
CANADA / JUDGMENT

R.S.R. v. J.N.

2020 BCSC 2017

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 2017 R.S.R. v. J. N.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R.S.R. v. J. N.,

2020 BCSC 2017

Date: 20201218

Docket: E50463

Registry: New Westminster

Between:

R.S.R.

Claimant

And

J.N.

Respondent

Before: The Honourable Mr. Justice Tammen

Reasons for Judgment

Counsel for the Claimant:

S. Ahuja

The Respondent, appearing on her own behalf:

July 3-6, 9-13, 2018, November 27, 2018,

March 11-13, 2019, July 29-31, 2019,
and August 1-2, 6, 8, 2019

J. N.

Counsel for the Respondent:

November 27, 2018

R. Cuddeford, appearing as agent for M. Evans

Counsel for the Respondent:

November 25-29, 2019, December 2-6, 2019, March 4,13, 2020 and July 17,2020

T.D. Hunter

Place and Date of Trial:

New Westminster, B.C.

July 3-6, 9-13, 2018,

November 27, 2018,

March 11-13, 2019,

July 29-31, 2019,

August 1-2, 6, 8, 2019, November 25-29, 2019,

December 2-6, 2019,

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Introduction and Overview

- [1] This is an extremely sad case. During their comparatively brief and unhappy marriage, Mr. R and Ms. N had two daughters, IS, now 10 years old, and IN, now 8 years old. Since the beginning of 2016, when IN had yet to turn 4, the girls have not had the benefit of a normal relationship with either parent. For almost the entirety of the past 5 years, one or the other of the parents has had no parenting time, or supervised parenting time, with the girls.
- [2] The sole exception was the middle of 2016, when, after a series of court hearings, there was 50/50 parenting time, with neither parent supervised. That ended abruptly in December, 2016.
- [3] Since December, 2015, Mr. R and Ms. N have been involved in an extremely acrimonious matrimonial dispute, with their daughters at the epicentre. Both girls have been exposed to multiple incidents of high conflict between their parents, which has doubtlessly impacted them psychologically. As noted in the most recent s. 211 report, "the children are now stuck in the middle and they need some relief from this."

- [4] The trial commenced in July 2018, and was originally scheduled for 9 days. At that time, the respondent, Ms. N, was the supervised parent. The trial lasted for more than 30 days, over many months. Most of the delay was caused by the trial conduct and tactics of Ms. N, who was self-represented for much of the trial. At various times, Ms. N has had counsel, including the last two weeks of the trial, and at various other times between sitting dates.
- [5] Ms. N's trial strategy can only be described as "scorched earth" tactics, designed to persuade the Court that Mr. R is an abusive, controlling man, incapable of being a loving father to his daughters. The depth and breadth of Ms. N's allegations against Mr. R is truly staggering. These allegations include the following:
1. Mr. R during the marriage was a drug dealer and money launderer;
 2. Mr. R used and abused drugs and alcohol during the marriage;
 3. On one occasion, Ms. N discovered one of the girls imbibing a white powdery substance, which she believed to be Mr. R's drug stash;
 4. Mr. R has allowed one of his infant daughters to consume alcohol;
 5. Mr. R is a controlling, manipulative husband, who refused to permit Ms. N to be autonomous in any respect during the marriage;
 6. Mr. R controlled all family finances, hid money from Ms. N, and squandered funds on himself, rather than provide for the family;
 7. Mr. R could not hold down a job, forcing the family to live in comparative poverty. All of the foregoing, Ms. N characterized as "financial abuse" visited upon her by Mr. R;
 8. Mr. R was emotionally and physically abusive toward Ms. N and both daughters, with the older child, IS, bearing the brunt of his wrath;
 9. Mr. R cannot control his emotions, and is prone to bouts of anger and aggression;
 10. Mr. R sexually assaulted Ms. N on more than one occasion, leading to physical responses by her;
 11. On two occasions, Mr. R deliberately burned Ms. N with a cigarette, one time after she refused his sexual advances;
 12. When IN was a baby, she was prone to bouts of crying, which Mr. R did not like. He repeatedly said that he hated IN, and put his hand over IN's mouth to stop the crying;
 13. During the marriage, Mr. R constantly said how much he hated both daughters;
 14. Mr. R laughed at his daughters when they were receiving vaccination shots as infants;
 15. Mr. R hit or slapped IS on multiple occasions during the marriage, causing bruising;

16. On many occasions, Ms. N got between Mr. R and his daughters, and was then assaulted by Mr. R. Those assaults usually took the form of him scratching her face;
 17. During arguments, Mr. R would hug Ms. N aggressively, targeting parts of her body which he knew were prone to pain because of prior injury;
 18. Mr. R is a racist;
 19. Mr. R and his family, in particular his parents, are religiously intolerant, and did not permit Ms. N to practice her religion while they were all living together;
 20. Mr. R is generally an unfit parent, incapable of clothing and feeding his daughters; and
 21. Mr. R has coached both girls to such an extent that both are now "brainwashed." That fact explains the absence of any complaint by IS and IN to both the counsellor they see regularly and the author of the two s. 211 reports; (it must also be noted that Ms. N alleges both bias and overt dishonesty on the part of the counsellor and the s. 211 author, and she questions the accuracy of their recording and reporting).
- [6] There is no evidence of any complaint by Ms. N to any third party agency, such as police or The Ministry of Children and Family Development ("MCFD") during the marriage. She first complained to both agencies in late December 2015. The allegation she then made was that IS reported to Ms. N that Mr. R had hit IS on her face. Ms. N produced a photograph of IS in right profile, said to depict a bruise caused by that assault.
- [7] Since that time, Ms. N has made or caused to be made numerous complaints to both police and the MCFD related to Mr. R's assaultive behaviour toward his daughters, in particular, IS.
- [8] Most troubling is the fact that Ms. N has attempted to persuade IS that Mr. R has assaulted IS, and continues to do so.
- [9] It is extremely difficult to discern how much of Ms. N's narrative she truly believes, and that which is deliberate fabrication. Nonetheless, I found her to be neither reliable nor credible as a witness. I do not believe her allegations, for reasons which I will outline.
- [10] Ms. N lacks insight into the impact of her behaviour on her daughters. She has surrounded herself with self-styled counsellors and advocates she has met online, or through victims' rights groups, and is not receiving the sort of assistance from which she could benefit. Rather, she is being emboldened to make the spurious allegations she continued to make throughout her testimony in Court.
- [11] I wish to be clear that I am acutely aware of the very real social and legal problem of violence inflicted on women in relationships. I accept that incidents of family violence are under-reported, and that many victims suffer for years in silence. The reasons for non-reporting are complex and varied. Women are far more likely than men to be victims of spousal violence. Children are particularly vulnerable, and are often victims of violence by male parents.

- [12] However, that is not what this case is about. There is some contemporaneous evidence that in fact Mr. R was the victim of family violence, at the hands of Ms. N. There is no reliable, contemporaneous evidence to support Ms. N's claims.
- [13] In these Court proceedings, Ms. N has attempted to portray herself as an abused spouse and repeatedly said that those who do not believe her fail to understand the issue of spousal violence. In doing so, Ms. N does a disservice to women who have suffered violence during relationships at the hands of partners, and to the groups that support those victims of violence.
- [14] If I found that Ms. N was a victim of violence committed by Mr. R that would feature in my decision. For certain, if I accepted any of Ms. N's claims that Mr. R physically and emotionally abuses IS and IN, I would remove them from his care. However, there is no evidence, apart from that of Ms. N, that Mr. R is anything but a loving, caring father to his daughters.
- [15] As noted, I have had the benefit of two reports prepared by a psychologist, Dr. Elterman, pursuant to s. 211 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] to assess the best interests of IS and IN. The second such report was ordered by me after certain allegations emerged at trial in August 2019. That report specifically addressed risk of family violence and whether there had been efforts by either parent to alienate the girls from the other parent.

Relationship History

- [16] Ms. N and Mr. R were married on July 6, 2009. IS was born on July 28, 2010, and IN on February 27, 2012. By the end of December 2015, the parties were separated, and have remained so.
- [17] During the marriage, the family first lived in Surrey, for a time in a basement suite of Mr. R's parents' home, and later in different rental accommodation. In the spring or summer of 2015, they moved to a home owned and occupied by Ms. N's parents in New Westminster.
- [18] Ms. N was a full-time student during the marriage. Mr. R had various jobs, but at one point quit working and enrolled in school full-time, in order to spend more time with Ms. N, who was then enrolled in classes at Langara College in Vancouver.
- [19] There was conflicting evidence from the parties concerning primary care of their daughters, each claiming that she or he was the primary caregiver. Mr. R said that Ms. N was absent from the home for days, weeks, and sometimes months at a time, even when she was pregnant. He said he did the cooking and cleaning, and attended to the needs of the girls. In effect, at least for a time, he was a stay at home parent. When he enrolled in school full-time, he would drop off the girls at daycare, and pick them up at the end of the day.

