

CANADA / JUDGMENT

S.T.W. v. L.S.D.

2023 BCSC 1677

COURT

Supreme Court of British Columbia

DECIDED

25 September 2023

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2023 BCSC 1677 S.T.W. v. L.S.D.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.T.W. v. L.S.D.,

2023 BCSC 1677

Date: 20230925

Docket: E181101

Registry: Vancouver

Between:

S.T.W.

Claimant

And

L.S.D.

Respondent

Before: The Honourable Justice B. Smith

Corrected Judgment: The Reasons for Judgment were corrected
at paragraph 16 on October 10, 2023

Corrected Judgment: The Reasons for Judgment were corrected
at paragraphs 196, 197 & 198 on October 12, 2023

Reasons for Judgment

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Place and Date of Trial:

Vancouver, B.C.

July 4-7, 2023

Place and Date of Judgment:

Vancouver, B.C.

September 25, 2023

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- [1] The parties in this family law dispute are the parents of an eight-year-old girl. They seek orders pertaining to guardianship, parenting arrangements, child support and conduct, all pursuant to the provisions of the Family Law Act, S.B.C. 2011, c. 25 [FLA].
- [2] The trial involved three witnesses: the child's biological father (the claimant), the child's biological mother (the respondent) and the child's maternal grandmother.
- [3] I anonymize these reasons in order to protect the child's privacy. I refer to the claimant father as Mr. W., the respondent mother as Ms. D., the child's maternal grandmother as L.D., and the child as P.

II. Credibility and Reliability Findings

- [4] In *Yang v. Duralia*, 2020 BCSC 806 at para. 45, Justice Crabtree provided the following useful summary of the principles governing the assessment of credibility and reliability:
- [45] In summary, the assessment of a witness's credibility and reliability must include a critical assessment of the witness's evidence in the context of the evidence as a whole. This involves an assessment of whether the witness's evidence is at odds with other evidence in the case, and whether the testimony is implausible or improbable, having regard to the surrounding circumstances. The real test of the truth of the story of a witness must be its harmony with the preponderance of the probabilities, which a practical and informed person would readily recognize as reasonable in that place and in those conditions. A trier of fact must also bear in mind that an apparently honest, confident or convincing witness may not necessarily be an accurate witness.

A. Credibility

- [5] I find Mr. W. was a generally credible witness. His evidence was mostly internally and externally consistent. Mr. W.'s evidence about P's poor dental condition is undisputed and is corroborated by photograph exhibits and the evidence of Ms. D. He was responsive to questions, although in cross-examination he exhibited some reluctance to accept responsibility for his failure to pay any child support in recent months. Overall, I do not believe Mr. W. attempted to mislead or deceive the Court.
- [6] I find Ms. D. was a generally credible witness. Her evidence was mostly internally and externally consistent. Ms. D.'s evidence about P's behaviour regulation is corroborated by school records and L.D.'s evidence. She was responsive to questions, and exhibited willingness to accept responsibility for her failure to provide Mr. W. with important information concerning P. Ms. D. gave her evidence in a balanced way. For example, she acknowledged that when Mr. W. reduced the amount of his child support payments she accepted this because she knew he was experiencing financial difficulties. She stated several times that she wants Mr. W. to be a large part of P's life. I do not believe Ms. D. attempted to mislead or deceive the Court.
- [7] I was left with the impression that although Mr. W. and Ms. D. differ in their respective positions concerning parenting arrangements, they both genuinely want what is in the best interests of P.
- [8] I find L.D. was a credible witness. Her evidence was internally and externally consistent. L.D.'s evidence about P's issues with behaviour regulation is corroborated by school records and Ms. D.'s evidence. She was responsive to questions and balanced in her answers, without appearing to favour the position of either Mr. W. or Ms. D. I do not believe L.D. attempted to mislead or deceive the Court.
- [9] I was left with the impression that L.D. too wants what is in the best interests of P.

B. Reliability

- [10] I find Mr. W.'s evidence concerning P.'s poor dental condition to be reliable. As noted above, it is corroborated by photograph exhibits and the evidence of Ms. D.
- [11] I question the reliability of Mr. W.'s evidence concerning P.'s issues with behaviour regulation, because it is at odds with the evidence of both Ms. D. and L.D. in this regard, as well as the school records. Ms. D. has spent far more time with P. than Mr. W. has, and is more familiar with P.'s behaviour over time. L.D. continues to see P. regularly. Before retiring, L.D. worked for 25 years with children with special needs. Although Mr. W. maintains he has not observed P. to have issues with behaviour regulation as described by both Ms. D. and L.D., he has not spent as much time as Ms. D. with P., and does not otherwise have experience dealing with children with special needs. He acknowledges having spoken to P. about her behaviour and that P. "just gets angry" and he does not know why. For these reasons, to the extent Mr. W.'s evidence concerning P.'s issues with behaviour regulation is at odds with the evidence of Ms. D. and L.D., I find his evidence is less reliable than theirs.
- [12] I also question the reliability of Mr. W.'s evidence concerning his proposed plan for P.'s schooling, and who would look after her when he cannot, because it is somewhat speculative, somewhat unrealistic, and unsupported by independent evidence.
- [13] I find Ms. D.'s and L.D.'s evidence generally reliable. Much of it is based on personal observation and impression and corroborated by the school records. Ms. D.'s evidence concerning the plan in place for P.'s schooling is reliable, because the plan is already in place and it works.
- [14] None of the witnesses exhibited any difficulties communicating their evidence or any concerning demeanour.

III. Background

- [15] Mr. W. and Ms. D. met in June 2014. They commenced a two-month intimate relationship, during which Ms. D. became pregnant with P. Their relationship ended before P. was born. They never lived together.
- [16] P. was born on [date omitted]. She has lived with Ms. D. since birth. P. has had contact with Mr. W. all her life and regularly spends weekends and other time with him. She started grade 3 in September 2023. Due to P.'s behavioural issues, she has special needs at school. She may be autistic, although this has yet to be determined. P. is Métis.
- [17] Mr. W. and Ms. D. maintain contact but their communications have become toxic, characterized by unpleasant and unhelpful arguments.

- [18] Mr. W. says Ms. D. keeps him in the dark about important matters involving P. Mr. W. questions whether Ms. D. is properly performing her responsibilities as a parent, as evidenced by what he claims are P's poor dental condition and diet. Mr. W. is also concerned about the extent of Ms. D.'s consumption of cannabis, which he believes negatively affects her ability to parent P.
- [19] Ms. D. concedes that in the past she has not told Mr. W. about certain important matters concerning P. She says this is because Mr. W. is rude, demeaning and abusive in his communications with her. Ms. D. says P's dental condition is attributable to reasons other than the way she exercises her parenting responsibilities. She denies P. has a poor diet. Ms. D. acknowledges that she consumes cannabis but denies that doing so negatively affects her ability to parent P.

IV. Orders Sought

- [20] Mr. W. seeks a declaration of guardianship of P., and orders concerning parenting arrangements, notably for primary residence of P. and final authority over decision-making.
- [21] Ms. D. seeks orders for the same parenting arrangements, as well as retroactive and prospective child support, special or extraordinary expenses, and conduct.

