
CANADA / JUDGMENT

R.C. v. D.F.

2005 BCSC 1149

COURT

Supreme Court of British Columbia

DECIDED

8 August 2005

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IN THE SUPREME COURT OF BRITISH COLUMBIA

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Citation:

R.C. v. D.F.,

2005 BCSC 1149

Date: 20050808

Docket: E000455

Registry: Vancouver

Between:

R.C.

PLAINTIFF

And:

D.F.

DEFENDANT

Before: The Honourable Madam Justice Morrison

Reasons for Judgment

The Plaintiff appearing in Person

Counsel for the Defendant

Jonas Dubas

Date and Place of Trial:

May 9, 10, 11, 12,

16, 17, 18, 19, 20,

July 18, 19, 20, 21, 22, 25, 26, 27, 28, 29,

August 2, 2005

Vancouver, B.C.

- [1] This is a custody and access dispute between the plaintiff, R.C., father of the three children in question, and D.F., now known by her maiden name, D.P., mother of the children. Those children are S.K.C., born [], 1997, now eight years of age, R.S.C. and I.Q.C., twins born [], 1999, now six and a half years of age.
- [2] The trial of this matter extended over four weeks, two weeks in May, 2005 and two weeks at the end of July, 2005. A brief oral decision was given August 2, 2005. That decision contained 25 orders. A copy of that oral decision is attached as Appendix A to these reasons. For ease of identification, the parties will frequently be referred to as the mother and the father.

Background

- [3] R.C. was born [], 1961 and is currently 43 years of age. Ms. D.P. was born [], 1958, now 46. There is considerable dispute as to how long the parties have known one another, how long they have had an ongoing relationship, and how long they lived together.
- [4] Ms. D.P. was raised in Calgary. Both her parents were teachers. She has a sister, D.D., three years older and a brother T.. D.P. left school at age 17 or 18, and worked at various jobs in Calgary and Toronto. In Toronto she took a one year aesthetics course, and operated her own aesthetic business for some years in Toronto. She was married in Toronto and subsequently moved to Prince George with her first husband. That marriage ended in 1985 and she moved to Vancouver.
- [5] Shortly after moving to Vancouver, she began a four year graphic design course at C.[] College and graduated in 1990. The defendant is apparently a gifted designer and artist.
- [6] R.C. was raised in his mother's home following the separation of his parents when he was four years of age. He testified to a lonely and sometimes isolated childhood. He would spend some time at Christmas and during the summer with his father and stepmother in the L.[]. There are two stepbrothers on his mother's side of the family, he has a brother R. who is two years younger than he is, and a stepsister, K.C., and two stepbrothers on his father's remarried side of the family.
- [7] At the age of 15 or 16, he began taking karate lessons, eventually earning a black belt. He has competed in Canada and Japan.

- [8] At the age of 17 he graduated from high school, and reports that no one attended his graduation. He was effectively on his own from that age, and has worked primarily as a graphic artist and in the technical side of computers. He has been employed as a technical writer for the last several years. He appears to be largely self-taught. He moved to Vancouver in 1985.

Early Relationship

- [9] It is apparent from some documentary evidence that the parties' relationship began in 1991. The plaintiff testified that he and the defendant worked together in November, 1991 on a magazine layout for which Ms. D.P. was the accredited graphic artist. In evidence is a receipt which indicates that on December 24, 1991, Mr. R.C. sent roses to Ms. D.P. to her address [] T.[] Street, Vancouver. The parties were not living together at this time. There is another receipt for flowers on September 30, 1992, again to Ms. D.P. at the T.[] Street address. Further documentary evidence and testimony indicates that on June 14, 1993 the parties drove to Oregon together for the wedding of friends. On January 6, 1994, there was a postal change of address for Mr. R.C. to [] T.[] Street, D.P.'s address.
- [10] Ms. D.P. was uncertain on early dates, and denies a relationship going back this early.
- [11] The relationship seems to have been a stormy one from the beginning. The parties cannot agree on the amount or nature of work in which they collaborated. According to Ms. D.P., it was miniscule. According to Mr. R.C., it was substantial.
- [12] A quarrel erupted between the parties on October 31/November 1, 1994, which resulted in an incident report to the Vancouver City Police. Entered in evidence was a two page typed statement to the police dated November 2, 1994 from R.C.. The statement gives a flavour of the early relationship between the parties and a hint of the type of problems and reactions that were going to recur. That statement said in part that Mr. R.C. had been living with D.F. since January, 1994, and that he had recently decided to move out with a roommate, effective November 1, 1994. That D.P. did not want him to go and wrote him a note saying that she would like it if he stayed with her. And signed it, "I love you always".
- [13] However, on October 31 as they were preparing to go out with friends, Mr. R.C.'s statement said she saw him writing an email to a friend telling him of his plans to move. In anger, D.P. smashed a large cactus plant and also left a threatening message on the future roommate's answering machine. The future roommate was a female.
- [14] Mr. R.C.'s report details the number of drinks consumed by Ms. D.P. on that night, and of having to assist her home. The next morning, November 1, as he was getting ready to leave for work, the statement to the police indicates that Ms. D.P. woke up, ran out of the bedroom and began hitting Mr. R.C.. She slapped him on the face, he blocked the rest of her punches and pushed her on the shoulder to get away. She then reportedly said she was calling the police to tell them that he was "punching and kicking her and they would lock me up.". He later noticed a police car outside the building and called the police himself.

- [15] Ms. D.P. later showed a mutual friend of theirs injuries to her legs, which were fairly badly bruised on the front. Mr. R.C. says at no time did he come in contact with her legs, and there were no bruises anywhere on her body earlier that morning. He questions whether her bruises were self-inflicted, to give weight to the story that he attacked her.
- [16] The statement relates that later that evening, Mr. R.C. called the police to be present while he retrieved his personal belongings from the T.[] Street address. At the end of his statement, Mr. R.C. writes, "All I'm interested in is moving out safely, avoid harassment, and not be made to suffer if D.P. is intent on exacting revenge because I'm leaving."
- [17] Unfortunately, 11 years later, the same kind of accusations are going back and forth between these parties.
- [18] In spite of that incident, the parties did get back together and began living together in October, 1996. They appear to have lived together until May, 1998. S.K.C. was born, [], 1997. Mr. R.C. was present for the birth, and there are pictures of the newborn at the hospital with both parents. The parties disagree in testifying on the amount of parenting done by Mr. R.C..
- [19] Around the time the parties separated in May, 1998, Ms. D.P. became pregnant again, and gave birth to the twins, R.S.C. (R.S.C.) and I.Q.C. on [], 1999.
- [20] During 1999, Ms. D.P. testified she lived at the B.[] Street address in Vancouver from January to December of that year. She testified that beginning in February, shortly after the twins were born, Mr. R.C. forced himself into her premises, and refused to leave until the end of May, 1999. It is apparent that Mr. R.C. was back in Ms. D.P.'s home in February, 1999. According to him, he was there to help with the twins and S.K.C.. According to Ms. D.P., he was no help whatsoever.
- [21] Ms. D.P.'s parents, B.P. and L.P. came to Vancouver from Calgary for one month immediately following the birth of the twins and Ms. D.P. says they contributed financial and all the other help, with Mr. R.C. doing and paying nothing. The senior P. came regularly to Vancouver, staying to help their daughter for substantial periods of time.

1999

- [22] 1999 would prove to be a tumultuous year for this couple.
- [23] On March 30, 1999, apparently at the suggestion of her brother-in-law, the mother took two month old I.Q.C. to the emergency at Children's Hospital after she had noticed a bruising and swelling on one of I.Q.C.'s testicles. She also had noted a broken blood vessel in the area. I.Q.C. had been suffering from constipation and diarrhoea, and at one point L.P. had given him a child's suppository.

[24] Earlier, either because of advice from a doctor or from something read on the internet, both parents had been doing a cycling motion with I.Q.C.'s legs to help him deal with the problem. The mother felt that Mr. R.C. was doing this in a manner that was too rough for the child. The doctor at the emergency found nothing wrong, but referred the child to be seen by the child protection service unit at Children's Hospital.

[25] A Child Protection Intake Report dated March 31, 1999 was written by a social worker who saw the twins and interviewed the mother on that date. It stated, in part:

Caller said that D.F. brought her twins to the emergency ward at Children's Hospital. She expressed concern that the twins' father, R.C. was "handling the twins roughly". The Dr checked them out and they were found to be okay. But he referred them to the child protection clinic for follow up.

The twins were seen, along with their mother, on March 31 st 1999 at the clinic and were examined by Dr. Hlady. The mother reported that R.S.C. has been suffering from constipation and diarrhea. Their father had read on the internet that "cycling" the child's legs would help deal with this problem. The mother reported that dad would be pushing the child's legs towards his abdomen in a rather rough way and this would often result in the boys crying. The mother reported that she feels that dad is being rough with boys and dad's response is that he is "only trying to help them". Dad did not want to come to the clinic with the mother.

The mother said she noticed bruising on the inner thigh of R.S.C. and a "blueish tint I.Q.C.'s testicle".

The mother feels that the father is very appropriate with their older child S.K.C. who is two.

Mother reported that her and dad fight verbally. She describes dad as a "rough character". Both parents work at home as a graphic artist. The father has said that the mother can now be in charge of looking after the kids in response to the concerns about his handling of the kids.

Caller said that she does not have any concerns about the mother. She presents very well and appears to be willing to ask for help.

The mother is aware that MCF is being called.

(Emphasis added)

[26] A paediatrician, Dr. Hlady, Director of the Child Protection Unit at Children's Hospital, saw I.Q.C. on March 31, 1999. Her report indicated there was "no definite physical evidence of abuse at this point.". She said she was concerned about the history as it was presented to her, and recommended that x-rays be done and that the baby be reassessed in two to three weeks. X-rays were done on both twins, and nothing was indicated. Mr. R.C. discontinued the cycling motion after this.

