v. Hinsley*, [2001] O.J. No. 3707.
2. History of violence; unpredictable, uncontrollable behaviour; alcohol, drug abuse which has been witnessed by the child and/or presents a risk to the child's safety and well being. See *Jafari v. Dadar*, supra; *Maxwell v. Maxwell*, [1986] N.B.J. No. 769 (N.B.Q.B.); *Abdo v. Abdo* (1993), 126 N.S.R. (2d) 1 (N.S.C.A.); *Studley v. O'Laughlin*, supra.
3. Extreme parental alienation which has resulted in changes of custody and, at times, no access orders to the former custodial parent. See *Tremblay v. Tremblay* (1987), 10 R.F.L. (3d) 166; *Reeves v. Reeves*, [2001] O.J. No. 308 (Sup.Ct.).
4. Ongoing severe denigration of the other parent. See *Frost v. Allen*, [1995] M.J. No. 111 (Man.Q.B.); *Gorgichuk v. Gorgichuk*, supra.
5. Lack of relationship or attachment between noncustodial parent and child. See *Studley v. O'Laughlin*, supra; *M.(B.P.) v. M.(B.L.D.E.)*, supra.
6. Neglect or abuse to a child on the access visits. See *Maxwell v. Maxwell*, supra.
7. Older children's wishes and preferences to terminate access. See *Gorgichuk v. Gorgichuk*, supra; *Frost v. Allen*, supra; *Dixon v. Hinsley*, supra; *Pavao v. Pavao*, [2000] O.J. No. 1010 (Sup.Ct.).

[148] At paragraph 137, the court in *V.S.J. v. L.J.G.* found that those factors listed above would also be relevant to a consideration of supervised access. The court also stated:

...It is possible through a supervision order to do the following: protect children from risk of harm; continue or promote the parent/child relationship; direct the access parent to engage in programming, counselling or treatment to deal with issues relevant to parenting; create a bridge between no relationship and a normal parenting relationship; and, avoid or reduce the conflict between parents and thus, the impact upon children.

[149] At paragraph 143 of *V.S.J. v. L.J.G.*, the court stated that when terminating or restricting access, it is necessary for the court to weigh and balance numerous factors in the context of the child's best interests including:

1. The maximum contact principle;
2. The right of a child to know and have a relationship with each parent;
3. A limitation of a consideration of parental conduct to that conduct which impacts on the child;
4. The risk of harm: emotional, physical and sexual;
5. The nature of the relationship between the parents and its impact on the child;
6. The nature of the relationship and attachment between the access parent and the child; and,
7. The commitment of the access parent to the child.

[150] In *Merkand v. Merkand*, [2006] O.J. No. 528 (C.A.), leave to appeal refused, [2006] S.C.C.A. No. 117, the Court found that an order for indefinite supervised access, providing neither transition to unsupervised access nor a fixed review date should be made in rare circumstances. The Court also found that a trial judge's order which did not provide for these does not preclude the parent with access from seeking leave to vary the terms of the access in the future upon proof of a material change in circumstances.

[67] In *M.K.*, the evidence was that the father had a history of uncontrollable anger, violence and irrational hostility. He bullied and hit the mother, imposed rules on her parenting and limited contact with her family. He drank alcohol to excess, and became more violent and angry when he drank. Madam Justice Griffin concluded:

[156] The child is just a baby, and very vulnerable. Without a doubt it is in the best interests of a child to have loving ties with both parents but based on the evidence, I conclude it would be unsafe for the child if the plaintiff [father] was given any custodial or guardianship responsibilities. I also conclude that it would be unsafe for the child to have unsupervised access by the plaintiff in the immediate future.