V. Legal Framework

- [22] The legal framework for determining the issues in this case is found in the FLA.

A. Best Interests of the Child

- [23] Section 37 of the FLA states:

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.
- [24] The best interests of the child is not merely the paramount consideration, it is the only consideration: *R.A.F. v. T.N.M.*, 2020 BCSC 696 at para. 11.
- [25] While the factors set out in s. 37(2) must be considered separately, the evidence must ultimately be assessed as a whole: *M.W.B. v. A.R.B.*, 2013 BCSC 885 at para. 254.
- [26] Section 37(3) of the FLA states that an 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.
- [27] Finally, s. 37(4) of the FLA states that in making an order pertaining to care of and time with children, a court may consider a person's conduct only if it substantially affects a factor set out in s. 37(2), and only to the extent that it affects that factor.

B. Family Violence

[28] "Family violence" is defined in s. 1 of the FLA to include:

with or without an intent to harm a family member,

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a family member,
- (c) attempts to physically or sexually abuse a family member,
- (d) psychological or emotional abuse of a family member, including
- (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,

(ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,

(iii) stalking or following of the family member, and

(iv) intentional damage to property, and

(e) in the case of a child, direct or indirect exposure to family violence;

[29] In assessing the family violence factors identified in s. 37(2)(g) and (h) of the FLA, s. 38 of the FLA requires me to consider all of the following:

(a) the nature and seriousness of the family violence;

(b) how recently the family violence occurred;

(c) the frequency of the family violence;

(d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;

(e) whether the family violence was directed toward the child;

(f) whether the child was exposed to family violence that was not directed toward the child;

(g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;

(h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;

(i) any other relevant matter.

C. Guardianship

[30] Pursuant to s. 1 of the FLA, guardianship is determined by reference to ss. 39 and 50-57 of the FLA.

[31] Section 39 of the FLA provides, in part:

Parents are generally guardians

39 (1) While a child's parents are living together and after the child's parents separate, each parent of the child is the child's guardian.

(2) Despite subsection (1), an agreement or order made after separation or when the parents are about to separate may provide that a parent is not the child's guardian.

(3) A parent who has never resided with his or her child is not the child's guardian unless one of the following applies:

- (a) section 30 [parentage if other arrangement] applies and the person is a parent under that section;
- (b) the parent and all of the child's guardians make an agreement providing that the parent is also a guardian;
- (c) the parent regularly cares for the child.

[32] Sections 50-57 of the FLA are not applicable in this case.

D. Parenting Arrangements

[33] Parenting arrangements refer to arrangements respecting the allocation of parental responsibilities or parenting time, or both: FLA, s. 1.

[34] Section 40 of the FLA provides a framework for parenting arrangements. As stated in s. 40(4) of the FLA, no particular parenting arrangement is presumed to be in the best interests of the child, including presumptions:

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

[35] Section 41 of the FLA sets out the following parental responsibilities with respect to a child:

- (a) making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child;
- (b) making decisions respecting where the child will reside;
- (c) making decisions respecting with whom the child will live and associate;
- (d) making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location;
- (e) making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an Indigenous child, the child's Indigenous identity;
- (f) subject to section 17 of the Infants Act, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child;
- (g) applying for a passport, licence, permit, benefit, privilege or other thing for the child;
- (h) giving, refusing or withdrawing consent for the child, if consent is required;
- (i) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;

- (j) requesting and receiving from third parties health, education or other information respecting the child;
- (k) subject to any applicable provincial legislation,
- (i) starting, defending, compromising or settling any proceeding relating to the child, and
- (ii) identifying, advancing and protecting the child's legal and financial interests;
- (l) exercising any other responsibilities reasonably necessary to nurture the child's development.

[36] Section 42(1) of the FLA states that parenting time is the time that a child is with a guardian, as allocated under an agreement or order. Section 42(2) states:

- (2) During parenting time, a guardian may exercise, subject to an agreement or order that provides otherwise, the parental responsibility of making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child. Section 43(1) of the FLA affirms that a guardian must exercise parental responsibilities in the best interests of the child.

[37] Finally, s. 45 of the FLA provides:

Orders respecting parenting arrangements

45 (1) On application by a guardian, a court may make an order respecting one or more of the following:

- (a) the allocation of parental responsibilities;
- (b) parenting time;
- (c) the implementation of an order made under this Division;
- (d) the means for resolving disputes respecting an order made under this Division.
- (2) An order under subsection (1) must not be made if the child's guardians are the child's parents and are not separated.
- (3) The court may make an order to require that the transfer of a child from one party to another, or that parenting time with a child, be supervised by another person named in the order if the court is satisfied that supervision is in the best interests of the child.
- (4) Despite subsection (1), a person applying for guardianship may apply, at the same time, for an order under this section.

E. Child Support

- [38] Section 147 of the FLA states that each parent and guardian of a child has a duty to provide child support, subject to exceptions, none of which are applicable in this case. The amount of child support must be determined in accordance with the Federal Child Support Guidelines, SOR/97-175 [Guidelines]: FLA, s. 150, Family Law Act Regulation, B.C. Reg. 347/2012, ss. 7, 8, subject to exceptions, none of which are applicable in this case.
- [39] For the purposes of determining the amount of child support, s. 19(1) of the Guidelines allows the court to impute income to a spouse as it considers appropriate in the circumstances, having regard to various circumstances.
- [40] Section 170(b) of the FLA states that an order for child support may include "any period of time before the date the application for the order is made".
- [41] Section 7 of the Guidelines states that in addition to basic child support, the court has the authority to order additional support amounts to cover "special or extraordinary expenses" as specifically set out in s. 7(d) and 7(f) and defined in s. 7(1.1).

F. Conduct

- [42] Section 222 of the FLA states:

Purposes for which orders respecting conduct may be made

222 At any time during a proceeding or on the making of an order under this Act, the court may make an order under this Division for one or more of the following purposes:

- (a) to facilitate the settlement of a family law dispute or of an issue that may become the subject of a family law dispute;
- (b) to manage behaviours that might frustrate the resolution of a family law dispute by an agreement or order;
- (c) to prevent misuse of the court process;
- (d) to facilitate arrangements pending final determination of a family law dispute.

- [43] Section 225 of the FLA states:

Orders restricting communications

225 Unless it would be more appropriate to make an order under Part 9 [Protection from Family Violence], a court may make an order setting restrictions or conditions respecting communications between parties, including respecting when or how communications may be made.

[44] Section 227(c) of the FLA states that a court may make an order requiring a party to do or not do anything, as the court considers appropriate, in relation to a purpose referred to in s. 222.