- [20] Ms. N said that she was the primary caregiver. She does not drive, and thus she would either walk the girls to daycare, or take them to the door while Mr. R waited in the car. She said that Mr. R often insisted that she pick up the girls at the end of the day. He often came home late at night, or not at all, refusing to tell her what he was doing.
- [21] There is very little supporting evidence for either position. On balance, I tend to think Mr. R's evidence is more likely closer to the truth than Ms. N's evidence. For a time, Ms. N saw a psychiatrist, Dr. Chaudhary, at the Children's & Women's Health Centre of British Columbia, and the notes of some of those visits are in evidence. Ms. N told Dr. Chaudhary that she was absent from the home for extended periods, and those things were recorded contemporaneously in the doctor's notes.
- [22] The notes of the psychiatrist are admissible as evidence that Ms. N said those things to the doctor at the times recorded. To the extent that the things said by Ms. N may be admissions against interest, they are admissible for the truth of their contents. Portions of the notes put to Ms. N on cross-examination may also be prior inconsistent statements. Finally, the notes are admissible as evidence of the topics discussed and the actual observations made and recorded by Dr. Chaudhary. The medical records are not admissible as expert opinion evidence, and I am not considering any diagnosis, or other medical opinion recorded by Dr. Chaudhary.
- [23] Dr. Chaudhary recorded in the autumn of 2011, Ms. N reported to her that Ms. N moved from the family home in the summer of 2011, and experienced a period of homelessness. Mr. R remained at the Surrey residence with IS, who was then only one year old. As of November 30, 2011, Dr. Chaudhary noted that Ms. N was moving between the new Surrey residence of Mr. R and IS and a cousin's home in Vancouver, and was considering moving back into the family home full time. Ms. N told Dr. Chaudhary that Mr. R was the primary caregiver for IS at that time.
- [24] There is also a report, noted in the MCFD records, that Ms. N was arrested on May 1, 2015, at 9:00 p.m. for assaulting a male, not Mr. R, who was said to be her boyfriend. The MCFD notes disclose a follow up telephone call to Ms. N, in which she said she was separated from her husband, and the children went back and forth between them. Ms. N denied ever speaking with the MCFD about that incident. However, she did agree that there was an incident, she was arrested, never charged, and had no criminal record. She would not elaborate, although she denied ever having a boyfriend in 2015.
- [25] I cannot make much of that evidence, but even on that which Ms. N did acknowledge, it would seem that she was absent from the house, in the company of another male, in the evening while Mr. R was home with the two children.

- [26] I also note that Ms. N said she took the girls to swimming lessons, but could provide absolutely no details. She testified at length about her own participation in dance classes, later adding that the girls accompanied her to these classes to observe their mother. Overall, Ms. N's evidence of time spent with her daughters from 2012 through 2015 was vague and wholly unconvincing.
- [27] The evidence of Dr. Lloyd-Jones, who was the family doctor for IS and IN from a young age, was that Ms. N brought them to most visits. He believed that Mr. R was present, but waiting outside the examination room.
- [28] Ms. N's cousin, Kevin Prasad, testified that he believed Ms. N was the primary caregiver for the girls. He based that assessment on his observations of the family at various functions he attended during the relevant time period.
- [29] Mr. R was able to provide some detail about his care of his daughters during this period, mainly related to participation in different daycare centres. On all the evidence, it is clear that from the time IN was one year old, both girls were in full time daycare, commencing at 7:30 a.m. The reason for extended time in daycare was that both parents chose to attend post-secondary school full-time. Neither parent was absent from the home because of work commitments.
- [30] In these circumstances, I note the obvious, namely that the primary caregivers for the girls during the week were daycare workers.
- [31] I do find that as between Mr. R and Ms. N, the former was more involved in the care of IS and IN, but I reject the position of each that they were the "primary caregiver" of the children.
- [32] Neither parent was able to meet the financial needs of the family, as neither worked full-time for any extended period of time.
- [33] There was conflicting evidence from Mr. R and Ms. N concerning family violence, each claiming to be the victim of multiple assaults at the hands of the other. Ms. N also said that Mr. R abused her in other ways, emotionally, psychologically and financially. In addition, Ms. N testified that both daughters, in particular IS, were struck by Mr. R.
- [34] Again, there was very little contemporaneous evidence to support either version of events. Although the couple lived with both sets of in-laws at different times, none of them testified.
- [35] Ms. N told Dr. Chaudhary that she had difficulty controlling her anger toward Mr. R, and on occasion, she inflicted violence on him. That is recorded in the clinical notes. During cross-examination of Ms. N on these records, Ms. N said she could not recall in any detail the visits with doctors. She did not agree that she said anything that is recorded in the doctors' notes. Nor did she expressly deny saying those things. She repeatedly said that the doctor should be asked why she recorded things in that fashion, and suggested that somehow Mr. R had influenced the doctor to record things which he told the doctor. That explanation is fanciful.

There is significant information in the clinical notes that could only have come from Ms. N. On balance, I am satisfied that the clinical notes accurately reflect what Ms. N said to doctors on the dates recorded.

- [36] The initial consultation notes, from July 2, 2010, prior to the birth of IS, show that Ms. N told Dr. Chaudhary that arguments with Mr. R often led to physical aggression, with Ms. N "often slapping, punching, scratching, or throwing items at her husband." Ms. N told Dr. Chaudhary that Mr. R was respectful of women and had never been physically abusive toward Ms. N.
- [37] On August 20, 2010, three weeks after the birth of IS, Ms. N reported an incident of physical violence by her toward Mr. R, when she lost her temper and hit Mr. R in the head with a water bottle. The notes record Ms. N as being tearful in relating the incident, stating that she did not wish to continue like that, and did not wish to be abusive.
- [38] Notes from September 3, 2010 show a joint appointment for Ms. N and Mr. R with Dr. Chaudhary, in which the topic of discussion was Ms. N's mood lability and anger issues.
- [39] At another joint visit, on September 28, 2012, seven months after the birth of IN, Mr. R is recorded as reporting an incident in which Ms. N struck him and injured his eye. Dr. Chaudhary recommended that the couple contact the MCFD to request assistance.
- [40] The last noted visit is January 30, 2013, by Ms. N to Dr. Gregson, who appears to have been filling in for Dr. Chaudhary. IN was eleven months old. Those notes show that Ms. N said she was considering moving to Vancouver to live with a cousin; that there had been some violence between her and Mr. R, although they had not contacted the MCFD; and that there were no safety issues concerning her children.
- [41] Those notes conclude with Dr. Gregson documenting a call by her to the MCFD, and noting that Ms. N was aware of her intention to do so.
- [42] The MCFD records show the receipt of that call on January 30, 2013, although the caller's identity is redacted.
- [43] In her evidence in chief, which spanned six days, Ms. N did not specifically refer to Dr. Chaudhary's notes. She did, however, give some evidence concerning two incidents which commenced with unwanted sexual behaviour by Mr. R, and ended with him being struck by Ms. N's hand. I use the passive voice here because that is how Ms. N described the incidents.
- [44] The first incident was an unwanted pinch of her engorged breast by Mr. R, after which, she said "my left hand hit him in the head."
- [45] The second incident was a time when Mr. R persuaded Ms. N, a non-drinker, to consume alcohol, and then engage in oral sex with him. During that act, in which Mr. R became overly forceful, Ms. N said the palm of her hand "hit him in the nose." In cross-examination, she said she acted in self-defence.

- [46] I have difficulty accepting Ms. N's evidence concerning these incidents. Her accounts appear to be an attempt to explain at least two occasions on which she struck Mr. R. It seems that these allegations of sexual assault emerged at a very late stage of proceedings. Ms. N did not mention these incidents to Dr. Elterman at the time of her interview for the initial s. 211 report. According to that report, when Dr. Elterman questioned Ms. N about domestic violence, Ms. N said she only hit Mr. R in self-defence, but could not recall what she was defending against.
- [47] Ms. N described an incident when, after she flushed a bag of something down the toilet, Mr. R caught her in the bathroom and stabbed her forearm with a cigarette. She pointed to a mark on her left arm which she said was the resulting scar.
- [48] Near the end of her testimony in chief, Ms. N produced seven photographs, which she said she took of herself, depicting injuries caused by four separate assaults.
- [49] One of these incidents occurred when, after an argument, Mr. R came up behind Ms. N while she was sitting in a chair and scratched her face, leaving marks, and put his fingers into her mouth. There are two photographs that show some marks on Ms. N's face.
- [50] The second, again supported by two photographs, was a time when Mr. R was trying to get at IS, and Ms. N got between them, resulting in Mr. R scratching her face.
- [51] The third was a different incident in which Mr. R deliberately burned Ms. N with a lit cigarette, this time on her right hip, in 2015. That, she said, was precipitated by her refusal to accede to Mr. R's sexual advances. The two photographs appear to show an injury consistent with what might be caused by a lit cigarette.
- [52] The final photograph was said to be some scratch marks on her hip, caused by Mr. R during an argument in the summer of 2015, while they were living in New Westminster.
- [53] None of these incidents, nor the photographs, were put to Mr. R during cross-examination by Ms. N. By consent, Mr. R was recalled to testify about them. He flatly denied the incidents in question, and said he did not cause the injuries.
- [54] I simply cannot say if any of these incidents occurred as described by Ms. N, nor what the photographs depict. Nor am I able to discern when and in what circumstances the photographs were taken. Ms. N's overall evidence is so unreliable, and fraught with testimonial difficulties, that I cannot accept her evidence. Indeed, I find that she has been deliberately untruthful concerning certain critical events. To some extent, her entire evidence is tainted by my findings of deliberate dishonesty on key matters, which I will address in due course.
- [55] Finally, I note that in this case, the evidentiary record goes well beyond establishing absence of a contemporaneous complaint by Ms. N. Rather, Dr. Chaudhary's notes and consultation reports show that on multiple occasions, when asked by her psychiatrist, Ms. N denied that Mr. R had ever been physically violent with her. Those statements were made by Ms. N at

her initial consultation with Dr. Chaudhary on July 2, 2010. Other statements made by Ms. N to Dr. Chaudhary at that time, if true, indicate that Ms. N had not told Mr. R she was seeing a psychiatrist.

- [56] Mr. R testified that Ms. N assaulted him multiple times during the marriage. His evidence was vague and general, lacking detail. I do accept that he was a victim of family violence by Ms. N, but I do not accept his evidence concerning the frequency and severity of that behaviour.
- [57] The things said by Ms. N to Dr. Chaudhary at various times confirm that Ms. N acknowledged some assaultive behaviour toward Mr. R during the marriage.
- [58] I note that when Mr. R was contacted by the MCFD following the January 30, 2013 call, he denied that there was any violence in the household. He said he did so out of embarrassment and fear that the girls would be taken into care. I accept that explanation in general.
- [59] Of most concern, of course, is Ms. N's evidence concerning assaults on IS and IN by Mr. R. I reject that evidence entirely.
- [60] Ms. N's account of violence toward the girls by Mr. R has evolved to some extent during this litigation, and has not been consistent. For instance, she refuses to commit to a position concerning violence toward IN. At times, she has said that Mr. R did not hit IN because she was too young. At other times, she has said that IN was quick enough to escape Mr. R's assaults. When asked about this in cross-examination, Ms. N simply said, "he has hit both children, of course he has."
- [61] On occasion, Ms. N has told people that Mr. R has caused bruising to one or both of the girls. Dr. Lloyd-Jones testified that he had specialized training in child protection, and as part of that training routinely looks for bruises when seeing infant patients. He at no time observed any bruises on the children, including their most recent visit to him in the summer of 2018.
- [62] The main focus of Ms. N's allegations has been IS. Because these allegations, which persisted throughout the trial, are so central to my determination of the primary issues in this case, I will address them at length later in these reasons. I am satisfied, on all the evidence that Ms. N has, since December, 2015, fabricated a false narrative of assaults by Mr. R on IS, and has, most disturbingly, attempted to convince IS that Mr. R has assaulted her.

