
CANADA / JUDGMENT

M.S.R. v. D.M.R.

2022 BCSC 1398

COURT

Supreme Court of British Columbia

DECIDED

12 August 2022

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2022 BCSC 1398 M.S.R. v. D.M.R.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

M.S.R. v. D.M.R.,

2022 BCSC 1398

Date: 20220812

Docket: E200142

Registry: Vancouver

Between:

M.S.R.

Claimant

And

D.M.R.

Respondent

Corrected Judgment: The text of the judgment was corrected on the front page on November 10, 2023

Before: The Honourable Justice Thomas

Oral Reasons for Judgment

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J. James (A.S.)

Place and Date of Hearing:

Vancouver, B.C.

March 28-31, April 4, May 30-31, June 1-3, 6-10, 13 and

June 24, 2022

Place and Date of Judgment:

Vancouver, B.C.

August 12, 2022

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Primary Issue

- [1] This case requires a determination as to whether the child of the marriage became estranged from his mother or whether he was alienated from his mother by his father.
- [2] If I determine the child has been alienated, the next step will be to determine if or how the best interests of the child will be promoted by addressing the alienation.
- [3] This determination requires me to make a significant number of factual findings with respect to the nature of the relationship between the mother, M.S.; the father, D.M.; and the child, J.S.; during the marriage, separation and divorce, and significant events which took place over this time.

Finding of Facts

- [4] M.S. was born in Winnipeg and has two older brothers. She is 57 years of age. D.M. was born in Vancouver and has a younger sister. He is 62 years of age.
- [5] M.S. and D.M. began cohabitating in February 2004. They were married on March 26, 2004. They had one child, J.S., born October 18, 2008. He is currently 13 ½ years old.

Parenting during the marriage

Division of parental responsibilities

- [6] M.S. was the primary caregiver for J.S. She arranged all of the meals and activities for the family. She would take J.S. to and from school and his activities. She continued to work at UBC throughout and after the marriage.
- [7] D.M. owned and operated a coffee shop which occupied the majority of his time.
- [8] In the fall of 2012 D.M. was forced to close the coffee shop. He obtained full-time work from his parents, managing their properties and caring for them. D.M. remained busy at work but had more interactions with M.S. and J.S. than he had had while running the coffee shop. He regularly attended J.S.'s activities such as baseball and karate. At times he would take J.S. to school and to activities.
- [9] M.S. continued to organize all of J.S.'s activities and manage the household.

Relations with J.S.

- [10] D.M. was in agreement with the decisions made by M.S. with respect to J.S. D.M. had no significant concerns with M.S.'s parenting throughout their marriage. M.S. arranged numerous playdates and activities to ensure J.S. remained social with peers. J.S. had a loving relationship with both D.M. and M.S. throughout the course of the marriage. D.M. supported

the activities M.S. arranged for J.S.; specifically baseball, taekwondo and piano. He would occasionally take J.S. to them and watch them. J.S. did not want to continue with baseball so they stopped that activity in 2019. Neither D.M. nor M.S. had a problem with J.S.'s decision to stop playing baseball. He had lots of activities. J.S. continued with taekwondo and the piano in 2019.

- [11] During the marriage the family lived in the same complex as D.M.'s parents in Vancouver. Both D.M. and J.S. were very close to D.M.'s mother throughout the marriage. This caused some friction in the marriage as M.S. felt that D.M. was too reliant on his mother and her views.
- [12] J.S. had a strong relationship with M.S.'s mother and her brother G.R. throughout the marriage despite the fact they both lived in Manitoba.

Marital breakdown

- [13] The marriage did not remain a happy one. D.M. felt M.S. was too controlling of him and J.S. M.S. felt D.M. was too reliant on his mother and that his mother was too involved in their marriage. D.M. acquiesced to M.S. throughout much of the marriage.
- [14] One area of disagreement was J.S.'s use of electronics. D.M. gave J.S. a cell phone in 2008, when J.S. was four years old. J.S. was given an iPad when he was six years old. M.S. restricted J.S.'s use of these electronics. D.M. felt that M.S. was too restrictive with respect to J.S.'s use of electronics. During the marriage M.S.'s views prevailed.
- [15] Another point of contention was the amount of time J.S. would spend with his peers. D.M. did not prioritize interaction of J.S. with his peers to the same degree as M.S.
- [16] As the marriage deteriorated M.S. and D.M. had arguments; sometimes in front of J.S. M.S. yelled at times and said she wanted a divorce; comments which "freaked out" J.S. D.M. would call M.S. mean, a drill sergeant and a bully when she would enforce rules such as bed time and use of electronics too rigidly.
- [17] In 2018 D.M.'s property management duties began to wind down and he began spending more time at the family home and with his mother. This did not improve the marriage.
- [18] In early 2019 D.M. retired as his parent's property manager but continued to provide them with personal care. By this time D.M.'s father had moved into a care home.
- [19] In the fall of 2018 D.M. and M.S. decided to separate. They did it gradually with D.M. sleeping in his mother's residence each night. They began to divide their time equally with J.S. In December D.M., D.M.'s mother and J.S. went to Victoria without M.S. Both D.M. and M.S. were utilizing divorce coaches. In February 2019, D.M. and M.S. mutually told J.S. they were getting a divorce. Shortly after that D.M. obtained his own place in the same building complex.

Personality and psychological issues

- [20] D.M.'s treating psychiatrist indicated that he displayed many signs of a generalized anxiety disorder. His relationship with his mother has been a multifaceted source of stress for many years; an amalgam of support and demands. D.M. can avoid responsibility and his passivity can be unhelpful. Dr. Aube opined that D.M. is an anxious person who has difficulty responding to stressful situations. When upset he tends to have an immature and/or dramatic response. He requires constant reassurance. His social interactions are restrictive and he has very limited close relationships.
- [21] I agree with this characterization.
- [22] M.S. suffers from severe anxiety. She has embraced maladaptive behaviour patterns aimed at controlling her anxiety. She is emotionally very fragile with a vulnerable ego. She meets the criteria for generalized anxiety disorder. M.S. has learned to appease her anxiety by ensuring she eats healthy, stays thin and is physically fit.
- [23] I agree with this characterization.

Parenting styles

- [24] M.S. continued with the same parenting style that had been used throughout the period of cohabitation with D.M. and J.S.; she was very structured and enforced rules around bedtime, use of electronics and attendance at school. D.M. utilized a much less rigid style with J.S. He would solicit J.S.'s views and typically acquiesce to them. This was reflected in J.S.'s attendance and lateness at school, use of electronics and the time he would go to and get up from bed.
- [25] Dr. Aube prepared a section 211 report for the court. She interviewed the parties and relevant non-parties with the exception of D.M.'s mother whom chose not to participate. In addition, she reviewed records and conducted psychometric testing on D.M. and M.S.
- [26] Dr. Aube provided the following assessment of parenting styles:

I agree with the Reunification Team who described as asymmetric M.S. and D.M.'s concept of parenting. Indeed, they are totally divergent in respect to their perspectives, and goals of parenting. Their respective parenting styles is conflicting; it was non-complementary; it was disparate, which for any child is confusing and can generate a great deal of anxiety.

M.S., whom has been the primary caretaker, has been the parent who had to set the rules and require contingencies for J.S. Noticeably young, J.S. received the message that mom had more rules than dad; she wanted him to be accountable as a child, while dad wanted to be his friend. M.S. had expectations on J.S., while D.M. had limited to no expectations. He was, and still is, the "fun dad" when mom was the "mean mom". This theme has been reinforced in J.S.'s mind for several years.

There are many examples that could substantiate this polarization of the parents' character and the challenges for D.M. to exercise his parenting role... A few protagonists interviewed for this assessment have described D.M.'s inability to parent his son, despite his genuine love, as if he had abdicated his role as a father.

[names abbreviated]

- [27] The accommodations made by D.M. with respect to bed time, use of electronics and attendance at school exceeded what J.S. required for his health concerns. In saying this, I am cognizant of the fact that J.S. had health concerns that necessitated absences and lateness at school and D.M. was advised not to pressure J.S. to get to school. However, these health concerns alone cannot explain the sustained pattern of absences and lateness at school. I find J.S. preferred D.M.'s acquiescence to his wishes over the structure and boundaries provided by M.S.
- [28] This assessment is consistent with the impressions I have drawn from the evidence, and I accept her opinion as set out above. It is clear that contrasting parenting styles was one issue that made the transition from the marriage to divorce difficult for J.S.

Ability to parent

- [29] D.M. presented considerable evidence about M.S.'s psychiatric difficulties. I concur with the opinion of Dr. Aube, who was aware of M.S.'s psychiatric condition and opined that she had no concerns regarding her ability to care for J.S.
- [30] In addition, I agree with Dr. Aube that even if M.S.'s attitude towards food contributed to J.S.'s eating disorder it would have no impact on her ability to parent J.S. M.S. is aware of her issues and cognizant of messages that are transmitted to J.S.

J.S.'s personality and health concerns

Personality assessment of J.S.

- [31] Dr. Aube also provided an assessment of J.S.'s personality.
- [32] She noted that J.S. is an anxious child and his anxiety has two main sources: a) an environmental/situational basis: his parents' non-harmonic relationship; and b) social learning: he has observed numerous times the anxious response of his parents. Both mom and dad are themselves anxious individuals. She continued:

He is profoundly a worrisome child. When anxious, his anxiety absorbs a great deal of energy. He becomes tense and rigid. J.S. becomes quite irritable when he senses any emotional pressure or demands on him. His apprehension can be excessive, which tends to lead him to avoidant behaviour

It seems that over the years J.S. has emulated many of his father's psychological traits. Like dad, he is starting to respond to challenges and external pressure by an avoidant response. He deflects his anxiety by distancing himself from commitment.

In addition, it seems imperative to point out that J.S. seems quite addicted to the internet and his video games which by his account, absorbs most of his time during the day. D.M. may have some awareness of J.S.'s addiction, but M.S. has clearly deplored her son's obsession vis a vis the video games and restrictive activities it is clear that J.S. will need some help to significantly reduce his chronic usage of electronic devices.

Anxiety has been and is still very much the main common denominator of this family. It has exacerbated the worst aspect of everyone's personality and has led to maladaptive behaviours.

[names abbreviated]

[33] This assessment is consistent with the impressions I have drawn from the evidence as set out in these reasons, and I accept Dr. Aube's opinion as set out above.

ARFID

[34] J.S. had always been a picky eater and was in the lower percentiles for weight and the higher percentiles for height. However, he ate a wide variety of foods as a baby/infant including bananas which was documented in baby/infant materials created contemporaneously by M.S.

[35] M.S. and D.M. were concerned over J.S.'s weight and sought medical assistance. J.S. was diagnosed with avoidant/restrictive food intake disorder ("ARFID") by Dr. Deevska when he was 10 years old and referred to a nutritionist, Jadine Cairns; and a social worker, Pat Roles; both of whom are qualified to treat children with food disorders. Ms. Roles provides food counselling to children as part of her scope of practice but is not a psychologist. Ms. Roles provided assistance with strategies to encourage J.S. to eat and later to expand the range of foods he would eat.

[36] I accept Ms. Roles' evidence that as J.S. grew older:

- i. J.S. ate food he did not like and began to pretend to eat food in front of M.S.; and
- ii. M.S. was concerned over J.S.'s preference for sweets and encouraged him to eat a variety of healthy foods.

I also accept Ms. Cairns' evidence that J.S. was a compliant child who wanted to please his mother and make her proud such that J.S. was not forthcoming with her about foods he did not like. Ms. Cairns did not detect any signs indicating J.S. was afraid of M.S. when she attended with him up until the end of 2019.

- [37] There are two stages to ARFID. The first stage is medically serious and requires dramatic steps to increase the amount of caloric intake. The second step occurs once the child's weight has stabilized at a normal level for age and height. This second stage involves a diversification of the types of food consumed. According to Ms. Cairns, whose testimony with respect to ARFID and J.S.'s experience with ARFID I accept, by the time J.S. reached the second stage there was no medical need to continue with treatment, no reason to think J.S.'s weight loss would revert, as such further treatment was voluntary with the focus being on diversifying the types of food J.S. would consume.
- [38] J.S., along with one or both of his parents saw Ms. Cairns and Ms. Roles on a weekly basis from February until sometime in the summer of 2019 when Ms. Roles began counselling J.S. without his parents present in the session. J.S. and D.M. developed relationships with Ms. Roles outside of these clinical meetings and had extensive independent correspondences with her. Ms. Roles testified it was her standard practice to destroy these communications and she did so in this case.

Gradual weight gain

- [39] M.S. and D.M. were advised to focus solely on increasing J.S.'s caloric intake. This meant there were to be no restrictions on J.S.'s diet; he was to be encouraged to eat as much ice cream, milkshakes and other sweets as he could voluntarily consume.
- [40] Ms. Cairns testified M.S. had some concerns about this dietary advice. However, Ms. Cairns noted these concerns were consistent with those commonly expressed by parents in similar situations. She noted M.S. was compliant with the recommendations and "followed through" with them. I prefer Ms. Cairns' evidence over Ms. Roles' evidence on this issue. I will expand on the difficulties I had with Ms. Roles' evidence throughout my Reasons.
- [41] From February to August J.S.'s weight gradually increased.

Correspondence with Ms. Roles

Missing documents

- [42] D.M. produced over 300 pages of emails between himself and Ms. Roles shortly before the commencement of the trial. D.M. testified he was missing a number of emails as he had trouble with his service provider. There were sporadic gaps in the emails he was able to produce. In addition, during the trial a single highly relevant text from D.M. to Ms. Roles was provided by another witness who had been provided a copy of the text by Ms. Roles.
- [43] After reviewing the information provided and the circumstances of this case I do not believe all of the relevant correspondence between Ms. Roles and D.M. has been produced. I do not find there was any misfeasance on behalf of D.M. with respect to the missing correspondence.

April correspondences with Ms. Roles

[44] As early as April 2019, D.M. was providing the following information to Ms. Roles about M.S., including:

- i. Whenever J.S. had sweets, M.S. would take them away and eat them in front of him;
- ii. M.S. spent all of the family's money on herself such that there was no money left for essential items, such as school and necessary renovations;
- iii. M.S. constantly badgers and directs J.S. and D.M., and does not let them finish any sentences;
- iv. M.S. is suffocating J.S. and does not provide him with any personal space or privacy;
- v. The only reprieve J.S. has from M.S. is when he is on electronics;
- vi. M.S.'s residence is dirty and not a home since D.M. moved out;
- vii. M.S. is depriving D.M. of his father/son relationship; and
- viii. J.S. told him M.S. is horrible to J.S., J.S. is afraid of what M.S. might do to him, and J.S. believes M.S. should be put in jail.

[45] Ms. Roles testified J.S. uses strong language about M.S. in order to be heard and his extreme statements should not be interpreted literally. I accept this to be the case.

[46] I do not accept as true the facts and/or characterization of the facts provided by D.M. However, I find the correspondence probative as to D.M.'s views with respect to M.S.

August correspondences with Ms. Roles

[47] In August 2019, J.S. was excited to attend sleep away camp. When he returned from camp he had lost considerable weight. The cause of the weight loss was unclear, but I suspect J.S. had difficulty continuing to maximize his caloric intake while away from his parents.

[48] D.M. provided the following correspondence to Ms. Roles on August 17, 2019 shortly after J.S. returned from camp:

J.S. told me he "really hates Mom so much". Normally this might be a right [sic] of passage statement eventually from a tween or teen talking about his parents, but I have come to realize this isn't normal because he has actually repeated this to me quite a few times either saying that or "I hate being with Mom so much, and you and grandma give me my happiness." He says it very emphatically. J.S. has told me he wishes he was with me more than his mom. J.S. has changed his smile now with his mouth closed and I notice that the sparkle he always had in his eyes has disappeared over the past year. When he used the words "so much", I realized this is not normal kid stuff, but he is letting me know something serious.

Please be aware that M.S. is a pro at being very two faced. She is excellent at you being able to hear the positive and wonderful things you are hoping to hear from her that she will change and be doing while all the while staying the same. In the 15 years I gave fully to our marriage and all the sets of counsellors we saw, she was an expert at telling them all the wonderful things they were hoping to hear from her and she never changed at all and I was duped. I think you indicated to me early on that you may have her number, and recently she was going to work really hard at changing herself. But at nearly 55 years of age and she did not become a part of our family in our marriage and never was willing to work on our marriage. J.S. had not even been home from camp more than a few hours and she already had him in tears.

Just thought you should know this.

[names abbreviated]

[49] I do not accept as true the facts and/or characterization of the facts provided by D.M. However, I find the correspondence probative as to D.M.'s views with respect to M.S.

September correspondence with Ms. Roles

[50] On September 1, 2019 M.S. and D.M. formalized their separation agreement. M.S. remained in the family residence and D.M. had an apartment in his mother's complex. It was a joint parenting arrangement with J.S. living with each parent on a 2/2/5/5 schedule.

[51] This was similar arrangement to what had been occurring since April 2019. In October, M.S. was to move to an apartment close to D.M.'s residence and J.S.'s school.

[52] The agreement stipulates:

D.M. and M.S. wish to have a full and active role in providing a sound moral, social, economic and educational environment for J.S.