[45] The conduct orders provisions of the FLA are guided by the best interests of the child. As noted in *A.B. v. C.D.*, 2020 BCCA 11 at para. 187:

The conduct order provisions, like all provisions in the FLA, are guided by the best interests of the child, including minimizing the impact of conflict on a child. This is explicit in s. 199:

199 (1) A court must ensure that a proceeding under this Act is conducted

- (a) with as little delay and formality as possible, and
- (b) in a manner that strives to
 - (i) minimize conflict between, and if appropriate, promote cooperation by, the parties, and
 - (ii) protect children and parties from family violence.
- (2) If a child may be affected by a proceeding under this Act, a court must
 - (a) consider the impact of the proceeding on the child, and
 - (b) encourage the parties to focus on the best interests of the child, including minimizing the effect on the child of conflict between the parties.

VI. Analysis

A. Guardianship

[46] Section 40 of the FLA states that only a guardian may have parental responsibilities and parenting time with respect to a child. Mr. W. and Ms. D. each seek orders concerning parental responsibilities and parenting time with respect to P. I must therefore first determine whether Mr. W. or Ms. D., or both of them, should be declared guardians of P.

[47] Mr. W. and Ms. D. submit it is in the best interests of P. that they both be declared guardians of P.

[48] In determining guardianship of P. I have considered the best interests of P. only. To determine what is in the best interests of P., I have considered all of P.'s needs and circumstances, including the factors identified in s. 37(2) of the FLA, individually and as a whole.

[49] I have given primary consideration to P.'s physical, emotional and psychological safety, security and well-being. Mr. W. and Ms. D. are P.'s parents. Mr. W. has never resided with P. Ms. D. has resided with P. since P. was born. Mr. W. and Ms. D. love P. They both have regularly cared for P. They both have provided support for P., albeit to different degrees. They both have a stated desire and capability to support P. in future. The support which Mr. W. and Ms. D. have each provided for P. has been, and will continue to be, important to her

physical, emotional and psychological safety, security and well-being.

[50] I find it it is appropriate and desirable that Mr. W. and Ms. D both be guardians of P, because guardianship status will protect and promote meaningful and significant relationships between each of them and P.

1. Mr. W. is P's guardian

[51] Mr. W. is P's guardian., pursuant to s. 39 of the FLA, which I find is in the best interests of P.

2. Ms. D. is P's guardian

[52] Ms. D. is P's guardian, pursuant to s. 39 of the FLA, which I find is in the best interests of P.

[53] I turn now to parenting arrangements, including parental responsibilities and parenting time.

B. Parenting Arrangements

[54] Mr. W. and Ms. D. each seek orders pertaining to parenting arrangements. In determining parenting arrangements, pursuant to s. 37(1) of the FLA, I have considered the best interests of P. only. I have considered all of P's needs and circumstances, including the factors identified in s. 37(2) of the FLA, individually and as a whole.

[55] Mr. W. and Ms. D. want and are able to exercise the type of decision-making referenced in s. 41(a) through (e) of the FLA. They also want and are able to engage in the type of activity contemplated by the factors in s. 41(f) through (l) of the FLA. Neither are subject to any apparent practical limitations that would unduly inhibit them, such as physical or mental disabilities, or financial, geographical or other constraints.

1. Mr. W. and Ms. D. will equally share parenting responsibilities and Ms. D. will have final authority over decision-making

[56] Ms. D. has been P's primary caregiver since birth and more involved than Mr. W. in day-to-day decisions affecting P. Thus far, Mr. W. has been impeded in his ability to share in those decisions because of the communications issues between him and Ms. D.

[57] I find the best interests of P. are served by Mr. W. and Ms. D. equally sharing parenting responsibilities. If they are unable to agree, the best interests of P. are served by giving Ms. D. final authority over decision-making.

2. Ms. D. will have primary residence of P., but Mr. W. will have increased parenting time

[58] P. has lived with Ms. D. since birth. Mr. W. has parenting time with P. on alternating weekends.

- [59] I find the best interests of P. are served by Ms. D. having primary residence of P., with Mr. W. having P. on weekends from Friday at 5:30 p.m. to Sunday at 4:00 p.m., on a repeating schedule that provides three (3) consecutive weekends when P. is with Mr. W. followed by one (1) weekend when P. is with Ms. D.
- [60] In making these determinations concerning parenting arrangements I have given primary consideration to P.'s physical, emotional and psychological safety, security and well-being.
- [61] I will now explain the reasons for my decision, through an assessment of the factors in s. 37(2) of the FLA, mindful that I must consider the whole of the evidence to ensure that my orders are in the best interests of P. only, giving primary consideration to P.'s physical, emotional and psychological safety, security and well-being.
3. The s. 37(2) factors
- a. P.'s health and emotional well-being
- [62] Until recently, P. has suffered from a poor dental condition, and her consumption of food and drink with a high sugar content is of concern to Mr. W. and Ms. D.
- [63] Ms. D. says that since P.'s recent dental treatment she is vigilant to ensure that P. does not consume sugary food and drink, and that when P. does, Ms. D. ensures that P. brushes her teeth immediately afterward. Mr. W. says that the past is the best predictor of the future and he has no confidence in Ms. D.'s will or ability to do what she says she will do.
- [64] P. appears to otherwise be in good general health.
- [65] P. has issues regulating her behaviour.
- [66] P. may be autistic, although this has yet to be determined.
- b. P.'s views
- [67] There is no evidence of P.'s views.
- c. Nature and strength of relationships between P. and significant persons in her life
- [68] Mr. W. and Ms. D. are significant persons in P.'s life. There is no evidence P. is not bonded with either of them. They love P. and P. loves them.
- [69] There are a number of other significant persons in P.'s life. They include P.'s maternal grandparents, whom P. visits with a few times a month, and Ms. D.'s other children, who live with Ms. D. and P. These are family relationships, and P. enjoys a positive relationship with each of these persons. Mr. W.'s parents are deceased. Mr. W. has two older brothers, with whom he enjoys a good relationship and regular contact. The evidence is unclear about whether P. has relationships or regular contact with Mr. W.'s brothers.

- [70] I infer that in Ms. D.'s residence, P. has immediate direct access to support from other family members who live in the household. I infer too that in Mr. W.'s residence P. would not have immediate direct access to such support, as Mr. W. lives alone.
- [71] There is no evidence to show that the relationships between P. and significant persons in her life are likely to either improve or suffer depending on what parenting arrangements are in place.
- d. The history of P.'s care
- [72] Ms. D. has been primarily involved in P.'s care on a day-to-day basis since P.'s birth. Ms. D. has provided P. with a home, fed her, clothed her, arranged for her schooling, and taken her to medical or dental appointments, among other parenting responsibilities.
- [73] Mr. W. has also been involved in P.'s care, but to a lesser extent, because he has not had primary residence of P. and consequently has had less involvement with her on a daily basis.
- [74] The evidence is unclear concerning the extent of Mr. W.'s contact with P. in the time period immediately after P.'s birth. Mr. W. appears to have had regular parenting time with P. on Sunday afternoons since P. was about 18 months old. After some time, Mr. W. began having longer periods of parenting time with P., with P. staying overnight at Mr. W.'s residence on weekends. Mr. W. would typically have P. every second weekend, sometimes every weekend. Mr. W. currently has parenting time with P. on alternating weekends, from 4:30 p.m. on Friday to 4:00 p.m. on Sunday.
- [75] Recognizing that Mr. W. has not been primarily responsible for P.'s care, I find he too has provided her with a home, fed her, and on occasion gone with Ms. D. when she has taken P. to medical or dental appointments, among other parenting responsibilities. Mr. W. also spends quality time with P., such as by taking her swimming and camping.
- [76] These are all necessary and important aspects of P.'s care. There is no evidence any of these aspects of P.'s care would change depending on what parenting arrangements are in place, although obviously if Mr. W. has primary residence of P., his time and resources spent on P.'s care would increase, while Ms. D.'s would decrease.
- e. P.'s need for stability, given her age and stage of development
- [77] P. is a young child at an early stage of development. To fundamentally change important aspects of her life, such as where she lives most of the time, who she lives with, and where she goes to school, would have an immediate de-stabilizing effect in her life, if only in the short term.
- f. The ability of Mr. W. and Ms. D. to exercise their responsibilities

