
CANADA / JUDGMENT

Visser v. Visser

2022 BCSC 1198

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Supreme Court of British Columbia

DECIDED

14 July 2022

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2022 BCSC 1198 Visser v. Visser

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Visser v. Visser,

2022 BCSC 1198

Date: 20220714

Docket: E51363

Registry: New Westminster

Between:

Tara Davina Anne Visser also known as

Tara Davina Anne Byrne Visser

Claimant

And

Michael Jason Visser

Respondent

Before: The Honourable Justice E. McDonald

Reasons for Judgment

The Claimant, appearing in person:

T. Byrne

Counsel for the Respondent:

M. Brandon

Place and Date of Trial:

New Westminster, B.C.

March 28-April 1, 21-22 and June 9, 2022

Place and Date of Judgment:

New Westminster, B.C.

July 14, 2022

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Introduction

- [1] This is the second trial to occur in this family law proceeding. Following a trial in 2019, Justice Shergill made a final order on October 30, 2019 (the "Final Order"). It provided the parties equal parenting time with their four young children and it granted Mr. Visser final decision-making authority in respect of significant decisions regarding the children.
- [2] At the heart of the present dispute is the fact that Mr. Visser has not had equal parenting time and for some periods, he has had no parenting time at all. Mr. Visser has filed numerous court applications, including the present one, aimed at restoring his parenting time.

- [3] Each party has a different explanation for why the children resist their parenting time with Mr. Visser. Mr. Visser is concerned that Ms. Byrne is alienating the children and discouraging them from participating in their parenting time with him. Ms. Byrne says that while she has done everything reasonable to encourage the children, Mr. Visser is not using his "parental authority" to exercise his parenting time.
- [4] To date, the parties and the children have participated in professional therapies aimed at strengthening Mr. Visser's relationship with the children. With this professional assistance, Mr. Visser has managed to re-establish some limited parenting time with the children. However, a stable regime of equal parenting time has not been established.
- [5] After presiding over a second trial of the parties' respective applications, I have determined for the reasons that follow that Mr. Visser's application should be granted and Ms. Byrne's application should be dismissed.

The Applications

- [6] In Mr. Visser's September 1, 2020 application, he seeks the following relief:
- a) An order pursuant to s. 16 of the Divorce Act, R.S.C. 1985, c.3 (2nd Supp) [DA] for the children to be in the sole custody and guardianship of Mr. Visser with the children to have limited, supervised, contact time with Ms. Byrne as follows:
 - i. Ms. Byrne to have no direct or indirect contact with the children for a period of one year unless supervised and/or at the discretion of the children's new counsellor;
 - ii. During the one year of no contact, the children to obtain intensive counselling with a person or persons qualified to work on cases with the goal being the reversal of the deleterious effects of Ms. Byrne's parental alienation of the children. The counsellor to provide reports as to the children's progress in counselling; and
 - iii. Ms. Byrne to engage in personal counselling concerning the negative effects of parental alienation on children and counselling to understand and appreciate the negative effects that her behaviour has had upon the children. Ms. Byrne to report to the court to confirm the nature and extent of the counselling sessions, and to report her understanding of matters concerning parental alienation and whether or not she acknowledges her role in causing the children to be alienated from their father.
 - b) Pursuant to Rule 21-7 of the Supreme Court Family Rules, B.C. Reg. 169/2009 [Rules] , Ms. Byrne held in contempt of court for breaching para. 2 of the order of Justice Ball pronounced August 6, 2020 and that the court make an order for committal or impose a fine on Ms. Byrne, or both;
 - c) Pursuant to the Rules, Ms. Byrne held in contempt of court for breaching para. 3(a) and (b) of the order of Shergill J. pronounced October 30, 2020 and that the court make an order for committal or impose a fine on Ms. Byrne, or both;

- d) Pursuant to s. 228 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], the court requires Ms. Byrne to pay all or part of the expenses reasonably and necessarily incurred as a result of her non-compliance with the August 6, 2020 Order of Ball J. and a fine of \$5,000.
- e) Pursuant to s. 222 of the FLA, Mr. Visser have make-up parenting time commensurate with the amount of time he has missed as per the parenting time out in the Final Order of Shergill J.
- f) Pursuant to s. 231(5) of the FLA, a police assistance clause be ordered to ensure parenting time set out in the Final Order of Shergill J. or any other order of this court is obeyed.
- [7] Mr. Visser's counsel advised that Mr. Visser no longer seeks one year of exclusive parenting time. Instead, Mr. Visser seeks a one-month period of exclusive parenting time during which Ms. Byrne shall have limited parenting time. Following the completion of the one-month period, he proposes that the parties resume shared parenting time.
- [8] On November 23, 2021, Ms. Byrne filed an application seeking a variety of relief. On December 7, 2021, Justice Fitzpatrick referred the following items from Ms. Byrne's application to the trial list:
 - a) An order that the following paras. of the Final Order be varied as follows:
 - i. Paragraph 26 with respect to the proportionate sharing of s. 7 expenses shall be varied to provide the respondent shall solely pay the following expenses: parenting coordinator costs and the children's therapists costs. In the alternative, these costs shall be determined to be s. 7 costs and shall be shared in proportion to the parties' incomes.
 - ii. Paragraph 23 with respect to the offset amount of child support shall be varied to provide that the respondent shall pay to the claimant the full table amount of child support retroactively from January 1, 2020.
 - iii. Paragraph 2(e) with respect to the default decision making shall be varied by replacing it with an order that the parties shall jointly exercise the decisions with respect to the Children and in the event the parties are unable to agree, either party may proceed to court to obtain an order.
- [9] Ms. Byrne also made submissions related to requests for an accounting of the s. 7 expenses paid by the parties, production of Ms. Grant's financial documents, including documents related to a rental property owned by the respondent and Ms. Grant.
- [10] These items in Ms. Byrne's November 23, 2021 application were adjourned generally and not referred to the trial list. As these issues were adjourned and not referred to trial, they will not be addressed.