[157] I consider it important that the child have contact with the plaintiff to establish a bond but that this should be limited and gradual. The plaintiff should be allowed time to obtain counselling so that he can manage and reduce his general anger problems, find a way to lessen his open and active hostility with the defendant mother and her family, and develop parenting skills. An order providing that the plaintiff's access be supervised, subject to a period of review with the goal of moving to unsupervised access, is in the best interests of the child. Supervised access will protect the child from harm, but also assist the plaintiff in giving him the time and the opportunity to take the necessary steps to become capable of providing a safe and appropriate environment for the child. (emphasis added)

- [68] Whether supervised parenting time is appropriate is fact specific to each case. The mother cited two examples of cases in which the Provincial Court ordered supervised parenting. The facts in those cases are notably different from the facts in this case.
- [69] In *W.S. v. C.S.*, 2017 BCPC 376, the father acknowledged disciplining the child by making him take a cold shower, putting soap in his mouth, refusing to feed him dinner and speaking to him in a way that frightened him. The father also had difficulty controlling his temper, even in court, and accused the mother of manipulating the legal system. Judge Skilnick held:
- [40] I am satisfied that this is an appropriate case for an order for supervised parenting time. The FLA requires that orders for parenting time be made in the child's best interest and that this requires that the child be protected "to the greatest extent possible" from physical harm. I do not believe that the Applicant would intentionally cause physical harm to this child. The concern is that more "mistakes" would be made in reaction to the child's crying or other disapproved behaviour. There is an unspoken fear that, if left unsupervised with the child, the Applicant may experiment with other inventive ways of disciplining this child, and that these will be equally as abusive as cold showers and soap in the mouth.
- [41] Based on his past conduct, it is likely that the Applicant would perceive any constructive criticism of his parenting as manipulation on the part of the Respondent or an attack on his "rights", rather than concern for the child. His quickness to anger and his belief that others should have to be subjected to his anger whether they like it or not makes it necessary that there be someone more objective watching out for the child. I am satisfied that the Respondent is correct in her position that supervision is necessary in the best interests of this child. (emphasis added)
- [70] In *M.A.G. v. J.L.A.*, 2018 BCPC 206, the evidence was that the father physically abused the mother, frightened the child, punched holes in the walls and windows of the family home, hit the family dog, smashed dishes and damaged other property. A Provincial Court judge made an order for supervised parenting, in which the father participated for a time, but then stopped seeing his daughter altogether. On an application concerning parenting time, Judge Solomon held:
- [116] Under section 45(3) of the Act, a court may order that parenting time with a child, be supervised if the court is satisfied that supervision is in the best interests of the child. Section 37(3) of the Act requires that for an order to be in the best interests of a child, it must protect, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.

- [117] At present supervised parenting time for J.L.A. is appropriate and in the best interest of the child for several reasons. J.L.A. has not seen the child in over two years; the child has a fear of him, and he has undiagnosed and untreated mental health issues that have led to this situation. However, the previous supervised parenting time sessions were successful as reported on by Ann Davis Transition Society. I expect the supervised visits to be successful and this will lead to unsupervised visits in the community.
- [71] The mother relies on the decision of the Court of Appeal in *Fitzgibbon v. Fitzgibbon*, 2014 BCCA 403. In that case, a Supreme Court judge ordered that a father's parenting time be suspended following an alleged incident of family violence, until the parties could agree on a parenting supervisor. The father applied to vary or set aside the supervision requirement based on evidence the Crown had decided not to pursue criminal charges and the Ministry of Children and Family Development had closed its file on the incident. The judge dismissed the application and continued the supervision order until such time as a s. 211 report could be completed. The father appealed, arguing that the judge erred by ordering supervised access where there was conflicting evidence regarding the alleged incident and no pattern of family violence. The Court of Appeal dismissed the appeal, speaking through Justice D.M. Smith:
- [21] In my view the April 3, 2014 interim order does not engage a question of law. Decisions regarding the guardianship, custody, parenting and access of children are inherently exercises of discretion by the judge and are therefore accorded deference on appeal. An appellate court may only interfere where there is a material error, serious misapprehension of the evidence, or an error of law: see *Van de Perre v. Edwards*, 2001 SCC 60, and *Rick v. Brandsema*, 2009 SCC 10. Here, the judge's decision to confirm his December 6, 2013 interim order reflects an exercise of his discretion in weighing the new evidence and finding that it did not support a variation of the earlier interim order at that time. While the one-off nature of the alleged incident, the basis upon which the third-party decisions of the Crown and the MCFD were made, and the question of whether there is an ongoing need for continued supervision of the father's access to the child may all be relevant factors for consideration in the final determination of this issue, it was, in my view, open to the judge to conclude that it was premature to change his December 6, 2013 interim order before the s. 211 report had been completed. His decision, by inference, reflects the view that the issue would be better addressed at the trial of the action where the factual and credibility issues may be fully canvassed. In short, I do not find his decision to dismiss the father's application to vary the interim order for supervised access to demonstrate an error of law, but rather to reflect an exercise of his discretion in the weighing of the new evidence. Deference must be accorded to such a decision. (emphasis added)
- [72] I do not understand *Fitzgibbon* to have changed the law on supervised parenting as it was summarized by Madam Justice Griffin in *F.K.*, but rather to have confirmed that the weighing of the evidence in a particular case is an exercise of discretion.