- [78] Mr. W. is 50 years old. He is gainfully employed. He lives in Deroche in a modular home that he owns, situated in a gated community of some 120 residences. He has lived at that location since 2018. Mr. W. says there are approximately 20 other children in P.'s age group who live in the community and that she interacts well with them.
- [79] Ms. D. is 47 years old. She is gainfully employed. She lives in Delta in a rented single-family home with her partner and other children.
- [80] Mr. W. and Ms. D. are each able to provide P. with a home environment in which P. will receive parental love and support, as well as secure accommodation, food, clothing and access to services, including school education. Mr. W. and Ms. D. are each able to provide P. with a separate furnished bedroom in their respective residences.
- [81] Ms. D.'s employment situation is such that she can leave work on short notice, pick up P. from school and then work remotely from home. Although this is apparently required with some regularity, it does not jeopardize Ms. D.'s employment because her employer is accommodating and knows about P.'s issues regulating her behaviour at school. Mr. W.'s employment situation is not as flexible. I am not persuaded that he could leave work on short notice on a regular basis without jeopardizing his employment, because, unlike Ms. D, given the nature of his job installing machines in containers he is unable to work remotely from home.
- [82] Ms. D. has a medical and dental benefits plan at work which includes coverage for P., but only if P. lives with her. P.'s recent dental treatment totalling almost \$7,000 was fully paid for under the plan. Mr. W. does not have a medical and benefits plan at work.
- [83] There is no evidence that either Mr. W. or Ms. D. have any other insurance or benefits plan which includes coverage for P.
- [84] Ms. D. has regular contact with P.'s teachers. Mr. W. has not had any contact with P.'s teachers within the past year. He says they have not attempted to contact him, yet he apparently has not attempted to contact them either.
- [85] Mr. W. takes P. swimming at various public swimming facilities, which she enjoys. He also takes her on camping trips.
- [86] Mr. W. testified that he would consider an arrangement in which P.'s residence alternated on a weekly basis. Asked by his counsel if he thought that to be a workable arrangement, he said that if he was not available his neighbours could look after P., and so could his aunt and uncle. I do not consider such arrangements to be realistic. There is no evidence the neighbours or the relatives are suitable to take on the responsibilities of caring for a young girl with behavioural issues.
- g. The impact of any family violence on P.'s safety, security or well-being, whether the family violence is directed toward P. or another family member

- [87] I heard evidence of past conduct by Mr. W. that Ms. D.'s counsel submits I should consider as being "family violence" within the meaning of the FLA.
- i. The chair-throwing incident
- [88] The first instance of alleged family violence involves an occasion, when P. was an infant, in which Mr. W. angrily threw a chair at Ms. D.'s father when Mr. W. was at Ms. D.'s father's residence with Ms. D. and P.
- [89] The evidence about this incident came out in the direct examination of L.D. by counsel for Ms. D. Counsel for Mr. W. raised no objection to the evidence when it came out, did not cross-examine L.D. about it, and did not apply to re-examine Mr. W. Instead, in closing submissions, counsel for Mr. W. submitted the evidence is inadmissible by operation of the rule in *Browne v. Dunn*, 6 R. 67, 1893 CanLII 65 (Eng. H.L.) [Browne].
- [90] I have reviewed Justice Mackenzie's reasons in *North America Construction (1993) Ltd. v. Yukon Energy Corporation*, 2018 YKCA 6 [Yukon Energy], which provide a succinct explanation of the rule in *Browne*, its rationale, and the remedies available when it is breached.
- [91] In my view, the submission of counsel for Mr. W. that the rule in *Browne* would render the evidence inadmissible fails.
- [92] The rule in *Browne* is focussed on cross-examination of a witness by opposing counsel that is aimed at discrediting that witness. It is not clear how the doctrine could apply when counsel is conducting direct examination of their own witness to adduce evidence to the Court. It is a rule of trial fairness. In the judge-alone context, the remedies for violation of the rule in *Browne* include diminishing the weight of the evidence or recalling the witness.
- [93] Here there was no unfairness: Counsel for Mr. W. had the opportunity to cross-examine L.D. and maybe to recall Mr. W. As a matter of policy, if a party could invoke *Browne* where they have failed to take advantage of options to remedy unfairness, it would create a perverse incentive to ignore evidence that hurts one's case in order to reduce its weight.
- [94] *Browne* is ultimately a rule of fairness, and the situation was not unfair.
- [95] The remedy which counsel for Mr. W. seeks is also not available. As noted in *Yukon Energy* at para. 62, the rule in *Browne* cannot render evidence inadmissible.
- [96] This is not a scenario where the rule in *Browne* is engaged.
- [97] The chair-throwing incident is not "family violence" within the meaning of the FLA, because Ms. D.'s father is not a "family member" as defined in s. 1 of the FLA. It was however conduct of Mr. W. in the nature of a violent act, which I infer had the potential to physically injure any of those present, including P. It did not happen recently. There is no evidence of repeated conduct of a similar nature, or that it was part of a pattern of such conduct. It was not directed at P. but P. was exposed to it, although there is no evidence P. knew about it.

There is no evidence P. was harmed by it. There is no evidence of steps taken by Mr. W. to prevent such conduct from happening again.

ii. The incident involving P's personal belongings

[98] The second instance of alleged family violence involves an occasion in May 2021 when Mr. W. angrily deposited P's personal belongings on the front lawn of Ms. D.'s residence after having become frustrated by P's refusal to spend time with him. There is a video recording exhibit of the incident which was made by Ms. D. or in her presence.

[99] That this conduct occurred was not challenged in cross-examination. The only dispute was about whether P. had witnessed it.

[100] Mr. W.'s conduct in depositing P's personal belongings on the front lawn of Ms. D.'s residence is not conduct within the FLA s. 1 definition of "family violence". It was not a physically violent act and apparently did not have the potential to physically injure either Ms. D. or P. Nor do I consider that it rises to the level of psychological or emotional abuse. I would characterize it as in the nature of petulant behaviour by an adult behaving like a child.