- [27] It was sometime after this that Ms. D.P. phoned Mr. R.C.'s father and stepmother, L.C. and S.C., and told them that she feared R.C. was physically abusing the boys. The P. told the senior C. that "one of the twins had been hospitalized for physical injuries at the hands of R.C.."
- [28] S.C., R.C.'s stepmother, testified at the trial that she told her daughter, K.C., sometime in April, 1999 that they had "a problem" in the family, that R.C. was abusing his children. After that, in April, 1999 K.C. then told her mother for the first time that R.C. had abused her sexually when they were children. R.C. was six years older than K.C.. S.C. then told D.P. what R.C. had done to K.C. years previously, and advised D.P. to "take the children as far away as possible from R.C.." After this time, D.P. said that R.C. was sexually abusing S.K.C., then two years of age.
- [29] A number of documents from the Ministry of Social Services, the Child, Family and Community Services Division were placed into evidence with regard to these allegations by Ms. D.P. concerning S.K.C..
- [30] The first indication of a call by the mother to Social Services is a notation of a telephone call August 6, 1999. Social workers' notes of August 12, 1999 indicated that D.P. had not filed a custody application yet, but had spoken to a lawyer about the sexual abuse issue with S.K.C.. That the lawyer had advised her to call the police. The social worker told D.P. that she would be sending the police a Trac form. "D.P. is not sure if that is the way to go. She is unsure how that would affect other family members. R.C. has a sister who said she would say in court that he sexually molested her when she was younger if that helps D.P.'s custody case."
- [31] The Trac form was sent to the Vancouver Police, and D.P. was informed of that. The social worker notes on August 12, 1999 that D.P. "was not pleased about the fact the police had been involved. She told me she was not comfortable with the police being involved and just wanted MCF to tell her spouse he could not have visits. D.P. would not provide me with R.C.'s telephone number or address."
- [32] That assessment was done August 12, 1999, when there was a home visit where the social worker met with S.K.C. and D.P..
- [33] That report stated as follows:

Aug 12 Home visit met with S.K.C. and D.P..

Interviewed S.K.C. -- she was verbal but could not really answer any of my questions. She did spontaneously say rub the beaver while her mother and I weretalking. She also sat on the chair and exposed her genital area to us. This seemed more like an attention seeking behaviour as the child started to laugh when her mother reacted to it.

The father is R.C. he lives near [] between F.[] Drive and V.[] Drive. Oct 06 92. D.P. was not sure of his exact address.

D.P. feels the abuse is happening at bath time. S.K.C. will say "rub the beaver" lay on the bed with her legs open saying "rub the beaver, nice beaver".

D.P. met R.C. seven years ago when they were both doing graphic design work. He has pictures of the family on the computer. He has a site called rooms with porno of females in that folder there is a picture of S.K.C. in a diaper. Everytime he comes over he says S.K.C. smells and wants to bathe her. He comes over twice/week for vivists-now wants to come over more.

While talking to D.P. who was saying she wants S.K.C. to call it a vagina the child spontaneously said no its a beaver. Currently being potty trained.

D.P. is going to see a lawyer next week as she is going for full custody of the children???. She asked me if I could inform R.C. that he could no longer have visits due to the abuse concerns. I told her no as I did not get a clear disclosure and if she were concerned she should supervise the visits herself. She could also have the child medicalled. I asked her to call me after she had seen the lawyer.

Sep8 P/C SW from Childrens called. D.P. brought S.K.C. in for a medical. The medical showed no signs of sexual abuse. Mom told hospital sw she is seeing a lawyer on Friday. R.C.'s sister is now saying he molested her when she was 14 and will say this in court if needed.

(Emphasis added)

[34] In a Trac form dated October 8, 1999, that was sent to the police, the allegation indicated that the mother felt the abuse to S.K.C. was happening in June, July, August of 1999.

[35] Meanwhile, S.K.C. was seen on September 7, 1999 by Dr. Hlady at Children's Hospital, on a referral from the family doctor. The mother was interviewed in the presence of the hospital social worker.

[36] Dr. Hlady was concerned at how difficult the physical examination of S.K.C. was, that the child was very anxious and kicking. However, the labia area was found to be normal, the hymen was normal with no dilation or scarring, and the anus was normal. But Dr. Hlady had a concern about the child's "tremendous anxiety".

[37] She also observed, "This little girl has no evidence of sexual abuse on examination." She said that would not rule out any inappropriate sexual contact. That the Ministry should interview the child if possible. She ended by saying that the mother wanted a restraining order, and was advised to talk to her lawyer about that.

[38] On November 5, 1999 the Vancouver Police Department contacted D.P. after receiving the referral from the Ministry for Children and Families. That referral had indicated that S.K.C. had exhibited behaviours that were of concern to the mother. A letter to Ms. D.P. on November 5, 1999, the same date, stated:

This letter is to confirm our telephone conversation of November 5th regarding the investigation of your allegations. You stated during this conversation that the unusual behaviours exhibited by S.K.C. that had caused you concern occurred approximately six months ago. You reported that since that time S.K.C.'s behaviour had improved and that you did not want S.K.C. interviewed about the possible sexual touching. You went on to say that S.K.C. has had minimal contact with her father and that you have been successful in limiting his access to her.

We will respect your wishes regarding your decision to not have S.K.C. interviewed. The investigation of these allegations will not be pursued any further by the Vancouver Police Department. The Ministry for Children and Families have been notified of your decision.

[39] Mr. R.C. testified that during all this time in 1999, he continued to see the children regularly, and to buy groceries, including baby food. He produced as evidence grocery receipts showing Similac, a baby formula, purchased by him on the following dates in 1999: February 23, March 15, May 28, June 5, July 5, October 8, November 11, November 24 and November 29, 1999.

[40] After he moved out at the end of May, 1999 he stated that Ms. D.P. had another boyfriend, by the name of G., but Mr. R.C. still visited with the children, and brought over groceries from time to time. He was not paying any maintenance.

[41] It is acknowledged that toward the end of May, 1999, L.C., R.C.'s father, gave him a cheque for \$1,000.00 to enable him to move to another residence. Mr. R.C. did move out of Ms. D.P.'s residence at the end of May, 1999.

[42] Toward the end of November, 1999 while her parents were visiting Vancouver and looking after the children, D.P. went on a holiday to Mexico with her friend G., for one week. Shortly after her return, she consulted a family law lawyer in Vancouver and obtained a letter which enabled her to take the children over the border to Mexico. That letter was notarized and stated that under the Family Relations Act, Ms. D.P. was considered the custodial parent of these three children. That letter of December 9, 1999 was the first time that any documents indicated D.F. was changing her name to D.P.. It was also the first time the mother apparently consulted a lawyer.

[43] On December 12, 1999 Ms. D.P. left for Mexico, taking the three children with her. She gave no indication of this move to Mr. R.C., or to any members of her own family. The only person who knew was apparently her friend G., whom she left behind.

[44] Mr. R.C. did not find out about the absence of the children and their mother until approximately December 14. Thus began Mr. R.C.'s four and a half year search for his children. During that time he employed private investigators, B.C. Government agencies, child find agencies, and Interpol. All he knew was that the mother had taken the children to Mexico. He had no idea where.

[45] Mr. R.C. obtained a B.C. Provincial Court order on December 31, 1999 that Ms. D.P. not remove the children from the jurisdiction. It allowed substituted service of Ms. D.P. on her mother, L.P. in Calgary.

2000

[46] In January, 2000, it appears that both B.P., D.P.'s father, and Mr. R.C. filed missing persons reports with the Vancouver City Police with regard to D.P. and the children.

[47] In their evidence, the senior P. indicated that the first they heard from D.P. after she left was during the Christmas holidays in late December, 1999 when she telephoned them at her brother's home in Ottawa to say that she was in Mexico, that she and the children were fine, but she did not give them her location.

[48] In her testimony, Ms. D.P. says she telephoned her parents for a second time on February 1, 2000. Again, she did not indicate her location. There were no further telephone calls from Ms. D.P. to her family or anyone else until [], 2001 when she telephoned her parents from San Miguel de Allende in Mexico, phoning on the occasion of her mother's birthday.

[49] Meanwhile, back in the year 2000, Mr. R.C. had commenced his custody action in Supreme Court in British Columbia on February 9, getting his order on February 15 for substituted service on D.P.'s parents in Calgary.

[50] A lawyer acting on behalf of B.P. and L.P., James Kitsul, apparently had a lengthy telephone conversation with the Vancouver City Police, concerned with regard to possible charges under sections 282 or 283 of the Criminal Code of Canada against D.P.. By this time the parents would have received by substituted service the documents with regard to Mr. R.C.'s custody action.

[51] On May 4, 2000, Mr. R.C. obtained an ex parte order in B.C. Supreme Court granting him interim custody of the children, and a proviso that the mother was to return the children to British Columbia. The order provided that Ms. D.F. was to be personally served with a copy of the order, and that she could only be arrested in British Columbia. A copy of this was sent to her parents in Calgary.

[52] Mr. R.C. sent an email to J.P., the wife of D.P.'s brother in Ottawa, on May 12, 2000, advising her of the action that he had commenced, and the ex parte custody order he had obtained. He asked that that information be transmitted to D.P.'s parents and obviously ultimately to D.P..

[53] The P. in Calgary then received a letter from the Vancouver City Police on July 29, 2000. On August 11, 2000 Mr. Kitsul sent a letter to the Vancouver Police saying that Ms. D.P. had custody of the children, and that there ought to be no police involvement. He confirmed that he was retained by B.P. and L.P., and in his letter, there was discussion of the Hague Treaty. Mr. Kitsul indicated in the letter that the parents, the P., were "most alarmed" over the threat of Criminal Code proceedings against their daughter. He also stated that the parents have

had no contact from Ms. D.P. since February 1, 2000, when she telephoned them. He wrote that they do not know her whereabouts and that they were concerned for the safety of her and the children.