- [73] Fitzgibbon stands for the proposition that interim orders are primarily designed to maintain the status quo and provide short-term solutions until issues regarding the best interests of a child can be fully canvassed at trial. Fitzgibbon also holds that disputed issues of fact and whether there is an ongoing need for supervision are best resolved at trial and not by repeated interim applications (para. 22).
- [74] In this case, unlike in Fitzgibbon, there has been no judicial determination that supervision is required in the best interests of the children. The parties' agreement that the father's parenting time would be supervised following his suicide attempt is not the sort of status quo referred to in Fitzgibbon that would give rise to deference pending trial. The mother - understandably in the circumstances - required that the father's parenting time be supervised following his discharge from hospital. The only alternatives open to the father were to stop seeing the children altogether or to proceed immediately to court. In my view, spouses should be able to seek a resolution or a transitional arrangement, without the risk of creating a status quo which is then confirmed by the court pending a trial that, in this case is not yet scheduled and may be a year or more away.
- [75] What Fitzgibbon does emphasize is that my decision on these applications is based on a limited record. A trial judge may reach different findings of fact on a more developed body of evidence, including expert evidence. I must therefore take a cautionary approach to disputed issues of fact and expert opinion. However, I must also strive to ensure that I am not "so overly cautious as to be timid": *I.F. v. R.J.R.*, 2015 BCSC 793, at paragraphs 13-15.
- [76] I am also required by s. 37(3) of the FLA to ensure that any interim order for parenting time protect, to the greatest extent possible, the physical, psychological and emotional safety, security and well-being of the children. However, there must still be a basis in the evidence for me to impose supervision and restrict the father's parenting time having regard to the factors summarized by Madam Justice Griffin in *F.K.*
- [77] The mother raises a number of factors which she submits require the court to order that the father's parenting time be supervised: his "long-standing history of psychiatric illness"; his severe depressive disorder; the involuntary certifications under the Mental Health Act and the hospitalization over several weeks; his suicide attempt in February 2019; his "reported risk of a repeat suicide attempt"; his "myriad of suicide plans"; his "pattern of dishonesty", including dishonesty with the medical providers at Lions Gate to obtain a discharge; his "history of thought distortions, lack of judgement and impaired insight"; the presence of medical conditions that are stressors; and his PTSD, flashbacks and anxiety following the suicide attempt.
- [78] The "history of psychiatric illness" to which the mother refers is the father's depression and suicidal ideation. There is no evidence of any other history of mental illness. The father's depression and suicidal ideation alone did not cause the mother to question the safety of the children in his care. Despite his disclosure of suicidal thoughts dating back to 2016, the father co-parented P. and cared for her at times by himself, both before and after the parties'

separation. As late as November 2018, following his father's "near suicide attempt" in August 2018, the mother allowed the father to care for P. alone (this was while the mother was recovering in hospital following M.'s birth). Prior to the actual suicide attempt, the mother agreed to generous parenting time for the father with the two children, albeit mostly at home in her presence. It was the father's attempt to commit suicide on February 13, 2019, which tipped the balance for the mother, and gave rise to her requirement that any further parenting time be supervised.