[101] The video recording shows Mr. W. placing some of P's personal belongings on the front lawn of Ms. D.'s residence. Mr. W. does not appear visibly angry, he places each item deliberately, and does not vocalize displeasure or make any obscene comments or gestures.

iii. Name-calling directed at Ms. D

[102] The third instance of alleged family violence concerns Mr. W. directly and repeatedly calling Ms. D. derogatory names in various communications between them pertaining to parenting arrangements.

[103] That this conduct occurred was not seriously challenged in cross-examination.

[104] Mr. W.'s name-calling directed at Ms. D. is conduct which falls within the FLA s. 1 definition of "family violence", because it can be characterized as psychologically and emotionally abusive. Ms. D. testified Mr. W. engaged in this behaviour on multiple occasions. I find that repeatedly calling a former intimate partner the names referred to in the evidence, in communications about disputes involving a child of the former relationship, to be psychologically or emotionally abusive behaviour. While it was not coercive or controlling, it was demeaning. I find Mr. W.'s name-calling directed at Ms. D. affected her. Ms. D. said several times in her evidence that she became non-responsive to Mr. W.'s communications because she found them rude, demeaning and abusive. There is no evidence P. was directly exposed to Mr. W.'s name-calling directed at Ms. D. or that she was harmed by it. However, P. may indeed have been affected by it, because it was a key factor in the communications issues between Mr. W. and Ms. D. There is no evidence Mr. W. has taken steps to refrain from such behaviour in future.

iv. Name-calling directed at P.

[105] The final instance of alleged family violence concerns Mr. W. directly calling P. various derogatory names while exercising parenting time with her, expressive of his apparent belief that she is overweight.

[106] That this conduct occurred was not challenged in cross-examination.

[107] Mr. W.'s name-calling conduct directed at P. is conduct which falls within the definition of "family violence" because it can be characterized as psychologically and emotionally abusive. A father calling his child the names referred to in the evidence, or describing his child the way Mr. W. described P., is demeaning and potentially destructive of the child's self-image, and sense of self-esteem and self-worth. The evidence is unclear about the frequency of this conduct. While on the state of the evidence I am unable to conclude that it was part of a pattern of coercive or controlling behaviour, the words used can certainly be interpreted as coercive by having the apparent objective of inducing P. to eat less. While there is no direct evidence that Mr. W.'s name-calling actually affected P., I infer that it likely did, because it was apparently sufficiently noteworthy to P. that she told Ms. D. about it. There is no evidence Mr. W. has taken steps to refrain from such conduct in future.

v. Conclusions about alleged family violence

[108] Mr. W.'s name-calling conduct raises concerns about his impulse control and anger management. His name-calling conduct exhibited not only a lack of respect for the targets of his behaviour, but also a disregard for their physical, psychological or emotional well-being.

[109] Mr. W.'s name-calling directed at Ms. D. affected her and may have affected P.

[110] Mr. W.'s name-calling directed at P. likely affected her.

[111] While Mr. W.'s name-calling conduct is concerning, I must remain mindful of s. 37(4) of the FLA, which requires that I be satisfied that it was conduct which "substantially affects" a factor identified in s. 37(2) of the FLA. See: N.R.G. v. G.R.G., 2017 BCCA 407 at para. 43.

[112] I am not satisfied Mr. W.'s name-calling conduct described above "substantially affects" any of the factors in s. 37(2) of the FLA. It does not affect my orders pertaining to parenting arrangements. I do, however, find Mr. W.'s name-calling conduct to be relevant to the appropriateness of conduct orders, about which I shall have more to say below.

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 P. and meet P.'s needs

- [113] While I am not satisfied that Mr. W.'s conduct "substantially affects" any of the factors in s. 37(2) of the FLA, I do have residual concerns about it. I find Mr. W.'s conduct is evidence he may have issues with anger management, in that he has previously exhibited willingness to make demeaning comments in communications with Ms. D., his former intimate partner, and P., his child. Consequently, I find Mr. W. may be somewhat impaired in his ability to care for P. and meet P.'s needs.
- i. The appropriateness of an arrangement that would require P.'s guardians to cooperate on issues affecting P., including whether requiring cooperation would increase any risks to the safety, security or well-being of P. or other family members
- [114] An arrangement requiring Mr. W. and Ms. D. to cooperate on issues affecting P. could be beneficial because of the history of poor communication between them. I find that requiring such cooperation would not increase any risks to the safety, security or well-being of P., or other family members. On the contrary, it could lessen any such risks.
- [115] Counsel for Mr. W. submits it would be appropriate to have a family justice counsellor, a parenting coordinator, or other third-party professional involved in communications between the parties. Counsel for Ms. D. disagrees and submits this would be both impractical and unaffordable.
- [116] I agree with counsel for Ms. D. I find that the communications issues between the parties can be addressed by way of conduct orders.
- j. Any civil or criminal proceedings relevant to P.'s safety, security or well-being
- [117] There is no evidence of any civil or criminal proceedings relevant to P.'s safety, security or well-being. There was some evidence of historical criminal proceedings involving Mr. W., as well as historical criminal proceedings involving one or more of Ms. D.'s family members. The events giving rise to those proceedings are dated, and I do not consider them relevant to P.'s current safety, security or well-being. I give the evidence of those events no weight.
4. P.'s other needs and circumstances
- [118] The factors identified in s. 37(2) of the FLA are not exhaustive. I must consider all of P.'s needs and circumstances.
- a. P.'s Métis heritage, culture and identity
- [119] Indigenous children should have opportunities to learn about their heritage, culture and identity while in the care of their parents and guardians.
- [120] Mr. W. is not Indigenous. Ms. D. is Métis. It may be that Ms. D. is therefore better equipped than Mr. W. to educate P. about P.'s Métis heritage, culture and identity, and to exercise decision-making in that regard, but I have no evidence which would allow me make any such finding one way or the other.

b. P's dental condition

[121] P. suffered from a poor dental condition for some time before her recent dental treatment, valued at almost \$7,000, in which she had a number of baby teeth extracted and received caps to protect her permanent teeth. The issues P. experienced with her teeth caused her pain and embarrassment. Mr. W. testified P. could only eat soft food, or food which had been shredded or cut into small pieces, that P. complained about tooth pain "all the time" and "would not smile".

[122] Mr. W. says he repeatedly expressed concern to Ms. D. about P's poor dental condition, but Ms. D. always tried to explain it away.

[123] Ms. D. says there are various reasons for P's poor dental condition. First, Ms. D. says P's teeth are soft, and particularly susceptible to the proliferation of teeth-decaying bacteria which thrive on sugary food and drink. Second, Ms. D. says she has previously not been able to ensure that P. engages in daily dental care, including teeth-brushing, although why this is so was not explored in any detail in the evidence. Third, Ms. D. says she was unable to secure necessary dental treatment for P. in a timely way, because she was unable to access dental services during the COVID-19 pandemic and because P. was on a long waitlist for treatment.

[124] Ms. D. says that since P's recent dental treatment, she ensures P. brushes her teeth every day, and immediately after consuming sugary food and drink.