2001

- [54] The year 2001 rolls around. That January, in Mexico, Ms. D.P. met her future husband, J.J.M., a Mexican national. It was in this year, on April 10 that she finally telephoned her parents, and gave them her location, San Miguel de Allende. The next month, in May, 2001, B.P. went to San Miguel to visit with his daughter and the children.
- [55] Then there was another letter from Mr. Kitsul, this time to Mr. R.C., dated July 13, 2001. In that letter, Mr. Kitsul stated that Ms. D.P. had lawful custody, and that Mr. R.C. was to quit calling L.P. and B.P.. Mr. Kitsul wrote that his clients, the P., did not know where D.P. and the children were, that they had only heard two times from her by telephone since she had left, and that she had never given them her location, only that she was in Mexico. This letter was dated two months after Mr. B.P. had visited his daughter in May in San Miguel.
- [56] The letter to Mr. R.C. went on to demand that Mr. R.C. quit calling the parents as they have "no information" with regard to the whereabouts of Ms. D.P.. Further, that it was an invasion of their privacy, and they will report any further calls from Mr. R.C. to the "proper law enforcement authorities".
- [57] On October 4, 2001 Mr. R.C. married his present wife N.C., a Brazilian national who is now living and working in British Columbia.
- [58] In December, 2001, Ms. D.P. telephoned her parents once again. She was several months' pregnant at this time, and a caesarean birth had been indicated. In January, 2002, B.P. and L.P. travelled to Mexico to San Miguel and on January 15, 2002 they flew back to Calgary with their daughter and the three children. According to an affidavit of D.P., on that date they "took up residence at the home of my parents at [] S.[] View, Calgary."
- [59] A.M.M.P. was born [], 2002, the son of D.P. and J.J.M.. Mr. J.J.M. remained in Mexico at that time. He apparently did not meet his son until July 8, 2003 when Ms. D.P. travelled to Mexico to marry Mr. J.J.M..
- [60] In June, 2002 D.D., the older sister of D.P., made one of her visits to Calgary to visit with her parents for a few days. In October of that same year, Ms. D.P. began working for O.[], a women's clothing store in Calgary.
- [61] Meanwhile, Mr. R.C. had no idea that Ms. D.P. and his children had returned to Canada and were living in Calgary with or near Mr. B.P. and Mrs. L.P.. He was still searching for the children through various agencies. He was unaware the children were now going under the name of P., as was Ms. D.F.. D.D. testified Ms. D.P., aided by her parents, was careful to leave no "paper trail", with no rental premises or telephone in her own name.

2003

- [62] In May or June, 2003 D.D. had another visit to Calgary. Ms. D.P. was still working at O.[] at the time.
- [63] Around July, 2003 D.P. travelled once again to Mexico for a period of one month. She took only A.M.M.P. with her, and the other three children remained with Mr. P.B. and Mrs. L.P.. It was at that time that Ms. D.P. married Mr. J.J.M..

2004

- [64] In April, 2004, D.P. quit her work in the retail trade. On April 10, 2004, a travel agency issued tickets and invoices to B.P. for plane tickets to Zihuatanejo, Mexico for April 17 to April 24, 2004, for Mr. B.P. and Mrs. L.P., D.P. and all four children, including A.M.M.P.. The cost for Mr. B.P. and Mrs. L.P. was \$2,060.00; the cost for D.P. and the three older children was \$2,320.00. All the children were listed under the name of P., not C..
- [65] D.D. arrived in Calgary on April 12 for a visit. She learned of the trip, and testified that the return tickets were "a ruse". Mr. B.P. and Mrs. L.P. would be returning to Calgary, D.P. and the four children would not be.
- [66] Concerned for the children, D.D. located the Vancouver phone number for Mr. R.C. through directory assistance, and telephoned him April 15 to advise him, for the first time since December 12, 1999, of the whereabouts of his children.
- [67] On April 16, 2004, Mr. R.C. obtained an ex parte order from the Queen's Bench Court in Alberta confirming the order that he had obtained in 2000 in British Columbia, giving him custody of the children. That same day, April 16, D.P. was served with all relevant documents, and the children were apprehended by Alberta Social Services. Mr. R.C. and his wife N.C. arrived in Calgary the next day, April 17, and flew the three children back to their home in Vancouver.
- [68] The trip to Mexico was cancelled. The mother commenced an originating notice for the return of her children on April 20. The affidavits flew back and forth.
- [69] Madam Justice Neilson of our court heard the matter on May 3 and issued a detailed order, granting Ms. D.P. temporary custody of the children, under some very specific conditions. One condition was that the mother was to provide reasonable access so the father could re-establish himself in the children's lives. Neilson J. wrote, "It is entirely the mother's fault that the children do not know their father."
- [70] Access for the father was to be two weekends per month for the months of May, June, September and October, 2004, for six hours each Saturday and Sunday. Then there was to be one week in July and one week in August of unrestricted access. Ms. D.P. was to pay to Mr. R.C. \$350.00 a month, in advance, for each trip that he would have to make to Calgary.

- [71] There was to be telephone access for Mr. R.C. daily. With respect to security, the following terms were imposed:
1. Once returned to Alberta, the children will not be removed from Alberta until further court order, except for the purpose of access visits with their father if he chooses to travel with them to British Columbia.
 2. The children and the mother will continue to reside with her parents in their home at [] Signal Hill View Southwest in Calgary, until a final order has been made with respect to custody and access.
 3. The mother will post a bond of \$20,000.00 to be held in trust by counsel for the father. If the mother breaches either of the two preceding terms, those funds will be released to the father on further court order once the breach has been established to the satisfaction of the court.
- [72] Further terms of the order of Madam Justice Neilson provided that the parties were not to discuss proceedings with the children. Telephone access for the father and children was to be daily at the P. home at a specified time.
- [73] There was also a provision that the father's first two visits would be supervised, on the grounds that this would be a new experience for the children, and it would be wise to record their adjustment process. That supervision was to be paid for by the mother.
- [74] Travel documents for the mother and children as well as the P., Sr. were to be deposited with the Queen's Bench Court in Alberta.
- [75] Following the order of Neilson J., the mother and her parents flew the children back to Calgary on May 3, 2004. Shortly after that, the mother reported that S.K.C. stated that her father had placed his finger in her "peepee". She reported this to child welfare in Calgary and took S.K.C. to a doctor. She also then went to meet with the police.
- [76] Upon hearing these allegations, Mr. R.C. immediately volunteered to take a polygraph, and did so.
- [77] The mother took S.K.C. on May 19, 2004 to the medical clinic in Calgary. The notes of the clinic stated, in part, "Patient (S.K.C.) was visiting father who is a pedophile... concerned and wants her daughter checked out." This was apparently the nurse's writing who took the history from the mother. It was not until July 7, 2004 that the mother took S.K.C. to the Calgary police.
- [78] In the meantime, on June 14, 2004, the mother registered the three children at W.[] School in Calgary, which would be a change from the A.[] School that the children had been attending. Justice Neilson's order had stipulated that the father could call the children's school. The mother gave no indication to the father that she had registered the children in a different school on June 14, five or six weeks after the order of Justice Neilson.

- [79] The school registration form for all children showed their address to be a new address, [] W. [] Drive, Calgary. This was the address shown for both the mother and all three children. Again, this was a matter of five or six weeks after the order of Neilson J. which ordered unequivocally that the mother and children were to continue to live with her parents, B.P. and L.P. at [] S.[] View, S.W.
- [80] At the end of June, 2004, the three children received their report cards, and on S.K.C.'s report card, the teacher wished her good luck "in your new school".
- [81] This dispute came before the Court of Queen's Bench in Alberta on August 11, 2004 before Mr. Justice Germain. In his judgment, Justice Germain indicated he had read the decision of Madam Justice Neilson, and was in agreement with it. As for the allegations of sexual abuse, he stated, "But some of these have suspicious timing and there is no significant medical corroboration."
- [82] Justice Germain noted that the failure of the mother to get a clarifying process to take the children to Mexico was "regrettable". Also, her failure not to facilitate contact with the father for four and a half years was also "regrettable". The order of Mr. Justice Germain confirmed the jurisdiction of the B.C. court over the children, and supported the order of Neilson J. The hope was expressed that the trial set for two weeks in October would resolve matters.
- [83] The court noted the mother's efforts to thwart the access provisions of the order of Neilson J. were "inappropriate". The Alberta Court refused to transfer the case to Alberta, stating that that would amount to an appeal of the order of Neilson J. The court agreed with the approach of the B.C. court and ordered the reciprocal enforcement of the B.C. orders in Alberta, while confirming B.C. as the appropriate forum.
- [84] The mother had sought supervised access for the father to see the children, and this was denied. Justice Germain expressed concern that the July and August one week access in each month had not occurred, so Mr. R.C. was to have two weeks' continuous and unsupervised access with the children in either Alberta or B.C., whichever he chose as soon as possible.
- [85] The court also confirmed that the mother was to continue living with her parents, denying her application to live elsewhere, until this matter concluded or until the parents could convince a court that they are no longer willing and able to continue the arrangement.
- [86] Mr. Justice Germain rejected the mother's suggested reduction of telephone access from once per day to two times per week. Instead, he expanded the daily telephone access to be between the hours of 3:30 to 8:30 p.m. Alberta time. This was to accommodate the working hours of Mr. R.C..