- [79] There is compelling evidence that the father was at risk to attempt suicide again following his discharge from St. Paul's Hospital in March 2019. The consulting psychiatrist at St. Paul's found he was at high risk of a repeat attempt, based on the following risk factors: male gender; history of depression; prior suicide attempt; and significant psychosocial factors including loss of identity, loss of relationship and potential financial strain. In addition, the father expressed disappointment to the St. Paul's psychiatrist that the suicide attempt was unsuccessful, and he said at that time that he was uncertain what could change going forward such that he would not feel like making another attempt.
- [80] The father has shown improvement in his mental health since being discharged from hospital a year ago. As of August 2019, his treating psychiatrist was not concerned about depressive symptoms or suicidal ideation or intent. By November 2019, the father had returned to work part-time with the approval of his psychologist and the College, and he began four shifts of emergency medicine in a busy hospital. While he has experienced some flashbacks that have affected his sleep, the father deposes that his psychologist is happy for him to continue at work, as is his department. In December 2019, the father began assisting with transport and care of infants for a major hospital. The father continues to participate in the health monitoring program provided by the College. The recent update by the father's treating psychiatrist confirms that his depressive disorder remains in remission.
- [81] While the evidence of the father's recovery is promising, I am unable to conclude on this interim application that he has fully overcome the depression that drove him to attempt suicide in February 2019. The mother argues that the evidence is unreliable given the father's history of misleading doctors and others about his suicidal thoughts. As the mother points out, an accurate diagnosis of the risk of suicide requires honest self-reporting by the father. The question of whether he is fully clear of the risk of another suicide attempt can only be determined, if at all, at a trial with the benefit of full testimony, cross-examination and expert evidence. For the present purposes, I must assume that the father remains at risk based on the factors identified in February 2019.

- [82] However, the relevant question before me is not whether the father is at risk of attempting suicide again, but rather whether, without supervision during his parenting time, the father poses a risk to the physical, psychological or emotional safety and well-being of the children. Standing alone, the evidence that the father is at risk of attempting suicide does not bring this case within the factors set out in F.K. The issue is whether the father poses a risk to the children during his parenting time.
- [83] It would clearly be emotionally devastating for the children if their father attempted suicide again, much less killed himself. But that risk exists regardless of whether the father's parenting time is supervised. The only potential risk a parenting supervisor could mitigate is a risk the father might attempt suicide in the presence of the children or a risk he might engage in dangerous suicidal behaviour while the children are in his care.
- [84] In my view, it is a large step from the recognized risk of a repeat suicide attempt to a risk that the father would seek to take his life or endanger the safety of his children while they are in his care. That step is too large for me to take on the evidence.
- [85] The psychiatrists who consulted on his case were aware that the father had young children, that he was separated from their mother and that he had parenting time with the children. They did not express concern for the safety of the children. The father was also cleared by the College to return to work in an emergency department where he is responsible for the health and safety of very vulnerable patients, including children, and has access to potentially fatal medications.
- [86] In August 2019, the father's psychiatrist reported that, while he was not in a position to conduct a parenting assessment, he had "not witnessed any residual symptoms of mood disorder, PTSD or characterological factors that would interfere with [the father's] parenting ability". In March 2020, the same psychiatrist confirmed "without reservations" that, in his view, the father's mental state does not create an impediment to parenting. While a parenting assessment may be outside his area of expertise, these clear statements by a trained psychiatrist give me comfort the children will not be at risk in the presence of their father.
- [87] There is no evidence of reckless behaviour by the father that has ever put the safety of his children at risk. Some of the suicide methods the father has admitted to considering - such as going to a gun shop and shooting himself, driving a car into a pole or stepping into traffic - are dangerous and violent. However, there is no evidence that he would ever involve the children in such horrific actions.