[125] I accept Mr. W.'s evidence that Ms. D. either did not communicate to him necessary information about P's poor dental condition, or failed to do so fully, or in a timely way. That said, Mr. W. was generally aware of the deterioration of P's dental condition and I believe he could have been more proactive in his efforts to ensure she received the necessary dental treatment. I accept Ms. D.'s evidence to the effect that she is now vigilant to ensure P. brushes her teeth every day, and immediately after consuming sugary food and drink.

c. P's diet

[126] Mr. W. says P. has a poor diet, consisting largely of fast food. Mr. W. infers this based on his consistent observations of fast food wrappers in Ms. D.'s residence, as well as P's preference for consuming food and drink with high sugar content. Mr. W. says P. "eats very well" when P. is with him and he gives her healthy, nutritious food when they are together. Ms. D., while conceding P. loves sugary food and drink, says P. has a good diet; that it is the other members of her family who consume a lot of fast food and are responsible for the food wrappers in her residence; and that P. only eats fast food about once a week. Ms. D. says P. enjoys good general health.

[127] On the state of the evidence I am unable to draw any conclusions about P's diet generally.

d. P's school options

- [128] P. completed grade 2 at a school near where Ms. D. lives (the "Current School").
- [129] There is an alternative school which P. could attend which is about a kilometre from Mr. W.'s residence (the "Alternative School").
- [130] The evidence about the Current School is detailed, and shows how it is equipped to meet P.'s special needs. No evidence was presented about the extent to which the Alternative School is equipped to do so.
- [131] An important part of the consideration of P.'s school options concerns P.'s behaviour while at school. Ms. D. testified P. has issues with behaviour regulation. As indicated in the school records, P. tends to be physically aggressive with others, including by hitting children and staff, and throwing objects. Mr. W. testified P. never exhibits aggression when she is with him, nor has he observed any issues with P.'s interactions with other children in his residence community. He has spoken with P. about her behaviour at school but she "just gets angry". He acknowledges he does not know the cause of her anger.
- [132] P.'s issues with behaviour regulation requires Ms. D. to pick her up from school whenever P.'s behaviour remains unregulated for more than 30 minutes. This requires Ms. D. to leave work on short notice. Ms. D.'s employer knows about this, has been very accommodating, and will continue to be. It does not affect Ms. D.'s ability to fulfill her work responsibilities as she can and does work from home when necessary.
- [133] Ms. D. lives and works in Delta. Her work is about a seven-minute car ride from her home.
- [134] Mr. W. lives in Deroche and works in Port Kells.
- [135] The Current School is in Delta. Mr. W. testified it is about a 90-minute car ride between Deroche and Delta.
- [136] Mr. W. works from 9:00 a.m. to 5:00 p.m., Monday to Friday. He says he has flexible working hours and is prepared to go to work earlier or work shorter hours if necessary. Mr. W. says he would be able to leave work on short notice. That may be so, but unlike the situation with Ms. D., I find it extremely unlikely Mr. W. could regularly work from home without jeopardizing his employment, as his job involves installing machines in trailers used by housing-industry contractors.
- [137] The school district has designated P. as requiring intensive behaviour intervention. There is a support system for P. in place at the Current School. The support system includes a number of staff-members to support P. at various times during the day. There is a safety plan involving P. There is a routine for P. to follow. There are strategies to assist P. with behaviour regulation. Staff-members at the Current School are aware that P. is Métis and part of P.'s program at the Current School involves an Indigenous Learning Plan.
- [138] I find that the support system at the Current School meets P.'s special needs.

- [139] Mr. W. testified P. could attend the Alternative School and that P. would be "better out there". There is no evidence to support that assertion, or which establishes the Alternative School has support programs in place comparable to, or better than, those in place at the Current School. Mr. W. testified in cross-examination that he has not looked into whether the Alternative School has a program for students with special needs. Neither is there evidence to show any such programs which do exist at the Alternative School would be able to accommodate P.
- [140] There is no evidence that either the Current School or the Alternative School would otherwise provide P. with a superior educational experience.
- [141] For P. to continue to attend the Current School, P. will need to reside with Ms. D., because Mr. W. lives approximately 90 minutes one-way by car from where Ms. D. lives. I do not accept that a drive of this duration twice a day would be in the best interests of P. In my view that would be too much to reasonably expect P. to cope with. Moreover, it would also be impossible for Mr. W. to pick P. up from school at short notice because of the driving time between either his residence or work and the Current School.
- [142] A change of school will be disruptive for P., particularly so because she has special needs at school. Not only would P. have to become accustomed to the new school environment and routine, she would have new teachers, and have to develop and maintain new friend groups.
- e. Ms. D.'s consumption of cannabis
- [143] I heard evidence about Ms. D.'s historical and current consumption of cannabis. Mr. W. is concerned about the extent of Ms. D.'s consumption of cannabis, which he believes negatively affects her ability to parent P. Ms. D. acknowledges that she consumes cannabis but denies that doing so negatively affects her ability to parent P.
- [144] In cross-examination, Ms. D. testified that she has consumed cannabis since she was 14 years old, and does so currently to manage pain associated with injuries she sustained in a motor vehicle accident in 2007. She testified that her consumption of cannabis has decreased since P.'s birth, and that she currently consumes one or two cannabis cigarettes a day.
- [145] On the evidence before me I am not prepared to find that Ms. D.'s consumption of cannabis negatively affects her ability to parent P. Mr. W.'s concern that Ms. D.'s cannabis consumption affects her ability to parent P. has no evidentiary basis.

C. Child Support

- [146] Ms. D. seeks orders for retroactive and prospective child support, including for future special or extraordinary expenses.
1. Retroactive child support

- [147] Ms. D. seeks retroactive child support from Mr. W. for the period from January 2022 to present.
- [148] In *D.B.S. v. S.R.G.*, 2006 SCC 37, the Supreme Court of Canada set out a list of factors the court must consider in determining whether to order retroactive child support. In doing so, the court must strive for a holistic view of the matter and decide each case on the basis of its particular facts. The payor parent's interest in certainty must be balanced with the need for fairness to the child and for flexibility. The court should consider the reason for the recipient parent's delay in seeking child support, the conduct of the payor parent, the past and present circumstances of the child, including the child's needs at the time the support should have been paid, and whether the retroactive award might entail hardship. Once the court determines that a retroactive award should be ordered, it should generally be retroactive to the date of effective notice by the recipient that child support should be paid.
- [149] I have taken a holistic view of the matter and find that an order for retroactive child support from January 2022 to present is appropriate, because it will be in the best interests of P. In this case, the issue is really one of arrears of child support. Ms. D. has not delayed in seeking the child support. There was a child support order already in place which Mr. W. knew about. I take account of Mr. W.'s conduct in failing to pay child support in accordance with that order. With the exception of four payments of \$182 each between January 2022 and April 2022, Mr. W. failed to pay any child support in 2022. The evidence does not reveal any legitimate reason for his failure to do so. On the contrary, when he was asked in cross-examination about the reason for stopping child support payments, he became evasive and argumentative, stating "none of [P.'s] needs are getting met by her mother either".
- [150] During the relevant time period, P. was at an age when it can reasonably be expected that her needs for basic expenses such as food, housing, transportation, clothing, personal care, allowances and vacation were increasing. There is no evidence that an order for retroactive child support would cause undue hardship to Mr. W. I find that an order for retroactive child support will not entail undue hardship to Mr. W., because he is currently employed full-time in a well-paying job and the Court can grant him a reasonable period of time to pay.
- a. Imputed income - 2022
- [151] There is no apparent disagreement between counsel on the question of whether it is appropriate to impute 2022 income to Mr. W. The issue is what the imputed amount should be.
- [152] I have reviewed the law concerning the imputation of income, including s. 19 of the Guidelines and Justice Morellato's decision in *B.K.W. v. S.J.H.*, 2022 BCSC 1445, which contains a helpful review of the applicable legal principles. Having done so I am satisfied it is appropriate to impute 2022 income to Mr. W., because he was intentionally under-employed.