Parenting history post-marriage breakdown

- [63] The marital breakdown occurred between Christmas and New Year in 2015. At the time, the family was living in New Westminster with the parents of Ms. N.
- [64] On December 28, 2015, Ms. N's father summoned police to the home, claiming that Mr. R had drugs on the premises. Police attended, did not find evidence to support that claim, and took no further action.

- [65] On December 30, 2015, Ms. N took both girls to the Burnaby RCMP detachment, and reported that IS disclosed to her that Mr. R had hit IS on the right side of her face the day before. Ms. N produced a photograph of IS to police. The RCMP advised Ms. N to make her report to the New Westminster Police Department ("NWPD"), since that is where the assault occurred. By that time, Mr. R had already contacted the NWPD, with a concern about both his daughters and various items of personal property being missing.
- [66] The MCFD became involved as a result of Ms. N's allegations.
- [67] Ms. N's evidence about the lead-up to her attendance at police was that IS came to her in tears, and said "papa hit me," and showed her the bruise. Ms. N, having previously warned Mr. R that she would take action if he struck the girls, took a photograph of the injury. Ms. N said this was Monday, the day after the police attendance at the home. IS told her Mr. R hit IS on the weekend, as IS and IN were fighting over a toy.
- [68] That day, Ms. N contacted a cousin named Kevin Prasad, a court clerk, who advised her to go to the police and a doctor. Since her doctor's office was closed, Ms. N did not do so. The next day, Ms. N had a friend pick her up from her home, to drive Ms. N and both daughters to the Burnaby RCMP. While Ms. N was waiting there, she learned from police that Mr. R had contacted the NWPD.
- [69] Mr. R's evidence was that he woke up on December 30, 2015 and discovered that Ms. N and both daughters were gone from the home. Also missing were his cell phone and laptop computer. The only person present was Ms. N's father, who told Mr. R to leave. Mr. R summoned the NWPD, who attended the home, and Ms. N's father told police the girls might be at school. Ultimately, Mr. R called his father, who helped him move from the home.
- [70] Thereafter, Ms. N lived with both girls at a different location, perhaps the home of her grandmother, and did not permit Mr. R to see IS and IN. Ms. N caused IS to miss more than one month of kindergarten. She said she did so because of concerns that Mr. R might kidnap the girls from school if she took them there.
- [71] Mr. R was never charged with any offence.
- [72] The MCFD investigation concluded, with no finding that the children were at risk, near the end of January 2016. Ms. N claims that the social worker who handled that investigation was negligent, in part because she refused to take the photograph of IS from Ms. N.
- [73] I have looked very closely at the laser copy of that photograph, and cannot see a definite bruise. There appears to be some discolouration to IS's cheek, but it does not look like a typical bruise. Ms. N said that one needs to look at an electronic version of the photograph and zoom in on the cheek to properly see the bruise. I cannot say if that is so.

- [74] Through a series of court applications in 2016, Mr. R was able to see his daughters. For a time, his parenting time was extremely limited, and was professionally supervised. Those supervised visits took place without incident, nor any difficulty between Mr. R and the supervisor, Suzanne Edmundson.
- [75] By April 2016, there was a court order in place which gave each parent 50/50 parenting time, on a weekly rotating basis.
- [76] In August 2016, Mr. R filed an application, seeking to have both girls enrolled in school in Surrey, where he lived. The application may have included an application to have the primary residence be Mr. R's home in Surrey. Ms. N testified that she believed Mr. R was seeking to have her parenting time suspended.
- [77] There were a series of court attendances in September and October 2016, which accomplished little. There was an interim order that IS and IN could be enrolled in school in both Surrey and New Westminster, but would continue to attend school in New Westminster.
- [78] In October 2016, Ms. N commenced taking both girls to see a counselor at Burnaby Family Life, in the Children Who Witness Abuse Program. Ms. N told that organization that Mr. R hit both IS and IN, and presented the picture of the right side of IS's face from the previous December. Later, Ms. N sent a copy of that picture to the intern who saw the girls, Yasaman Madanikia. Ms. Madanikia was a witness at trial.
- [79] It appears that Children Who Witness Abuse is one of very few organizations that provides services to children without consent of both parents. They do so if there is evidence of abuse or harm being caused by one parent. Ms. N presented the photograph of IS as evidence. Ms. Madanikia was not aware that the MCFD had investigated allegations related to that photograph earlier in the year.
- [80] Ms. Madanikia said she saw the photograph as part of the intake process. When a copy of it was produced to her at trial, Ms. Madanikia said it showed a bruise just below IS's right eye. She pointed to a discolouration below the eye. That is not what Ms. N described as the bruise shown to her by IS. Ms. N clearly demonstrated the area in almost the exact centre of IS's cheek.
- [81] Ms. Madanikia had several counselling sessions with each girl, individually. She made notes of those visits, but the notes were not available at trial. Ms. Madanikia had limited memory of her time with IS and IN. Documents which were available to refresh her memory were the intake forms, and a letter that she wrote to Ms. N, at Ms. N's request, on January 6, 2017, summarizing some of the things IS told her during visits.
- [82] Part of the intake process was to have each child use a continuum of happy and sad face emojis on a printed page to describe their feelings about various things, including parents. Ms. Madanikia was present when IN filled in this form on October 25, 2016. IN chose the happy face emoji to depict how well she got along with her mother. For her father, IN chose both the sad face and the happy face, showing what Ms. Madanikia interpreted, sensibly, as

"mixed emotions." Regarding the level of safety she felt in each parent's home, IN chose the happiest face for mom, a less happy face for dad.

- [83] Ms. Madanikia recalled that during one session, the younger girl, IN, disclosed to her that her father had hit her. By reference to the letter, Ms. Madanikia was able to say that the disclosure was made on November 22, 2016, and that the hitting had occurred the previous Saturday. Ms. Madanikia reported that disclosure to the MCFD the same day, November 22, 2016.
- [84] The MCFD commenced a new investigation into Mr. R's treatment of both girls. Pursuant to Court order, the parenting arrangement in place at the time had changeovers occurring Friday after school, on school grounds. It thus seems that the allegation that Mr. R hit one of his daughters on Saturday, November 19, 2016, could not have been accurate, since the girls were in the care of Ms. N on that date.
- [85] Mr. R had both girls in his care from November 25 to December 2, 2016. Ms. N had scheduled parenting time from December 2 to 9, 2016.
- [86] On December 9, 2016, the MCFD intervened in the custody arrangements and contacted both parents and the school. The December 9, 2016 changeover thus did not occur, and both girls remained in Ms. N's sole care until December 23, 2016.
- [87] On December 20, 2016, the MCFD notified both parents that the investigation was concluded, and that IS and IN were not in need of protection. The Court ordered parenting schedule could thus resume.
- [88] Ms. N and Ms. R agreed that the latter would have his regularly scheduled parenting time commencing December 23, 2016. Because school was not in session, they agreed to a changeover at a Walmart store in New Westminster at 3:00 p.m.
- [89] Before leaving her home with the girls to attend at Walmart, Ms. N made a video recording on her cellular phone of IS, extremely distraught, stating that she did not wish to go to "papa" because he would take her to the police. I have no doubt that prior to turning on the recording device, Ms. N planted those ideas in IS's head. There would have been no reason for IS to think her father would take her to the police. He had not done so in the past. Moreover, Mr. R had not seen his daughters in the preceding three weeks.
- [90] What occurred at the Walmart at the time of the exchange is a matter of great dispute between the parties. Each blames the other for what eventuated, namely the girls being separated, with IN going with her father and IS remaining with her mother. Ms. N testified that IS did not wish to accompany her father, and she was unable to persuade IS to do so. Mr. R said that Ms. N was responsible for the reluctance of IS to go with him, and may have even physically prevented IS from doing so. Each blamed the other for causing a scene at Walmart, which required third party intervention.

- [91] I need not, and cannot, say for certain what transpired. However, I am satisfied that Ms. N was responsible for the reluctance of IS to go with her father. Ms. N had clearly whipped her elder daughter into a state immediately prior to the proposed changeover. Ms. N had obviously attempted to poison IS against her father, by persuading IS that, if she were returned to Mr. R's care, he would take her to the police to make some sort of report concerning Ms. N's conduct. As noted, it was Ms. N who had taken her daughters to police in the past, not Mr. R.
- [92] The result was that the girls were separated for the next several days, and only reunited, in Mr. R's care, following an application to the Court some days later.
- [93] In the interval, both parties had been in contact with police, who documented some interaction with both parents, but took no action. At trial, each of the parties levelled accusations at the other concerning the reason for the delay in reuniting their daughters. I make no findings in that regard and decline to ascribe blame. Ms. N knew that she continued to have IS in her care during Mr. R's Court ordered parenting time. Ms. N should have taken steps to return IS to Mr. R without need of a Court order. She did not do so.
- [94] There were then several court appearances in relation to parenting time, resulting in Ms. N becoming the supervised parent. That remained the situation to the conclusion of trial. Ms. N has consistently maintained that she was set up by Mr. R, and that somehow he deliberately took steps to gain the upper hand in the litigation. That position has informed much of Ms. N's conduct during this trial. Initially, she refused to meet with Dr. Elterman, who had been ordered to prepare a s. 211 report, because she perceived a disadvantage based on her status as supervised parent. Ultimately, Ms. N met with Dr. Elterman sufficiently in advance of trial to permit the report to be completed. However, he noted her to be defensive on interview, and he was unable to interpret her scores on psychological testing.
- [95] Ms. N has not responded well to supervised parenting time, in essence refusing to accept it. Likewise, she sabotaged the attempt to have a parenting coordinator ("PC") in place. As regards the former, Ms. N has created conflict at every stage of her interactions with all supervisors not hand-picked by her. At times, she has taken her proposed supervisors to visits being supervised by professional supervisors approved by the Court. Ms. N has refused to adhere to any fixed schedule for her parenting time set by the Court. Several supervisors have become exasperated by the volume of emails needed to schedule Ms. N's parenting time, and the last minute modifications.
- [96] Ms. N has proposed many supervisors to the Court over the two-year span of the trial. I approved at least one person for that role, a non-paid supervisor, Simeon Pang. Unfortunately, Mr. Pang strayed from his role and became yet another advocate for Ms. N. Ms. N called Mr. Pang as a witness during the last phase of the trial and his evidence was a litany of complaints about both Mr. R and counsel for Mr. R. None of that testimony was helpful, nor germane to the issues at trial.