D.M. and M.S. acknowledge that:

- (a) Each is a loving and capable parent;
- (b) Both wish to do everything necessary to ensure that the parenting arrangements specified in this Agreement are in the best interests of J.S. and that the life of J.S. is disrupted as little as possible;
- (c) The parenting arrangements they are agreeing to are those which appear to them to be the least disruptive to J.S. in the circumstances;
- (d) J.S. needs the ongoing nurturing care that D.M. and M.S. have provided in the past;
- (e) Both wish to do everything possible to maintain J.S.'s free enjoyment of the company of each of them; and
- (f) Neither will place unnecessary restrictions on the freedom of J.S. to spend time with either of them.

The parties acknowledge that the fairness, validity and enforceability of this Agreement is dependent upon each of them:

- (a) negotiating in good faith and with the utmost integrity;
- (b) providing accurate and complete disclosure to the other in accordance with the Collaborative Agreement.

[names abbreviated]

[53] D.M. and M.S prepared the separation agreement with coaches and collaborative lawyers over a period of many months. Ms. Grundberg assisted D.M. with the agreement and met with him many times to ensure it accurately reflected his wishes. Ms. Grundberg thought things were very positive up until the agreement was signed. She was very saddened that things broke down. She did not know why. There was no indication that M.S. had been abusive to D.M. during their marriage during the process.

[54] Neither D.M. nor any of the other participants raised any issues about M.S.'s ability to parent during the process.

[55] In September, shortly after signing the agreement, D.M. provided Ms. Roles further information:

- i. A summary of how in his view M.S. instilled improper eating habits in J.S.;
- ii. M.S. abused D.M. in the marriage to the point where he was left like a dirty torn rag;
- iii. D.M. became conditioned to be silent and avoid speaking with M.S.;
- iv. D.M. appeased and spoiled M.S. by giving her fine jewellery, fancy trips and entertainment out;
- v. J.S. asked D.M.: "Why is mom so mean to you all the time?";
- vi. J.S. told D.M.: "My happiness comes from you Dad and Grandma and [Ms. Roles] right now"; and
- vii. D.M. "does not believe [M.S.] is capable of getting [J.S.] to eat properly within a structured program. [M.S.] will give lots of lip service, but she has never been a team player. She will not take direction from anybody".

[56] I do not accept as true the facts and/or characterization of the facts provided by D.M. However, I find the correspondence probative as to D.M.'s views with respect to M.S.

[57] Ms. Roles replied to D.M. by email suggesting, amongst other things, he consider changing the custody arrangement, the primary residence or the visitation rights, and that he request a section 211 report that would provide the court with the views of the child. Ms. Roles should have, but did not provide M.S. an opportunity to respond to the information provided to her by D.M.

- [58] Ms. Roles testified she never provided D.M. with legal suggestions to keep J.S. from his mother. I accept the evidence contained in the September email (which she destroyed but D.M. produced) and reject her evidence.
- [59] I find by this point in time Ms. Roles had determined that M.S. should not be parenting J.S. according to the parenting schedule M.D. had agreed to and was attempting to undermine the shared parenting schedule without M.S.'s knowledge.
- [60] Ms. Roles was aware D.M. had finalized and consented to the parenting agreement on September 1, 2019. She speculated D.M. was too intimidated by M.S. to say anything until he signed the agreement. In the fall after the agreement was signed D.M. became more forthright with his opinions. Ms. Roles opined D.M. was passive and conflict avoidant.
- [61] I accept D.M. is passive and conflict avoidant but do not find this to be a full explanation for his failure to raise issues about M.S.'s parenting. I find D.M. was silent about his concerns in order to obtain the separation agreement from M.S.

Summer to Fall 2019

- [62] D.M. testified during the summer and fall of 2019 J.S. began to express a preference to live exclusively with him. This preference increased throughout the fall. He did not think it was serious but it seemed to increase up until the "Best Buy incident", discussed below. D.M. testified he did not have any concerns about M.S. parenting J.S. He did not share the feedback he had been getting from J.S., the correspondences with Ms. Roles, or any other concerns with M.S.
- [63] M.S. testified J.S. expressed no direct complaints to her but over the fall he became somewhat withdrawn and more distant. He still told her he loved her every night before bed, was polite, respectful and asked to buy her and did buy her a birthday present in November.
- [64] Throughout the fall of 2019 M.S. and D.M. attended numerous events together with J.S. including Rosh Hashana, Halloween and Cirque du Soleil.
- [65] Also in the fall, J.S. became sick with a sore throat and loss of energy. Given his ARFID and recent weight loss this was a concerning condition. On October 16, 2019, M.S., D.M. and J.S. attended at the hospital for a consultation. Each was interviewed separately. I infer each was unaware of what the other said:
- i. J.S. advised the doctor he became stressed around M.S. when she enforces rules at home, including taking his phone away and making him do chores. He reported he felt "scared" when she raises her voice when she was upset with him but denied any physical abuse. He feels M.S. is a "bad person" and he "wanted her gone forever";

ii. M.S. reported guilt around J.S.'s eating disorder and noted D.M. had placed the blame for this disorder on her. She felt she placed "healthy boundaries and discipline" on J.S. but D.M. did not. She noted J.S. had a hard time following through with certain activities of daily living including hygiene unless prompted; and,

iii. D.M. reported he had been "bullied" by M.S. and they had separated for that reason. He believed J.S. was being "bullied" by M.S. and J.S.'s eating disorder was caused by M.S. He denied any concerns about J.S.'s safety while with M.S. but disagreed with M.S.'s parenting style. J.S. is sensitive to her criticisms and instructions.

[66] J.S. was diagnosed with mono. He was weak and unable to attend school or participate in his regular activities. He was bedridden for a period of time.

[67] M.S. was moving into her new residence at the end of October 2019, so she suggested J.S. stay with D.M. M.S. visited J.S. everyday and prepared meals for him.

[68] During J.S.'s recovery the doctor advised J.S. should stay home one more week and then they should see how J.S. feels in determining whether he should go back to school. M.S. advised the school J.S. may be back the next week. When J.S. said he did not feel ready to return to school M.S. agreed he should not return until he felt better.

[69] M.S. had planned a trip to Mexico with J.S. J.S. had a number of activities he wanted to do there and appeared excited to go. The trip was cancelled due to J.S.'s mono. After the trip was cancelled, D.M. decided he would take J.S. to Mexico with D.M.'s mother over the winter break instead of M.S.

Winter 2019 and the deterioration of J.S.'s relationship with M.S.

Residual impact of mono

[70] In November M.S. took J.S. shopping for a sofa at IKEA while he was staying at her house. J.S. had made a list of sofas he wanted to look at and M.S. brought him to the store so he could have some input into the sofa she was purchasing. He lay on one of the sofas while at the store, played on his phone and had some ice cream.

[71] On another occasion M.S. arranged for a play date for J.S. with his best friend, D.H. They played games in the house. After some time J.S. tired and had a nap. His friend remained playing in the house. When it was time for his friend to leave J.S. got up and asked to accompany his friend on the drive home.

Best Buy incident

[72] On December 4, 2019 M.S. was scheduled to pick J.S. up at school to bring him to her residence. D.M. sent a text to M.S. advising her he was taking J.S. to Best Buy to purchase a gaming headset. At Best Buy D.M. testified:

a) J.S. told him "mom's mean", "I can't go to her house" and "it is my life";

- b) this "threw" D.M. "for a loop - he was blindsided by the statement";
- c) it was at this point D.M. realized this was something serious; and,
- d) D.M. felt he had to support J.S. and "stand by his son" by not taking J.S. to M.S.'s house as scheduled.

[73] D.M. sent M.S. the following text:

I am giving you J.S.'s exact words. "Dad, I do not want to go back to mom. She is mean and nasty all the time and I am afraid for my life. I have to do what she says or I am afraid of the punishment she is going to give me. This is about my survival Dad".

He is refusing to go so he will be staying with me. This is what J.S. wants. These are J.S.'s words so he is remaining with me the rest of the week. It is very sad that a child would feel this way about his mother.

[names abbreviated]

[74] D.M. had not provided any notice to M.S. about J.S.'s behaviour prior to this incident. D.M. testified he did not share the issues J.S. had been having with M.S. because he thought they had been co-parenting well and he did not realize J.S. was so serious.

[75] I do not accept J.S.'s conduct on December 4, 2019 "threw" D.M. for a loop and at this point he realized "this was something serious". D.M. had expressed the same concerns to Ms. Roles in April. I find these concerns mirrored D.M.'s own feelings about M.S. and her relationship with J.S. I find D.M. simply tired of encouraging his son to see M.S. and unilaterally decided to change the parenting agreement.

[76] M.S. was in shock and had no idea what was wrong or what had happened. Ms. Roles testified D.M. should have been providing information about J.S.'s behaviour to M.S.

[77] The next day Ms. Roles sent a text to M.S. telling her not to blame D.M. and to focus on what J.S. "needs right now." Ms. Roles told M.S. she would provide her some specifics of why J.S. was upset next week.

December school pickups

[78] On December 10, 2019, D.M. advised M.S. that J.S. did not want to stay with her on December 11 and 12 and he would therefore be picking J.S. up at school on those days because D.M. is supporting J.S.'s wishes.

[79] To ensure M.S. did not pick up J.S., D.M. took J.S. out of school early on those days. M.S. attended at the school on December 11 and spoke with the principal. She subsequently provided the school with the separation agreement so it would be clear on what days D.M. was to pick up J.S. and what days M.S. was to pick up J.S.

[80] D.M. messaged Ms. Roles, advising her:

- i. M.S. had been sending him emails which he refused to read;
- ii. he had taken J.S. out of school early on December 11 and 12 to prevent M.S. from picking up J.S.;
- iii. he joked there must have been quite a scene at school when M.S. arrived to pick up J.S. and found out J.S. was not there; and,
- iv. he was going to have a "tough time navigating" a meeting scheduled with the principal tomorrow.

[81] M.S. texted J.S. to tell him she was at school to pick him up and had arranged a play date with D.H. after school. J.S. was angry with M.S. because he felt she was making him feel guilty about not seeing his friend. J.S. did not believe M.S. had arranged a playdate with D.H. because D.H. did not mention it at school. M.S. and D.H.'s mother were good friends. It is possible M.S. had arranged a play date directly with D.H.'s mother while D.H. was at school.

[82] On December 12, 2019 the school counsellor spoke with J.S. and gave "a slight push" to get over the feelings he has for M.S. and to love her fully again. D.M. was upset the school counsellor had spoken with J.S. about M.S. and thought the counsellor acted inappropriately in discussing these issues with J.S.

[83] D.M. sent a further email to Ms. Roles asking her professional advice as to how to keep J.S. safe from a "potential blow up scene at the school". He noted J.S. was very sensitive about how others see him and a scene would be particularly detrimental to him.

[84] I make the following findings of fact and/or inferential findings of fact:

- a) D.M. knew M.S. intended to follow the parenting schedule and pick J.S. up at school;
- b) the school was aware of the parenting schedule and that there was conflict between M.S. and D.M.;
- c) D.M. avoided communicating with M.S. about the schedule;
- d) D.M. knew there was a possibility of a "blow up scene" when M.S. next arrived at the school to pick up J.S.; and
- e) D.M. knew a "scene" at the school would be particularly difficult on J.S.

Explanation of what "mean" means

[85] On December 14, 2019 Ms. Roles told M.S. she promised to provide details of why J.S. did not feel comfortable spending time with her. J.S. had agreed Ms. Roles could tell M.S. when J.S. says M.S. is "mean" he means "psychologically, with use of guilt manipulation."

[86] Ms. Roles clarified the words "psychologically, with use of guilt manipulation" were J.S.'s words. Ms. Roles testified this meant J.S. did not feel listened to at his mom's home. Specifically, she mentioned the following examples which were provided to her by J.S.:

1. M.S. limited the amount of sweet and sugary foods he could eat and encouraged J.S. to eat what M.S. considered to be healthy items, such as fruits and vegetables;
 2. M.S. forced J.S. to play baseball, taekwondo, and piano lessons when J.S. felt powerless to say he did not want to; and
 3. M.S. did not understand J.S.'s exhaustion when recovering from mononucleosis. The example which stood out was when M.S. forced J.S. to go to IKEA when he did not want to go because he was too tired. He was so tired when shopping he had to curl up on some furniture to rest.
- [87] J.S. has expressed ongoing concerns that M.S. unfairly limits his phone time and has been told on many occasions his phone is "glued to his head." In addition, J.S. has recounted several instances where M.S. has been emotional and cried in his presence. He believes that M.S. has faked her crying to motivate him to do what she wants, such as get off his phone.
- [88] In addition, J.S. told Dr. Aube that when he returned from summer camp in 2019 he was sad and upset when the lego city he had built had vanished. His mother had taken it down and put it away. J.S. suspected his mother had smashed the construction with a hammer. I accept M.S.'s testimony that she did not smash the lego with a hammer but simply put it away.

Obtaining a lawyer for J.S.

- [89] Dr. Buckman is a colleague of Ms. Roles. Ms. Roles had a number of informal consultations with Dr. Buckman about J.S. and D.M. Ms. Roles did not record these consultations in her clinical file. Dr. Buckman testified he was aware from a previous family matter that children could retain their own counsel and believes the idea for J.S. to obtain a lawyer came from him.
- [90] On December 11, 2019 D.M. sent the following information to Ms. Roles by email:
- a) D.M. did not know if he would let J.S. go to school until he had retained a lawyer for J.S.;
 - b) D.M. had contacted the lawyer who was on the top of the referral list provided by Dr. Buckman; and,
 - c) D.M. asked Ms. Roles for advice to keep J.S. safe until D.M. can get J.S. "lawyered up."
- [91] From this evidence and my findings of fact that:
- a) Dr. Buckman had no direct contact with D.M. until the fall of 2020;
 - b) Dr. Buckman had direct contact with Ms. Roles about D.M. prior to the fall of 2020;
 - c) Dr. Buckman believes he provided the idea of obtaining a lawyer for J.S.; and
 - d) relevant correspondence between D.M. and Ms. Roles has been destroyed and/or was not produced,

I conclude Ms. Roles had an informal conversation with Dr. Buckman prior to December 11, 2019 in which the idea that J.S. could have his own lawyer was discussed and a list of recommended lawyers was provided to Ms. Roles by Dr. Buckman. Ms. Roles suggested to D.M. he retain a lawyer for J.S. and provided the lawyers recommended by Dr. Buckman to D.M. sometime prior to December 11, 2019.

December 18, 2019 pickup incident

- [92] On December 16, 2019, through her lawyer, M.S. advised D.M. he was breaching the parenting schedule in the separation agreement and M.S. expected him to comply with the agreement. The next block of days M.S. was scheduled to pick up J.S. at school was December 18, 19 and 20. The letter indicated M.S. would be attending at the school to pick up J.S. pursuant to the agreement.
- [93] M.S. had previously attempted to retain a parenting coordinator as stipulated by their separation agreement but D.M. had not responded to her requests to do so.
- [94] On December 18, 2019 before dropping him off at school, D.M. did not tell J.S. that M.S. would be picking him up at school that afternoon.
- [95] D.M. attended at J.S.'s school at approximately 2:30. He spoke with the principal who told D.M. he understood M.S. was entitled to pick up J.S. and he (D.M.) had to leave. As a result of the conversation the principal had with D.M., the principal then called J.S. down to the office and told J.S. he was to go home with M.S. J.S. asked if he could speak with D.M. who he could see waiting outside the school. The principal said "No" and walked J.S. to M.S.
- [96] D.M. testified he was not sure whether he had received the December 16 letter from M.S.'s lawyer and thought he was first advised M.S. was picking up J.S. by the principal. I do not accept this evidence. D.M. verified receipt of M.S.'s letter by email on December 16, 2019 and advised M.S.'s lawyer he would discuss the letter with his lawyer.
- [97] D.M. testified the manner in which the transfer was handled by the school was traumatizing and embarrassing to J.S. J.S. was called out of his class and marched down the hall to his locker and then to M.S. in front of his teachers and fellow students. I find D.M.'s criticism of the school for how the transfer occurred unwarranted. I accept the incident was traumatizing and embarrassing to J.S. Ms. Cairns testified this was one of the most traumatic incidents impacting J.S. The key issue appeared to be that J.S. did not know M.S. would be picking him up at school.
- [98] I find D.M.'s misconduct to be the primary cause of this incident. I find J.S. mistakenly blames M.S. for the incident. I further find J.S.'s misapprehension is based upon the conversations J.S. had with D.M.

December 18 to 20, 2019

- [99] J.S. spent December 18 to 21 with M.S.

- [100] On December 19, 2019, Ms. Roles sent an email to M.S. inviting her to a meeting with J.S., D.M. and herself at her office on December 21, 2019.
- [101] J.S. went with D.M. to the rabbi's on the afternoon of December 20 and returned to M.S.'s house afterwards.
- [102] On December 20, 2019 when J.S. was with M.D. he sent Ms. Roles a text saying:
Hi pat, I have to be with mom from now until next Saturday, I am scared, what do I do?
- [103] Ms. Roles believes she replied to J.S. telling him to come to her office tomorrow and they would discuss J.S. living with M.S. at that time.
- [104] M.S. and J.S. did not discuss the event at Best Buy or the school pick up. M.S. just wanted to enjoy her time with J.S. J.S. did not say he did not want to be there and spent the night. J.S. was eager to get to the appointment with Ms. Roles.