- [153] Mr. W. has been gainfully employed in a variety of capacities since leaving school after completing grade 10. These include: as a roofer in the construction industry, as a heavy-duty mechanic, as a commercial driver, as the owner/operator of a start-up trucking company, and, since January 2023, installing machines in trailers used by housing-industry contractors.
- [154] Mr. W. has marketable skills and experience which have historically provided him with the ability to earn an annual employment income well in excess of the minimum wage.
- [155] Between 2015 and 2017, he was employed as a heavy-duty mechanic, with an annual income of approximately \$50,000. In 2018 he was employed as a commercial driver and had an annual income of approximately \$38,400. In 2019 he started a trucking company. His income that year and in the following two years was modest, in large part due to the effects of the pandemic. Mr. W.'s tax documentation shows he had 2020 income of \$7,882, 2021 income of \$8,121, and 2022 income of \$8,624. During this three-year period Mr. W. supplemented his modest income by relying on funds from an inheritance, and by selling some of his cars.
- [156] I do not have any evidence that Mr. W. could not have earned a higher 2022 income in order to meet his child support obligations.
- [157] Counsel for Ms. D. submits the Court should impute Mr. W.'s 2022 income at \$32,552, representing the equivalent of the 2022 minimum wage of \$15.65 per hour, 40 hours per week, 52 weeks per year.
- [158] Counsel for Mr. W. submits I should consider the impact of the COVID-19 pandemic on the trucking industry and impute Mr. W.'s income in this time period as between \$28,000 to \$30,000.
- [159] I do not have any evidence pertaining to the impact of the COVID-19 pandemic on the trucking industry.
- [160] I agree with counsel for Ms. D. that in 2022 Mr. W. should have been able to secure and maintain employment at least at the minimum-wage level, because of his skills, experience and previous employment. His record of employment over the years indicates that he has marketable skills which have enabled him to secure well-paying full-time employment.
- [161] I impute Mr. W.'s annual income from January 2022 to December 2022 at \$32,552.
- [162] Ms. D.'s tax documentation shows she had 2020 income of \$36,427, 2021 income of \$39,923, and 2022 income of \$31,649.
- [163] With Mr. W. having 2022 income of \$32,552 and Ms. D. having 2022 income of \$31,649, the Guidelines table amount indicates a monthly payment by Mr. W. to Ms. D. of \$334.
- [164] Mr. W. will pay Ms. D. retroactive child support of \$334 per month for the period from January 2022 to December 2022, less credit for \$728 he has already paid.

b. Set annual income - 2023

[165] Mr. W. has not paid Ms. D. any child support in 2023.

[166] Since January 2023, Mr. W. has been employed full-time at an hourly rate of \$25. Mr. W's 2023 income will be \$50,000 if he takes two weeks' vacation, \$52,000 if he does not.

[167] Counsel for Ms. D. submits I should set Mr. W.'s 2023 income at \$52,000. Counsel for Mr. W. submits it would be reasonable to subtract the income Mr. W. will forego if he takes two weeks' vacation.

[168] Mr. W. testified that he expects to make \$52,000 this year. I set Mr. W.'s annual income for 2023 at \$52,000.

[169] Ms. D. testified that she expects to make \$31,438 this year. I set Ms. D.'s annual income for 2023 at \$31,438.

[170] With Mr. W. having 2023 income of \$52,000 and Ms. D. having 2023 income of \$31,438, the Guidelines table amount indicates a monthly payment by Mr. W. to Ms. D. of \$488.

[171] Mr. W. will pay Ms. D. retroactive child support of \$488 per month for the period from January 2023 to September 2023.

2. Prospective child support

[172] Mr. W. will pay Ms. D. prospective child support of \$488 per month for the period from October 2023 for as long as P. is eligible for support under the FLA or until further agreement of the parties or order of the Court.

3. Special or Extraordinary Expenses

[173] Guidelines child support is "designed to provide contribution towards basic expenses such as food, housing, transportation, clothing, personal care, allowances and vacation": *Bennett v. Bennett*, 2015 BCSC 699 at para. 56.

[174] In addition to Guidelines child support, the Court has the authority to order additional support amounts to cover "special or extraordinary expenses" under s. 7 of the Guidelines. While currently not claiming any special or extraordinary expenses, counsel for Ms. D. seeks an order that the parties shall proportionately share any valid future special or extraordinary expenses for P.

[175] I have no evidence of any current or anticipated future special or extraordinary expenses. I therefore have no basis upon which to determine whether the criteria of s. 7 of the Guidelines are met. Accordingly, I am not prepared to order additional support amounts to cover special or extraordinary expenses for P.

D. Conduct Orders

- [176] Ms. D. seeks conduct orders pertaining to Mr. W.'s communications with her. I must consider whether conduct orders for one of the purposes in s. 222 of the FLA are in the best interests of P.
- [177] Conduct orders concerning communications between Mr. W. and Ms. D. are appropriate, because they will manage behaviours by Mr. W. and Ms. D. that might otherwise frustrate the resolution of this matter by my other orders. Conduct orders are thus within the stated purposes for such orders identified in s. 222 of the FLA.
- [178] Mr. W.'s and Ms. D.'s communications have become toxic. Ms. D. has kept Mr. W. in the dark about important matters concerning P. Mr. W. has repeatedly asked Ms. D. for information about P., but generally Ms. D. has been either slow to respond, or her responses have lacked information that should be provided. Over time, this has led to Mr. W. becoming frustrated and he has resorted to demeaning communications directed at Ms. D. Ms. D. has acknowledged her role in the breakdown of communications, but she refuses to respond to demeaning communications such as she has received from Mr. W.
- [179] These communications issues will be harmful to P. if left unaddressed.

VII. Final Orders

A. Guardianship

- [180] Pursuant to s. 39 of the FLA, Mr. W. shall be a guardian of P.
- [181] Pursuant to s. 39 of the FLA, Ms. D. shall be a guardian of P.