- [97] On another occasion, the PC approved a professional supervisor proposed by Ms. N, Rodica Balaj, with results that can be best described as disastrous. Both Ms. Balaj and Ms. N ultimately levelled complaints against the PC, leading to him stepping down. He, like several of the professional supervisors who had also quit providing services, was owed money by Ms. N at the time.
- [98] Ms. Balaj was the primary supervisor for Ms. N's parenting time for a few months in early 2019. During that time, Ms. Balaj became complicit in one of Ms. N's efforts to deceive the Court regarding complaints made by IS about Mr. R.
- [99] Both Mr. Pang and Ms. Balaj wished to give expert opinion evidence to support Ms. N's position, although neither was properly qualified to give such evidence. Mr. Pang was a well-intentioned, albeit unhelpful, witness. Ms. Balaj was a disruptive, deceitful witness, whose testimony was the polar opposite of helpful to the Court.
- [100] Two professional supervisors who were called by the claimant shed some light on the challenges Ms. N poses as a supervised parent. The first, Suzanne Edmundson, supervised Mr. R's parenting time in 2016, and later Ms. N's parenting time when Ms. N was the supervised parent. There were no difficulties arising from her supervised visits of Mr. R. However, once Ms. N was supervised, issues arose, resulting in much time spent in email communication to arrange the visits. Ms. Edmundson withdrew her services because of the excessive number of texts and emails from Ms. N, and also because of what Ms. Edmundson viewed as a false allegation made by Ms. N that on one occasion, Ms. Edmundson had yelled at her. Ms. Edmundson described Ms. N as prone to histrionics, and said that Ms. N had told her that people involved in this case were conspiring against her. I accept Ms. Edmundson's evidence. She presented as an extremely competent, professional, objective witness. In addition, she was plain spoken and direct in her testimony.
- [101] Melitta Passek was initially proposed by Ms. N as a supervisor for her parenting time in early 2017, and Mr. R agreed. Ms. Passek has been engaged in that capacity, on and off, ever since. She testified during the first week of the trial about her experiences as a supervisor in this case to date. Ms. Passek seemed quite objective in her evidence. She testified about what she perceived as excessive email and text communication to arrange visits. I took from her evidence that there were more communications from Ms. N than from Mr. R, but she ascribed no blame to either party. She described some difficulties with getting paid by Ms. N, and said that at times Ms. N attributed comments to her that she did not make. She said both Ms. N and Mr. R wanted to get their way, and described what was occurring between them as a power struggle.
- [102] Ms. Passek gave considerable evidence about the visits themselves, most of which was helpful to Ms. N's case. She said both girls obviously had strong emotional bonds with their mother, and she witnessed nothing inappropriate in Ms. N's behaviour toward the girls during the visits. The only issues she described related to Ms. N bringing third parties to the visits, and one occasion when Ms. N took the girls to see a doctor, which Ms. Passek

perceived to be offside. She advised Mr. R, who attended the doctor's office, and put an end to the visit.

- [103] Ms. N was extremely critical of Ms. Passek concerning that incident, believing that she had a right to do what she wished during her parenting time, including taking the girls for a medical examination. However, even apart from that incident, Ms. N appeared to have a great deal of animus toward Ms. Passek, the source of which remains unclear to me. Throughout these proceedings, Ms. N has repeatedly criticized Ms. Passek, and complained that she should not be a Court approved supervisor in this case. I discerned nothing in Ms. Passek's behaviour or testimony that caused me to share that view, and hence have included her in the approved supervisors throughout these proceedings.

Section 211 Reports

- [104] The first s. 211 report was made pursuant to an order of a Master and was completed June 27, 2018, the week prior to trial. It is comprehensive and helpful. In the concluding section of the report, Dr. Elterman noted his impression that Ms. N seemed to be throwing out allegations against Mr. R in the hope that one of them would stick. He also expressed concern about Ms. N's inability to place her daughters' needs ahead of her own. Dr. Elterman's opinion was that Ms. N viewed the custody dispute as a "zero sum game where one wins and the other completely loses." He then noted that Ms. N's attitude "seems to be that she needs to outwit and eliminate the other parent in order to 'win' custody."
- [105] I note that Ms. N's allegations of wrongdoing against Mr. R were amplified and expanded considerably at trial from those she revealed to Dr. Elterman. Similarly, her view of the Court proceedings as a conflict in which one parent would win and the other would lose persisted. On the final day of trial, during closing submissions, her position on child support, which she has never paid, was that she should not be made to do so until Mr. R was punished by the Court. She refused to acknowledge that part of her obligations as a parent was to provide financially for her daughters.
- [106] Dr. Elterman, in spite of the aforementioned concerns, noted that Ms. N had the potential to be an effective and loving parent, and recommended that Ms. N should have the opportunity to show an ability to put her daughters' needs ahead of her own. He recommended that once Ms. N was able to do so, there should be a plan to move toward equal parenting time. The report concludes as follows:

My recommendation in this case is for the parents to share guardianship but that the day to day parenting responsibility be with [Mr. R]. I am also going to recommend that he have the primary residence of the children but that there be a path for [Ms. N] to work towards an equal responsibility and an equal residential arrangement through cooperation. As I have stated before, I think that [Ms. N] could be an effective parent who makes an important contribution to her children. I do not think that supervision is a permanent solution and would recommend that she is given an opportunity to demonstrate that she is able to focus on the children's needs for

both of them over a sustained period of time.

For this reason I would recommend the appointment of a parenting coordinator (PC) and that [Ms. N] start seeing the children on a weekly basis for 4 hours (12 noon to 4pm alternating between Saturday and Sunday but that the transfer be done by a third party. This should be someone who can be a witness to what was and was not said during the parenting time. The PC would select this individual for their neutrality. At the same time and as a way of closely monitoring the children, I would recommend that [Mr. R] retain an experienced child counsellor who can see each of the children and speak to them on an occasional basis on the Monday following the parenting time with [Ms. N]. The focus of this counsellor would be to ensure that the children are not being told negative things about their father and that they are being able to sustain a positive relationship with both parents without negative influence.

If there are no significant problems then the 4 hours should be expended to 6 hours (10am to 4pm). If the counsellor becomes aware that negative things are being said by anyone about the other parent then this counsellor must immediately inform the PC who would write to the court and the parenting time would be suspended. I see this as proceeding for about 6 months where parenting time is on a weekly basis and that if there is no problem after 6 months, then I would recommend that in an update report to Court that [Ms. N's] parenting time to be considered to expand to include overnights with the same counsellor continuing to monitor the children's relationship with the two parents. This I see as the avenue to [Ms. N] being able to work towards an equal time arrangement if other time she is able to focus on the children's needs rather than "winning".

I hope that this report will assist the parents in reaching an agreement as to how to proceed forward.

[107] Unfortunately, the incremental steps envisaged by that report have not materialized. When the trial did not complete as scheduled in July 2018, I made interim orders which attempted to move toward unsupervised parenting time for Ms. N. Those orders included the appointment of a PC, who would have a great deal of flexibility concerning amount of parenting time and selecting supervisors.

[108] A senior family law lawyer was in place as PC for approximately three months, from early December 2018 to the end of February 2019. Ms. N was in considerable conflict with the PC throughout most of that time. He temporarily withdrew from the role in early February, because Ms. N was in arrears with payments of his accounts. He then declined to resume the role on February 26, 2019, in part because of an indication from Ms. N that she intended to report him to either the Law Society or the B.C. Parenting Coordinators Roster Society. When Ms. N was cross-examined at trial about some of the underlying correspondence from the PC, she said that he seemed to be influenced by Mr. R, and that many other people, including Ms. Balaj, had concerns about the PC.

- [109] The PC had approved, at the suggestion of Ms. N, Ms. Balaj as a professional supervisor. Ms. Balaj is a self-styled child advocate, who purports to have expertise in various family law subjects, in particular child psychology.
- [110] Ms. N was not interested in demonstrating to the Court, the PC, or anybody else, that she was capable of focussing on anyone other than herself. She co-opted Ms. Balaj into her attempt to demonstrate that Mr. R was physically abusive toward IS. Those efforts are summarized in the ruling I made at the conclusion of submissions on July 17, 2020.
- [111] With respect to Dr. Elterman's recommendation that the girls see an experienced child counsellor, that too has been a contentious issue. Mr. R arranged for IS and IN to see Kuldip Gill, a registered clinical counsellor, with a master's degree in clinical counselling. Ms. N has consistently taken the position that Ms. Gill is unsuited to the role, because she is not a specialist in children's counselling. Moreover, Ms. N says that Mr. Gill is biased toward both Mr. R and Mr. R's counsel, with whom she had a prior affiliation.
- [112] Ms. Gill authored several brief reports for this matter and testified on two separate occasions, both of which involved cross-examination by Ms. N. I disagree with Ms. N's assertions that Ms. Gill is biased. I also reject the proposition that she lacks the necessary qualifications to serve as the counsellor for IS and IN. Ms. Gill impressed me as an objective and professional witness, and one who puts the interests of IN and IS to the fore. Clearly, both girls have developed a trusting relationship with Ms. Gill.
- [113] When Ms. Gill was questioned about the recommendations at the penultimate page of the June 2018 s. 211 report, she said that she agreed with them, and was willing to continue to work with the girls, if the parties agreed or the Court so ordered. By then, Ms. Gill had seen IS and IN on several occasions, and had also seen both Mr. R and Ms. N, individually and in sessions with both girls present. Ms. Gill opined that Ms. N seemed preoccupied with "winning" a custody dispute, but that Mr. R did not see things in those terms.
- [114] Ms. Gill stressed that what all the parties needed to work toward was a solution that kept IS and IN "safe." I questioned her about the meaning of "safe" in this context. She said that she was referring to the emotional safety or well being of the girls. From her perspective, the risk being created by the current conflict was the bond of trust between child and parent being broken, in particular if IS and IN felt that they were being forced to choose between their parents.
- [115] From that answer, in addition to the rest of her evidence, I am satisfied that Ms. Gill is an appropriate person to perform the counsellor role recommended in the s. 211 report. I see no reason to direct that she be replaced with a different counsellor, and decline to do so.