- [87] The Alberta Court further ordered a bilateral custody assessment to be done with the cost to be split 50-50. He noted that Mr. R.C. had already paid \$3,000.00 for such an assessment, so the mother was directed to pay her \$3,000.00 before the end of August, 2004. If she did not pay that \$3,000.00, Mr. R.C. was authorized to divert from his child support payments that amount when child support payments were determined.
- [88] He declined Mr. R.C.'s contempt application, feeling that this might further inflame the dispute. But Mr. Justice Germain stated that he expected the orders of the Alberta Court to be obeyed; otherwise, Mr. R.C. could come back and show cause.
- [89] Finally, the mother was ordered to pay to the father \$1,000.00 in costs, payment to be stayed until after the trial of this matter.
- [90] The children then spent two weeks with their father and stepmother in N.[] or Vancouver from August 24 to September 3, 2004. On September 7, on their return to Calgary, the children began at W.[] School, unbeknownst to their father. Unable to obtain satisfactory telephone access, and concerned that the mother and children might have disappeared again, Mr. R.C. called the N.[] Police who contacted the Calgary Police to attend at the S.[] View address of the parents. The police at that time were advised that the children were attending W.[] School, and that they were still residing in Calgary. The evidence is not clear as to whether the police informed Mr. R.C. of the change of school at that time. At no time did the mother tell the father of the change of school.
- [91] In December, 2004, D.P. began part-time work with F.[], working five hours each Saturday and each Sunday at \$10.00 an hour.
- [92] On December 6, Ms. D.P. commenced a notice of motion in the Albert Queen's Bench Court, and indicated in the outline that she "would like the court to have the benefit of Dr. Posthuma's report before deciding" interim access. Dr. Posthuma had been selected by one of Ms. D.P.'s former lawyers to do a Section 15 report, a choice agreed to by both counsel at that time. Dr. Posthuma had commenced work on his assessment, and had arranged to fly to Calgary on December 16, 2004 in order to interview and assess the mother and the children at their home with her parents on S.[] View.

Cancellation of Dr. Posthuma's December 16 Visit to Calgary

- [93] Both sides to this dispute have emphasized the importance of credibility. The cancellation of this visit is significant on the issue of credibility. The evidence comes primarily from three sources, the affidavits and testimony of D.P., the testimony and documentation of Dr. Posthuma and the evidence of B.P..

- [94] In an affidavit sworn December 16, 2004 for a motion in Alberta before the Court of Queen's Bench, D.P. deposed that in the early evening of December 14, 2004, she received a telephone call saying that her brother's family (in Ottawa) had suffered a very serious accident. She deposed, "Within hours of the telephone call, my father and mother were on their way to the airport to fly to Ottawa....My mother and father, both in tears, left Calgary for Ottawa in an emotional state that same evening."
- [95] She further went on to depose that before her father left, her father had phoned Dr. Posthuma and left a message. Then on December 15, Dr. Posthuma had called her. "I confirmed...the unfortunate accident..." and advised Dr. Posthuma it would be better to reschedule the appointment. She further swore, "due to the unforeseen and unfortunate family matter, which affects our whole family, Dr. Posthuma's access can be rescheduled...."
- [96] In a later affidavit in B.C., sworn January 12, 2005, Ms. D.P. complained that Dr. Posthuma was biased against her, that she had been advised that he was primarily a specialist in ICBC and WCB matters, and that he "has done little towards finalizing the assessment...at this stage.". That she did not realize that the assessment would "drag on" as it has.
- [97] Two days later in her affidavit of January 14, 2005, in the British Columbia courts, D.P. stated that she was not aware that Dr. Posthuma "would delay his assessment until after Christmas."
- [98] The evidence of Dr. Posthuma at trial confirmed his letter of December 15, 2004, to Mr. R.C.. That letter stated as follows:

At your request I am confirming on my letterhead my earlier e-mail message to you and Mr. Fraser. Mr. B.P., D.P.'s father, left a voice mail today canceling my appointment with his daughter and the family in Calgary tomorrow stating that a family emergency had arisen. I called Ms. D.P. who informed me that her brother in Ontario was involved in a disaster and that she was in no condition to take part in the assessment. She then abruptly hung up the phone before I could express my concerns. Mr. B.P. had also stated in his voice mail that the matter was going to be adjourned until June so that I would have lots of time to do my assessment.

My concern is that I was first brought into this file on the 4th of June, 2004 on the understanding by both counsel involved at the time that their clients had serious concerns with regards to the welfare of their children. I have yet to see the children because of various delays. I fail to see how these delays are serving the best interests of these children.

Aside from my lost time and the costs of the plane ticket for tomorrow's appointment, I would like to point out that Mr. Fraser had advised me that he had made it clear to his client, in "no uncertain terms:" to cooperate fully with my scheduled arrangements for the assessment.

- [99] B.P. testified at the trial that Dr. Posthuma was to come to Calgary for an assessment. He had left a message on the voicemail for Dr. Posthuma that they could not keep the appointment. "We got a telephone call from D.P.", that there had been a call from Ottawa. A babysitter with an accent had said there was an accident with regard to our grandson. We thought we'd have to rush off to Ottawa.
- [100] Mr. B.P. testified that they felt that they had to cancel, and that this had occurred while they were driving back to Calgary from Saskatchewan. He said he received the call from D.P. when he and his wife were in the car as they were driving from Saskatchewan. He called Dr. Posthuma from the car while still en route to Calgary. He said he happened to have Dr. Posthuma's phone number with him and was able to call the voicemail for Dr. Posthuma.
- [101] B.P. then testified that they called their son in Ottawa, and it was "all a false alarm". He said that they thought they had an emergency in Ottawa and that they would have to go to Ottawa immediately. And as there was to be no trial until June, there was no hurry with Dr. Posthuma's assessment. That that had been part of the voicemail message he left for Dr. Posthuma.
- [102] When asked why he did not call Dr. Posthuma back once he learned it was a false alarm that same night, Mr. B.P. indicated they were still upset, and there was no great hurry for the assessment in view of the later trial date in June.
- [103] Further to that evidence is the transcript of a motion in Alberta Queen's Bench Court on December 17, 2004 before Mr. Justice Clark. This was on the mother's application and she was represented by counsel, Mr. Huck. During the hearing in reference to the cancelled visit December 16, Justice Clark asked Mr. Huck, "How is the brother in Ottawa?". To which Mr. Huck replied, "Well, I've asked, and they said he is in serious condition." The court asked who told him that, to which Mr. Huck replied "my client". Mr. Justice Clark asked Mr. Huck if he had phoned the hospital in Ottawa to confirm that, to which Mr. Huck answered that he had not.
- [104] When matters came before Mr. Justice Cullen in British Columbia Supreme Court on January 18, 2005, part of that motion was the mother's application to have Dr. Posthuma's assessment of her and the children done at the end of that week in Vancouver, so that the mother and children would be free to return to Calgary.
- [105] Justice Cullen accordingly made an order that Dr. Posthuma was to complete his assessment while the mother and children were in Vancouver, and then the mother and children could proceed back to Calgary. And that is what occurred. There was no further attempt to have Dr. Posthuma interview the children and mother at their home in Calgary. Although this later became a source of contention voiced rather vehemently by the defence, and it was a criticism of Dr. Posthuma's report by Dr. Koopman.

- [106] On the issue of credibility with regard to the cancellation of the December 16 visit of Dr. Posthuma to Calgary, I accept without qualification the evidence of Dr. Posthuma, and find the evidence of both D.P. and her father, B.P. to be beyond belief. It is appropriate that D.P. pay for the costs of that cancellation.

Alberta Queen's Bench Court Hearing December 17, 2004

- [107] On the same date that Dr. Posthuma was to do his assessment, December 16, 2004, J.J.M. arrived in Calgary from Mexico. The next day, December 17 was the hearing before Mr. Justice Clark. The Alberta Court found there was clear evidence that Ms. D.P. was not living at the home of her parents. This was in part by her own admission in her affidavit. The court was of the opinion that she had moved, without authority to do so. Also, that she had moved the children, and changed their schools, without telling the father.
- [108] Mr. Justice Clark therefore made an interim custody order that the father was to take the children to B.C. immediately for as long as necessary to complete the assessment by the psychologist. He included a police enforcement provision in his order. He further stated it was up to the B.C. court to deal with contempt, but was of the opinion that Ms. D.P. was in contempt of certain aspects of the order of Neilson J., an order that had been confirmed by Germain J. in Alberta Queen's Bench Court.
- [109] As to the allegations of sexual excesses or sexual assault, Clark J. stated, "I do not put any credence in those." He further stated that they seemed to be unproven at the moment, and certainly not supported by evidence from other sources. He then awarded costs of \$2,500.00 to be paid by Ms. D.P. to Mr. R.C.. He further stated it would be up to Mr. R.C. to make the decision as to whether the children would fly or drive back to British Columbia.

Late December 2004 and 2005

- [110] The children remained with the father from that time until late January, 2005. However, on December 28, 2004, Ms. D.P. called the Ministry of Children and Families in British Columbia to report that the children were saying that their father was hurting them. The mother reported to the social worker that she had a phone call with the children two nights previously, which would have been December 26, and S.K.C. had told her that "R.C. was hurting them on their legs and arms by grabbing them tightly." She also reported that the children had returned with bruises from their last visit in August, but she could not be more specific with regard to the location of the bruises, and nor did she indicate medical attention and documentation were produced for those injuries.

- [111] The mother further reported that the father had a history of watching child pornography videotapes and had child pornography on his computer. She indicated this was evidenced by her when she lived with him seven years previously. She asked if Social Services would be prepared to go to R.C.'s home and check out his computer for child pornography. The social worker told her that was not possible, and gave her the number for the N.[] Police Department.
- [112] Mr. R.C. received a letter from the Ministry of Children and Family Development on January 10, 2005 from the child protection worker and the team leader stating that they had completed their investigation as required under the Child, Family and Community Services Act. The letter stated, "The findings indicate there are no currently [sic] child protection concerns."
- [113] In the meantime, the N.[] Police had called at the home of Mr. R.C. following their contact from D.P..

The Evidence of D.P.