December 21, 2019 meeting

- [105] On December 21, 2019 M.S. took J.S. to Ms. Roles' office where they met D.M. J.S. met with Ms. Roles first and then M.S. and D.M. went into her office.
- [106] The meeting started with J.S. telling M.S. he did not want to live with her. Ms. Roles then said the settlement agreement was done wrong, J.S. had not been consulted, J.S. had rights and she [i.e., Ms. Roles] was going to help get him [i.e., J.S.] a lawyer. M.S. went into shock and could not speak.
- [107] She went outside Ms. Roles' office for five minutes and, after she caught her breath, went back into the office. When she was back in the office M.S. said they had already agreed J.S. would come to her house for the first half of the holidays; activities were planned and G.R. was coming into town from Winnipeg to see them. M.S. does not recall the specifics but it was clear it had been decided that J.S. would not stay at her home.
- [108] Ms. Roles denied making these statements and indicated she had no knowledge of J.S. getting a lawyer prior to this meeting when J.S. independently thought of retaining legal counsel. I note a few months after this meeting Ms. Roles advised Dr. Blancato: "the current Parenting Agreement was done incorrectly as it didn't consider the views of the child."
- [109] D.M. denied attempting to find a lawyer for J.S. before this meeting and stated the first time he had heard about a lawyer for J.S. was when J.S. independently thought of obtaining a lawyer and then independently located a lawyer that evening.
- [110] Given my previous findings, specifically the email correspondence of December 11, 2019 between D.M. and Ms. Roles, I accept neither D.M.'s nor Ms. Roles' evidence on this issue.

[111] M.S.'s recollection of events is consistent with the advice Ms. Roles had been providing (without her knowledge) to D.M. since September and the December 11, 2019 email. I accept M.S.'s recollection of this incident.

[112] On the evening of December 21, 2019 J.S. sent M.S. a text:

Hi mom, thank you for listening to me at Pat's. Love J.S. [followed by 10 heart emojis]

[name abbreviated]

[113] When asked about the messaging D.M. provided to J.S. about staying with M.S. after the December 21 meeting, D.M. testified his messaging to J.S. was consistent and was always the same. D.M. testified his messaging was as follows:

- a) this is a terrible situation;
- b) you [J.S.] are on a schedule for when you stay with M.S. and when you stay with me [D.M.];
- c) we are supposed to abide by the schedule but we can always negotiate.

[114] I find there was no agreement between M.S. and D.M. to negotiate parenting time to the degree indicated to J.S. by D.M. D.M.'s messaging was not supportive of M.S.'s parenting time, did not encourage J.S. to spend time with M.S. and was inconsistent with the parenting agreement. Given my findings with respect to D.M.'s silence about his concerns prior to signing the separation agreement, I question whether D.M. ever intended to comply with the parenting schedule contained and defined by the agreement.

[115] J.S. did not return to M.S.'s house pursuant to the settlement agreement after the December 21 meeting.

[116] Through their lawyers D.M. advised M.S. he "would not interfere" with M.S.'s parenting time beginning on January 15, 2020.

J.S. retaining a lawyer

[117] By early January 2020 D.M. had driven J.S. to meet with a lawyer, whom he subsequently retained. On February 15, 2020 D.M. was encouraging J.S. to continue following up with his lawyer as Ms. Roles felt J.S. needed a further appointment with her. I infer D.M. drove J.S. to in-office appointments with J.S.'s lawyer and facilitated meetings between J.S. and his lawyer. I find D.M. was not directly involved in J.S.'s discussions with his lawyer but facilitated access to her.

January 2020 and final attempts to maintain parenting schedule

January 15, 2020

[118] There was a snowstorm on January 15, 2020 and as a result school was cancelled. M.S. was unable to drive in the snow so she told J.S. she would not be able to pick him up. M.S. managed to get a taxi so she then texted J.S. and told him she would be able to pick him up.

[119] She texted J.S. and D.M. a few times when she was in the lobby. J.S. came down to the lobby by himself. D.M. testified he might have been out of the complex and J.S. may have been at his mother's place. He testified J.S. was likely reactive because M.S. caught J.S. off guard. I find whether or not D.M. was present, he did not take reasonable steps to assist with a smoother transition between M.S. and J.S. He applied a literal interpretation of "did not interfere" with the exchange.

[120] J.S. appeared upset to M.S. when he appeared in the lobby so she recorded the end of their conversation which went as follows:

M.S. asked J.S. if anything was wrong. J.S. said M.S. was mean to him.

J.S. said M.S. did not trust him on electronics. There was a time when M.S. cut his computer time short when J.S. was studying for a test [on his computer]. Another time when J.S. was on the computer M.S. asked him to get off the computer. J.S. did not because he was finishing something. M.S. said "I guess you don't want to spend time with me and started crying". Then because J.S. felt bad he came off right away. That's guilt manipulation.

J.S. said M.S. insulted him at Pat's when she said J.S. had been glued to his phone for 3 years.

[M.S. apologized]

J.S. said "I don't want to be with somebody who does these things to me. It makes me feel bad and I feel unsafe there. I don't want to go with you unless you're willing to change."

M.S. I'm willing to do whatever I can for you sweetheart. I love you so much . I am willing to do anything.

J.S. said "I did give you some time to change. I said my feelings in a couple of texts, but you ignored them."

J.S. said he was very upset that M.S. had provided the schedule to the school. He said that was very mean.

J.S. said he did not want to go with her and "We'll work some things out again sometime. Bye, mom. Love you."

[names abbreviated]

J.S. went back up to the apartment. M.S. stayed in the lobby for some time and then walked home.

Attempted school pickups by M.S.

- [121] The next day M.S. went to pick up J.S. at his school. She arrived early. She sat on a bench by the office inside the school. J.S. saw her and said: "I'm not going with you and you can't make me" and walked away. She spoke with the principal. Neither the school nor M.S. could reach D.M. on his phone. The school contacted the police as J.S. was only 11.
- [122] J.S. had left the school and taken a taxi home. M.S. was able to contact J.S. by text. J.S. said he was in a taxi going home and D.M. knew he was coming.
- [123] D.M. kept J.S. home from school the next day so M.S. was unable to pick him up at school. D.M. did not advise M.S. M.S. found out from the school.
- [124] At this point M.S. concluded D.M. was not encouraging J.S. to comply with the parenting schedule. I draw the same conclusion.

January 31, 2020

- [125] On January 31, 2020 D.M. sent Ms. Roles a text outlining an allegation of physical abuse against M.S. This information was provided just in time for Ms. Roles to interview J.S. and put the information into an affidavit for the upcoming court dates that had been set in this matter. I will deal with the allegations of abuse at the end of my reasons.

Judicial intervention to enforce parenting time

Court ordered visit

- [126] On February 14, 2020 M.S. obtained a court ordered visit with J.S. on February 17, 2020. D.M. dropped J.S. off with his phone. J.S. was totally absorbed on his phone for the visit. J.S. did not complain or raise any issues. G.R. acted as a supervisor at the visit.
- [127] On February 22, 2000 M.S. had a second visit with J.S. M.S.'s mother acted as a supervisor. During this visit D.M. did not drop J.S. off but stayed with them for the visit.

Court Orders

- [128] There were numerous applications before the court. The court ordered:
- i. The parenting time schedule agreed to in the separation agreement will resume by May 1, 2020;
 - ii. Dr. Blancato shall be appointed J.S.'s psychologist;
 - iii. M.S. and D.M. will cooperate in consultation with Dr. Blancato for the gradual resumption of M.S.'s parenting time;
 - iv. M.S. and D.M. were directed not to discuss anything with respect to family litigation with J.S.;
 - v. Dr. Aube was ordered to prepare a section 211 report which must include an assessment of M.S.'s allegation of parental alienation; and,

vi. D.M.'s application to have a lawyer appointed to represent J.S. was dismissed.

[129] Ms. Roles advised J.S. was very upset that M.S. had stopped him from having a lawyer represent him in these proceedings. Ms. Roles did not know who told J.S. his mother had done this. I note consent of the parties would not have been sufficient to enable J.S. to be represented by counsel in these proceedings.

[130] In addition, D.M. and M.S. consented to an order to participate in sessions with Dr. Blancato as directed by Dr. Blancato with the assistance of the parenting coaches as recommended by Dr. Blancato. The parties achieved this order by consenting to participate in Dr. Bock's Reconnect program which Dr. Blancato was involved in.

First attempt at mediated reunification

Reunification program

[131] In February 2020 D.M. and M.S. through their counsel consented to enter into the ReConnect program coordinated by Dr. Bock. The initial plan was for Dr. Blancato to prepare J.S. for meeting with M.S., then a youth worker would take J.S. to supervised meetings with M.S., then D.M. would take J.S. to the meetings, then J.S. would have unsupervised meetings with M.S. The goal was to help the parties return to the parenting agreement set out in their separation agreement by May 1, 2020.

[132] On February 27, 2020 D.M. corresponded with Ms. Roles about the ReConnect program. D.M. set out a long email which he intended to send to Dr. Bock stating he did not want to move forward with any parenting plan and the sessions would not be a priority as J.S. was very busy with school, therapists and religious services.

[133] Ms. Roles suggested some modifications and suggested D.M. request she be included in the program. The last paragraph of the letter states:

The judge has ordered that we get together and go ahead with the parenting plan for May 1st. With all respect to the judge, this is not a feasible option as J.S. wants no part of spending time alone with M.S., let alone stay overnight with her. J.S. is adamant about his feelings and I totally hear and respect him. He deserves to come out of this as a whole person, and in no way deserves to be beaten down or experimented with to see how resilient he is. His mental and physical health are the most important consideration in my mind and I won't let his well being be sacrificed. J.S. has a voice that must be heard. After J.S. has been appropriately heard, then I will be willing to move forward with a totally new parenting plan that allows J.S. to feel safe. I will not support a parenting plan where J.S. doesn't feel safe. He has been made to feel guilty by his mother and her family members for refusing to see her and this has made him more upset with her. This whole thing about getting the parents back together with the current parenting plan is not going to happen

[names abbreviated]

[134] In March, D.M. sent Dr. Bock an email stating his dissatisfaction with the order made by the court; specifically, D.M. said he felt that he:

came across in a very negative manner. M.S. is being supported for her fairy tales, J.S. has been shut down all this time and is barely getting started with his truth. I am only just getting started I am not in agreement to consider what you are suggesting until the scales have been tipped more equally after J.S. has been fully heard J.S.'s voice is the most important thing in this whole situation, and I am only for J.S.. The emails are not to resolve the issues, the emails are to get the truth out D.M. - Defence

[names abbreviated]

[135] I do not accept as true the facts and/or characterization of the facts provided by D.M. However, I find the correspondence probative as to D.M.'s conduct and motivation; specifically the following:

- a) D.M. feelings with respect to reconnecting J.S. with M.S.;
- b) D.M.'s reluctance to fully participate in ReConnect; and
- c) D.M.'s intention not to comply with court orders or agreements that run contrary to his views.

[136] In my view the last paragraph of the February 27, 2020 letter accurately states Ms. Roles' views as to the reunification of M.S. and J.S. and her attitude towards compliance with orders of the court.

[137] In April 2020, Ms. Roles sent an unsolicited email to Dr. Bock expressing concerns about M.S. reuniting with J.S. and offering to be J.S.'s voice in the process. As noted earlier, Dr. Blancato had already been appointed to be J.S.'s psychologist and participate in the ReConnect program with him.

[138] On April 26, 2020 D.M. reviewed with Ms. Roles the information he wanted to share with the ReConnect program during their initial interview. He agreed with Ms. Roles the following summary was accurate and shared it with ReConnect:

J.S. began expressing how he didn't want to see his mom. The more she pushed him to see her and didn't listen to him, the more distrust he had for her. The day when M.S. and the principal escorted J.S. out of school on her parenting day J.S. was so hurt and furious. His hurt turned into anger when M.S. took D.M. to court to try to force J.S. to see her.

J.S. became increasingly angry when M.S. blamed D.M. saying it was just because D.M. had no structure and had more electronic time with D.M.. J.S. felt this was untrue and began seeing how M.S. treated him was not okay.

[names abbreviated]

[139] Ms. Roles was unaware D.M. had consented to participate in Dr. Bock's program.

[140] I accept this is an accurate summary of J.S.'s perceptions and feelings associated with certain events but I am of the view the facts are mischaracterized.

[141] On April 29, 2020 M.S. provided consent for Ms. Roles to speak with the reunification team. She advised Ms. Roles with the following paragraph:

I am giving my consent for you to speak to my family reunification team I have not had my parenting time with him since December 21 of last year. Thankfully, there is now a team of experts in place to rectify the situation and set my family back on track, taking into account J.S.'s best interests. Thank you for your assistance in this matter.

[names abbreviated]

[142] The program was subject to a number of delays and difficulties with scheduling and the onset of COVID. By May M.S. and J.S. began to engage in guided typed chats where individual coaches would provide advice on questions and answers. M.S. participated in every session and promptly scheduled her meetings. The program was very expensive and no in-person visits were occurring between M.S. and J.S. After considering the testimony and exhibits entered documenting the sessions and correspondences dealing with ReConnect; I find the largest impediment to the success of the program was D.M.'s attitude toward reconnecting J.S. with M.S. and what I would characterize as a "passive aggressive attitude" towards compliance.

Camp Shabbaton

[143] J.S. was not returning M.S.'s texts. M.S. found out there was a camp that J.S.'s school was going to for a weekend. M.S. asked D.M. if J.S. was going to attend Camp Shabbaton with his classmates. D.M. told M.S. he was concerned J.S. would not be able to obtain proper food at the camp so J.S. would not be going. M.S. made some inquiries, was able to ensure proper food would be available to J.S. if he were to attend the camp and got the camp to extend the deadline for registration.

[144] D.M. provided the emails to J.S. and told J.S. that M.S. was trying to prove D.M. wrong about J.S. not being able to go to camp. D.M. then told Ms. Roles this was abuse. Both D.M. and J.S. were upset, but primarily J.S. He further stated this was proof M.S. felt that J.S. had no rights and inquired of Ms. Roles if this could be reported to Child Protection Services.

[145] D.M. then advised Ms. Roles that J.S. said: "If I was living with [M.S.] this is her saying to me, 'Go to the weekend Shabbaton, or Die.'"

[146] D.M. agreed he shared M.S.'s texts with J.S.

Further Court Orders

[147] M.S. became disenchanted by the slow pace of the program and the fact that despite the court order she had had no direct contact with J.S. D.M. brought an application for an order allowing J.S. to be represented by counsel, this application was dismissed. It is undisputed that despite this order J.S. continued to be represented by counsel, and met with and obtained advice from her after this order.

[148] M.S. obtained an order for a section 211 report from Dr. Aube and an order for three in-person visits on the following terms:

- i. the visits will be 2 hours each;
- ii. J.S. will be taken to and from the visit by a youth worker; and,
- iii. Dr. Blancato or her designate will be present at the first visit, and thereafter if she believes her presence is necessary.

None of these visits occurred as ordered.

Termination of program

[149] After the court ordered visits did not occur, Dr. Bock asked for a \$25,000 retainer from M.S. to continue with the program. She was not satisfied with the progress of the program; specifically, the slow pace and failure of the program to provide the court ordered visits. She refused to pay the retainer as it did not appear she would be able to have direct contact with J.S.

[150] Dr. Blancato advised the team she would no longer be able to assist with J.S. moving forward. This would require J.S. to obtain a new therapist to continue with the program.

[151] I find the ReConnect program was not working and it was reasonable to terminate it and pursue a different program.

Continued attempts to maintain contact with J.S.

Communication with M.S, family and friends

[152] M.S. continued to send texts in an attempt to maintain communication with J.S. She had not had a text returned since January 2020.

[153] In April M.S. requested D.M. utilize the "Our Family Wizard" program so she could be apprised of J.S.'s activities, appointments and school. D.M. sent a general update to M.S. about how J.S. was doing but did not elect to use an information sharing program. Regular ongoing updates were not provided. M.S. had to contact D.M. in June to find out if J.S. had returned to in-class learning.

- [154] In the fall M.S. was invited by the school to email teachers for updates about students. So M.S. contacted the school directly to obtain information about J.S. in the fall because she had had no contact with him for eight months. I find M.S. was entitled to this information, had a right to contact the teachers and, given the lack of communication from D.M. and J.S., acted appropriately in contacting the school.
- [155] G.R. also tried to continue texting with J.S. but did not have any texts returned. J.S. was upset with G.R. because he had provided an affidavit in the applications that occurred earlier in the year.
- [156] M.S.'s mother also had no further contact with J.S. despite continued efforts. M.S.'s mother had left a voicemail message for D.M.'s mother pleading for her to see if she could reunite J.S. with M.S. D.M. played the message to J.S. J.S. interpreted the message as disrespectful and felt she had called him a liar as she did not believe what J.S. said about M.S. M.S.'s mother did not intend for this message to be played to J.S.
- [157] A.H. is the mother of D.H. and a friend of M.S. Prior to 2020, J.R and D.H. did a number of activities together, including camp and taekwondo, and had play dates several times each week. Since 2020 J.S. has not been over to D.H.'s house for a play date. They continue to see each other at school. J.S. still considers D.H. to be his best friend. D.H. is still cordial with J.S. but not as close as when they saw each other regularly.
- [158] In October D.M. contacted A.H. to invite D.H. to J.S.'s birthday in October 2020. A.H. had previously invited J.S. to D.H.'s bar mitzvah but had not heard back from D.M.
- [159] D.M. told A.H. to send all communications concerning J.S. directly to him and not to M.S. D.M. advised A.H. that J.S. "is in utter terror of M.S." and J.S. would not be attending D.H.'s bar mitzvah.
- [160] A.H. responded by text: "Terror?? Of M.S.? Huh?" She said she did not think it was healthy for one parent to speak ill of the other, and it would be difficult to parent properly if the parents are not speaking. She summarized by saying:

Anyway that is my 2 cents. It is really hard to watch being a close friend to your family. [J.S.] is the one suffering. I don't know all the details and I do not need to...