[116] Dr. Elterman prepared a supplemental s. 211 report during a break in the trial, after Ms. Balaj gave some disturbing evidence about a conversation she overheard between Ms. N and IS on the Skytrain during a supervised visit in January 2019. That report was to address the issue of potential violence directed at IS or IN by either parent, and whether or not there were signs of attempts by either parent to alienate the girls from the other parent.

[117] The most salient portion of that report, under the heading "Opinion", is set out below:

Opinion

As noted in the introduction, it is unfortunate that the level of animosity and irrational competition has continued unabated . Unfortunately my comments made in the opinion section of the first report are as true today as they were then. While I understand that [Ms. N] has experienced a severe emotional loss it is unfortunate that she continue to perceive that the way forward is to out-manuever and "win" the children. This presents as hyper-vigilant, suspicious and combative. For his part, [Mr. R] continues to present as passive, but I also see that he has concluded that he also needs to "play the same game" and he may, perhaps unintentionally, promote a negative view of [Ms. N].

I have no doubt that both parents love the children and I also have no doubt that [Ms. N] misses them profoundly and that her greatest wish is to have them living with her. The concern in the first report was that she sees this as a zero-sum game where one wins and the other loses rather than sharing as the best option. At the time I don't think that the children would be satisfied with seeing their mother for only a few hours a week. While they may have grown accustomed to this, I think that it is neither desirable nor in their best interest to not have a meaningful relationship with her. I believe that both girls are now caught in a bind and that they say one thing to one parent and something different to the other and in so doing, they are demonstrating a desire to be able to maintain a relationship with both parents. Unfortunately by doing this, it leads to false information being passed to each parent and then to the authorities. It also leads the children into more investigations and makes the relationship between the parents even worse This is also why the different professionals have such a diametrically opposite (and confusing) take on what is going on for the children. I think that the children might say things in the presence of the other parent but this is intended more to prove loyalty than to carry out the instruction of one parent.

On the issue of risk of family violence, I do not believe that either child is at risk from either parent. I don't believe that there has been a history of domestic violence directed at the children and neither child says that physical punishment has been part of the repertoire of either their mother or father. The children talk about being pinched by [Ms. N] but I have found it difficult to discern what incidents actually happened from what the children have come to perceive what needs to be said.

On the issue of parent alienation, I believe that some of the examples provided by [Ms. N], such as questions like "who is my guardian" and "who took me to dance class" would seem to be things that the children are following up based on other conversations. It is entirely possible that even

though [Mr. R] may not have instructed or coached the children, that the children have been hearing conversations between himself and other members of the family or between other family members that relates to [Ms. N]. The dispute between these parents has been going on for at least 4 years and it is unlikely that the children would not have overheard the adults speaking about what has been a long and highly adversarial conflict.

I do think [Ms. N] has made statements intended to influence. The statements where the children quote her disparaging their father, aunt and counsellor are consistent with her own statement and both children described the context where this was made. In general I think that if one looks at parent alienation as a phenomenon which the parent-child communication, I think that in this case it more likely the children feeding information to each of the parents rather than it is one of the parents who are on a campaign to negatively influence the children against each other.

At the very root of things, parents in this situation are motivated out of fear of loss. I think that the appeal by a parent "not to lie" comes from fear that the other parent will prevail by deception. It is only when they come to understand that the children need both parents and therefore a shared arrangement is best, that matters such as these create an equilibrium where the children can go happily between the two parents. Whatever the solution for these children is I don't believe that they should lose one of their parents as the cost. The children are now struck in the middle and they need some relief from this.

[118] That report gave me comfort that IS and IN were not at risk of physical harm while in the care of Mr. R. Even without the report, I would come to that conclusion, based on the reliable evidence. I do not consider the testimony of Ms. Balaj to be reliable.

Credibility of Rodica Balaj

[119] I do not believe the evidence of Ms. Balaj. I set out the basis for that conclusion, as it relates to the SkyTrain trip, in the July 17, 2020 ruling. I am appending those Reasons to this judgment, for ease of reference.

[120] In addition to the issues noted in those Reasons, I have other concerns with the evidence of Ms. Balaj.

[121] Ms. Balaj fundamentally misunderstood her role in this case. She claims to have a master's degree in counselling psychology, and says she has specialized expertise in attachment disorder. She wished to testify as an expert in this case, and refused to accept the Court's direction that she was not testifying in that capacity.

[122] Moreover, she was the antithesis of an objective expert, attempting to assist the Court. She was clearly an advocate for Ms. N, and appears to have been so from the beginning of her involvement in this case. She took on the role of professional supervisor, yet failed completely to perform that role. Rather, she sought to assess and criticize the behaviour and parenting of Mr. R, and to help Ms. N build a case against him for use at trial.

- [123] Ms. Balaj expected to be remunerated for her testimony, and apparently had prepared an expert report for use in this case. She sought the Court's assistance in obtaining payment from Ms. N.
- [124] Ms. Balaj also participated in Ms. N's trial by ambush tactics. She did not prepare the required reports for the supervised visits, and only produced the unedited versions at the commencement of her testimony. As noted, Ms. Balaj did not even provide the unedited reports to the PC. Moreover, she assumed the role of advocate for Ms. N with the PC, which led to conflict between her and the PC. In her testimony, Ms. Balaj affirmed Ms. N's view that the PC was biased toward Mr. R, and against Ms. N. There is no objective evidence to support that assertion.
- [125] Ultimately, Ms. Balaj reported the PC to the roster of parenting coordinators and made a report to the MCFD about her stated concerns with Mr. R and IS. That report was at least five or six weeks after the SkyTrain incident.
- [126] Ms. Balaj said she tried to address her concerns with the PC, but he "turned against" her, so she complained about him to his governing body, and then reported to the MCFD. I took from her evidence that she did not disclose fear of ongoing physical abuse to the MCFD, but rather a general concern about Mr. R's parenting. She also did not advise the MCFD that the matter was before the Court, in the middle of a trial.
- [127] Ms. Balaj was not a credible witness. Nor did she perform her role as a professional supervisor in a competent manner. If I thought it necessary, I would specifically exclude her from any further professional supervision in this matter. She has at all material times demonstrated a fundamental misunderstanding of her role, both as a supervisor and as a witness. Most troubling, apart from what must be false testimony concerning the SkyTrain incident, is Ms. Balaj's apparent failure to recognize how inappropriate it is for her, whether as a paid supervisor or as a paid expert, to act as an advocate for one party. From her first involvement in this matter, she has assumed that role on behalf of Ms. N. Her efforts in that regard served to elongate this trial and obfuscate the issues. Her evidence was of no assistance to the Court in ascertaining the truth, nor in assessing the best interests of IS and IN.

Credibility of Ms. N

- [128] As noted, I do not believe the testimony of Ms. N. I have outlined some of the reasons for that conclusion both in these reasons and in my earlier ruling. I will expand on the basis for my negative credibility assessment.
- [129] As a general observation, I note that Ms. N was at all times obstructionist, combative and argumentative. She did not think that any rules of procedure or evidence should apply to her presentation of her case. Ms. N purported to believe that multiple conspiracies were afoot to keep her daughters from her. She included both Dr. Elterman and the PC in those conspiracy theories, although on the objective evidence, neither has been shown to be in

any way biased against Ms. N. With each of those individuals, in the course of criticizing them, Ms. N expressed the view that her concerns or views were shared by others, seemingly giving her opinions greater weight.

- [130] Ms. N made certain rather remarkable discrete allegations in aid of her view that people were jointly attempting to deny her what she referred to as her "rights" as a parent or mother. For example, Ms. N repeatedly claimed that the PC was being inappropriately influenced by either Mr. R, his counsel, or both. At one point in cross-examination, Ms. N refused to acknowledge the authenticity of a letter sent to both Ms. N and Mr. R, signed by the PC, claiming that counsel for Mr. R must have somehow altered the document.
- [131] Ms. N made various efforts to disavow the content of Dr. Chaudhary's records, and in particular the potentially damning comments attributed to her. At first, Ms. N refused to acknowledge that those were her medical records. She ultimately agreed that they were. She claimed that, prior to her first seeing a psychiatrist, Mr. R counselled her what to say, including telling her to blame her own parents and to not mention him. Ms. N repeatedly questioned the accuracy of Dr. Chaudhary's notes, claiming that she did not say those things to the doctor, and that counsel should ask the doctor why she made the notes. At one point, Ms. N suggested that a different doctor should interpret and assess Dr. Chaudhary's notes. Ms. N also suggested that Mr. R played a direct role in the creation of some of the notes, seemingly suggesting that he told Dr. Chaudhary what to write in the chart. Much of Ms. N's evidence on this score was fanciful and incapable of belief.
- [132] Even with witnesses who Ms. N herself called, issues arose. For instance, Ms. N called a teacher of IN, Lee-Ann Hollander, who gave evidence that was for the most part supportive of Ms. N and helpful to her case. However, Ms. N testified in chief that Ms. Hollander told her that she believed IN was being "coached" by Mr. R. Ms. Hollander denied saying that to Ms. N. Ms. N's evidence had been stood down to accommodate Ms. Hollander. When Ms. N was cross-examined about Ms. Hollander's denial regarding "coaching", Ms. N reiterated that Ms. Hollander had said that to her, but must have been nervous on the witness stand, and thus failed to recount the statement.
- [133] Remarkably, Ms. N then used that exchange as the launching pad for a speech about the fact that the girls were clearly being coached on what to say by Mr. R. That speech included her assertions that Dr. Elterman did not understand attachment theory, but Ms. Balaj did; and that two experienced professionals, Ms. Balaj and Ms. Hollander had reached the conclusion, contrary to Dr. Elterman's report, that both girls were being coached. The speech concluded with Ms. N's assessment of the unreliability of Ms. Hollander's evidence denying the "coaching" comment.