B. Parenting Arrangements

1. Parenting Responsibilities

- [182] Each guardian will advise the other guardian of any matters of a significant nature affecting P. Each guardian will comply with this obligation in a timely fashion.
- [183] Each guardian will consult the other guardian about any decisions of a significant nature affecting P. Each guardian will comply with this obligation in a timely fashion.
- [184] The guardians will have the obligation to make their best efforts to try and reach agreement on all decisions of a significant nature affecting P. In the event the guardians cannot reach agreement, Ms. D. will be entitled to make the final decision. Each guardian will comply with this obligation in a timely fashion.
- [185] Pursuant to s. 49 of the FLA, either guardian can apply to the Court for directions respecting an issue affecting P., including disagreement about the determination of matters or decisions of a significant nature.

[186] The guardians will share equally all of the FLA s. 41 parental responsibilities for P. as follows:

- (a) making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child;
- (b) making decisions respecting where the child will reside;
- (c) making decisions respecting with whom the child will live and associate;
- (d) making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location;
- (e) making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an Indigenous child, the child's Indigenous identity;
- (f) subject to section 17 [Consent of infant to medical treatment] of the Infants Act, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child;
- (g) applying for a passport, licence, permit, benefit, privilege or other thing for the child;
- (h) giving, refusing or withdrawing consent for the child, if consent is required;
- (i) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;
- (j) requesting and receiving from third parties health, education or other information respecting the child;
- (k) subject to any applicable provincial legislation,
- (i) starting, defending, compromising or settling any proceeding relating to the child, and
- (ii) identifying, advancing and protecting the child's legal and financial interests;
- (l) exercising any other responsibilities reasonably necessary to nurture the child's development.

[187] Each guardian will have the obligation to inform the other guardian of any matters of a significant nature affecting P., including those concerning P.'s physical and mental health and condition, education and schooling (and any special needs), and general welfare. Each guardian will comply with this obligation in a timely fashion.

[188] Each guardian will have the obligation to consult and discuss with the other guardian about any decisions of a significant nature affecting P., including decisions concerning P.'s physical and mental health and condition, education and schooling (and any special needs), and general welfare. Each guardian will comply with this obligation in a timely fashion.

[189] Each guardian will have the right to obtain information concerning P. directly from third parties, including information from school officials and employees, teachers, counsellors, medical professionals, and caregivers.

2. Parenting Time

[190] Pursuant to s. 45 of the FLA, Ms. D. will have primary residence of P.

[191] Mr. W. will have parenting time as follows:

- on weekends from Friday at 5:30 p.m. to Sunday at 4:00 p.m., on a repeating schedule that provides three (3) consecutive weekends when P. is with Mr. W. followed by one (1) weekend when P. is with Ms. D.;
- on Christmas Day from 3:00 p.m. until December 31 at 3:00 p.m.;
- for two weeks during the months of July or August, or a combination thereof;
- as otherwise agreed between Mr. W. and Ms. D.

[192] When exercising parenting time, Mr. W. will be responsible for pick-ups and drop-offs, or as otherwise agreed between Mr. W. and Ms. D.

C. Child Support

[193] Mr. W. and Ms. D. are both residents of British Columbia.

[194] Mr. W. had 2022 income of \$35,552 and will have 2023 income of \$52,000.

[195] Ms. D. had 2022 income of \$31,649 and will have 2023 income of \$31,438.

1. Retroactive Award

[196] Mr. W. will pay Ms. D. the sum of \$334 per month for the support of P., born [date omitted], in each of the months of 2022, less credit of \$728 for four prior payments of \$182 each from January 1, 2022, to April 1, 2022 ("Retroactive Payment #1). Mr. W. will pay Retroactive Payment #1 in full no later than February 1, 2025.

[197] Mr. W. will pay Ms. D. the sum of \$488 per month for the support of P., born [date omitted], in the period commencing January 1, 2023, to September 1, 2023 ("Retroactive Payment #2). Mr. W. will pay Retroactive Payment #2 in full no later than February 1, 2025.

2. Prospective Award

[198] Mr. W. will pay Ms. D. the sum of \$488 per month for the support of P, born [date omitted], commencing on October 1, 2023, and continuing on the first day of each and every month thereafter, for as long as P. is eligible for support under the FLA or until further agreement of the parties or order of the Court.

[199] For as long as P. is eligible to receive child support, the parties will exchange:

- a) copies of their respective income tax returns for the previous taxation year, including all attachments, not later than June 1 of each year; and
- b) copies of any Notice of Assessment or Reassessment received by them from the Canada Revenue Agency, immediately upon receipt of such notice.

[200] The parties will discuss adjustments to the table amount of child support payable to P. by Mr. W. in June of each year and implement any necessary adjustments by July 1 of each year.

D. Conduct

[201] Pursuant to s. 225 of the FLA, the parties will communicate with each other as follows:

- a) for routine matters, by email;
- b) for urgent matters, by text; and
- c) for emergencies, by telephone.

[202] Pursuant to s. 227 of the FLA, the parties will:

- a) put the best interests of P. before their own interests;
- b) encourage P. to have a good relationship with the other parent and speak to P. about the other parent and that parent's partner in a positive and respectful manner; and
- c) make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication or argument in front of P.

[203] Pursuant to s. 227 of the FLA, the parties will not:

- a) question P. about the other parent or time spent with the other parent beyond simple conversational questions;
- b) discuss with P. any inappropriate adult, court or legal matters; or
- c) blame, criticize or disparage the other parent to P.

[204] Pursuant to s. 227 of the FLA, Mr. W. will refrain from derogatory communications with Ms. D. that can reasonably be interpreted as being demeaning of her as a woman and as P.'s mother.

[205] Pursuant to s. 227 of the FLA, Mr. W. will refrain from derogatory communications with P. that can reasonably be interpreted as being demeaning of her appearance, or detrimental to her self-image, and sense of self-esteem and self-worth.

[206] Pursuant to s. 227 of the FLA, the parties will encourage their respective families to refrain from any negative comments about the other parent and their extended family, and from discussions in front of P. concerning family issues or litigation.

- [207] Mr. W. will permit Ms. D. to travel within Canada and internationally with P., conditional upon Ms. D. giving Mr. W. reasonable notice of her intention to travel with P. and providing Mr. W. with a travel itinerary and corresponding contact information. Mr. W. will cooperate reasonably and in good faith with Ms. D. to enable the procurement of any necessary government and other travel documentation in connection with such travel, including Canadian passports and Trusted Traveller and expedited border control programs such as Nexus.
- [208] Ms. D. will permit Mr. W. to travel within Canada and internationally with P., conditional upon Mr. W. giving Ms. D. reasonable notice of his intention to travel with P. and providing Ms. D. with a travel itinerary and corresponding contact information. Ms. D. will cooperate reasonably and in good faith with Mr. W. to enable the procurement of any necessary government and other travel documentation in connection with such travel, including Canadian passports and Trusted Traveller and expedited border control programs such as Nexus.
- [209] Ms. D. will promptly provide Mr. W. with a copy of any reports, plans or similar correspondence which she receives from P.'s school pertaining to P.'s performance, behaviour or special needs at the school.
- [210] Mr. W. will promptly provide Ms. D. with a copy of any reports, plans or similar correspondence which he receives from P.'s school pertaining to P.'s performance, behaviour or special needs at the school.
- [211] All other orders shall be immediately vacated.

"B.F. Smith J."

SMITH J.

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