- [161] D.M. showed the text to J.S. His explanation was the whole issue was "between J.S. and M.S. - I [D.M.] was just standing by J.S." D.M. let J.S. send a text to A.H. which said:

[D.M.] showed me your text. Please stay out of this. This is my life and my problems... There is lots you don't know. Please don't interfere in my friendship with [D.H.] because he is my best friend.

A.H. was shocked that D.M. showed her text to J.S. She thought the text sent by J.S. was inappropriate and disrespectful. When J.S. learned of his friend's bar mitzvah he indicated that he wished to attend so D.M. took J.S. to the bar mitzvah.

J.S.'s 12th Birthday

[162] M.S. contacted D.M. in October requesting to see J.S. so she could give him some presents from herself and her mom for J.S.'s 12th birthday. D.M. did not immediately respond then sent M.S. an email stating:

- i. M.S.'s request might have had a chance but J.S. left school in a state of anguish, had a complete meltdown and lay in bed for an hour because he was extremely upset;
- ii. J.S.'s anguish was caused by the fact M.S. contacted the school for an update on how J.S. was doing;
- iii. D.M. instructed M.S. not to contact the school but to wait for report cards and parent teacher conferences; and
- iv. in the circumstances, she could not see J.S. but D.M. would accept the presents and give them to him.

[163] I have already found it was appropriate for M.S. to contact the school in these circumstances. I find D.M.'s reaction was inappropriate and infer he improperly communicated to J.S. that M.S. had acted inappropriately.

[164] M.S. gave the presents to D.M. as instructed. Several days later she received a picture sent by text from D.M. The picture was of J.S. from his torso down [head cut off] standing with the presents at his feet holding a sign in his handwriting that said: "I got the gifts but I don't want them. I will give them to charity."

[165] D.M. testified he did not believe sending the picture was inappropriate. He testified it took him days to work out a compromise with J.S. D.M. felt it important that J.S. acknowledge he had received the gifts from M.S. and the picture was the compromise they agreed to.

[166] J.S.'s head was cut off in the photo because J.S. did not want M.S. to analyze his face. D.M. had shared with J.S. that M.S. felt J.S.'s face looked bloated on a previous occasion and he was self-conscious about what M.S. might say. M.S. denied making the comments, but I infer she made some comments previously about whether J.S. looked thin or heavier based on the difficulties he had been having with his weight due to ARFID. Sharing these comments with J.S. clearly had a detrimental effect on him.

[167] D.M. testified sending the picture was a learning moment for J.S. The important thing was J.S. acknowledged the gifts. Sending the picture was the result of D.M. parenting J.S. and sending the picture was the compromise the he worked out with his son for M.S. and her mom.

[168] I find D.M.'s testimony on this issue more than troubling. Taking and sending the picture was cruel to M.S. and her mother. The fact the picture was taken and sent as the result of negotiations between father and son, and that D.M. characterized the issue as a positive parenting moment, raise concerning issues about D.M.'s judgment and ability to parent.

Dr. Aube's report and responses thereto

Section 211 report and Dr. Buckman

- [169] On August 27, 2020 M.S. and D.M. received Dr. Aube's section 211 report. The report opined that D.M. alienated J.S. from M.S., recommended a reunification program and that Ms. Roles be replaced. She also opined reunification would require a major change in D.M.'s attitude. The validity of Dr. Aube's opinion was a contested issue in the trial.
- [170] In October 2020, D.M. retained Dr. Buckman to provide a critique of Dr. Aube's report and to provide him with strategic advice with respect to how to proceed in the lawsuit. I infer Dr. Buckman's contact information was provided to D.M. by Ms. Roles. Although Dr. Buckman provided a critique of Dr. Aube's report, it was not tendered at trial as opinion evidence and Dr. Buckman was not qualified as an expert. Dr. Buckman was retained initially to assist D.M. as an advocate for D.M.

M.S.'s ability to obtain health information about J.S.

- [171] M.S. sent a copy of Dr. Aube's report to Ms. Roles and advised her of the comments Dr. Aube had with respect to her conduct and the impact her conduct was having on J.S. Ms. Roles did not respond to M.S.
- [172] M.S. made a request to attend J.S.'s appointments with Ms. Roles and Ms. Cairns.
- [173] Ms. Cairns apologized to M.S. and advised her J.S. would not consent to her attendance but she would be happy to schedule appointments with her to update her on J.S.'s progress.
- [174] Ms. Roles refused the request and did not provide any mechanism to provide updates to M.S. M.S. had her counsel send a letter to Ms. Roles asking her to withdraw in her role as J.S.'s therapist. Given the concerns raised by Dr. Aube I find this to be a reasonable request. Ms. Roles refused to withdraw and obtained consent directly from 12-year-old J.S. through the Infants Act, R.S.B.C. 1996, c. 223, to maintain her therapeutic relationship with him.

Second attempt at mediated reunification

- [175] M.S. and D.M. through their counsel entered into negotiations for a new reunification program. On November 17, 2020, on the application of M.S., McDonald J. ordered by consent that the parties participate in the REACH reunification program.
- [176] After consulting with Dr. Buckman, D.M. refused to participate in the program and proposed the Family Forward Reunification Program ("FFRP"). On February 22, 2021 a consent order replacing the REACH program with the FFRP program was entered.

Dr. Buckman's first letter

- [177] D.M. commissioned a report from Dr. Buckman to provide a review of the section 211 report and provide comments on the efficacy of the proposed reunification program. Dr. Buckman relied primarily on D.M. for the factual basis for his letter, but he also conducted several interviews of J.S. He then wrote a letter relying on facts that are inconsistent with my findings. Dr. Buckman opined J.S. is estranged from M.S. due to emotional abuse inflicted through extreme invalidation. This letter was not entered into evidence as opinion evidence.
- [178] D.M. provided the report to Ms. Jones, the professional in charge of the FFRP. Ms. Jones advised the team was mandated by the consent order to provide services to the family. They expressed concern that another mental health worker appears to have gotten involved with the process and J.S. apparently without M.S.'s consent. She advised the team could only consider opinions from mutually agreed upon experts or those qualified by the court. She asked for a discussion about the letter with both M.D.'s and M.S.'s counsel.
- [179] I find Ms. Jones reaction to this letter was appropriate and professional.

Disclosure of J.S.'s genetic background

- [180] D.M. sought advice from Dr. Buckman about whether he should disclose to J.S. he was conceived through in vitro fertilization ("IVF") and was not genetically related to M.S. Dr. Buckman advised since J.S. was 12 he could access the identity of his biological mother and "now was a good time" to disclose this information to J.S. He volunteered to assist D.M. in disclosing this information to J.S.
- [181] D.M. decided he would disclose this information to J.S. He testified he thought it was information which would be helpful to J.S. He advised the FFRP team of what he had done but with strict instructions they were not to advise M.S. this information had been disclosed to J.R
- [182] Dr. Buckman testified J.S. received the information favourably and smiled. Within a matter of moments he realized the implications and said: "I was afraid I would become like my mother and I don't want to be that mean."
- [183] I do not accept D.M.'s explanation for disclosing this information to J.S. In my view this was an intentional attempt to hinder the efficacy of the reunification program and to permanently impair M.S.'s ability to restore her relationship with J.S.

Non-compliance with second reunification program

- [184] The progress reports from this program were entered into evidence as exhibits both as factual evidence and opinion evidence. I found the factual evidence helpful but the opinion evidence contained in these reports had no impact on my conclusions.

[185] M.S. participated fully in the program. Ms. Jones, the director of the program advised D.M. was not participating appropriately. In a July 19, 2019 email to D.M. and both M.S. and D.M.'s lawyers, Ms. Jones set out the concerns over D.M.'s conduct specifically his failure to schedule and attend appointments. She indicated this issue had to be addressed as soon as possible.

Dr. Buckman's second letter

[186] Dr. Buckman drafted a second letter to Ms. Jones dated July 16, 2021. This letter was circulated to Ms. Roles and Rabbi Moscovitch. Neither made significant changes to the letter and both signed it. The letter was addressed to Ms. Jones. It questioned the empirical underpinnings of the reunification program, requested she provide medical literature supporting her approach, offered to meet with her and recommended D.M. and J.S. cease participating in the program. This letter was not entered into evidence as opinion evidence.

[187] It contained a factual statement that D.M. was recommended to remove J.S. from the program so he "didn't continue to regress". Dr. Buckman agreed the last time he saw J.S. he looked "great".

[188] Ms. Jones was puzzled by the letter. She advised D.M. she could not meet with Dr. Buckman or Rabbi Moscovitch as she was uncertain of what their roles were in the case. She asked if she could meet with Ms. Roles, as Ms. Roles was a treating health care worker and she would like to discuss the views expressed in the letter and her views on reunification. The team had already met with Ms. Roles on two previous occasions to obtain her views.

[189] D.M. advised Ms. Jones neither he nor J.S. would attend any further meetings until he retained new legal counsel.

[190] Ms. Roles advised she would not meet with Ms. Jones without Dr. Buckman and Rabbi Moscovitch. In my view it would have been improper for Ms. Jones to meet with Dr. Buckman in these circumstances.

Termination of program

[191] D.M. and M.S. prepared applications for orders with respect to terminating or ordering compliance with the reunification program. Ms. Jones suspended the program given D.M.'s lack of support for reunification and the increasing aggression and accusations made towards the program by D.M. and Ms. Roles.

[192] On November 1, 2021 the applications were heard by Milman J. He suspended the FFRP program pending the trial of this matter.

J.S.'s 13th Birthday

- [193] M.S. wanted to give a birthday card and present to J.S. for his 13th birthday. D.M. said he would not accept a gift from her. M.S. dropped off a gift for J.S. with the concierge in D.M.'s building. The gift was returned unopened to her lawyer's office the day after J.S.'s birthday.
- [194] M.S.'s mother also sent a card with a cheque to J.S. by mail. The envelope was returned by registered mail in a large envelope. J.S.'s handwriting was on the large envelope addressing the package.

Application for restraining order

- [195] On April 8, 2022 during an adjournment of the trial, M.S. attended outside J.S.'s school. J.S. went into a panic and ran inside the school. He called D.M. for help. He was so upset he had to come home from school. He huddled under a blanket for days afterwards. This was before the Passover break. After Passover, J.S. had not been to school for 17 days and was still afraid to go to school.
- [196] D.M. seeks to have a restraining order made against M.S. to prevent her from coming near J.S.'s school and places where J.S. could reasonably be expected to attend. As I understand it, the basis for this order would be to provide assurance to J.S. that M.S. would not abduct him, or to prevent J.S. from being surprised by seeing M.S. without notice and to prevent him from becoming panicked and fearful for a prolonged period of time.

J.S.'s condition and activities

J.S.'s feelings towards M.S. since 2019

- [197] I take J.S.'s reaction on April 8, 2022 as evidence that his negative feelings towards M.S. appeared to be increasing during her absence from his life. Additional examples are:
- a) in May 2021 when he told his therapist he was afraid M.S. would "disembowel" him if he was left alone with her;
 - b) J.S.'s current view that M.S. did not believe he had mono and never visited him when he was sick in bed with mono at D.M.'s house. M.S. visited J.S. every day when he was sick at D.M.'s house; in addition, J.S. initially only complained that M.S. did not understand how exhausted he was when he was recovering from mono - not that he did not have mono.
- [198] In my view these are examples of a progression in J.S.'s negative views of M.S. I am aware that J.S. expressed unspecified fears for his safety with M.S. in 2019, but in my view these examples, as well as the findings I have made as a whole, demonstrate the intensity of J.S.'s feelings have significantly increased since he has been solely under D.M.'s care.

A typical day for J.S.

- [199] In August 2020, Dr. Aube obtained the following information from J.S. as to how he spends his time:
- a) D.M.'s mother's home is a second home to J.S. He spends dinners, some lunches and half of his evenings with her. Sometimes he spends the entire day with her. J.S. stated he spends a minimum of five hours a day at D.M.'s mother's apartment;
 - b) J.S. spends most of his time on the phone and playing video games. D.M. "lets me fly with this, which I appreciate." The rules with D.M. are that he should not be on his phone at mealtimes; the rest of the time it is up to J.S. He did acknowledge sometimes D.M. would say: "if you have been on your phone all day, perhaps in the evening there is no phone." D.M. advised the rules were that J.S. could not be on his phone during discussions, when in therapy and during meals. J.S. admitted M.S. is right when she says he spends a lot of time on his iPhone but he deplored that M.S. put limits on his screen time. D.M. told Dr. Aube that J.S. had an addiction to his phone; and
 - c) J.S. does activities such as walking, bike rides and little projects. He does most of his activities with D.M. When asked, he reported he had no contact with peers outside of school.
- [200] Currently on a school day J.S. gets up between 7:00 and 7:30 am, he makes his own breakfast and then D.M. takes him to school. School starts at 9:45 am, but D.M. has made arrangements to excuse J.S. from regular classes so they can arrive whenever they want. He then goes to a learning commons to do his school work. If J.S. feels well enough he can attend some classes in person, which the school is encouraging him to do. D.M. has gotten J.S. to be excused from gym due to growing pains which he sees a physiotherapist for.
- [201] D.M. picks J.S. up in the afternoon before school finishes and they come home. D.M. has arranged tutors for J.S. to come to their home for math, English, French and Hebrew. His school assignments and work are posted online. J.S. works at his own pace through school.
- [202] They have dinner with D.M.'s mom most nights and J.S. then typically is on his computer and goes to bed when he wishes. He does not see peers outside of school and has no formal activities. He does see friends online and at school. He sees D.H. at school.
- [203] J.S. does not go to school with his peers due to problems with his stomach. He has been having these issues since January; however, J.S.'s attendance at school has been sporadic with absences and lateness the entire time he has been in D.M.'s care. As noted earlier, I find J.S.'s absences and lateness since he has been in D.M.'s care far greater than can be reasonably explained by his physical problems.

Comparison to 2019

- [204] J.S. has had a marked decrease in his contact with peers, activities and attendance at school in comparison to 2019 before he had mono. He currently spends the majority of time with D.M., D.M.'s mother, tutors and physicians. He no longer participates in organized activities or camps. D.R., J.N. and Ms. Grundberg provided evidence that J.S. attends family functions and appears to enjoy himself and interact with his cousins at these outings. However, these gatherings are infrequent.

J.S.'s current status with respect to ARFID

- [205] Ms. Cairns testified in 2019 the focus with J.S. was to get his calories up as he was severely underweight. In 2020 J.S. was back on his growth curve and the focus moved to the second stage of treatment - expanding the variety of food that he would eat.
- [206] The last time Ms. Cairns saw J.S. was in March 2019. At that time J.S. remained totally on his growth curve and there were no concerns about his physical health. Ms. Cairns had no concerns that he would backtrack. At present whether he wishes to continue with food therapy is up to J.S. and depends on how much assistance he wants in expanding the variety of food that he eats. She is confident J.S. has the skills to continue expanding the variety of foods without further support from healthcare workers.

J.S.'s current psychiatric status

- [207] J.S. has been diagnosed with chronic anxiety and a generalized anxiety disorder and has been prescribed Prozac to treat his anxiety and depression. He has been referred to a psychiatrist for possible somatization disorder. He has developed a stutter since 2019. Although not a DSM V diagnosis, I find J.S. has developed chronic overuse of his electronics.
- [208] J.S. currently has significant gastrointestinal upset. Ms. Cairns is of the view this is stress/anxiety related. She advised D.M. to try to relieve J.S.'s stress, for example if J.S. is stressed about getting to school on time D.M. should try to remove this stress by allowing him to go to school later and see if that helps. Stress could definitely be caused by the current family situation.
- [209] It was Ms. Cairns' understanding that D.M. followed her advice and J.S. had improved. However, the school records do not indicate any change in J.S.'s attendance. J.S. advised Dr. Aube that he enjoyed school and expressed no fears or anxiety in attending at school. I do not find J.S. is stressed nor does he feel pressure to arrive at school on time.

- [210] D.M. testified that J.S.'s stress and anxiety are generally limited to situations involving M.S. I disagree. J.S. stopped attending the REACH program in July 2021. His symptoms and health have worsened since that time. I find his psychiatric issues are chronic and occur irrespective of situations involving M.S. With respect to the cause of J.S.'s anxiety I agree with the opinion of Dr. Aube. In saying this, it is clear that J.S.'s stress and anxiety increase when he is placed in situations involving M.S.
- [211] Dr. Aube opined that the result of J.S.'s generalized anxiety disorder has been an avoidant response where he attempts to deflect his anxiety by distancing himself from commitment. I find this to be the case and note that J.S. has become considerably isolated since coming under the sole care of D.M. I agree with Dr. Aube that J.S.'s avoidance response appears to be emulating D.M. J.S.'s isolation is far greater than what could be attributed to a COVID-19 and post COVID-19 shutdown and his medical difficulties.

Comparison to 2019

- [212] J.S.'s current psychiatric status is in stark contrast to his condition in 2019. In 2019 he had no apparent psychiatric issues. He has now been diagnosed as suffering from chronic anxiety and requires medication for anxiety and depression. His anxiety is so severe it appears to be causing him significant gastrointestinal issues. Although he used electronics prior to 2020, I find his usage has dramatically increased such that it is at a worrisome level.
- [213] J.S.'s weight has improved. I find this is in large part to the monitoring by the healthcare team and his use of supplements. J.S. tolerated ensure and was able to increase his weight largely by consuming ensure. I find his weight has stabilized in spite of the current family situation and do not believe that the current situation assisted.