- [134] The internal inconsistencies within Ms. N's evidence were too numerous to recount. It truly seemed as if Ms. N drew upon a store of purported memories about Mr. R's misconduct and put them forward as and when it suited her testimonial purposes. I say "purported" because I do not believe they were true or accurate memories. They were either wholly fabricated or greatly embellished.
- [135] Much of Ms. N's evidence was argument, putting forward her factual and legal position. Within a five-minute span of examination in chief (while being questioned by counsel), Mr. N advanced two diametrically opposed positions concerning Mr. R's role in the family, without seeming to grasp the contradiction. At first, Ms. N claimed that Mr. R was extremely controlling as a husband and father, and had to "know everything." To that end, he would accompany Mr. N to all medical appointments and insist on being kept apprised of all her medical matters. Mr. R's controlling behaviour extended to him needing to be in full control of everything in which IS and IN were involved. A short time later, Ms. N claimed that Mr. R "didn't care to know" anything about his daughters' medical issues or well being.
- [136] One of the cornerstones of Ms. N's position that Mr. R is an abusive father is the photograph of IS, said to document a bruise that IS showed Ms. N in late December, 2015. According to Ms. N, IS told her that Mr. R had struck IS, and Ms. N took the photograph to document the resulting injury. A laser copy of the photograph is Ex. 8 at trial. It is not at all clear if the photograph depicts injury to the face of IS. It is possible that there is a bruise under her right eye, but it could be simply dark lines caused naturally and amplified by the lighting conditions. The other discolourations to the right side of her face clearly appear to be related to lighting conditions.
- [137] However, Ms. N is adamant that she witnessed, and the photograph depicts, a bruise to the centre of IS's right cheek.
- [138] Ms. N said she took IS and IN to the police on December 30, 2015 and showed them the bruise, still visible on IS's face, and also the photograph. In addition, Ms. N said she showed the photograph to a woman named Sheila Mistry at the MCFD. According to Ms. N, Ms. Mistry yelled at her, and refused to take possession of the photograph. That allegation has been the centrepiece of Ms. N's allegations that the MCFD has negligently and inappropriately handled this matter and her concerns from the outset.
- [139] I paid extremely careful attention to the spot on IS's cheek pointed to by Ms. N as the bruise. It is almost dead centre of the cheek. Ms. Madinikia, the next person to whom Ms. N showed the photograph, pointed to a totally different part of the face. She said the bruising was beneath IS's right eye. Ms. N's cousin, Mr. Prasad, also testified in relation to the photograph. Ms. N took the girls with her on December 30, 2015, when she went to consult Mr. Prasad, who advised her to go to police. After some prodding in examination in chief, Mr. Prasad said that he recalled seeing a bruise on the right cheek of IS that day. He was then shown Ex. 8 and pointed to a third location as showing the bruise. He pointed to an

area on the lower cheek, near the mouth and chin. In cross-examination, he verbally described it as "discolouration" to the lower cheek, near the chin. I also note that Mr. Prasad said IS would not talk about the bruise or its cause.

[140] I cannot say if there was a bruise to the face of IS on December 30, 2015, and if there was, what caused it. I certainly cannot conclude that Ex. 8 is any evidence of physical abuse of IS by Mr. R. I am troubled by the seeming fixation of Ms. N on this piece of evidence, and her continued effort to use it in support of her many allegations against Mr. R.

[141] Even more troubling is the video evidence presented by Ms. N very late in her testimony. My findings about that evidence are set out in my July 17, 2020 ruling. Those findings alone warrant wholesale rejection of Ms. N's evidence concerning abuse by Mr. R of both her and their daughters.

Credibility of Mr. R

[142] For the most part, Mr. R was a credible witness. His evidence in chief was comparatively straightforward and to the point. I have already commented on my view that he likely exaggerated somewhat the physical abuse to which Ms. N subjected him during the marriage. He also likely downplayed his state of intoxication at the time he suffered his dog bite injuries. When cross-examined about that incident by Ms. N, he said he was not drunk. Other evidence, the blood test results presented by Dr. Lloyd-Jones, seems to indicate a blood alcohol content consistent with some degree of intoxication.

[143] Despite these testimonial shortcomings, I tend to believe the core assertions of Mr. R's evidence, in particular his assertions that he has never physically harmed his daughters. I also accept that during the marriage he was the victim, not the perpetrator, of spousal violence. There is some support for that finding in the contemporaneous notes made by Dr. Chaudhary of the things Ms. N disclosed to her.

[144] I am very cognizant of the limitations of demeanour as a measure of credibility. However, I was struck during the cross-examination of Mr. R by Ms. N (then self-represented) by the body language of each. Mr. R seemed cowed by both the tone of Ms. N's questioning, and her physical proximity to him in the witness stand. I do not believe Mr. R was feigning that reaction in an attempt to portray himself as a victim. It appeared genuine to me.

Other Credibility Issues

[145] Although it is probably not necessary for me to make express credibility findings concerning many of the other witnesses called at trial, I will comment on some of those witnesses.

Jennifer Elkabbany

- [146] Jennifer Elkabbany supervised Ms. N's parenting time on three occasions, prior to July 2018. She testified at trial on July 12, 2018. I then declined to include her in supervisors who were suitable for this case. In my view, Ms. Elkabbany fundamentally misunderstood her role as a supervisor and failed in her duties to the parties and the Court. She was an advocate for Ms. N, not an objective third party.
- [147] Ms. N proposed Ms. Elkabbany as a potential supervisor, but Mr. R wished to be present at the first such visit, in order to determine if she was suitable. In hindsight, that should not have occurred. It led to needless acrimony and some confusion on the part of Ms. Elkabbany, who thought Mr. R was intruding on Ms. N's parenting time. Mr. R spoke with Ms. Elkabbany prior to the visit, and according to her, made the situation seem worse than it was, regarding the need for supervision. However, I note that Ms. Elkabbany was labouring under a misapprehension concerning the supervision order. She seemed to think that because the order was not made by the MCFD, but rather by the Provincial Court, it was not particularly important.
- [148] The way in which Ms. Elkabbany failed the parties was her refusal to prepare a report after her supervised visits. She said she did not do so because neither party was prepared to pay her.
- [149] Her failure in her duty to the Court was her testimony about an unfortunate incident that occurred during the visit at which both Mr. R and Ms. N were present. It seems clear that during a somewhat acrimonious exchange between the two, Ms. N either softly muttered or silently mouthed a well-known expletive at Mr. R. Ms. Elkabbany witnessed the exchange, but took the position that because she did not overhear exactly what Ms. N said, nothing happened. When counsel for Mr. R, in an email inquiry, mischaracterized what occurred by stating that Ms. N had "yelled" the expletive at Mr. R, Ms. Elkabbany's position became further entrenched. She has consistently denied that such a thing occurred, including in interview with Dr. Elterman for the s. 211 report, and during testimony at trial. Only after careful questioning by the Court did she reveal the truth about what she actually witnessed. Clearly, Ms. Elkabbany had lost sight of her duties as a supervisor and as a witness. For those reasons, I would not approve of her as a supervisor in the future.

Sarah Tambosso-McMillan

- [150] Sarah Tambosso-McMillan testified at trial on Friday, July 13, 2018. She had no relevant evidence to give. She had not met Ms. N prior to that day, but had communicated with her via telephone and other electronic means. Ms. Tambosso-McMillan is part of a women's group that supports mothers who have suffered multiple forms of abuse, including physical, emotional, psychological, and litigation abuse. Through that group, she became acquainted with Ms. N online.

- [151] Ms. Tambosso-McMillan expressed her view that Ms. N was a great mother, who had been alienated from her children.
- [152] Ms. Tambosso-McMillan said that no parents should be supervised, except perhaps if there was a major substance abuse issue.
- [153] Although Ms. Tambosso-McMillan offered her non-expert opinions on family law matters, she did not wish to be cross-examined about those opinions. She refused to look at the s. 211 report, and only did so after being cautioned by the Court about potential contempt.
- [154] At one point in her testimony, Ms. Tambosso-McMillan said she was being subjected to litigation abuse during cross-examination. She had travelled from Squamish to testify, at the request of Ms. N, and the Court sat late in an attempt to avoid having her return at a later date to complete her testimony. Ms. Tambosso-McMillan interpreted that as a form of litigation abuse.
- [155] Ms. Tambosso-McMillan exhibited disregard for the Court and Court process. She is not a witness that I would permit to testify in proceedings of this nature in the future. That assessment is based solely on her performance as a witness on July 13, 2018. Unfortunately, Ms. Tambosso-McMillan's involvement in this trial continued beyond that date.
- [156] Ms. Tambosso-McMillan accompanied Ms. N to a visit with Dr. Elterman at the time he was preparing the second s. 211 report. Dr. Elterman terminated that interview because Ms. Tambosso-McMillan insisted on remaining and acting as an advocate for Ms. N. Ultimately, Dr. Elterman was able to complete the interview with Ms. N at a later date.
- [157] Finally, for reasons that are entirely unclear to me, Ms. Tambosso-McMillan was involved in witness preparation at the last stages of the trial, when Ms. N was represented by counsel.