- [114] In addition to her testimony at trial, a number of affidavits of Ms. D.P. were put in as exhibits. On April 19, 2004, within three days of her children being apprehended in Calgary, Ms. D.P. swore an affidavit in which she stated that when S.K.C. was little, she was constantly naked and always with Mr. R.C., that he never let S.K.C. out of his sight, that they were always together and frequently alone with one another. She claimed he was physically abusive at that time to the twins, and does not know if he has been sexually abusive to the boys. But she deposed that she "caught him violently forcing their knees into their stomachs with the result feces forced out of them." This did not give the full information to the court as both parents did the cycling action, particularly with I.Q.C., who was having bowel problems at that early age. Nor does she say why it was done. Rather, it appears that she "caught" the father doing something very wrong. Then she referred to "severe bruising" to the boys' legs. There is no evidence documentary or otherwise to support this claim.
- [115] In that affidavit, she stated that when S.C. told her about K.C., "I began to make plans to leave.". What she does not say in the affidavit is that she heard about K.C. in April or May, 1999, and she did not make any moves until December 1999 to leave Vancouver.
- [116] With regard to her husband, J.J.M., she deposed that he had his own company in Ixtapa, that he earned \$150.00 a day, and that he was going to immigrate to Canada. She confirmed that she told all four children that J.J.M. was their father. Also, that J.J.M. "phones me every single day and speaks to each child three or four times a week.". Mr. R.C. questions this as J.J.M. apparently does not speak English, and the children do not speak Spanish or Portuguese.

- [117] On the proposed visit to Mexico planned for April 17, 2004, in that same affidavit D.P. deposes that she took the children out of school, and "I was not sure whether I would stay for as little as a week or perhaps stay for the summer and then return. It was dependent on my finding a school in Ixtapa...".
- [118] It was in that affidavit that she deposed that while she had lived on her own for a time, she had recently moved back in with her parents and that she resides with them at "S.[] View". She also confirmed that while she was in Mexico, she was in touch with her parents who told her of "ongoing court litigation", and possible police involvement.
- [119] In her April 30, 2004 affidavit, D.P. deposes that she met Mr. R.C. in 1993. She reported that he would shake S.K.C. repeatedly in the early years. In her May 3, 2004 affidavit, she said that she and J.J.M. were planning to live at [] S.[] View in her parents' home.
- [120] There was an affidavit filed in Alberta Queen's Bench sworn July 7, 2004 in which Ms. D.P. said that the police called her periodically to make sure she was keeping R.C. away from S.K.C.. This would have been prior to her leaving for Mexico in December, 1999. This was not confirmed by any other evidence or police files. She also deposed in that affidavit that she believes her sister D.D. is mentally ill, and that D.D. has had three abortions. This conflicts with D.D.'s testimony in which she said she had had one abortion at the age of 17.
- [121] Ms. D.P.'s affidavit of December 16, 2004 filed in the Alberta Queen's Bench Court dealt extensively with her residence with her mother and father, and her involvement with [] W. [] Drive, which I will deal with later.
- [122] Her affidavit sworn November 30, 2004 deals with telephone access. She deposed again that J.J.M. calls "virtually every day and the children are happy to talk with him."
- [123] She deposed that she moved to Mexico in December of 1999 because of Mr. R.C.'s "ongoing harassment and my concern for the children's safety.". She also said the children were "too busy or occupied" for daily conversations with their father. She felt one call a week between the father and the children would be "more appropriate and beneficial for the children and the respondent.". In that affidavit she confirmed that Dr. Posthuma was to be in Calgary to do his assessment on December 16, 2004.
- [124] In an affidavit sworn January 12, 2005, and filed in the B.C. Supreme Court, Ms. D.P. deposed that, "In 1999, after I discovered the plaintiff had been sexually assaulting our daughter, I left for Mexico.". She does not mention a delay of six to eight months between her discovery and departure. She also deposed at that time that she was applying for a full-time job in Calgary, and was going to have a training session in the following week. That her husband J.J.M. was not working and that he could look after the children, along with her parents.

- [125] Ms. D.P.'s affidavit of January 12, 2005 stated that W.[] School was a better school for the children than A.[] School, and was only half a block from [] W.[] Drive. She stated that they were only at [] W.[] Drive when construction at her parents' home "was at its worst.". Also, that J.J.M. had no job in Mexico and no plans to return there.
- [126] In this affidavit, she said that Mr. R.C. was too rough with the children in 1999, and he is being too rough at the present time. Also, that the children did not want to talk to their father on the phone. And in April, 2004 S.K.C. had told her that her father had touched her vagina, at which point she took S.K.C. to the police. However, she learned that the police never asked S.K.C. about this incident.
- [127] In that same affidavit the mother talked of the substantial renovations that were being done at the S.[] View home, redoing skylights, window sills and "replacing some walls".
- [128] It was also in this affidavit that she deposed, with regard to Dr. Posthuma's cancelled visit, that they learned on December 16 that the telephone call on December 15 indicating that someone in their family had been injured was "a false alarm", and that that was "after my affidavit was prepared."
- [129] In those areas where Ms. D.P.'s evidence is in conflict with the evidence of Mr. R.C., especially regarding any physical or sexual abuse of the children, I accept the evidence of Mr. R.C. as credible. I do so without hesitation, based on my observations of both parties in court, and based on the evidence as a whole.
- [] W.[] Drive
- [130] The plaintiff, Mr. R.C., alleges Ms. D.P. moved to this address, [] W.[] Drive, sometime in June, 2004, in direct violation of the May 3, 2004 order of Neilson J. That order stipulated as a condition of interim custody to the mother, that "The children and the mother will continue to reside with her parents... at [] S.[] View in Calgary, until a final order has been made with respect to custody and access."
- [131] Based on all the evidence before me, there is no question in my mind that D.P. and her children were living at [] W.[] Drive in Calgary beginning sometime in June, 2004. That they remained in that home until they moved out in the middle or the end of January, 2005. I also believe that the children were spending time at their grandparents' home, particularly when they were expecting a call from Mr. R.C., who, until the Fall of 2004, had no knowledge of the [] W.[] Drive address. Also, Mr. B.P. and Mrs. L.P. continued to be very involved in looking after the children.
- [132] But in clear violation of the order of Madam Justice Neilson, the mother and the children did not continue to reside with her parents at [] S.[] View, S.W. in Calgary.
- [133] Ms. D.P.'s evidence that her parents began "extensive renovations in October, 2004 in hopes of selling the home" is not borne out by the documentary evidence. There is evidence of some repair work being done to the home.

- [134] In his evidence, B.P. presented receipts and/or bills as follows: one was for "house repairs" that referred to repairing holes in the drywall and stain blocker on three places in the ceiling (skylight) for a total bill of \$103.18, which included both labour and materials. There was no date on that bill. But there was a cheque for that amount dated October 16, 2004. It referred to "ceiling and holes". Then there was a copy of a Sears bill presented for some paint and brushes for a total of \$92.38, which included deck stain. The date had clearly been altered on this bill to show "6/22/04". This was written over the original date on that bill.
- [135] Next there was a bill for sanding walls and paint for \$2,268.06. The date of October 2004 appeared in different handwriting. Finally, there were two estimates for hardwood floors, one which included the living room and one which did not. There is no evidence that that work was ever done.
- [136] The total amount of painting and repairs, even including the suspect Sears bill was \$2,443.00. Hardly what would amount to "extensive renovations", that would necessitate renting a house from June to January to escape "all the fumes and dust" that were suggested. [] W.[] Drive was rented in June, 2004. The repairs were done in October.
- [137] The most telling evidence were the school registrations of the children dated June 14, 2004, which showed the home address for the children and the mother on that date as [] W.[] Drive. That school being only minutes away from that address.
- D.D.
- [138] I was impressed with the credibility of not only Mr. R.C., but also his witnesses. D.D., D.P.'s older sister, contacted Mr. R.C. and then supported him and gave evidence on his behalf at tremendous personal cost to herself. I found her evidence believable and compelling.
- [139] She described a home life where there were and still are explosive outbursts of rage and temper, particularly on the part of her father and her sister, D.P.. She stated that she has never believed that R.C. was abusing the children. That she telephoned him on April 15, 2004 because she was worried about the verbal and emotional abuse that the children were subjected to in Calgary. She has felt that her father was too rough with the twin boys, that he lost patience with them all the time, and shook them. And there was a lot of yelling.
- [140] D.D. does not believe what her sister has said about R.C.. She has stayed with R.C. and N.C., and has been impressed by the demeanour of the children when they are in that home; she found it very different from their demeanour in the home of her parents or with her sister D.P.. At mealtimes, she said the children in the C. home are calm, respectful and pleasant. There is no screaming and hitting.
- [141] D.D. deposed that she has enjoyed a good relationship with S.K.C., and S.K.C. has said to her "Mommy says you are mean, the devil." Another time, S.K.C. said "I want a gun, so I can shoot all the people mommy hates."

- [142] If the twins argue in the C. home, D.D. testified that Mr. R.C. is calm. She finds D.P.'s place is a train wreck, whereas R.C.'s place has strict rules with regard to television and keeping the play areas relatively clean. That the children will not do chores at their mother's home, but they are willing and have fun doing chores at their father's home.
- [143] One of her main concerns has been her father being verbally abusive to the children, and D.P. as well. She said she believes that once her parents are gone, that her sister alone cannot handle the children.
- [144] With regard to S.K.C. using the term "beaver", D.D. said that that was a common word in D.P.'s vocabulary as early as in her late teens.
- [145] While acknowledging that her sister is a great designer and artist, she is concerned that she will "do anything to punish someone".

N.C.