Views of the child

- [214] I am satisfied the views of the child were accurately expressed in the section 211 report. At the request of both parties I conducted an interview of J.S. despite the fact the focus of the dispute revolves around potential enmeshment and estrangement or alienation. A judge may exercise his or her discretion to interview a child in such cases: see, for instance, C.J.J. v. A.J., 2016 BCSC 676 [C.J.J.]; and L.E.G. v. A.G., 2002 BCSC 1455 [L.E.G.].
- [215] In agreeing to conduct the interview I read and placed particular emphasis on Nicholas Bala et al, "Children's Voices in Family Court: Guidelines for Judges Meeting Children" which was provided to me and recommended as helpful by both counsel. I reviewed the article before conducting the interview.
- [216] I interviewed J.S. in a courtroom, on the record, but in the absence of counsel and his parents. I ordered the recording sealed. The purpose of the interview was to:
- a) Confirm J.S.'s views had been accurately expressed in Dr. Aube's report;

- b) Confirm to J.S. I was aware of his views; and
- c) Discuss the trial process and the difference between having a voice and deciding an issue.

[217] It is my hope the judicial interview process will enhance the likelihood that J.S. would accept my decision.

[218] I provided the summary of my interview to counsel which is reproduced in the following three paragraphs. The purpose of my interview was not to gather evidence.

[219] During my interview with J.S., I confirmed the following:

- a) J.S. loves his Dad, does not like his mom - and is terrified about seeing her let alone being alone with her;
- b) J.S. wishes to remain solely with his dad and grandmother;
- c) J.S. does not wish to see his Mom or have any contact with her; and
- d) J.S. is upset that people have taken advantage of him and ignored his rights.

[220] J.S. expressed relief that I had been provided this information. He also wished to make sure I was aware of the following:

- a) the way his mother treated him caused his eating disorder; and
- b) his mom mistreated both him and his dad before the divorce.

[221] During the interview I told J.S. I would be happy to meet with him and explain my reasons to him once I made a decision. He indicated he wanted to have this further meeting.

Lacuna of evidence

[222] It was unfortunate that D.M.'s mother could not testify or participate in the section 211 investigation conducted by Dr. Aube. Apparently she was not well enough to participate. However, D.M. sought and was granted an order for J.S. to go on a cruise with her and D.M. to Alaska shortly after the trial. There was also correspondence from D.M. to M.S. stating that his mother was as well as M.S.'s mother.

[223] I do not draw an adverse inference from her absence. However, it is likely her testimony would have been of assistance to the court given the pivotal role she plays in J.S.'s life and her involvement in many of the issues that form the basis for this lawsuit.

Enmeshment

[224] Dr. Aube presented the following explanation of enmeshment, which I accept:

Literature explains that a healthy child development requires a child to explore the world while being able to develop his or her independence and enhance his or her thinking skills. This requires healthy boundaries from a psychological and behavioural aspect between the parents and the child, and between the two parents and the two homes for a separated family.

Regrettably, in the midst of separation and often even before separation, for some parents experiencing a troublesome time, it can echo previous personal insecurities and/or trigger a dynamic which can result in enmeshed parenting. Often enmeshment can result in a triangulation situation, which involves an inter-parental dispute and the forming of an alliance with one parent against the other parent. Literature indicates that in this case the child will have difficulty transitioning between the homes and exhibiting healthy bonding with the other parent. The enmeshed/intrusive parent tends to behaviourally control the child; and his or her thoughts and feelings so that the thoughts, behaviours and feelings of the child will conform to the parent's agenda. The child will have an exaggerated alignment with one parent at the expense of the other parent. The stronger this affectionate bond is with one parent, the weaker and at times non-existent, it becomes with the other parent. The child is emotionally reinforced for his support and alliance to the enmeshed parent and/or rebukes when he or she does not endorse the enmeshed parent's agenda. The concept of enmeshment is often present when there is a dynamic of alienation.

[225] In considering whether enmeshment has occurred between J.S. and D.M. I make the following findings of fact:

- a) D.M.'s parenting has fostered an environment amenable to enmeshment; as J.S. explained: D.M. is the fun parent while M.S. was painted as the "mean one";
- b) Upon reviewing the evidence as a whole, including Dr. Aube's section 211 interviews, J.S. and M.D. spoke as one voice. The most telling example was when J.S. cried for 30 minutes after listening to a zoom meeting between D.M. and the reunification team in which J.S. was concerned the team was "beating up" on D.M. Another example is when J.S. described D.M. as passive in order to protect D.M.;
- c) D.M. set up a lack of appropriate boundaries with J.S. Allowing J.S. to listen the zoom call (mentioned above) and discussing what J.S. told Dr. Aube are significant examples of this. Dr. Aube opined lack of boundaries and/or speaking as one voice are a significant indication that enmeshment exists;
- d) Many of J.S.'s complaints about M.S. appeared scripted and designed to support D.M. and rebuke M.S.; and
- e) Upon reviewing the evidence as a whole, I conclude J.S. and M.D., along with M.D.'s mother, formed in Dr. Aube's words, a "clan" which was opposing M.S.

[226] In my view there is substantial evidence indicating enmeshment has occurred between J.S. and D.M. and I find that it has.

Allegations of abuse

Rabbi Moscovitch

- [227] On February 5, 2020 D.M. and his mother took J.S. to see Rabbi Moscovitch. D.M. called and requested a meeting. Rabbi Moscovitch understood the meeting was about the current break up of the family.
- [228] Rabbi Moscovitch met with the three of them. J.S. indicated to the Rabbi Moscovitch that he had something to say about M.S. Rabbi Moscovitch the met with J.S. alone. J.S. advised Rabbi Moscovitch that when he was very small, around three years old, he felt uncomfortable when his mother had him sit at the table. Rabbi Moscovitch later recalled that J.S. had told him that he peed his pants. J.S. also advised that more recently J.S. had difficulty tying his shoes so his mother pushed him down onto the hallway floor.
- [229] Rabbi Moscovitch called the parents back in the room and advised them that he was going to have to report the matter to the Ministry. Which he did. He also assured J.S. that both of his parents loved him very much.
- [230] Rabbi Moscovitch testified he found J.S. to be very credible and he believed what he said.
- [231] Rabbi Moscovitch signed the second letter drafted by Dr. Buckman but relied on Dr. Buckman and Ms. Roles for the accuracy of the statements. Contrary to what the letter says, the last time he saw J.S. he looked happy and well.
- [232] D.M. testified he did not know what J.S. told Rabbi Moscovitch, only that it was serious and would require a report to the Ministry.

Ms. Roles' allegations

- [233] Ms. Roles testified that in January 2020 (it was actually February 1, 2020) J.S. made further disclosures to her of two incidents where M.S. made him feel uncomfortable when he stayed with her at her apartment separate from the place they were sharing with D.M. J.S. did not feel safe talking about these incidents and had not been able to tell anyone about them.
- [234] The two incidents involved conflict over cell phone usage. M.S. grabbed his hands held them behind his back causing him to fall to his knees and almost hit his head.
- [235] J.S. advised Ms. Roles he wanted Ms. Roles to contact his lawyer so this information could be provided in the upcoming court hearing.

- [236] Ms. Roles swore an affidavit on February 3, 2020 in which she added M.S. does not allow J.S. to text after 7:30 pm and the incident was caused because M.S. caught J.S. texting after 7:30 pm. In the affidavit, and at trial she stated that J.S. was very credible. At trial she indicated that she had no doubt that the incident occurred and that J.S. had never provided inconsistent evidence to her. Although as I indicated earlier, she did concede in cross examination that J.S. tended to exaggerate to ensure his voice was heard.
- [237] At trial Ms. Roles disclosed a further allegation of abuse that she had not previously mentioned. She testified that in November 2019, J.S. disclosed to her that while at his mom's new house she made him sit on a stool to tie his shoe laces. M.S. insulted J.S. and said he could not leave until he tied his laces. He was unable to tie them to her satisfaction so he was not allowed to leave the stool. He was there so long that he peed his pants.
- [238] Ms. Roles testified J.S. disclosed this to M.S. during the December 21, 2019 meeting. However, neither M.S. nor D.M. recalled this event.
- [239] Ms. Roles was unaware of the existence of the January 31, 2020 text to her from D.M. and had destroyed her correspondence to J.S.'s lawyer on that date. This document had been provided to Rabbi Moscovitch whom produced it to the court.
- [240] The email she sent to lawyers on January 31, 2020 (the day before she saw J.S.) reads, in part, as follows:

I have disturbing information that J.S. shared at bedtime last night that shed light on why J.S. feels so unsafe at his mom's. I'm copying J.S. on this as he has given me permission to share this with both of you.

I see J.S. tomorrow and will discuss this with him in person. Then would like to add this into an affidavit.

Here is the text I received from dad this morning. J.S. brought it up with dad on the drive to school again saying it was absolutely true. He needs to be believed as he has never lied. There may be more traumatic experiences that get shared now that this has been revealed.

[D.M.'s] text: "We were just relaxed and talking as J.S. was getting into bed when all of a sudden he said something out of the blue that must have been very hard and humiliating for him to come out and say. J.S. told us he doesn't know why he held it back but with a deadline of no texting or phoning or using his apps on his phone after 7:00 pm when at M.S.'s place, if he went over the time she would hold his arms behind his back and make him drop to his knees with his head on the ground and said: "I told you that you are not to use the phone after 7." J.S. was alone in the world and said he never started to learn manners until he was with my mom and with me one on one. He thought he just had to suck it up but now he realizes it was abuse." David

Peter, I'd like to add this example on another affidavit. I will get exact quotations from J.S. first hand Saturday to report. I could come in Monday about noon to sign it.

[241] This email raises a number of concerns with Ms. Roles' testimony.

[242] Ms. Roles testified this was the first time J.S. had disclosed this information to anyone. This was not the case. She was hoping to get "exact quotations" from J.S. for an affidavit.

[243] On cross examination Ms. Roles advised she did not advise the Ministry of the abuse because she was aware that J.S. was not living with his mother. However, with respect to the abuse she first disclosed at trial, Ms. Roles was aware that J.S. was living with his mother and did not disclose the abuse.

[244] Despite saying in the letter:

He needs to be believed as he has never lied. There may be more traumatic experience that get shared now that this has been revealed.

Ms. Roles did not disclose or mention that a further traumatic experience had already been disclosed.

[245] Ms. Roles testified she did not disclose the "peeing" incident earlier because she thought it was private and did not want to embarrass J.S. She testified she was able to overcome these concerns during her testimony in court because it "was time for the truth to come out." Ms. Roles provided previous affidavits to the court which did not contain this evidence; evidence which was highly relevant to a position she felt was essential for J.S.'s wellbeing.

[246] I do not accept her explanation for not disclosing the "peeing" evidence until trial. I do not accept this incident occurred as described by Ms. Roles.

D.M.'s allegations

[247] D.M. testified that J.S. disclosed the abuse to him as set out in the text and then he contacted Ms. Roles. D.M. testified J.S. only disclosed this event to him on one occasion and physically demonstrated it to him.

[248] In addition, D.M. made another allegation against M.S. He testified M.S. took J.S. to the synagogue and pushed his head down onto the bimah and demanded J.S. apologize to the rabbi for saying she was a bad mother.

[249] D.M. had not disclosed any allegations of abuse by M.S. prior to his testimony to anyone but Ms. Roles. He has provided numerous affidavits disclosing numerous concerns that he has with M.S. and detailed concerns that have been expressed to him by J.S. In addition, later in the proceedings D.M. filed affidavit evidence referring to the incidents as J.S. disclosed them to Ms. Roles rather than deposing to what he had been told by J.S.

[250] D.M. was also interviewed by Dr. Aube on two occasions when she was gathering information for the section 211 report.

- [251] D.M. testified that he did not previously disclose these allegations because he thought they were hearsay. I do not accept this explanation. His testimony and previous affidavits contained numerous examples of hearsay.
- [252] With respect to Dr. Aube, he stated he simply answered her questions which were very focused and she did not ask him about allegations of abuse. This explanation is not consistent with the Dr. Aube's testimony in which she provided a detailed explanation of how she interviewed D.M. nor is it consistent with the other concerns D.M. expressed to Dr. Aube concerning M.S.
- [253] I do not accept D.M.'s explanations for not disclosing these allegations prior to the trial. With respect to the "bimah" evidence I do not accept this incident occurred as described by D.M. I am confident given J.S.'s alienation that he would have had no hesitation in disclosing this incident had it occurred.

Dr. Buckman's allegations

- [254] Dr. Buckman testified he was asked to speak with J.S. on February 21, 2021 by D.M. to see if he could determine the nature of the difficulties J.S. was having with M.S. D.M. was present during this interview. Dr. Buckman did not obtain M.S.'s consent to interview J.S. or advise her of the interview.
- [255] J.S. volunteered an incident to Dr. Buckman when M.S. had held him down with his stomach on the floor and pinned his arms behind his back. He did not make a report to the Ministry as he felt confident it would get reported at the trial of this matter.
- [256] Dr. Buckman testified based on his training and experience he was convinced J.S. was truthful. He testified on one occasion he had D.M. leave the room and noticed no change in J.S.'s demeanour.
- [257] Dr. Buckman was not qualified as an expert. His evidence was not admitted as opinion evidence. Based on my findings of fact I find Dr. Buckman was a paid advocate whom was under no obligation to be objective, and was not.

Allegations disclosed to Dr. Aube

- [258] J.S. told Dr. Aube that in October 2019 while with M.S. he saw her sticking out her foot so he tripped over it and fell on the couch.
- [259] A second incident occurred in November 2019 when he had an agreement with M.S. that he would be off his phone after dinner. When he was walking towards his bedroom: "he felt a pair of hands grabbing him by the arms, pulling him back and shoving him forwards". He fell on his face and hurt his nose. His nose still hurts now from that experience. He could not tell if it was M.S.

- [260] For J.S.'s first interview with Dr. Aube he arrived with screenshots to "confirm his words", and began his interview by listing as many negative things about M.S. as possible as if he was trying to recite a pre-determined list of issues. In addition, J.S. used terms he did not appear to know the meaning of. For example he used the word "anguish" and when asked what he meant replied that "he forgot what the word means." During the second interview J.S. indicated he had had a discussion with D.M. and wanted to provide some corrections to her based on this discussion.
- [261] Dr. Aube testified these were signs indicative of coaching. Dr. Aube opined that during the interview she felt J.S. was tell her what he though D.M. wanted her to say.
- [262] I agree with Dr. Aube's opinion on this issue and find that J.S. was telling Dr. Aube what he thought D.M. wanted him to say. I also conclude D.M. coached J.S. to say these things. I am not convinced these allegations occurred as described or that they amounted to abuse by M.S.

Use of judicial interview

- [263] After reflecting on the evidence as a whole, I find I had similar concerns with the information provided to me by J.S. in my judicial interview. The question is whether this is an appropriate consideration in my decision making process.
- [264] L.E.G. contains a starting point for an assessment of the purpose of, benefits of and concerns with judicial interviews. It contains the following passage:
- c. Benefits of Judges' Interviews
- [22] In addition to the benefits described above in the discussion of the purposes of an interview, a child may feel more comfortable speaking in a setting that is less formal than that found in a court room. The child may also be more comfortable speaking in the absence of the child's parents. As a result, the information obtained may be more reliable.
- [23] The process also allows a child to tell the judge directly what the child's views are. As a result, the child will know that his or her views have been heard by the person actually making the decision: L. (Re), cited above.
- [24] Judges' daily work requires them to listen to and observe witnesses, including child witnesses, and to assess the credibility and reliability of that evidence in the context of all the other evidence in the case. That experience can assist judges in assessing the credibility and reliability of the information received from a child in a private interview.
- [emphasis added]
- [265] This is despite the fact that the case law is clear that assessing the credibility of the child is not the point of the interview. This is discussed in C.J.J.:

[332] I agree that L.E.G. is a good starting point when considering whether to conduct a judicial interview. I also agree that a judicial interview is not usually the best means to gather information or evidence about the child's situation, needs, wishes and feelings: see Nicholas Bala et al, "Children's Voices in Family Court: Guidelines for Judges Meeting Children" (2013), 47 Fam. L.Q. 381 at 392, 397 (the "Bala Article"). In that article the authors say, and I agree, that the purpose of a child's meeting with a judge is not to gather evidence or to have the child provide information about a factual matter in dispute between the parties (at 399). Instead, judicial interviews have as their purpose (at 396):

- (i) to enable children to feel more involved and connected with proceedings in which important decisions are made in their lives; (ii) to give children an opportunity to satisfy themselves that the judge has understood their wishes and feelings, and (iii) to help children to understand the nature of the Judge's task and the court process.

However, as noted in L.E.G., assessing credibility and reliability is an inherent part of the judge's role. Indeed, the court in C.J.J. went on to make the following finding stemming from a judicial interview:

[343] X also mentioned certain events he said occurred when he was 11 years old (during his mother's relationship with J.C.) that I am quite satisfied never happened or at least never happened in anything approaching the way he described them.

[266] Despite the fact the purpose of my interview was not to gather evidence I am of the view it is appropriate for me to consider the concerns I had during the judicial interview that J.S. was telling me what he thought D.M wanted him to say.