Kevin Prasad

- [158] The final witness called by Ms. N was her cousin, Kevin Prasad. Mr. Prasad testified on March 13, 2020, day 32 of trial. That day was reserved for final submissions, but when Mr. Prasad became available to testify, I permitted Ms. N to re-open her case and call him as her last witness. Mr. Prasad was at that time a justice of the peace, working in the Lower Mainland. In December 2015, he was working as a court clerk in New Westminster. Ms. N took IS and IN to see him on December 30, 2015, prior to going to the police.
- [159] Mr. Prasad testified about that event. He also gave some evidence about his observations of the family prior to separation, and expressed his views about Ms. N's parenting skills.
- [160] Mr. Prasad testified about various matters related to Mr. R's conduct, which might be characterized as misconduct. However, most of that was based solely on things which Ms. N had told him, not things he had personally observed.

- [161] He testified to seeing Mr. R become angry with the girls, to the point of causing IS to almost cry. He said IN was "too young" to be affected by Mr. R's anger. He said at times both girls were afraid of their father.
- [162] He testified about an occasion on which he saw bruises on IS's neck and back area. He gave confusing evidence about what IS said to him on that occasion. She may have said that she was hit and that her father was angry with her. His recollection was very vague and imprecise. It seemed that he was describing the time in December 2015 when Ms. N brought the girls to see him prior to going to police. He believed it was in January of 2014 or 2015. He said later that same day, he saw Mr. R and his counsel outside the court building. Clearly, that was a different occasion, the following year, when Mr. R attended at Court after the Walmart exchange incident.
- [163] Mr. Prasad said that was the only time he directly witnessed anything, which I took to mean any bruising.
- [164] He was then asked a leading question about seeing a bruise to IS's right cheek, and he answered, "yes, now that you've brought it back to my attention, yes I did." He agreed that was the occasion of the attendance at the police station. He then gave evidence about the photograph, Ex. 8, previously described in these Reasons.
- [165] I note that this evidence cannot comfortably co-exist with his earlier evidence with respect to location of bruising and what, if anything, IS said about its cause.
- [166] Mr. Prasad appeared extremely discomfited during his testimony. One of the reasons for that may have been the behaviour of Ms. Tambosso-McMillan, who was present in the public gallery. Ms. Tambosso-McMillan was holding up signs, rudimentary cue cards, to assist Mr. Prasad with his testimony. Mr. Prasad was stood down while that issue was resolved. Three of those signs, with extremely large printing, became exhibits for identification. The words were clearly legible to me from the bench as Ms. Tambosso-McMillan held the signs aloft.
- [167] When Mr. Prasad was recalled, he was asked about the signs, and said he did not know what they were about, and that he did not know Ms. Tambosso-McMillan. He thought she had telephoned him prior to court to go over his proposed testimony with him.
- [168] Mr. Prasad said he could not read what was written on the signs. When asked in cross examination why he did not alert the Court to the fact that somebody was attempting to influence his testimony, he said he saw something, but was not really paying attention.
- [169] I do not believe those assertions. Mr. Prasad must have been able to read the signs. Moreover, as a judicial officer, he would understand the importance of advising the Court of the behaviour being exhibited by a stranger in the gallery. He must have been paying attention, and should have notified the Court.

[170] His failure to do so causes me to question the overall reliability of his testimony. I am also hesitant to give much weight to his assertions of seeing bruising on IS's neck and back area, and what she might have said about that. He seemed extremely uncertain of those recollections, and they contradicted his later evidence about that occasion. Mr. Prasad was the only witness apart from Ms. N to describe Mr. R behaving in an angry manner toward IS and IN, and the girls being frightened by their father. Because of the other testimonial difficulties, I cannot give that evidence any weight.

Issues

[171] The issues, broadly speaking, that are before me are these:

- 1) Divorce;
- 2) All issues related to parenting and guardianship;
- 3) Child support;
- 4) Allocation of debt; and
- 5) Costs.

[172] I frame the fourth issue in that manner, since I heard no evidence about any assets jointly owned by the parties during the marriage. I am not in a position to make any order in relation to property division.

[173] Mr. R makes no claim for spousal support. Ms. N led no evidence related to spousal support, but applied to file a counterclaim seeking spousal support after the trial had concluded. I dismissed that application. On the evidence before me, there would be no basis to order either of the parties to pay spousal support to the other.

Analysis

Divorce

[174] The parties agree that there should be an order for divorce, and there is sufficient evidence before me to make the necessary findings pursuant to ss. 8, 10 and 11 of the Divorce Act, R.S.C. 1985 (2nd Supp.), c. 3 [Divorce Act]. I make that order. Mr. R and Ms. N are divorced from one another, the divorce to take effect 31 days from the date of this judgment.

Guardianship/Parenting Orders

[175] Obviously, these issues are at the heart of this litigation. Each of the parties seeks to have primary care of IS and IN.

- [176] Mr. R seeks to essentially maintain the status quo, with both parents remaining guardians, but primary residence and decision making being with him, and Ms. N's parenting time being supervised. He asks the Court to appoint a PC to assist in facilitating that supervision and to provide a mechanism for dispute resolution outside of the courts.
- [177] Ms. N seeks to effectively reverse the present situation. She wishes to have primary care of IS and IN, with an extended period of reunification aimed at rebuilding her parental bonds with her daughters. She seeks to have a psychologist other than Ms. Gill see IS and IN in the future. I am unclear on her position on appointment of a PC.
- [178] Both parties agree that the only consideration is the best interests of IS and IN, but they disagree entirely on how those interests are best served.
- [179] Section 37 of the Family Law Act, S.B.C 2011, c. 25 [FLA] reads:

Best interests of child

37 (1) In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only.

- (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
- (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;
 - (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - (d) the history of the child's care;
 - (e) the child's need for stability, given the child's age and stage of development;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
 - (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
 - (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;

- (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.
- (3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.
- (4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.

[180] I must also consider and apply s. 38 through s. 43 of the FLA.

[181] In addition, although I intend to make orders pursuant to the FLA, I must consider the maximum contact principle codified in s. 16(10) of the Divorce Act.

[182] I begin with a statement of the obvious, namely that it is clearly in the best interests of IS and IN that they have a loving and nurturing relationship with both parents. That relationship should be one in which both girls feel safe and protected at all times, and one where their emotional and psychological well being is of primary concern to their caregivers.

[183] Unfortunately, I have seen no evidence that Ms. N is willing to respect the need of her daughters for such a relationship with both parents. Ms. N persists in conduct which undermines her daughters' relationship with their father, and poses a substantial risk to the emotional safety of the girls.

[184] Ms. N seems incapable of understanding that this trial has always been focused on the needs of IS and IN. Instead, her primary, perhaps sole, focus has been on herself, her rights as a mother, and the many and varied ways in which first Mr. R, and then others, including the court system, have victimized her.

[185] The first s. 211 report opined that Ms. N should be given an opportunity to demonstrate that she was capable of focussing on her children's needs for a sustained period of time. Ms. N was given that opportunity, but did not avail herself of it. Rather, she put her own needs first, and took active steps to poison the girls' relationship with Mr. R. The events of January 27, 2019 are the most blatant example of this behaviour, but there have been others. I am told by counsel for Mr. R that there have been multiple police attendances at Mr. R's home, ostensibly "wellness checks" for IS and IN. Some of those are also noted in Ms. Gill's reports. IS and IN have spoken of police attendance at the home, on at least one occasion in the middle of the night.

- [186] The second s. 211 report notes some comments made by Ms. N to her daughters which can only be viewed as disparaging of Mr. R. Also noted by IS and IN in reports to Ms. Gill is their discomfort with their mother checking them for bruises and taking them to the doctor for that purpose. The girls have at all times reported to both Ms. Gill and Dr. Elterman that their father is a loving and caring parent, who does not physically discipline or harm them. They are confused by their mother's efforts to uncover evidence to the contrary.
- [187] Ms. N has not used her limited parenting time to assiduously foster her relationship with IS and IN. She has made the very scheduling of that time as complex and difficult as possible, at every turn. Almost all professionals who have been involved with scheduling those visits have noted the excessive amount of communication needed for that purpose, and the constant last minute changes made or demanded by Ms. N.
- [188] Moreover, Ms. N has consistently attempted to have third parties other than approved supervisors present at her parenting time, or to have in place supervisors of her choosing. In many instances, her motive was to attempt to gather evidence against Mr. R for use at trial. That is what occurred, for example, with Simeon Pang. Rather than simply report on Ms. N's conduct during the visits he supervised, Mr. Pang mostly testified about the inappropriate conduct of Mr. R and his counsel.
- [189] Similarly, from her first involvement in the case, Rodica Balaj acted as a vehicle for Ms. N to gather evidence to be used against Mr. R. Quite apart from her involvement in the January 27, 2019 incident, Ms. Balaj devoted much time and energy in her reports to the PC criticizing Mr. R and his parenting skills.
- [190] Nonetheless, I am extremely mindful of the opinions expressed by Dr. Elterman in both s. 211 reports that supervised parenting time is not a permanent or long term solution, and that it is not in the best interests of IS and IN to only see their mother for a few hours each week, and thereby be prevented from developing a meaningful relationship with her.
- [191] In balancing those competing considerations as regards the best interests of IS and IN, on July 17, 2020, I suspended Ms. N's in person parenting time. Since that time, Ms. N has only had video or telephone contact with her daughters. In my view, that drastic step was necessary to safeguard IS and IN from emotional harm that would inevitably be caused by Ms. N's ongoing efforts to persuade them, in particular IS, that they were victims of abuse by Mr. R.
- [192] I recognize that suspension of parenting time is not a viable permanent arrangement, and that I must attempt to craft an order or series of orders that permits Ms. N to rebuild her relationship with her daughters. At present, I cannot conceive of a realistic way to do that. I cannot change Ms. N's behaviour, only she can do that. As noted in my July 17, 2020 ruling, I will need to see some evidence from Ms. N showing a commitment to change and insight into the potential harm being caused to IS and IN by her conduct. I am hopeful in that regard.