- [146] Mrs. N.C. is 34 years of age, born, raised and educated in Brazil. She obtained her Bachelor of Education in Brazil, and taught Grade 1 for three years there. She also obtained a two year program in Human Resource Training while in Brazil.
- [147] She is now working in British Columbia, and is now, I assume, on maternity leave, as the C.'s daughter M. was born early this year.
- [148] I found N.C. to be strong, intelligent and generous. I was concerned by evidence that both she and Mr. R.C. have, in the past, talked either in front of the children of matters in issue, or have talked perhaps carelessly without ensuring that the children cannot hear. S.K.C. is obviously a very bright young girl, and like all children, picks things up very quickly. The only other concern I have with regard to N.C. is that she may be too quick to ridicule or laugh at any discomfort of D.P.. I trust that that has only been done in the furnace heat of litigation and her humour will remain directed to helping heal relations between these two families. She has much to offer.
- [149] I have been very impressed by her evidence, her demeanour, her credibility and general warmth and humour. In my view, she can only be seen as a bonus in the lives of the children and her husband. She has acknowledged the challenges of sole or joint custody, but is prepared to accept them.
- [150] Her assessment of her husband is that he is "sweet and peaceful", that he is a positive and enthusiastic person, warm and good humoured.
- [151] J.J.M. was not called to give evidence, so I can make no assessment of him as a stepfather to the three children. I was concerned by D.P.'s evidence that he talks to the children almost daily, but they cannot find time to talk to their father.

K.C.

- [152] K.C. is R.C.'s stepsister. They have the same father. She is now 37 years of age and her daughter B. is 19. She testified that she would see her stepbrother R.C. during the summer and at Christmas when he visited. He is six years older than her.
- [153] She was a credible, albeit reluctant witness. Her recall of events when she was six to nine years of age was perhaps vague on dates, but credible and unembellished.
- [154] When she was six or seven, she said R.C. asked her to touch his penis. They were in the back yard. He said it was all right to do it as he had seen it in magazines. She said okay. Again when she was six or seven, it happened in the chicken coop. This would occur in the summer. Oral sex occurred later. In estimating their ages, she said she would have been six possibly and maybe until she was nine. Oral sex happened perhaps six times. "Then it didn't happen anymore.", indicating no further sexual contact of any kind.
- [155] K.C. acknowledged that she and Mr. R.C. had remained friendly over the years. She even regularly cut his hair. Until six years ago, when she told her mother, S.C., what had happened when they were children. Since that time, she has had no dealings with Mr. R.C. nor does she wish to. Prior to that time, they exchanged visits and cards, and she acknowledged that she encouraged her daughter B. to stay in touch with R.C.. One of the cards entered as an exhibit was "To Uncle R.C. - Love B.." "You are my best Uncle R.C. I have ever seen. And I love you very much."
- [156] Around April of 1999, she testified her mother, S.C., called her to say that D.P. had told S.C. that there was a bruise on one of the twin's testicles. She said she told her mother, "he's capable of abusing children." It was around that time that she told her mother for the first time what had happened when she and R.C. were children.
- [157] In cross-examination she acknowledged that she does not think that R.C. at that age knew all the ramifications of what they had been doing. She agreed that she encouraged her daughter B. to write cards to him, saying, "We'd settled our differences." But then she heard from S.C. via D.P. of sex abuse of the infant children. And she felt she had to speak out and protect the children.
- [158] During his questioning of K.C., R.C. indicated a clear acknowledgment of what he had done when they were young, and "how stupid and wrong it was" to do what he had done.
- [159] There was no indication in court, in her testimony or demeanour, of Ms. K.C. being "terrified" of Mr. R.C.. She said she did what he told her as a child because he was older, knew karate and bullied her two brothers. Now, as an adult, she simply said she didn't want anything further to do with him, echoing what her mother S.C. had said on the stand previously.
- [160] Mr. R.C. has acknowledged how wrong his actions were to his younger sister K.C. 30 to 32 years ago. I am not sure he fully appreciates the long term effects of those actions on a sister six years younger, in those early years. He has now been condemned and shunned as an adult by his own family, who believed what they were told by D.P. in the spring of 1999;

and then were horrified to learn of the sexual touching and oral intercourse of the two siblings many years previously. He was judged as an adult, not as a child. Mr. R.C. may be able to appreciate their reactions as he is now the father of a daughter who is six years younger than her two stepbrothers. He will be a vigilant and more understanding father, in my opinion.

Telephone Access

[161] This has loomed as a very important issue, in my view. Madam Justice Neilson ordered that there be daily access, and Mr. Justice Germain expanded the number of hours in which those daily telephone calls could take place. Mr. R.C. has complained continuously about not being able to have normal or daily telephone access with the children. When he finally does reach them, he alleges they are, in effect, being "coached".

[162] B.P. denied that he has been coaching the children. However, two taped transcripts were put into evidence of two phone calls that took place May 18, 2004 when Mr. R.C. was in Vancouver and the children were apparently at the P. residence in Calgary. I believe those transcripts are indicative of the types of phone calls that occur, when and if Mr. R.C. is able to get through.

[163] On May 18, 2004 at 6:50 p.m., Mr. R.C.'s answering machine had the following message:

B.P.:

ok you say, This is S.K.C., we were playing soccer and we just got home.

S.K.C.:

This is, this is S.K.C., we were playing, soc... soccer...

B.P.:

We just got home

S.K.C.:

We just got home

B.P.:

...went to bed

S.K.C.:

and now, and we're going... and now we're going to bed.

[hang up]

Answering service:

Sent 6:50 PM, from a blocked number

[164] One minute later, at 6:51 p.m., Mr. R.C. called the children and the following ensued:

1:08 R.C.:

Hello

Child's voice

Hi.

R.C.:

Hi, who's this?

Child's voice

S.K.C..

R.C.:

Hi S.K.C....

S.K.C.:

[interrupts]

We just, we just, we just went to soccer and now we got home from soccer and now we're going to bed.

1:22 R.C.:

Are you? Did you have fun at soccer - I thought you went to soccer yesterday too?

Child #2 (not S.K.C.)

Hello...?

R.C.:

Hello? S.K.C.?

Child #2 (sounds like R.S.C.)

aaalooowww?

1:35 R.C.:

Hi, who's this?

Child #2 (R.S.C.?)

(rough sound) I just got, I just got home and I WANTA GO TO BED!

R.C.:

OK, what did you do tonight? Hello?

Child #3 (I.Q.C.?)

Hello?

1:47 R.C.:

Yes, who's that?

Child #3 (I.Q.C.?)

Um, I just go to soccer, and, I went to the park, and I just went home, and I, um, need to go to bed now.

2:03 R.C.:

Ok, Hello. [hung up on]

[165] It does not take long for children of even tender years to get the message that in one household, they are not being encouraged, applauded or praised for speaking with their father.

Experts' Reports

Dr. Allan Posthuma

[166] Dr. Posthuma was originally selected by then counsel for Ms. D.P. and agreed to by counsel for both parties to prepare a Section 15 report, an assessment for custody and guardianship purposes. His report was filed, and Dr. Posthuma also gave evidence at the trial.

[167] Dr. Posthuma is board certified in clinical and forensic psychology, and has a considerable background and experience as evidenced by his curriculum vitae. His report to both parties, was dated February 24, 2005; that was followed by a brief letter of March 22, 2005 after he had received the Teacher-Child Rating Scales completed by the children's teachers at W.[] School in Calgary.

[168] The defence contends Dr. Posthuma appeared to have an early bias against the mother, and certainly the report was slanted in favour of the father. It is obvious from his report that he spent considerable time with the parents and the children, and that he had the usual testing done which is found in these cases. It is also apparent that Dr. Posthuma had reviewed and considered the extensive materials that had been provided to him by both parties prior to the completion of his report.

- [169] In his comments about S.K.C., Dr. Posthuma wrote that in all his years of doing Section 15 reports, he had never been so thoroughly cross-examined by an eight year old on what he should tell the court and with whom she wished to live. S.K.C. told him she wanted to go and live with her mother and J.J.M. in Mexico, where J.J.M. has a home for them. Dr. Posthuma felt that S.K.C. had been coached by the mother, that her behaviour was consistent with a child who had been coached.
- [170] He found the twins more spontaneous. With regard to S.K.C., he observed no sexualized behaviour and she raised no such concerns with him.
- [171] His report fills out some background and history of both the mother and the father. Dr. Posthuma had the MMPI-2 tests done on all the adults. These are recognized tests of emotional adjustment. His comments about the tests were interesting, but perhaps of limited value.
- [172] Dr. Posthuma reported that the mother regards the father as having poor parenting skills. The father sees the mother as having adequate skills. Both see each other as unstable. On one test, Dr. Posthuma found the father to be remarkably patient and persevering, without the hostility and agitation that he found with the mother.
- [173] He felt that the mother engaged in inflammatory and implausible explanations. On page 18 he observed, "The sequence of events described by Ms. D.F. (referring to the sexual abuse of S.K.C.) do not make any sense with regard to how the child protection services and the police normally work given the type of allegations made by Ms. D.F." He found a lack of candour with her in her test responses.
- [174] In favouring the father, he stated, "The father endorses the importance of the relationship of the children with their mother and is much more likely to facilitate this relationship than the reverse."
- [175] It is unfortunate that Dr. Posthuma did not have an opportunity to observe the mother and children in the P. home in Calgary, but why that did not occur has been set out earlier in this judgment.
- [176] In his brief letter of March 22, 2005, after receiving the Teacher-Child Rating Scales, Dr. Posthuma wrote:

The results of these rating scales I believe are helpful to the Court. They indicate that all three children, especially S.K.C., are displaying significant behavioral problems. S.K.C. is noted to be underachieving to a serious degree and to be highly anxious and unhappy. Thus, custodial arrangements need to reflect which parent can better address these children's academic needs.

- [177] In the end, Dr. Posthuma recommends that the father have sole custody of the children, and that for a period of approximately three months, the children have limited contact with their mother, in order to give the father a chance to establish himself with them.