Conclusions on allegations

[267] With respect to the allegations that J.S. had been pushed down to the floor by M.S. made by Ms. Roles, D.M., Dr. Buckman and Rabbi Moscovitch; I find J.S. was telling them what he thought D.M. wanted him to say. I do not accept these incidents occurred as described.

Reports to Ministry

[268] These allegations resulted in at least one and perhaps more reports to the Ministry. Dr. Aube testified she had significant experience with how the Ministry deals with complaints of physical abuse. If the complaint is determined to be frivolous, no further steps are taken. If there is any merit to the allegation, the parents are notified. M.S. was not notified of any concerns by the Ministry as a result of the allegations of physical abuse and the subsequent report or reports to the Ministry. I find the Ministry determined there was no merit to any reported concerns of abuse on the part of M.S.

Alienation v. Estrangement

Legal principles

[269] In *Williamson v. Williamson*, 2016 BCCA 87 at para. 40 [Williamson], the Court of Appeal adopted the description of alienation given in *D.S.W. v. D.A.W.*, 2012 BCSC 1522 at para. 64:

the notion that the child's decision to refuse to have a relationship with the targeted parent is without justification or without convincing reason. If there is a reason given by the child for taking the extreme step of refusing to have a relationship with a parent, it will often be out of all proportion to the decision taken. The reasons for such decisions need to be assessed with the particular personality and experience of the child involved. What may seem a thin or unconvincing rationale for one child may have a much more convincing force in the context of the personality and experience of another child.

[270] It is also crucial to distinguish the concepts of alienation and estrangement from one another: *Williamson* at para. 41. The difference between these two concepts was discussed in *N.R.G. v. G.R.G.*, 2015 BCSC 1062 at paras. 277-278:

[277] The difference between an estranged child and an alienated child lies in the cause; estrangement, sometimes referred to as "realistic estrangement", is the label applied when the child understandably refuses contact with a parent because of the latter's behaviour whether it be physical or emotional abuse, rigid or restrictive parenting, immature and self-centered behaviour, and/or dysfunctional conduct arising from the parent's own psychological or psychiatric issues. In such circumstances, the child's rejection of the parent may well be a reasonable and adaptive response to the estranged parent's behaviour.

[278] An alienated child, on the other hand, is the label frequently applied when there is little or no objectively reasonable cause for the child's rejection of the parent and particularly when it is the product of the other parent's hostility and antipathy towards his/her former spouse and the intentional undermining by the former of the child's relationship with the latter. While the undermining of the relationship can arise from direct or indirect behaviours, in its worst form the parental conduct is expressly designed to alienate the child from the other parent. Such conduct is pernicious and unpardonable.

[271] Finally, given the serious nature of an allegation of alienation, proof requires proper expert evidence such that the court considers the threshold requirements of admissibility and then its gatekeeper function and balance the potential risks and benefits of admitting the evidence.

Dr. Aube's evidence

[272] Dr. Aube was qualified as an expert in clinical and forensic psychology with specific expertise in section 211 psychological assessments. She is an experienced clinician and no objection was taken with her qualifications as an appropriate expert.

- [273] Her report was dated, in that it had been completed on August 27, 2020 over 1½ years before she testified and before the failure of the first reunification program. Both parties requested an updated report, but Dr. Aube was not able to accommodate the request. Prior to the trial both parties cross examined Dr. Aube on hypotheticals based on the updated facts of this case. It was clear her opinion current opinion had changed in some respects given the continued estrangement of J.S. from M.S. and the failure of the reunification programs.
- [274] I directed her opinions be confined to those expressed in her report unless requested to comment on a hypothetical question relevant to the updated facts.
- [275] Respondent's counsel objected to Dr. Aube answering hypothetical questions without having conducting an updated assessment of J.S. I allowed Dr. Aube to answer hypothetical questions as it is common for experts to be provided hypotheticals. I will deal with the lack of an updated assessment as a matter of weight. Although both parties were allowed to cross examine Dr. Aube (she was a court appointed expert), neither party could be taken by surprise with her evidence since both had conducted a pre-trial examination of her. Respondent's counsel confirmed there had been "no surprises" in Dr. Aube's evidence in a subsequent application.

Admissibility of expert evidence on alienation

Evidence

- [276] Dr. Aube applied the four factor model to assess whether alienation occurred in this case.
- [277] Although the four factor model was controversial in the 1980's I accept Dr. Aube's evidence this is no longer the case. Although the term "parental alienation" is not contained in the DSM V; the majority of the medical literature endorses that the term is contained within the definition of child abuse which is listed in the DSM V. The reason that parental alienation was not included in the DSM V is that it is a relationship problem that leads to mental health issues as opposed to a psychiatric disorder. Most academics agree that it falls within the DSM V definition of child abuse. This is true for other recognized relationship conditions such as domestic violence.
- [278] Dr. Aube agreed some academics are critical of the parental alienation concept and the four factor model; but in her view, they are recognized and supported by the majority of academic opinion and empirical literature.
- [279] It is true that parental alienation disorder was not included in the DSM V. Dr. Aube explained there is a difference between parental alienation and parental alienation disorder. Parental alienation disorder is a more controversial subject than parental alienation as the former attempts to incorporate what is essentially a dysfunctional social/family relationship into a psychiatric diagnosis.

[280] Dr. Aube agreed that a number of academics are critical of the term. I do not find this to be unusual. Opposition to the majority of academic and scientific opinion is an essential part of the scientific process.

Legal Admissibility

[281] The evidence contained in Dr. Aube's s. 211 report forms the foundation of the allegations of parental alienation. Williamson at para. 47 mandates the careful scrutiny of such expert evidence in accordance with the framework set out in *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23 [White Burgess], and *R. v. Mohan*, [1994] 2 S.C.R. 9 [Mohan]. There are two steps to this process. First, the court assesses the threshold requirements for admissibility, being: (1) relevance; (2) necessity in assisting the trier of fact; (3) absence of an exclusionary rule; and (4) a properly qualified expert: Mohan at 20-25. If these threshold requirements are met, the court must exercise its gatekeeping function and balance the probative value of the report against its possible prejudicial impact: White Burgess at para. 24.

[282] The context in which the Court in Williamson laid down the expert evidence requirement is relevant: the judge below had summarily admitted expert evidence from a party-retained expert on the subject of alienation, despite there being a s. 211 report from a court-appointed expert. This threw into question whether the judge had considered the expert's qualifications and the necessity of additional expert evidence.

[283] In my view the application of the four factor model utilized by Dr. Aube meets the Mohan criteria for admissibility. There is no question that Dr. Aube's analysis is relevant, in the sense that it tends to prove or disprove a fact in issue (i.e., whether there has been parental alienation). It is likewise necessary, in that it provides information outside of the court's knowledge. While the court conducted a brief interview with J.S., the factual foundation of the report is more broad-based and ranging than could be surveyed in such an interview. Additionally, Dr. Aube brings her specific expertise to bear on the subject matter. Her qualifications as an expert in clinical and forensic psychology were discussed above and her testimony was confined to those topics.

[284] In exercising my gatekeeping function, I must balance the potential risks and benefits of admitting the evidence. At the gatekeeping stage, one of the prime prejudicial impacts the court must be wary of is the potential for the expert to usurp the fact-finder's role.

[285] This potential for prejudice on this basis sits perhaps uncomfortably with the unique role of an expert in authoring a s. 211 report: while the court is not bound by the findings of such a report (*A.R. v. A.V.R.*, 2016 BCSC 629 at para. 4; *M.F.W. v. M.F.W.*, 2020 BCCA 284 at para. 25), the facts set out in a s. 211 report are *prima facie* evidence of the truth of those facts: *A.P. v. J. C.*, 2018 BCSC 1381 at para. 46. Many courts in this province have commented on the unique position of these experts; for instance, N. Smith J. noted the following in *Falvai v. Falvai*, 2008 BCSC 79 at para. 23, *rev'd on other grounds* 2008 BCCA

503:

[231] In most civil cases, expert witnesses are tendered by one or other of the parties and it is a basic rule that the facts and assumptions on which the expert's report is based must be established by evidence. If the truth of those facts and assumptions is not established, or if the true facts are shown to be contrary to the expert's assumptions, the court can place no weight on the expert's opinion. However, an expert who prepares a custody and access report at the direction of the court is in a somewhat different position. The difference was succinctly explained by Parrett J. in *Goudie v. Goudie*, [1993] B.C.J. No. 1049 (S.C.) (QL), at paras. 33-34:

In family law cases generally, and in custody and access cases in particular the issues are often obscured by the emotional overtones of such proceedings. In such circumstances, the courts power to order an investigation by an independent person with specialized training is an invaluable tool. The procedure anticipated by s. 15 is one in which the investigator interviews the people involved, observes the relationship and interaction between the spouses and the children and reports those observations, facts and impressions to the court. In the truest sense these individuals act as the courts eyes and ears in what are all too frequently highly emotional areas of conflict. The safeguards built into the process include the early delivery of the investigation reports, the opportunity to call the investigator to the witness stand and the opportunity to respond to the report generally by other evidence .

See also *Hill v. Hill*, 2017 BCSC 2117 at para. 54; A.P. at para. 116.

[286] I have carefully considered the potential for prejudice arising from the manner in which Dr. Aube provided her evidence but find that its assistance to the court far outweighs this. I am aware that the court must not abdicate its duty in favour of recommendations made by the expert: *King v. Borserio*, 2018 BCCA 308 at para. 76. Where I have accepted Dr. Aube's findings, I have done so with these principles in mind.

[287] In my view the application of the four factor model utilized by Dr. Aube is admissible expert opinion evidence.

Alienation

[288] Using the four factor model to assess alienation requires scrutiny of the following four factors:

J.R's relationship with M.S. prior to disruption

[289] I find M.S. had a solid relationship with J.S. for the majority of his life. She was the primary caregiver up until 2018. I find it was not until M.S. and D.M. decided to separate in the fall of 2018 that J.S. began distancing himself from his mother.

Abuse or neglect on the part of M.S.

[290] The main issue to consider is whether M.S. engaged in the types of abusive or neglectful behaviours that would warrant fear, hatred and rejection by her child. I will consider this from a modified subjective perspective; that is, from a reasonable child's perspective of similar temperament and disposition as J.S.

[291] I have not accepted any evidence that M.S. has been physically abusive to J.S. I find two components of concern raised by J.S. The first is that M.S. was mean to him.

[292] In the fall of 2019 J.S. provided the following examples of meanness to Ms. Roles:

- a) M.S. limited the amount of sweet and sugary foods he could eat and encouraged J.S. to eat what M.S. considered to be healthy items, such as fruits and vegetables. I accept this was the case; however, I accept Ms. Cairns' evidence that M.S. followed the dietary advice provided by herself and Ms. Roles once J.S. was diagnosed with ARFID;
- b) M.S. forced J.S. to play baseball, taekwondo, and piano lessons when J.S. felt powerless to say he did not want to. I do not accept this evidence. J.S. told Dr. Aube he was good at these sports. D.M. watched and took J.S. to his activities and continued with them when J.S. was under his care;
- c) M.S. did not understand J.S.'s exhaustion when recovering from mononucleosis. I have reviewed these two incidents earlier. As noted J.S.'s perception of what M.S. did while he had mono has dramatically worsened since he has been solely under D.M.'s care;

[293] In addition, I have considered the following additional issues that, in my view, form a sufficient summary, but not an exhaustive list, of the issues of concern:

- a) M.S. disassembled and put away J.S.'s lego. J.S. suspected M.S. smashed it with a hammer. I do not accept the lego was smashed with a hammer;
- b) M.S. limited J.S.'s screen time and made him do chores. J.S. told Dr. Aube that he gets carried away and forgets how long he has been playing games on his phone. I find J.S. spends excessive time on his phone and it is appropriate to put limitations on his use of electronics. I do not accept that J.S. was required to do an excessive amount of chores with M.S. I accept that J.S. is independent and prefers not to be told what to do, and that M.S. has a somewhat rigid parenting style;
- c) M.S. displays sadness and attempts to manipulate J.S. by crying when she is not sad. Given M.S.'s emotional profile I accept that she displays emotion around J.S. I also accept she has used a variety of methods to limit J.S.'s use of electronics;
- d) M.S. tricked him on a snow day when she first told him she could not pick him up because she was unable to drive and then arrived by taxi. I discussed this event earlier;
- e) M.S. sent the parenting schedule to the school and forced J.S. to go home with her. I have discussed this event. There is no indication that this constituted abuse on the part of M.S.; in fact I find this event constitutes significant alienating behaviour on behalf of D.M.;

- f) J.S. was upset that M.S. contacted the school to see if Camp Shabbaton could accommodate his dietary needs and extend the registration. I reject D.M.'s assertion this constituted abuse;
 - g) M.S. showed up at J.S.'s school on April 8, 2022. She knew J.S. was sensitive to seeing her, but J.S.'s reaction was unforeseeable. Although ill advised, given the amount of time she has been unable to see J.S. and her inability to have court ordered visits enforced I do not find this amounts to abuse.
- [294] In my view, taken as a whole, J.S.'s complaints about M.S. do not amount to abuse or neglect; nor would they warrant the fear, and rejection displayed by J.S. I note Dr. Aube testified that she has interviewed thousands of children and she finds these type of complaints to be non-concerning.

Behaviours consistent with alienation on behalf of D.M

- [295] The critical issue is to determine if the conduct amounts to sabotaging the alienated parent's relationship. The following factors are considered: limiting contact, withholding information, badmouthing, polarization and/or allowing the child to choose and confiding in the child. It is not necessary that all of the factors are involved, the key is the intensity and number of factors at play.
- a) Limiting contact and interfering with communication: M.S. and her family have had no contact with J.S. since 2020. D.M. testified he suspected J.S. blocked them on his phone. I find D.M. is responsible for allowing J.S. to limit contact in this way. Allowing J.S. to attend a court ordered lunch visit with his phone is a form of limiting communication given J.S.'s propensity to use electronics. The manner in which D.M. handled J.S.'s presents from D.M. is egregious and a clear example of alienating behaviour. D.M. intentionally refrained from telling J.S. that M.S. would pick him up at school on December 18, 2019 resulting in a traumatizing event for J.S. for which he blamed M.S. I have found D.M. hindered the first reunification program and refused to participate in the second.
 - b) Confiding in the child: D.M. has allowed J.S. to become aware of the court proceedings. J.S. told Dr. Aube that D.M. tells him how the court appearances went. D.M. facilitated J.S. obtaining a lawyer and his continued contact with the lawyer. J.S. is aware that M.S. opposed D.M.'s application to have counsel appointed for J.S. D.M. allowed J.S. to listen in on zoom meetings involving reunification where J.S. was not supposed to be present. D.M. disclosed to J.S. that M.S. was not his natural mother during the second reunification program. D.M. played J.S. M.S.'s mother's voicemail resulting in J.S. believing that she called him a liar. D.M. showed J.S. the text from his best friend's mom (A.H.) and allowed him to respond.
 - c) Badmouthing: J.S. advised Dr. Aube that D.M. told him that M.S. gave him ARFID. I have also found that D.M. coached J.S. to say negative things about M.S. This is clearly an egregious form of badmouthing. A troubling incident that highlights this issue is that D.M. sought a restraining order against M.S. not because there was a realistic fear that she would abduct or harm him, but because J.S. was fearful of her. The appropriate step would be to assure J.S.

that M.S. posed no threat. In my view seeking an injunction to reassure J.S. in these circumstances is equivalent to badmouthing M.S. in that it validates what is objectively an unrealistic negative view of M.S.

- d) J.S. could come to his own conclusions on these issues if he had not been told by D.M.; the difficulty is that when D.M. says them the polarization between the parents is amplified - Dr. Aube opined this is the primary concern of badmouthing.
- e) Polarization and/or allowing the child to choose: Dr. Aube noted the amount of polarization expressed by J.S. and D.M. was stunning. I agree. J.S. told Dr. Aube "Dad and I feel the same about the relationship with mom," and that he needed to comply in order not to create trouble for D.M. There was significant use of the term "we" in the interview with Dr. Aube and in the reunification records when referring to J.S. and M.D. For example, J.S. said: "I observed mom yelling at us many times". J.S. has a polarized feelings about M.S., J.S. says: "D.M. is nice, M.S. is mean", "I love my Dad, I do not like mom - and am terrified about seeing her let alone being alone with her".
- f) Withholding information: D.M. does not provide M.S. with sufficient updates about J.S. and refused to participate in information sharing programs.

[296] I have no hesitation in finding D.M.'s conduct amounts to sabotaging M.S.'s relationship with J.S. I find his alienating behaviour to be severe and egregious.

Behaviours consistent with alienation on behalf of J.S.

[297] Dr. Aube noted the following behaviours that children exhibit when they become alienated:

- a) Campaign of denigration: In assessing this factor one looks at such things as harsh, cold, rude rejection of the parent including denial of past positive experiences, disinterest in having a relationship in the future and a willingness to broadcast the negative views to others. Dr. Aube noted: J.S. reported that he had no good memories of M.S. He played games with M.S. but added immediately she was "infatuated with her choice of games" and that she was cheating. J.S. also made the following assertions: M.S. was tormenting him; he was terrified of her; she insulted him; he could not recall anything nice she has done for him; he could think of nothing he would like to do with her; he does not want to see her again. Dr. Aube noted J.S. always portrayed M.S. in a bad light. I agree. My findings of fact contain a number of examples of this, such as J.S. stating he was afraid M.S. would "disembowel" him if left alone.
- b) Weak, frivolous and absurd reasons for the denigration: The critical issue here is a disproportionate response to the level of emotion exhibited to the parent. The list of complaints that J.S. has already been reviewed and his reactions are clearly disproportionate. The April 8, 2022 incident indicates this has dramatically increased since Dr. Aube's assessment.