- [88] The mother relies on the statement in February 2019 by the psychiatrist at St. Paul's, that it was "concerning [the father] was not particularly forthcoming with his recent care givers at [Lions Gate] with regard to how he was feeling and coping". The father's lack of disclosure at a point in time when he was in distress is a potential cause of concern for his continued health. However, it is, again, too big a step for me to take from that concern to a concern the children may be at risk if he is not supervised during his parenting time.
- [89] The mother also expresses concern that the father has not provided full and timely disclosure of his medical records or his dealings with the College despite repeated requests. The specific medical records the mother says the father has not disclosed pre-date the suicide attempt. I am not convinced that, for the present purposes, the father must produce his medical records pre-dating the suicide attempt; however, he must provide complete documentation of the College's requirements and how he has met them, as well as on-going disclosure of any additional medical records as they become available to him.
- [90] The mother's requirement that the father's parenting time be supervised after his discharge from hospital was an appropriate cautionary response to a very troubling event. But a year has now passed, with no evidence of any behaviour by the father that has put the children at any risk. The father has taken steps to address his physical and mental health, and it appears he is on the path to recovery. An interim order requiring continued supervision would effectively be indefinite. The parties have not set a trial date. With the recent disruption to normal court operations due to the outbreak of COVID-19, it is unclear when the matter could come to trial. The evidence does not justify indefinite supervision.
- [91] The mother argues, in the alternative, that the father's parenting time should be supervised until such time as the parties obtain a s. 211 report. This may also be a substantial period of time in the present circumstances. Moreover, as discussed further below, I do not think a s. 211 report will provide the mother with the certainty she seeks. The mother's concerns with the father's mental health are likely to continue until this matter goes to trial, and maybe beyond a trial judgment. A s. 211 report may be of assistance to the parties or the court in reaching further agreements or a final decision on parenting arrangements; however, I don't think one is necessary to determine whether continued supervision is required in the best interests of the children.
- [92] In my view, the best interests of the children will be protected by: allowing the father unsupervised parenting time based on the current parenting arrangements; requiring the father to continue with the health monitoring program provided by the College, obtain regular updates from his treating psychiatrist and provide full and on-going disclosure of all relevant medical documentation to the mother; and granting the mother leave to apply to the court, on short notice if appropriate, in the event further concerns arise or the father fails to make the required disclosure. I will return to the terms of an appropriate order in the conclusion section below.

D. Section 211 Report

- [93] The father applies for an order pursuant to s. 211 of the FLA that a parenting report be prepared. He proposes that Dr. Nicole Aube prepare the report, although he says he is also prepared to agree on another qualified expert such as Dr. Michael Elterman, Dr. Ron La Torre or Leanne Harder. He argues that the parties should initially be required to split the cost of the report evenly, with the final apportionment to be left to the trial judge.
- [94] In her application response, the mother opposed a s. 211 report on the basis it is unnecessary and not in the best interests of the children, given the invasive nature of the assessment for the children.
- [95] In a "with prejudice" letter dated September 23, 2019, however, the mother proposed that the parties jointly retain Dr. Peggy Koopman to prepare a full s. 211 report on the needs of the children, the ability of the parties to meet the needs of the children, and to opine on appropriate parenting arrangements.
- [96] During oral submissions, the mother's counsel acknowledged - while maintaining her principled doubts regarding its evidentiary benefit - that a s. 211 report is inevitable in this case. If a report is ordered, the mother submits that the father should pay for its cost in the first instance.
- [97] The mother is opposed to Dr. Aube authoring the report. She notes that a report by Dr. Aube was described as marginally useful by the trial judge in *K.W. v. L.H.*, 2017 BCSC 1441, who was also critical of Dr. Aube's testimony as an expert witness. The mother submits that Dr. Koopman has "substantial and greater expertise in the forensic analysis required for the court".
- [98] The father opposes Dr. Koopman on the basis she is not familiar to his counsel and not on the roster of prominent s. 211 report authors. The father notes that the trial judge in *N.J. v. S.J.*, 2018 BCSC 2352, rejected the main conclusions and recommendations in a report by Dr. Koopman.
- [99] The issue at the heart of these applications was the concern with the father's mental health and the risk he may attempt suicide again. It is unclear to me what "forensic analysis" Dr. Koopman would undertake into this issue based on her area of expertise. Dr. Koopman is a registered psychologist; her specialization includes a focus on sexual abuse, sexual deviance and related issues.
- [100] For that matter, it is unclear to me whether the issue that has been raised on these applications is within the expertise of the father's proposed authors.