Dr. Peggy Koopman

- [178] Dr. Koopman was retained by counsel for Ms. D.P. for the purpose of replying to Dr. Posthuma's report, and for the assessment of custody and guardianship of the three children. She was also to address the continuing allegations by S.K.C. that her father had acted inappropriately sexually with her, in both historic terms and currently.
- [179] Her report to the defence was dated April 30, 2005.
- [180] Dr. Koopman's qualifications are unquestioned, and, like Dr. Posthuma, she has years of academic, clinical and forensic experience, including those as an expert in our courts.
- [181] Mr. R.C. questioned her bias toward the mother, and has criticized her report for that.
- [182] In her report, Dr. Koopman wrote of her interview alone with S.K.C., reporting that S.K.C. did not like her father showing S.K.C. pictures of S.K.C. when she was naked as a baby, pointing out her red vaginal area. S.K.C. pointed to a hand in the picture that might touch the baby, and said that that frightened her. Also, S.K.C. reported that she did not like showering at her father's house because she said he came in and watched her when she was naked. That he tried to take pictures to which she said, "no!".
- [183] Dr. Koopman suggests counselling for S.K.C..
- [184] In her critique of Dr. Posthuma's report, Dr. Koopman is critical in a number of areas. There seems to be general agreement that Dr. Posthuma being introduced to the children in the C. home as "a friend of daddy", when he was assessing the children was not appropriate. The evidence conflicts as to whether Dr. Posthuma advised this or this was Mr. R.C.'s idea.
- [185] In her 14 page report, almost two of those pages relate a 35 to 40 minute telephone call that she had with K.C.. Dr. Koopman testified she was not able to arrange this in person. She testified there was fear and reluctance on the part of K.C., and that she was "very terrified" of Mr. R.C..
- [186] I found some confusion in Dr. Koopman's report and her evidence with regard to this telephone call with K.C.. Her report at page 2 indicated the telephone call took place April 29, 2005 and it took 40 minutes. On page 4 of her report she wrote the call took place April 30. On page 12 of her report she said the conversation took place April 25. In Dr. Koopman's notes, which were produced at trial, the telephone interview with K.C. took place April 30 and was 35 minutes in length.
- [187] It may be the report was completed in a hurry toward the end. It leaves the impression of considerable reliance on this one telephone call. Almost two pages of the report deal with that call, which appears to be a recitation of what K.C. had said. It would have been more helpful if Dr. Koopman had the opportunity to interview in person an individual she deemed this important.

[188] Dr. Koopman was critical of Dr. Posthuma's comment with regard to the mother possibly thwarting the children's relationship with their father. She felt that his criticism of the mother was too harsh.

[189] Dr. Koopman seemed to indicate that Dr. Posthuma was giving the husband a break. Whereas the plaintiff feels that Dr. Koopman was giving the mother a break, which she did not appear to give the father.

[190] Under her observations at page 13 Dr. Koopman wrote:

It is said D.F. is irritable and sometimes erratic and emotionally vulnerable displaying outbursts some of which involve shouting at the children. When the writer looked at D.F. in depth I saw a custody battle weary woman sometimes showing suppressed emotions of righteous indignation and angry frustration. She believes she has been wrongly stigmatized as an absconder; whereas her ex-spouse who she believes to be a sexual molester and a liar, is believed innocent and the victim of his alienation of their children.

[191] The plaintiff felt that nowhere in the report did Dr. Koopman cut "the same slack" for the father, who might also presumably be battle weary and feeling wrongly stigmatized.

[192] Dr. Koopman at page 10 of her report stated, "The children acted normally for children of their ages with both parents.". She saw "no marked differences in their demeanour or emotional state in either home."

[193] Although conflicting, I found both reports to be helpful. Both gave additional information and insights into the individuals involved. Both reports helped fill out a more complete picture.

[194] The court has had the additional opportunity of hearing four weeks of evidence, from many family members and both parties. An opportunity that neither expert obviously had. The impression that Dr. Koopman received from K.C., that she was "very terrified" of Mr. R.C. was, for example, not borne out by the evidence of K.C. at trial.

Credibility

[195] On the issue of credibility, I remain very concerned by some of the evidence of both D.P. and her father, B.P.. D.P.'s accusations against R.C. have become enlarged and exaggerated over the years.

[196] By trial time, her allegations were that she was fleeing Vancouver and R.C. out of deadly fear of continuing sexual and physical abuse of the children, and out of fear for the very lives of herself and the children. Which begs the questions: Why wait so long? Where were the police? Where were the social agencies? Where were her parents? Why did she hide her whereabouts in Mexico from her parents for one and a half years?

- [197] This is a family who knows how to call the police, as the evidence has indicated. They are not shrinking violets - which was well demonstrated in the courtroom. Repeatedly.
- [198] It may well be D.P. has convinced her parents that R.C. is indeed a terrible person, psychotic and a pedophile, none of which is borne out by the evidence. It is understandable that parents would do anything to protect a child or a grandchild, but they also must bring their knowledge of their own children to bear, and be able to filter what is true, and what may be brought on by temper or revenge or impulse or other motives.
- [199] The P. have provided an extraordinary support, personal and financial, for their daughter and their grandchildren, but in doing so, they have aided her in hiding the children from their father, and denying the children and their father four and a half years of a rightful relationship. It is my hope they can now go back to being regular grandparents, and assume the vital but normal role that grandparents play in the lives of their grandchildren.
- [200] I hope that under the orders made, they will have ample opportunity to spend as much time as they wish with their grandchildren and daughter, particularly if shared custody takes place. I am confident Mr. R.C. will not interfere with the relationship between the children and their grandparents.
- [201] However, the history from 1999 to the present time has convinced me that if the children remain in the sole custody of their mother, they will never have an opportunity to establish and enjoy a normal relationship with their father and his family.

Financial Claims

- [202] The decision of Mr. Justice Cullen on January 18, 2005 dealt with the \$20,000.00 bond that the mother had to post pursuant to the order of Neilson J. The Cullen order confirmed that Mr. R.C. had obtained \$6,900.00 from the \$20,000.00 bond. He received \$3,000.00 which was the mother's share of 50% of Dr. Posthuma's regular bill, \$1,400.00 for the father's travel costs to that date, and \$2,500.00, the court costs ordered by the Alberta Court for a total of \$6,900.00. Mr. Justice Cullen ordered that the mother post an additional \$6,900.00 to bring the security bond back up to \$20,000.00 before she could resume interim custody of the children. This was done.
- [203] Cullen J. denied the mother's application to live elsewhere other than with her parents. He ordered that the mother was not to change the school for the children without first informing Mr. R.C. and giving him access to the number for the school. The mother violated this by enrolling the children in June, 2004 in A.[] School, transferring them out of W.[] School, without ever notifying their father.
- [204] The order further denied the mother's application to have Mr. R.C. pay the \$6,900.00 he had obtained into court. Cullen J. confirmed that the father was to have daily telephone access. Also that the mother was to provide a landline at her parents' home for the daily telephone calls.

- [205] Mr. R.C.'s income for Guideline purposes was set at \$50,000.00, resulting in \$911.00 a month payments to be made by the father to the mother for the support of the children commencing February 1, 2005. However, that monthly amount would be off-set by \$350.00 a month which would be travel access costs, leaving a total of \$561.00 a month to be paid, presumably if access occurred.
- [206] There was a further order that there would be an appointment of a psychologist to respond to the Section 15 report if required, and if so, the mother was to pay that "solely". Finally, costs were in the cause.
- [207] The evidence reveals that Mr. R.C. has paid no maintenance for the children, either in the period from their birth up to their departure for Mexico December 12, 1999, or since this order of Mr. Justice Cullen. This non-payment of support has been a matter resented very much by the mother and her parents. Understandably so.
- [208] However, I did find it unusual and absurd that both the mother and B.P. included in their many criticisms of the father the fact that Mr. R.C. had paid no maintenance for the four and a half years that the children were hidden from his view and presence. B.P. was of the opinion that even though R.C. was not seeing the children or aware of their whereabouts, Mr. R.C. should have been putting money away each month for their support, during that four and a half years.
- [209] Mr. B.P. and Mrs. L.P. have spent over \$100,000.00 over the past eight years assisting D.P. and the children. B.P. suggested strongly in a letter to his daughter, D.D., that she begin immediately to pay \$500.00 to them to assist them with court costs and other costs in relation to this action. It is fair to say that this dispute has been very difficult and costly to all parties concerned, both financially and emotionally.

Conclusion

- [210] There is no need to repeat the 25 orders made in my judgment of August 2, 2005. That judgment is attached as Appendix A.
- [211] There is liberty to apply if the parties are unable to agree on the appropriate distribution of funds from the \$20,000.00 bond.
- [212] I am assuming child maintenance and possible tax consequences may have to be addressed close to February 1, 2006, and I will remain seized of those issues, as well as all other issues in this dispute.
- [213] The order remains that each party pay their own costs.

"N. Morrison, J."

Madam Justice N. Morrison

APPENDIX A

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R.C. v. D.F.

2005 BCSC 1146

Date: 20050802

Docket: E000455

Registry: Vancouver

Between:

R.C.

PLAINTIFF

And:

D.F.

DEFENDANT

Before: The Honourable Madam Justice Morrison

Oral Reasons for Judgment

The Plaintiff appearing in Person

Counsel for the Defendant

Jonas Dubas

Date and Place of Trial:

May 9, 10, 11, 12,

16, 17, 18, 19, 20,

July 18, 19, 20, 21, 22, 25, 26, 27, 28, 29,

August 2, 2005

Vancouver, B.C.

[1] I am handing the parties a draft of these oral reasons, so they particularly can follow the 25 orders I am making today.

[2] In this difficult custody dispute three children are involved, S.K.C., born [], 1997, R.S.C., born [], 1999 and I.Q.C., born [], 1999. S.K.C. is now eight and the twins are six.