- [193] However, hope is no basis for a Court order that directly impacts on the well being of children. Any such order must be predicated on my assessment of the evidence before me. On that evidence, the best interests of IS and IN are best served in the short term by the current order. I do not, at this juncture, vary the order I made on July 17, 2020.
- [194] I am going to order that both Mr. R and Ms. N continue to be guardians of IS and IN pursuant to s. 39 of the FLA.
- [195] Primary residence shall continue to be with Mr. R.
- [196] Mr. R will have the parental responsibilities set out in s. 41 of the FLA.
- [197] Ms. N shall be entitled to receive information about her daughters' education, health, extracurricular activities and religious instruction, and Mr. R shall provide that information to Ms. N upon request.
- [198] In addition, Ms. N shall be entitled, pursuant to s. 41(j) of the FLA, to request and receive directly from third parties information related to the health and education of IS and IN.
- [199] Mr. R shall notify Ms. N of significant decisions he makes regarding IS and IN, including, but not limited to, enrolment in school, attendance at any program of religious studies, any planned travel outside Canada and any medical or dental procedures beyond routine check-ups scheduled for IS or IN. Mr. R shall provide Ms. N with the names of all primary health care providers for IS and IN.
- [200] I am going to seize myself of all applications that pertain to parenting and child support for a period of three years. All such applications should be brought before me. I also wish to schedule periodic reviews related to parenting arrangements. The first such review should occur no later than July 31, 2021 and be scheduled for a half day or two hours.
- [201] Ms. N is permitted, pursuant to my order of July 17, 2020, to bring an application to reinstate her parenting time any time between now and July 31, 2021. Such an application must be supported by some material from a qualified psychologist or psychiatrist and an affidavit from Ms. N.
- [202] Mr. R seeks the appointment of a PC. I decline to make that order at this time. I will consider such an appointment at a scheduled review, on request of either party, and on being advised of details for a plan that would make such an appointment viable. At present, neither party can afford the cost of a parenting coordinator. In addition, Ms. N is unlikely to engage with the minimum required effort to make such an appointment workable. In light of the recently failed attempt to enlist the services of a parenting coordinator, I cannot see how a fresh appointment would have any prospect of meaningfully assisting these parties resolve issues in dispute.

[203] I am going to direct that prior to bringing a court application related to any matter in dispute, save and except for an application by Ms. N to restore in person parenting time, the parties shall attempt to resolve the issue through dispute resolution mechanisms available through the Family Justice Centre. I believe that the Family Justice Centre offers a variety of mediation options free of charge.

Child Support

[204] To date, Ms. N has paid no child support. Mr. R seeks such an order now, which would include retroactive support. Clearly, child support is the right of the child. Ms. N has always been responsible for doing her part in providing for IS and IN financially. I reject out of hand the submission of Ms. N that she is not responsible, or should not be ordered to pay such support until Mr. R is punished by the Court. That is among the most ridiculous of the generally unhelpful submissions made by Ms. N.

[205] There are two overarching difficulties in deciding the question of child support at this time. First, I have extremely limited information on which to base any amounts. Secondly, as mindful as I am of the need to recognize Ms. N's obligation to support her daughters, I cannot lose sight of the fact that, by this judgment, Ms. N will be indebted to Mr. R in a significant amount. If that mountain of debt becomes inordinately steep, Ms. N may never be able to scale it, and the repercussions could adversely impact any possibility of reunification with IS and IN. In short, I view it as a delicate balancing exercise.

[206] Mr. R filed a Form F8 financial statement shortly prior to the commencement of trial. At that time, and when he testified at trial, he was unemployed, but hoping to secure full-time employment in the near future. I believe he has now done so, but there is no evidence before me on that question. I have only income information related to Mr. R for calendar years 2014 through 2017.

[207] With respect to Ms. N, she repeatedly failed to comply with directions that she file a Form F8 financial statement, and only did so in January 2019. The information is incomplete. At trial, Ms. N said she was unemployed, and also that she had lost some employment as a result of this case. I could not make sense of her logic on that score. I do not know what is preventing Ms. N from seeking and maintaining gainful employment. Ms. N claims that her income for 2018 was \$3,000.00.

[208] Mr. R submits that I should impute income to Ms. N of \$24,000.00, which he says is what Ms. N would make if working full-time earning minimum wage. If I were to do so, according to Mr. R, the Federal Child Support Guidelines, SOR/97-175 [Guidelines] would yield the amount of \$375.00 per month payable by Ms. N. Mr. R seeks an order in that amount, retroactive to January 1, 2017.

[209] I agree that Ms. N should have been paying child support from at least February 2017. Since that time, both IS and IN have lived primarily with Mr. R. I also agree that I should impute income to Ms. N for that entire period of time. However, I am not going to make a

retroactive order in the amount suggested by Mr. R. Rather, I find that Ms. N should have been in a position to pay the amount of \$100.00 per child per month. I acknowledge the potential arbitrariness of the figure, but on the evidence and information before me, it is the best I can do. I will order that Ms. N is responsible for child support payments to Mr. R in the amount of \$200.00 per month, retroactive to February 1, 2017. Ms. N's obligation to pay that amount shall continue until the first review of parenting arrangements, at which time it will be adjusted based on evidence then presented.

[210] The parties shall exchange copies of income tax filings and assessments no later than May 31 each year, and child support obligations shall be set based on the incomes of the parties, or any income figure attributed to either party.

[211] Pursuant to s. 7 of the Guidelines, the extraordinary expenses for IS and IN shall be shared equally by Mr. R and Ms. N.

Division of assets/allocation of debt

[212] As noted, there is no evidence before me of any assets which must be divided. Neither party led any such evidence.

[213] I will make some general orders to assist the parties to achieve certainty regarding their financial affairs.

[214] Both Mr. R and Ms. N shall retain all assets registered in their respective names or in their possession, free from any claim by the other party.

[215] Each of Mr. R and Ms. N shall be solely responsible for any and all debts held in their name alone.

[216] The main issue in contention between the parties relates to debts arising from litigation expenses. Mr. R has paid for both s. 211 reports, and seeks indemnification from Ms. N with respect to both. With respect to the first one, prepared prior to trial, Mr. R seeks an order that Ms. N is responsible for 50% of the cost. With respect to the latter, he seeks an order that Ms. N be solely responsible for its cost. That order, Mr. R says is justified because it was only the trial conduct of Ms. N that necessitated its preparation.

[217] I agree with the submissions of Mr. R on this issue. Ms. N should be responsible for payment of half the expenses associated with the June 2018 s. 211 report. I make that order. Ms. N shall reimburse Mr. R in that amount.

[218] I also agree that the second s. 211 report was only made necessary by the circumstances surrounding the evidence of Ms. Balaj. Ms. N should have disclosed a detailed will-say statement for Ms. Balaj well before August 2019. In addition, the unedited supervision reports should have been disclosed prior to that time. I made directions that Ms. N provide witness lists and lists of documents on multiple occasions, which directions Ms. N largely ignored. Pursuant to s. 211(5) of the FLA, Ms. N shall reimburse Mr. R for the entire cost of the s. 211 report of November 19, 2019.

Costs

- [219] Mr. R has requested that I permit further submissions on costs once judgment is rendered. I will accede to that request.
- [220] I have already made two separate awards for costs thrown away in relation to last minute adjournments granted to Ms. N for the continuation of the trial. Those costs awards are reflected in orders I made on November 27, 2018 and March 13, 2019.
- [221] I will consider further submissions on costs. I leave to counsel for Mr. R the arrangements in that regard. If counsel wishes to rely on written submissions, those should not exceed 10 pages, and shall be filed within 30 days of the release of this judgment. Ms. N should then respond, with submissions of no more than 10 pages within 45 days. If counsel wishes to be heard on the question of costs, he should advise the registry in writing within 21 days of this judgment and arrange a date for that purpose.

Conclusion

- [222] To summarize, I make the following orders, all of which, with the exception of the order for divorce, are made pursuant to the FLA:
1. Pursuant to s. 39 of the FLA, both parents are guardians of IS and IN.
 2. The primary residence of IS and IN shall be with Mr. R.
 3. Mr. R shall exercise the parental responsibilities set out in s. 41 of the FLA. Mr. R shall comply with paragraphs 197 and 199 of this judgment, and those terms should be reflected in the final order.
 4. Ms. N shall be entitled, pursuant to s. 41(j) of the FLA, to request and receive directly from third parties information related to the health and education of IS and IN.
 5. Ms. N shall not attend at the school of IS and IN during school hours or within 30 minutes of the commencement or conclusion of the school day.
 6. Ms. N may bring an application to be permitted to exercise parental responsibilities at or after the time that her in person parenting time is reinstated by the Court.
 7. Apart from applications related to Ms. N's parenting time, the parties shall not bring an application in relation to this matter unless they have attempted to resolve the issue through the Family Justice Centre.
 8. Mr. R and Ms. N shall retain all property and assets registered in their respective names or in their possession. Each of them shall be solely responsible for any debts held in their names alone.

9. Pursuant to s. 211(5) of the FLA, the cost of the June 2018 s. 211 report shall be shared equally between the parties. Ms. N shall be responsible for the entire cost of the November 2019 s. 211 report, and shall reimburse Mr. R for that report within 60 days of the date of this judgment.
10. Ms. N shall pay to Mr. R \$200.00 per month for child support, retroactive to February 1, 2017. Child support payments after the date of this judgment shall be made on the first day of each month.
11. S. 7 extraordinary expenses shall be borne equally by the parties.
12. The parties shall exchange income tax filings and notices of assessment no later than May 31 each year.
13. There will be a review of parenting arrangements and child support no later than July 31, 2021.
14. Thereafter there shall be regular reviews, to be scheduled with the Court as agreed by the parties.
15. I am seized of all applications in this matter for three years, including all reviews of parenting arrangements and child support. In the event that an application must be brought on an emergency basis, and I am unavailable, the matter may be set down on the regular chambers list.
16. Pursuant to s. 225 of the FLA, neither party shall speak negatively regarding the other parent in front of or within hearing of IS and IN.
17. Pursuant to s. 225 of the FLA, neither party will permit their family to speak disparagingly about the other party or their family in front of or within hearing of IS and IN.
18. Pursuant to s. 225 of the FLA, all communications between the parties shall be respectful and courteous, and shall be limited to discussions concerning IS and IN.
19. The parties are divorced from one another, the divorce to take effect 31 days from the pronouncement of this order.
20. I will consider further submissions on costs, pursuant to paragraph 221 of this judgment.

"Tammen J."

APPENDIX

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