- [101] Regardless of how well-qualified and recognized any of these professionals are for the purposes of preparing s. 211 reports, the issue that has been raised before me requires a report which is more in the nature of an independent psychiatric medical examination of the father. For this reason, I find it difficult to resolve the disagreement over who should prepare the report. None of the proposed authors is clearly more qualified than the others.
- [102] In my view, the parties should revisit their preferred authors in light of the real issues in this case. They should also canvass the ability of the proposed authors in light of the elapse of time since their initial communications and recent developments around COVID-19. They should exchange three names each. If the parties still cannot come to agreement on an author, they may submit their recommendations to me to decide.
- [103] As to the cost of the report, my view is that the father should pay for the cost of the report in the first instance, with the final apportionment left to the trial judge. Although the father's income has been reduced by his medical leave and reduced hours, it will be higher than that of the mother over the period of time before trial. The mother would likely need to use taxable assets such as RRSPs to pay for the report.

E. Decision-Making Authority

- [104] The mother applies for an order pursuant to ss. 40, 41 and 65 of the FLA that, in the event the parties are unable to reach agreement on a significant decision concerning the children, she will be entitled to make the final decision and the father will have the right to apply for directions from the court.
- [105] The father did not seriously dispute this application. The parties have managed to make most of the decisions concerning the children collaboratively to date. In the event of future disagreements, the children require a final decision-maker. The mother is their primary caregiver. She provided them with the stability they required while the father was in the hospital. She can provide them with the stability they will require in the event he relapses into depression. I will grant the order sought by the mother; however, I would require the parties to attempt mediation before the mother exercises her right to make a final decision or the father exercises his right to challenge the decision.

IV. CONCLUSION

- [106] The parties are each guardians of the children. They will share all parenting responsibilities, including those listed in s. 41 of the FLA. In the event the parties are unable to reach agreement on a significant decision concerning the children through mediation, the mother will be entitled to make the final decision and the father will have the right to apply to the court for directions.
- [107] Forthwith, the father must produce to the mother full documentation of the College's requirements, how he has met them, and how he continues to meet them.

- [108] On an on-going basis, the father must request, and produce to the mother as soon as practicable, all medical records relating to his mental health. This obligation will continue until agreement of the parties or further court order.
- [109] On an interim basis, the father will have unsupervised parenting time with the children three times per week for four hours, or such other times as the parties may agree.
- [110] As a condition of exercising unsupervised parenting time, the father must continue to participate in the health monitoring program provided by the College until such time as the program is no longer available to him, agreement of the parties or further court order.
- [111] As a further condition of exercising unsupervised parenting time, the father must obtain quarterly (once every three months) updates from his treating psychiatrist, and produce copies of the updates to the mother. This obligation will continue until agreement of the parties or further court order.
- [112] I will remain seized of any application to vary the parenting arrangements in this order. The parties may submit a request to appear before me to deal with any emergent issues and inform the registry that the application is to be considered urgent. If available, I will grant short leave where appropriate for such applications.
- [113] The parties will confer on the name of the person who will be appointed to prepare a report under s. 211 of the FLA. In the event they are unable to agree, the parties may submit their recommendations to me to be resolved. The father will pay for the cost of the report in the first instance, with the final apportionment left to the trial judge.
- [114] The father was substantially successful on these applications. In accordance with Rule 16-1(9), he is presumptively entitled to costs of the applications in the cause. If the mother would like to argue that the court should order otherwise, she may deliver written submissions by e-mail within 14 days of the date of these reasons, with the father to respond within 14 days of receipt of the mother's submissions.

"Master Elwood"

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