- [3] Written reasons are being dictated, and will be available in a few days. But the orders I have made should be communicated to both parties immediately, so that the parties can plan accordingly.
- [4] This has been a very difficult and lengthy trial for both parties. It has taken considerable time to go over all the evidence once more, the exhibits and the testimony. Twelve witnesses testified, including the parties, over four weeks of trial.
- [5] My conclusions at the end of all this are many.
- [6] First, and most important, these three children are bright, intelligent, happy children, who need both their parents.
- [7] Both parents love these children.
- [8] Both parents have enormous talents to bring to the job and challenges of parenting. They have very different parenting styles. That is not unusual. It can and should work to the benefit of the children, rather than to their disadvantage.
- [9] For example, life when with their mother will never be dull. Ms. D.P. is a very bright, well-educated, artistic, forceful, articulate, stylish and at times impulsive woman. That she loves the children very much is never in doubt.
- [10] Life for the children when with their father may be more structured, quieter and possibly more intellectually challenging as opposed to artistically challenged. Mr. R.C. is also well educated, although mostly self-taught. He is organized, unflappable and persistent. He also loves his children and wants only the best for them. His wife N.C. adds much warmth and vitality to their household.
- [11] In each household there is a younger step-sibling for the children to cherish.
- [12] The evidence does not support the contention that Mr. R.C. is a pedophile or a psychopath, or in any way a sexual deviant. What occurred between Mr. R.C. and his stepsister 30 to 32 years ago, when he was 12 to 15 years of age and she was 6 to 9 years old, was wrong. As the older child, he was responsible. But it was infrequent, it was experimental, and it ended. It involved some episodes of oral sex, never sexual intercourse.
- [13] The evidence does not support the claim that Mr. R.C. sexually abused his daughter S.K.C. or physically abused the twins. I have dealt with the evidence with regard to these allegations at length in my reasons.
- [14] It is time for both parties and their families to stop name-calling. Pedophile, psychopath, thief, abductor, perjurer, crazy person, liar.
- [15] It is time for these parties to move on and begin parenting together.
- [16] My obvious hope is that Ms. D.P. will relocate to Vancouver, so that parenting can be shared equally.

- [17] Both parents need the time and assistance of one another, with all the challenges of parenting three small, active, bright children. Each parent has a spouse to assist, but the primary job of parenting will ultimately rest with the mother and the father.
- [18] If these parents can share parenting, that will give each of them some relief and time to themselves. And time for their own careers.
- [19] B.P. and L.P., the maternal grandparents in Calgary, have been co-parenting, in effect, with their daughter since January, 2002. That cannot continue - for the sake of everyone.
- [20] It is time for Mr. R.C. to be allowed to take his rightful place as a parent. For four and a half years, he had no idea where his children were, except probably somewhere in Mexico. He now must be allowed to make up for lost time.
- [21] I am making the following orders and, as I have said, I hope Ms. D.P. will relocate to Vancouver. If not, I will hear submissions on access.
- [22] The orders are as follows:
1. There will be joint custody and guardianship of these three children.
 2. Principal residence of the children will be with Mr. R.C., commencing August 20, 2005, unless the parties agree otherwise.
 3. In the event that Ms. D.P. should change her residence to Vancouver from Calgary, the principal residence of the children will be with each parent, with the children spending approximately equal time with each parent, alternating weeks; one week with each parent on an alternating basis. The transfer from one home to the other will take effect each Friday after school, unless the parties agree otherwise.
 4. The children are to be enrolled in school in Vancouver by Mr. R.C. for the school year commencing September, 2005. Mr. R.C. will consult with Ms. D.P. with regard to a suitable school before enrolment. If the parties are unable to agree, Mr. R.C. will ultimately choose the school.
 5. The children's school will be advised that both parents are to be given all school records and notifications, and both parents are to be allowed to contact the school in the usual manner.
 6. All holidays will be shared equally with each parent:
 - (a) Christmas 2005 - The children will be with their mother up to 12:00 noon December 26, 2005; they will spend the remainder of the Christmas vacation time with their father. For Christmas 2006, it will alternate, with the children being with their father up until 12:00 noon December 26, 2006 and with their mother for the remainder of the vacation, and so on for each following year; unless the parties agree otherwise.

- (b) Easter and Spring Break - 2006. Easter 2006 will be spent with their father, and Spring Break with their mother. In 2007, the reverse will occur, and so on for each year; unless the parties agree otherwise.
- (c) Summer vacation 2006. This vacation is to be divided equally in 2006 and for each successive year. If the parties are unable to agree on a schedule, liberty to apply. The schedule is to be determined by the parties on or before May 1, 2006 of each year.
- 7. Neither parent will remove any of the children from the jurisdiction of British Columbia or Alberta without the written permission of the other parent or a court order.
- 8. Both parents will cooperate in deciding what extracurricular activities are appropriate for each child. Those will include swimming for all three children, ballet for S.K.C., Brownies and/or Beavers for all three, unless the parties agree otherwise. Mr. R.C. will pay for these and any other extracurricular activities, provided that he has been given prior notice and agrees to that activity. Otherwise Ms. D.P. will pay for that activity.
- 9. Neither parent shall obtain a passport for any child without the written consent and cooperation of the other.
- 10. The children shall be registered at school and for all activities under their legal surnames of C.. They will no longer be referred to or go under the surnames of P. for any reason.
- 11. Each parent will encourage and facilitate regular and normal telephone access with the absent parent, either daily or every second day.
- 12. Mr. R.C. shall set up or facilitate the set up of video cam links to his home and Ms. D.P.'s home, at his expense. This does not include the expense of a computer, unless Mr. R.C. agrees otherwise.
- 13. Mr. R.C. will do nothing to discourage video cam links to anyone else in Ms. D.P.'s family, in the event that they obtain video cam facilities.
- 14. Both parties will actively encourage the children to communicate by video cam with the absent parent.
- 15. Email communications will be actively encouraged between the children and the absent parent once each child is sufficiently adept at the computer for such communication.
- 16. Each parent will communicate immediately with the other parent in the event of any illness, medical or dental needs of any of the children.
- 17. In the event that either parent is unable to look after the children by reason of illness, work demands, travel, vacation or other reason, the other parent is to have the first chance to parent the children during that time of access. If the other parent is unable to accommodate the custodial parent in that week, or time period, the custodial parent is then free to make his or her own arrangements for the care of the children. This is not meant to exclude the stepfather or stepmother from parenting if the mother or the father is absent for some

reason. This only applies in the event that someone from outside the parent's household is to be brought in.

18. The parties will consult with one another on any religious education or instruction for the children. If the parties cannot agree, then the children will participate with each parent on that parent's Sunday, according to that individual parent's wishes.
 19. I find there has been clear contempt by Ms. D.P. of the order of Madam Justice Neilson of May 3, 2004, and I order the \$20,000.00 bond to be paid forthwith to Mr. R.C.; less the amount of arrears of child maintenance as ordered by Cullen J. from February 1, 2005 to the present, less \$2,000.00 which is to be paid to Dr. Posthuma and less the \$1,000.00 in court costs previously ordered. The arrears will be paid to Ms. D.P. from that bond by payment to her counsel, Mr. Dubas, in trust.
 20. Each party will provide their own clothing and toys for each child in their own homes. If a child wishes to bring a toy or some clothing at the time of transfer, that item or items must be returned with the child at the end of that week.
 21. Mr. R.C. will pay all school expenses for the children.
 22. In the event that Ms. D.P. does not relocate to Vancouver, and the parties are unable to agree on an access schedule, there will be liberty to apply.
 23. Child maintenance payable by Mr. R.C. pursuant to the order of Mr. Justice Cullen of January 18, 2005, will continue for the next six months, up to and including February 1, 2006.
 24. Ms. D.P. will claim all three children for 2005 for any tax benefits, unless the parties agree otherwise. Commencing January 1, 2006, Mr. R.C. will claim S.K.C. and Ms. D.P. will claim R.S.C. and I.Q.C., unless the parties agree otherwise.
 25. Each party will pay their own costs of this action.
- [23] No order has been made with regard to the videotaping and audio tape recordings that have been made by Mr. R.C., particularly after he discovered the children were living in Alberta in April, 2004.
- [24] Mr. R.C.'s drive to try and record what has been happening in his world is understandable, particularly since mid-April, 2004. He is now and has been since that date in the almost impossible position of trying to prove a negative. Namely, that he did not and does not abuse his children either physically or sexually.
- [25] So he has been gathering evidence, and the video and photographs and audio sound tracks have been entered as evidence. They have been useful. It has given the court some snapshots into the world of the children, and what Mr. R.C. has been up against in trying to see his children, talk to them on the telephone, or have normal access.

- [26] But the need for that evidence no longer exists.
- [27] Mr. R.C. has shown the children the early videos of their lives, in an effort to show them that he was in their lives from the beginning. At their births.
- [28] Part of the video that has been filed in court has shown some of the hostility that Mr. R.C. and his wife have faced since April 16, 2004 from Ms. D.P. and her family. The P. have objected strenuously to being videotaped or photographed.
- [29] In my view, there is no longer any justification to video Mr. B.P. or Mrs. L.P., or D.P. without their express consent. They oppose it, and their wishes should now be respected. It is important to try and normalize relations. All parties are going to be parenting and grandparenting for the rest of their lives. It is time that courtesy and respect be re-introduced into these relationships.
- [30] Because of the serious allegations of sexual abuse, the children have been questioned by a number of people, family members and professionals. So they are now, I must assume, very sensitized to the issues of abuse. S.K.C. in particular. She has voiced objections to being shown pictures of herself when she was a small infant, when she was "naked".
- [31] So it is time to respect her privacy as well with regard to cameras. And the same with the twin boys. There is no more need to document cute kids in the bathtub. Everyone does that. And it has been done with these children. That's enough.
- [32] By all means let the cameras come out on joyous occasions, birthdays, holidays, where no one feels they are being spied upon, but rather being documented for the family album.
- [33] If there are continuing problems with communication between the parties, then audio tape recordings will probably continue. But it is my hope that these parents will start communicating with respect and courtesy to one another and there will be no need to continue to collect evidence.
- [34] There are no winners or losers today. I am hoping both sides will walk away being able to say - it is not the whole package that I wanted - but I think I can live with this. And I will try. It is important for the children.

"N. Morrison, J."

Madam Justice N. Morrison

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