- c) Lack of ambivalence towards both parents: This is essentially an idealization of the favored parent, despite his or her obvious flaws, and demonization of the disfavoured parent, despite his or her obvious positive attitudes. This aspect was consistent during both of Dr. Aube's interview sessions: D.M. was the "fun parent" M.S. was the "mean parent" whom tormented him. My findings of fact are consistent with Dr. Aube's observations.
- d) Independent thinker phenomenon: This involves strenuously insisting the favoured parent played no role in the rejection of the disfavoured parent despite their obvious influence. Dr. Aube notes "it is hard to believe [D.M.] whom has so much power over [J.S.] and whom is now the only caregiver, is not influencing [J.S.] in his decision making process." Dr. Aube provided two examples that corroborate this. The most compelling was when describing how scared he was of M.S. J.S. said: "You have no idea how hard it is; my anguish and my suffering are so big. The pain and horror come back to me". When asked if he could expand on his anguish J.S., quite perplexed, stated: "I forgot what anguish means." This is consistent with my finding that, on many occasions, J.S. says what he thinks D.M. wants him to say and my finding of enmeshment.
- e) Lack of guilt regarding poor treatment of the disfavoured parent: J.S. has no empathy for M.S. This is reflected on his comments he made in the lobby of D.M.'s complex on January 15, 2020. This is particularly apparent when one hears the audio recording of the conversation. The most brutal example is the picture that was sent to M.S. acknowledging, but refusing to accept, the presents sent to J.S. for his twelfth birthday.
- f) Spread of the animosity to friends and family of the disfavored parent: Formerly beloved friends, neighbors and family are cut off based on their association with the disfavored parent. This applies to G.R. and M.S.'s mom.

[298] I have no hesitation in finding J.S. exhibits behaviours consistent with alienation.

Realistic estrangement

[299] In determining whether realistic estrangement occurred I will consider the test as set out in Williamson:

[277] The difference between an estranged child and an alienated child lies in the cause; estrangement, sometimes referred to as "realistic estrangement", is the label applied when the child understandably refuses contact with a parent because of the latter's behaviour whether it be physical or emotional abuse, rigid or restrictive parenting, immature and self-centered behaviour, and/or dysfunctional conduct arising from the parent's own psychological or psychiatric issues. In such circumstances, the child's rejection of the parent may well be a reasonable and adaptive response to the estranged parent's behaviour.

[300] Dr. Aube opined finding alienation utilizing the four factors tests excludes the possibility of realistic estrangement. When one examines each of the criteria of the test it is apparent that this is the case. I say this because applying the four factor test involves analysis of the same behaviour that would be under scrutiny in a realistic estrangement analysis.

[301] Dr. Aube opined the key distinction between the two concepts rests on whether the alienation of the child is the result of neglect or abuse. In my view this was too lenient a standard to use in distinguishing between the two concepts and I have applied the Williams criteria.

[302] Dr. Aube noted that in realistic estrangement the estranged children:

- a) Rarely engage in a campaign of denigration;
- b) Typically have a feeling of ambivalence for both parents; and
- c) Typically do not reject other family members belong to the disfavoured parent.

[303] I note all of these factors are present in this case and favour alienation.

Concerns with Dr. Aube's opinion

M.S. authored report

[304] Respondent's counsel argued that Dr. Aube did not formulate her own opinion but relied upon M.S. to diagnose alienation. I disagree. Although M.S. had researched the concept and provided her views to Dr. Aube, M.S. and D.M. were aware that she had been directed to investigate this issue. In these circumstances I am not surprised that M.S. discussed the issue, researched the issue and provided information to Dr. Aube in a sequenced order. This is not the same as a child being coached to provide information.

[305] It is clear in reviewing Dr. Aube's report that she did a thorough and fair examination. Contrary to counsel for the respondent's assertion that she spent minimal time with D.M., she actually spent seven hours interviewing D.M. and six hours interviewing M.S.

[306] Respondent's counsel suggested M.S. should be credited as a "co-author" of the report. I disagree. It is clear Dr. Aube did her own analysis. She cannot be faulted for the manner in which the evidence was provided to her by one party.

Opinion was dated

[307] Dr. Aube noted that her opinion was dated and she would expect if alienation was present it would have worsened over 1½ years if allowed to continue. The alienation would be more serious and the damage inflicted would be deeper. Dr. Aube would expect that J.S.'s alienation would have progressed from moderate to severe over that time.

[308] When I review the facts of this case and trace J.S.'s behaviour and health over time, it is apparent that both have considerably worsened (with the exception of his weight).

[309] I agree it is possible that conducting a further interview of J.S. would have provided more information. However, given the combination of Dr. Aube's hypothetical opinion that the behaviours and damage caused by alienation would worsen over time with my findings of fact, I find her opinion to be more persuasive than it would have been in August of 2020 without those additional facts.

Bias

[310] Bias is not established if an expert opines against a party's position. I disagree that Dr. Aube characterized M.S. as faultless in her testimony in contrast to the assessment provided in her report. She testified:

Both parents have moderate to higher side of anxiety disorders both are anxious. Mental illness does not necessarily preclude one from being able to provide appropriate parenting. If you reached that conclusion a lot of people would be precluded from parenting.

[311] The respondent says Dr. Aube's bias was confirmed when she said that she could not understand why M.S. would "sabotage" a reunification program. I do not accept this as bias. I find this to be a statement in accord with common sense. All things being equal, one would assume that a parent trying to reunite with a child would not sabotage the process.

[312] I reject the respondent's argument that Dr. Aube was biased and that her opinion is suspect due to bias against D.M.

Conclusions on alienation

[313] Upon review of the four factors in my view it is clear that D.M. has alienated J.S. from M.S. Although Dr. Aube provided her opinion on this some 18 months before the trial, the evidence I have assessed includes events that occurred after her assessment, and in my view it is clear the alienation has grown worse.

[314] As noted earlier, I have ensured realistic estrangement is not present.

Impact of alienation on J.S.

[315] I agree with Dr. Aube, D.M. is currently not parenting J.S. Although he states he is honouring J.S.'s wishes, I find he is only thinking of what he wants and is ignoring the best interests of J.S. In essence, he has abdicated his responsibilities as a parent. He promotes avoidance as a behaviour pattern, which J.S. is susceptible to given his anxiety and J.S. is now adopting this behavior.

[316] J.S.'s anxiety and alienating behaviours are increasing as a direct result of the alienation. The problem is so significant that Dr. Aube opined that to do nothing would be to leave J.S. in a state that was tantamount to ongoing psychological abuse.

[317] The respondent argued that "tantamount to abuse" should be interpreted as something less than psychological abuse. I reject this interpretation. I clearly understood Dr. Aube to mean that the current scenario is equivalent to psychological abuse.

[318] Dr. Aube opined an alienated child whom has no remedy faces increased risk of:

- a) Addiction;
- b) Failure to develop interpersonal skills;
- c) Failure to develop conflict resolution skills; and
- d) Trust issues.

[319] I agree with Dr. Aube's opinion and find her opinion that the harm to J.S. would continue to increase over time to be supported by the evidence. In my view the evidence indicates that J.S. will suffer permanent serious psychological harm if he remains in D.M.'s care in the current circumstances.

Appropriate Remedy

Legal principles

[320] The only consideration in determining what particular order respecting parenting arrangements is appropriate is the best interests of the child, having regard to the enumerated factors in s. 37(2) of the Family Law Act: FLA, s. 37(1). This is no different where parental alienation or estrangement is alleged: Williamson at para. 45.

[321] Section 37(2) states:

To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:

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

- (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
- (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
- (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

[322] A finding of alienation does not predetermine one particular remedy. Determining an appropriate response to a finding of alienation is an important process since it impacts both the short and long term well being of the child. In N.R.G. at para. 28, Kent J. describes some of the legal responses to alienation, which are illustrative of the type of inquiry one would expect:

- Detailed case management and parental conduct orders with cost consequences for non-compliance;
- Judicial exhortation urging compliance and emphasizing the emotional harm caused to the children (generally only effective in less severe cases of alienation);
- Court-ordered therapeutic intervention where appropriate, while recognizing "force-marching" a child to reunification may in some cases be unrealistic and harmful;
- Ordering supervised access/parenting time to allay any child anxiety and possibly pave the way for further strategies to achieve positive relationships;
- Suspension of child or spousal support as a sanction to enforce more engagement with the other parent;
- Transferring custody from the alienating parent to the rejected parent where expert testimony establishes the long-term benefits will outweigh any short-term emotional trauma to the child;
- Terminating access by/parenting time of the alienated parent when the alienation is so entrenched that the "cure is worse than the illness", recognizing that children do sometimes resume a relationship with a rejected non-custodial parent after a long period without contact, albeit perhaps only in later years.

[323] Age is an appropriate factor to consider especially if the child is at such an age that the remedial options are impacted: L.G. v. R.G. 2012 BCSC 1365 at para. 215.

Available programs

- [324] There are essentially three reunification programs in B.C. I find that the two programs tried by the parties were unsuccessful and will not work given the attitude of D.M. towards reunification. D.M. refused to participate in the third program. There are therefore no other available programs in B.C.
- [325] Dr. Aube opined that if D.M. had a negative attitude towards reunification, this would essentially eliminate any chance of successful reunification with M.S. in the three programs mentioned above.
- [326] Dr. Aube opined that, given the amount of time of alienation, lack of contact with M.S., and the failure of the two reunification programs, if the Family Bridges program were available in B.C. it would be the next appropriate choice.

Family Bridges program

- [327] The Family Bridges program is peer reviewed and recognized in the academic literature. The main study by Dr. Warshak, Reclaiming Parent-Child Relationships: Outcomes of Family Bridges with Alienated Children, Journal of Divorce & Remarriage, 2019 Vol. 60 8, 642 - 647, dealt with 83 moderate and severely alienated children who nearly all achieved a large improvement in their alienated behaviour.
- [328] Of significance is that Dr. Aube was not aware of any peer reviewed studies in which alienated children were harmed by Family Bridges program or a similar program or suffered trauma. The study was peer reviewed had a high level of reliability given the empirical methods utilized and the sample size. Dr. Warshak is an internationally recognized researcher in the field.
- [329] Dr. Aube was shown a number of anecdotal reports of negative results but opined they were of limited assistance since they were not empirically valid and had only marginal applicability. I note this is especially true given the existence of Dr. Warshak's study.
- [330] The Bridges program has an intensive counselling period at a third party location followed by a period of no contact of at least 90 days from the favoured parents. Dr. Aube advised this period of no-contact is well recognized in the empirical literature as being a key element in promoting reunification because:
- a) If there is no contact between the unfavoured parent and the child the chance of reunification is very low; and
 - b) It is healthy for alienated children to be distanced for a period of time from the favoured parent to develop critical psychological skills that will enable reunification.

- [331] Dr. Aube opined the amount of upset caused by removing the alienated child from the favoured parent will likely be influenced by negative communications the child is provided by the favoured parent. The favoured parent can increase or decrease the risk of harm.
- [332] In this case, it is clear that D.M. is not supportive of reunification and I infer he will not be supportive of the Family Bridges program. I find that, to minimize the risk, it is critical that efforts be made to avoid D.M. having an opportunity to communicate this attitude about Family Bridges to J.S.
- [333] Dr. Aube opined that it is critical that the Family Bridges program provide the following elements:
- a) Safe conduct to the workshop component of the program;
 - b) When child returns from the workshop component there is a support system that understands the program;
 - c) There is monitoring and incentive structure to build traction; and
 - d) The favoured parent is provided resources to assist in moving forward in a constructive as opposed to a destructive manner.
- [334] Dr. Evans is a psychologist that is a trained facilitator for the Family Bridges program. He was not qualified as an expert. He provided evidence of the elements of the program and the training required. I am satisfied the Family Bridges program that the claimant has arranged to be put in place in B.C. is consistent with the program recommended by Dr. Aube and provides for her required elements.
- [335] As Dr. Evans was not qualified as an expert I put no weight on his views and anecdotal evidence.
- [336] Mr. Briggs is a retired police officer that works for a private security and investigation company. If Family Bridges program is ordered he and a team member would be responsible for transporting J.S. to the undisclosed location for the workshop component of the program.
- [337] Mr. Briggs is very experienced in working with youths. He has transported two different children to the Family Bridges program in Ontario. His firm has transported eight children to the program in total. He struck me as a very caring and competent at his job.
- [338] One case he dealt with was quite serious, involving a nine year old girl with suicidal tendencies whom had required regular hospitalization due to psychiatric issues. This evidence was of no value in predicting how J.S. might react given the backgrounds and medical histories of the children; however, it was useful in demonstrating that a skilled professional such as Mr. Briggs is essential for the transportation process and that the transportation can be performed without the use of force.

- [339] When transferring a child, it is Mr. Briggs' preference to be provided a court order that prohibits the use of any physical means of restraint unless the child poses a risk to himself or others. He never carries restraints or handcuffs. He relies mainly on patience and reasonableness.
- [340] For safety reasons, the location of the workshop is not disclosed to the favoured parents, nor is the identity of the facilitators. Mr. Briggs provided examples of where the favoured parents tried to surreptitiously determine the location of the workshop. Mr. Briggs provides his business card and number to the alienated parent so they can contact him. He testified that: "it makes sense to keep them in the loop that way." I agree.
- [341] Dr. Aube opined that removing J.S. from D.M.'s care to place him in the Family Bridges program would cause an increase in his anxiety in the short term. When balanced against the permanent harm associated with the status quo Dr. Aube unequivocally recommended a program like Family Bridges on the condition it satisfied her recommended criteria.

Best interests of the child

- [342] In assessing the best interests of the child using the factors in section 37(2), I must be cognizant of our Court of Appeal's comments in *A.A. v. S.N.A.*, 2007 BCCA 363 at paras. 25-28 [A.A.], that if the long term best interests of the child involve a change to the status quo, even where that change could have short-term difficulties, then those changes should be made and failure to do so could amount to an error of law:
- [25] The trial judge found it impossible to predict whether M would survive psychologically the "experiment" of changing custody in the only manner that would be available given Ms. A.'s "intransigence and determination". Certainly, he noted, great damage would be done to M if the attempt failed or if she were unable to cope with the trauma of the "forcible rupture of her relationship with her mother and grandmother". (Para. 85.) Considering that Ms. A. was not amenable to treatment and that she had "undermined and sabotaged" the attempts made during the course of the trial to re-establish the relationship between M and her father, the trial judge continued:

The court must focus carefully on M.'s best interests. The probable future damage to M. by leaving her in her mother's care must be balanced against the danger to her of forcible removal from the strongest parental connections she has. I am cognizant of the inability of the court to control and manage the chaotic day-to-day results of a forcible removal of a child from a close parental bond. I conclude that the forcible removal of M. from her mother's and her grandmother's care has a high likelihood of failure, either because M. will psychologically buckle under the enormous strain or because she will successfully resist re-integration with her father.

Considering all of the circumstances, I cannot find that it would be in M.'s best interest to be forcibly removed from her mother's care. [At paras. 87-8.]

In the result, he ordered that sole custody and guardianship of M be granted to Ms. A., that the child attend regular counselling sessions until reaching age 18, and that Mr. A. have access only if M "voluntarily expresses the desire to have him exercise access."

- [26] The trial judge was indeed faced with a "stark dilemma" - albeit one created largely by the custodial parent. He was obviously aware that he was required to "focus" on M's best interests. He carefully reviewed the evidence and made clear findings of fact. As has been seen, these findings militated almost exclusively against the mother's continuing as the custodial parent. Yet at the end of the day, the trial judge chose to leave M in a situation that he said would be detrimental to her in the long run and indeed had "already been detrimental to her". He found that this damage, which would almost surely continue, was preferable to making the "fundamental change" that Dr. Krywaniuk had stated was necessary. Expressing regret regarding the "inability" of the Court to manage the results of the forcible removal of the child from her mother. The trial judge deferred to a "highly manipulative" and "intransigent" parent who would clearly never permit her child to have any sort of relationship with her father.
- [27] We are of the view that in so concluding, the trial judge erred in law. We agree with counsel for the appellant that the trial judge wrongly focused on the likely difficulties of a change in custody - which the only evidence on the subject indicates will be short-term and not "devastating" - and failed to give paramountcy to M's long-term interests. Instead, damage which is long-term and almost certain was preferred over what may be a risk, but a risk that seems necessary if M is to have a chance to develop normally in her adolescent years. As Ms. Label argued, it was a contradiction in terms, and legal error, for the trial judge to state that M will be damaged by continuing in her mother's custody, but to order that she remain in exactly that situation. The obligation of the Court to make the order it determines best represents the child's interests cannot be ousted by the insistence of an intransigent parent who is "blind" to her child's interests.
- [28] While it is obvious that no court should gamble with a child's long-term psychological and emotional well-being, the trial judge's findings show that the status quo is so detrimental to M that a change must be made in this case. Although M has not been permitted to have a normal relationship with her father for two years, the expert opinion suggests she will succeed in adjusting, although the process will be difficult. In this regard, it is important to note that Mr. A. has shown sensitivity to the feelings of insecurity and anxiety M is likely to experience should he be given custody of the child. He has arranged to take a semester off work and for the two of them to become reacquainted gradually, while residing with his sister and her family for a time; for M to have a full-time female caregiver thereafter; for M to continue at the same school; and for M to have regular counselling as long as necessary. We also note that M is by all accounts a bright girl who has shown a "desire to connect with others" when she is out of her mother's control, and that the chances she will weather this change, if it is properly carried out, seem good.

- [343] The need to preserve the child's health and emotional wellbeing (s. 37(2)(a)) is the most persuasive factor in these circumstances. As noted in A.A., the court must not unduly privilege short or long-term health and wellbeing. The present case is analogous to A.A. in the sense that this court is faced with a dilemma, created by the favoured parent, that requires a choice between two harms. To allow the current situation to persist would be to sanction the ongoing harm that is parental alienation; a harm that, as I have found, only appears to be getting worse over time. To mandate participation in the Family Bridges program would surely cause short term harm and stress; that said, J.S. experiences GAD and concomitant gastrointestinal issues regardless. I would note that there is no evidence of danger of self harm should the Bridges program be ordered, despite J.S.'s fierce opposition to this prospect. This factor requires that, where the alternative is present and ongoing harm, I must give paramountcy to J.S.'s long term interests in his health and emotional well-being. Like the child at issue in A.A., this is a necessary risk where normal adolescent development is at stake. This factor militates strongly in favour of making the order for participation in reunification.
- [344] In examining the factors enumerated in s. 37(2), the views of the child have been nearly decisive in a number of cases. For instance, in M.Y.T.C. at paras. 79-81, Forth J. found that forcing a recalcitrant 15 year old to participate in a reunification program would not be in the best interests of the child, given that they presented as bright and intelligent and were clear that they did not want to participate. This case is distinguishable, not only on the basis that the child involved was two years older than J.S., but also on the basis that there was no finding of alienation and no expert evidence concerning remedy. The present situation is much closer to that in C.J.J.: there, Blok J. held it was not "inappropriate" to consider the child's views, but noted that those views were "in large part, the product of alienation and the associated enmeshment with his father and with his father's views. I am satisfied X's views are based on a distorted view of past events": at para. 409. For this reason, this factor is unpersuasive.
- [345] Other relevant factors in this case are listed in subsections 37(2)(c) and (e), which requires consideration of the child's need for stability and the significant relationships in the child's life. Obviously, J.S. has a strong bond with both D.M. and his paternal grandmother; but, as I have found, the strength of this relationship, and J.S.'s reliance on it, has become unhealthy. Taking him away from these pillars of stability in his life will likely cause some short term harm, but the stability itself, the current status quo, poses a much greater threat. For this reason, stability and J.S.'s relationships cannot take priority in my analysis of his best interests. Additionally, this case is not analogous to something like a relocation scenario; the no-contact order proposed by M.S. would last for only 90 days, after which time regularized contact with J.S.'s father and grandmother would resume in accordance with the mandated aftercare.

[346] Subsection 37(2)(g) also requires that I consider the impacts of family violence. As noted, Dr. Aube opined that the current situation is "tantamount to child abuse." Additionally, in other decisions, alienation has been found to constitute "psychological and emotional abuse", falling within the FLA definition of "family violence": see C.J.J. at para. 410; L.D.K. v. M.A.K., 2015 BCSC 226 at para. 98. This factor militates heavily in favour of removing J.S. from his present circumstance of being alienated from his mother.

[347] Where family violence is present, s. 38 also directs that I consider the following:

38 For the purposes of section 37 (2) (g) and (h) [best interests of child], a court must consider all of the following:

- (a) the nature and seriousness of the family violence;
- (b) how recently the family violence occurred;
- (c) the frequency of the family violence;
- (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
- (e) whether the family violence was directed toward the child;
- (f) whether the child was exposed to family violence that was not directed toward the child;
- (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- (i) any other relevant matter.

[348] It is difficult to gauge the nature and seriousness of alienation as compared to other forms of family violence. Obviously, it does not represent the physical threat that direct assault on a child or family member does, but its impact can be permanent and have the effect of destroying one of the most fundamental relationships in a person's life. I consider alienation to be serious in nature. Likewise, the harm is ongoing and does represent a pattern of controlling behaviour directed at the child. D.M. has not taken steps to prevent it from occurring and has indeed impeded its amelioration. The factors in s. 38 militate in favour of making the claimant's requested orders.

[349] I find that the order for participation in the Family Bridges program, and the ancillary orders concerning parental responsibilities, are in the best interests of J.S.

Ms. Roles' continued involvement

- [350] Ms. Roles became involved in this action and provided a number of affidavits supporting D.M.'s position. Ms. Roles agreed that in hindsight she overstepped her role. She also agreed that it was improper for her to offer her opinion on parenting time or custody arrangements.
- [351] Ms. Roles was accompanied by her own counsel whom insured that she had the protection afforded to her under the Evidence Act for a college disciplinary hearing scheduled to occur with respect to her conduct in this matter. Although her counsel objected to some questions I did not grant his objections on the basis the questions were proper and her counsel did not have standing to make the objections.
- [352] Dr. Aube opined Ms. Roles' perspective was biased against M.S. as she simply accepted the information provided to her by D.M. and did not attempt to take a global perspective of the issues. In addition, Dr. Aube opined a therapist should not take a position on one parent's side or the other, and it was inappropriate of Ms. Roles to do so. Given her lack of objectivity, Dr. Aube was of the view that it is inappropriate for Ms. Roles to continue as J.S.'s therapist. Despite J.S.'s significant improvement in body mass, Dr. Aube opined Ms. Roles' conduct caused further harm to J.S.
- [353] Dr. Aube did not have the benefit of the correspondences between D.M. and Ms. Roles that I have noted in these Reasons which provides considerable support for her opinion.
- [354] Notwithstanding these facts Ms. Roles remained of the view that it was important for her to continue to provide therapy to J.S. Ms. Roles gave the impression that ongoing therapy was a medical necessity to maintain J.S.'s health. I reject this evidence and accept the evidence of Ms. Cairns. I find Ms. Roles displays a significant lack of objectivity which has unfortunately impaired her ability to provide appropriate treatment to J.S. and to provide reliable evidence.
- [355] Ms. Roles and D.M. have taken the position that, haven obtained J.S.'s consent under s. 17 of the Infants Act, R.S.B.C. 1996, c. 223, Ms. Roles could not be removed as J.S.'s care provider. Indeed, *A.B. v. C.D.*, 2020 BCCA 11 at para. 138, makes clear that the court's jurisdiction to review, and possibly reverse, the consent given by an infant pursuant to s. 17 of the Infants Act is very limited. In that case, the Court held as follows:
- (b) in the context of a guardian's responsibilities under the FLA, a consent given under s. 17 of the Infants Act is reviewable by the court having regard to whether the infant has legal capacity to consent, and specifically:
 - (i) whether the health care provider "has explained to the infant and has been satisfied that the infant understands the nature and consequences and reasonably foreseeable benefits and risks of the health care"; and

(ii) whether the health care provider has made reasonable efforts to determine, and has concluded, that the health care is in the infant's best interests.

[356] The court does not have the evidence before it that would be necessary to impugn J.S.'s consent on one of these bases. However, s. 17 of the Infants Act differentiates between "health care" and "health care provider"; it allows an infant to consent to "health care", not a specific "health care provider". Given this plain language, I am not convinced the Act can, in these circumstances, be used to consent to a specific therapist providing treatment that has already been consented to. I find in these circumstances consent under the Infant's Act does not extend to a child's choice of specific food therapist, only the therapy itself.

Best interests of the child

[357] M.S. also seeks an order permitting the removal of Ms. Roles from J.S.'s file. The court must determine whether such an order is in his best interests.

[358] Here, on its face, subsections 37(2)(c) and (e) would militate most strongly in favour of declining such an order. Ms. Roles has been working with J.S. consistently for years at this point. He obviously feels a strong bond with her. But just as with his father and paternal grandmother, the strength of the bond has become unhealthy reliance, such that her continued participation in his treatment would be detrimental. Maintaining stability would result in active harm. The relationship goes beyond that of ordinary patient and care-provider; J.S. texts Ms. Roles when he is anxious; Ms. Roles clearly sees herself as an advocate for J.S., going so far as to suggest disobeying court ordered parenting arrangements which led, in part, to the breakdown of the first attempt at reunification; she also appears to have had some involvement in suggesting J.S. have counsel in this matter. This evidence entirely diminishes the persuasive force of the factors (c) and (e).

[359] In terms of the child's health and emotional wellbeing, I find that this factor militates in favour of making M.S.'s requested order. Ms. Cairns has opined further treatment is not medically necessary and there is little risk of a deterioration in J.S.'s symptoms should he discontinue the therapy. There was evidence other therapists were available, some of whom worked in conjunction with Ms. Cairns. Although changing therapists will be troubling to J.S. I agree with Dr. Aube that Ms. Roles' ongoing involvement is harmful to J.S. In addition, I find reunification with M.S. will be impossible until Ms. Roles is removed as J.S.'s therapist.

[360] I find it is not appropriate for Ms. Roles to continue to be involved with J.S. either professionally or socially.

[361] Given my findings of enmeshment and alienation, Ms. Roles' unprofessional conduct which inadvertently supported these conditions and Dr. Aube's opinion, I have concerns about J.S.'s ability to provide consent to Ms. Roles for her continued role as his therapist.

[362] Although consent for treatment can be obtained through the Infant's Act I am not convinced, in these circumstances, the Act can be used to require specific treatment that has already been consented to be provided by a specific therapist. I find in these circumstances consent under the Infant's Act does not extend to providing consent for M.S. Roles to provide treatment to J.S.

The parties' financial position

[363] D.M. does not work. This is by choice. He testified he has no need to work.

[364] D.M. purchased a house for \$1,550,000 debt free after his divorce and renovated it. He has \$400,000 in retirement savings that he has not touched which is for his "retirement".

[365] D.M. received \$1,600,000 from his parents from the date of his divorce until June 6, 2020. His parents continue to forward him additional funds since June 6, 2020 and have paid his legal fees of approximately \$500,000.

[366] His parents company recently sold a building for \$32,000,000. D.M. has shares in the company which presumably are a mechanism to transfer the funds to upon his parent's death or their discretion.

[367] There is no contract between D.M. and his parents for the money which has been provided to him. They decided to discuss the nature of the money provided to D.M. once this matter settles. As noted earlier, D.M.'s mother did not testify at the trial

[368] M.S. has paid approximately \$500,000 in legal fees up to the time of trial and supports herself at her job which pays approximately \$40,000 per year.

[369] I find there is considerable financial disparity between the parties and payment of the complete Family Bridges Program would pose no financial hardship to D.M.

Conclusions/Orders

[370] Leaving aside court orders for the moment, I hope that all parties keep J.S.'s best interests in mind and do their utmost to see that he gets the help he needs, without interference, and that they will fully participate in any counselling required of them. It is important that everyone professing support for J.S.'s best interests back up those words with their actions, and put his interests first. This has not happened to date.

[371] The expert evidence is clear that the best chance of success is where all parties are onside with the program, and participate fully. The Family Bridges program is not a punishment; it is an opportunity to fix this highly dysfunctional family and to ease the psychological harm being inflicted on J.S.

[372] I make the following orders:

Orders sought by claimant

1. J.S. has been alienated by the respondent from the claimant and is in need of protection. The alienation constitutes psychological abuse and is a form of family violence.
2. Pursuant to sections 225 and 227 of the Family Law Act, the respondent is prohibited from:
 - a) Having any direct or indirect contact with J.S., including but not limited to phone contact, text messages, letters, contact via computer, Snap-chat, Face-time, Skype, Instagram, video game or other forms of electronic communication, in-person contact, and/or communication via third parties;
 - b) Being within 100 meters of the following locations:
 - i. The claimant's home;
 - ii. J.S.'s school

From the time the order is pronounced for a period of a minimum of 90 days, or until further order of the court.

3(a) If the respondent, or his mother, or Ms. Roles has direct or indirect contact with J.S. during the 90 day period, then the 90 day period on no contact will restart.

3(b) If any third party contacts J.S. where the court determines such contact has frustrated the aims of the reunification process the 90 day period of no contact will restart, subject to the discretion of the court.

4. Ms. Roles does not have consent to personally provide health care services to J.S. pursuant to the Infant's Act.
5. Pending further court order, the claimant shall under section 45 of the Family Law Act, be allocated all parental responsibilities in respect of J.S., and specifically, shall have the right to make all medical and health related decisions in respect of J.S. including counseling to the exclusion of the respondent. This specifically includes the authority of the claimant to replace or discharge Pat Roles from providing healthcare to J.S.
6. Pending further court order, the claimant shall have the right to exclude J.S. from having any contact with the respondent's friends, relatives and associates, where contact includes all forms of contact and communication, including but not limited to phone contact, text messages, letters, contact via computer, Snap-chat, Face-time, Skype, Instagram, video game or other forms of electronic communication, in-person contact, and/or communication via third parties.
7. The claimant shall enroll herself and J.S. in the Workshop for Troubled and Alienated Parent-Child Relationships (Family Bridges)("FB") to enable and assist J.S. with reunification and living with the claimant. This shall be done forthwith.

8. The claimant shall be authorized, if she deems necessary and/or appropriate, to hire and designate other persons to facilitate and assist with the transfer of J.S. to the location where FB will be conducted, on the following terms:
 - a) The designated persons who assist in the transport of J.S. shall not use any physical means of restraint, unless J.S. poses a threat to himself or others;
 - b) The designated persons who assist in the transport of J.S. shall not carry any handcuffs or any objects meant for restraint;
 - c) The claimant shall not be obligated to disclose the location of the FB workshop or facilitators to the respondent. The claimant will place this information in a sealed envelope and provide it to the court forthwith. This envelope will be subject to a sealing order and placed in the court file.
 - d) The designated person will provide the respondent with a business card that contains a telephone number at which he or she can be contacted
9. The claimant and J.S. will proceed as soon as possible to the location where FB will proceed.
10. If the respondent does not select an approved aftercare specialist (the "Aftercare Specialist") within 14 days of the order being made, claimant shall have the further authority to select the Aftercare Specialist.
11. Subject to further order of the court, the respondent shall participate in the aftercare as recommended by that Aftercare Specialist.
12. The claimant shall be entitled to provide a copy of the section 211 report to any therapeutic person involved with the claimant and/or J.S. pursuant to this order and the FB.
13. The claimant shall have the authority to authorize that J.S. may travel outside of the lower mainland to facilitate his participation in the FB program.
14. The respondent will ensure that all of J.S.'s remaining personal belongings, including electronics, are provided to his counsel within 5 days. His counsel will deliver them to claimant's counsel or designate upon receipt.
15. Following completion of the FB workshop, Family Bridges or the Aftercare Specialist shall provide the recommendations as to the next steps for the parties related to counselling and contact.
16. The nature, conditions and timing of the resumption of contact between J.S. and the respondent and the lifting of the section 227 prohibition, shall be determined by the court whom will be provided updates and recommendations as to the next steps for the parties related to counselling and contact. The claimant will advise the court and the respondent if any further orders are sought with respect to the disclosure of the updates and recommendations to the respondent.

17. The nature, condition and timing of the resumption of contact between J.S. and the respondent and the lifting of the section 227 prohibition, will be based inter alia on the cooperation of the respondent with these orders and the FB program, and with the Aftercare specialist.
18. The claimant shall, through her counsel, request to attend before me for a judicial case conference within 2 business days of their return. Respondents counsel will be included in this request to appear before me. The court will hold a judicial case conference to determine what other therapeutic interventions if any should be ordered and to provide a brief update on FB.
19. Neither party shall subpoena any FB records, nor shall either party seek testimony in any future court hearings by FB team leaders. This does not prohibit FB team leaders from communication with Aftercare Specialists and any professionals, appointed by the court.
20. The respondent shall deposit \$60,000 to be held by the claimant's counsel in respect of his liability to pay 100% of the cost of J.S. and the claimant attending the Family Bridges program, the cost of the FB workshop, the services of Investigative Solutions Network transport costs, all airfare and lodging, as well as all appointments with the Aftercare Specialist. The sum shall be paid within 7 days of this order and shall be applied to the costs incurred and that will be incurred for these services. Any amount remaining over and above shall be repaid to the respondent as directed by the court.

Orders sought by respondent

21. The orders sought by the respondent are dismissed.

Additional orders

22. I will be seized of this matter for a period of 12 months from the date of this order, subject to extending the period if necessary.
23. Neither party shall make any disparaging remarks about one another or about members of the other party's family in the presence of J.S.
24. Neither party shall discuss this litigation with the children or with anyone else in their presence.

Directions

25. The direct involvement of J.S. in court proceedings and the litigation process must cease.
26. Respondent's counsel will advise J.S.'s counsel of:
 - a) the orders of Justice Groves and Justice McDonald dismissing his application to have counsel appointed for J.S. pursuant to section 203 of the Family Law Act; and
 - b) direction 25.

27. Respondent's counsel will advise Ms. Roles of:

- a) orders 1, 2, 3(a), 4 and 5; and
- b) direction 25.

28 Respondent's counsel will provide J.R.'s personal effects including his medication and passport to the claimant's counsel or her representative forthwith.

[373] I will postpone my decision on costs until after the 90 day period as post judgment conduct of the parties may be a factor that needs to be considered given the nature of my order.

"Thomas J."

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Prepared on 26 October 2026 · Esheria