Issues

- [11] The main issues that I am required to resolve at this trial are as follows:

- a) Has Ms. Byrne failed to comply with court orders regarding parenting time?
- b) What consequences should flow from any failure to comply with court orders?
- c) Should the Final Order be varied?

Background

- [12] The parties were married on September 9, 2006 and they separated in July 2016 and divorced in late 2019.
- [13] The parties have four children together:
 - a) K.A.T.V. ("K."), born December 2010 and currently 11 years old;
 - b) M.A.J.V. ("M."), born May 2012 and currently 10 years old;
 - c) S.A.R.V. ("S."), born February 2014 and currently 8 years old; and
 - d) M.A.R.V. ("A."), born September 2015 and currently 6 years old.
- [14] Following the parties' separation, Ms. Byrne began working as a special education assistant in the public school system. At present, she works at the same school where their children attend elementary school. Mr. Visser works as a machinist.
- [15] Ms. Byrne filed a notice of family claim on July 18, 2016 and Mr. Visser filed a counterclaim on September 27, 2017.
- [16] Following their separation, each party, at least for some periods, entered into new romantic relationships. Mr. Visser is engaged to be married to his new partner, Ms. Grant. Ms. Grant has two children from a previous relationship who live with them full-time in a home that she and Mr. Visser purchased. At some point following the parties' separation, Ms. Byrne also had a new partner with children from a previous relationship. However, at present, Ms. Byrne is single.
- [17] Following the first trial, Shergill J. described the scope of the dispute between the parties as follows in *Visser v. Visser*, 2019 BCSC 1856, paras. 1-2:
 - [1] The claimant mother, Tara Visser (whom I will refer to by her current name, Tara Byrne), and the claimant father, Michael Visser, are both in their early 40's. They were in a relationship for 11 years and married for 10. They have four children ranging in age from four years to eight-and-a-half years. When the parties separated in July 2016 the children were all under six years of age. Since their separation the parties have both entered new relationships.

- [2] The parties disagree on just about everything. They differ on where the children should live; who should have final decision making authority over them; what expenses for the children should be shared by the parties; the amount of child support and spousal support that is payable; whether income should be imputed to either party; and how to divide the family assets and debts.
- [18] Justice Shergill ordered, among other things, that the parties shall equally share parenting time with the children and in the event the parties cannot agree on a major decision involving parental responsibilities, Mr. Visser "has the right to make the decision and Ms. Byrne shall have the right to seek review of any decision which she considers contrary to the best interests of the children".
- [19] At some point following the Final Order, Mr. Visser raised the issue of whether the children should change schools since they were attending an elementary school in a neighbouring community. Ms. Byrne was opposed to the school change and ultimately, the parties could not agree.
- [20] Mr. Visser decided to move the children to a school located in the same city where both of the parties lived. Ms. Byrne challenged Mr. Visser's decision regarding the school change. On July 31, 2020, Ms. Byrne's application opposing the school change was dismissed by Justice Baker. Ms. Byrne's subsequent request to Baker J. to reconsider or set aside the July 31, 2020 order was also dismissed.
- [21] In the meantime, Mr. Visser's relationship with the children was deteriorating. The children were increasingly resisting attending their parenting time with him. In an effort to try to strengthen Mr. Visser's relationship with the children, the parties and the children began attending professional reunification therapy first with Dr. Bolgar, and then with Dr. Ouelette.
- [22] This therapy has garnered some success, including reintroducing some limited parenting time for Mr. Visser. However, even with professional assistance, equal parenting time has not been achieved.
- [23] After Mr. Visser filed this application, Ms. Byrne consented to the preparation of a s. 211 report. The purpose of the report was to consider, among other things, whether there was parental alienation occurring. On May 9, 2021, Dr. Koopman completed that report. The report concludes that Ms. Byrne's behaviour is alienating the children from their father.

Analysis

Issue 1: Has Ms. Byrne failed to comply?

- [24] For a short period after the Final Order was made, Mr. Visser was able to exercise equal parenting time. By the summer of 2020, his parenting time ceased entirely. There is no dispute between the parties that Mr. Visser has not had equal parenting time since the Final Order was made.

- [25] Mr. Visser submits that Ms. Byrne has not complied with the requirement that the parties share equal parenting time and he alleges that she has alienated the children from him. He also submits that Ms. Byrne failed to comply with the court's further order made by Ball J. on August 6, 2020 when his parenting time did not resume and she failed to deliver the children to him.
- [26] The respondent's evidence in support of his application consisted of his own testimony and that of his new partner, Ms. Grant. In her direct examination, Ms. Grant stated that in her observation, the respondent's difficulty exercising his equal parenting time began immediately after the claimant took the children away on a holiday in July 2020. From that point on, she said the children began to show signs of resistance to spending parenting time with their father. The children, especially the eldest two, behaved in a "stand-offish" manner during the first couple of hours of their parenting time when it did occur.
- [27] Ms. Grant described that she has a good relationship with Mr. Visser's children. She provided specific examples of her typical interactions when she sees them during the respondent's parenting time. It was obvious that she makes considerable efforts to interact positively with each of the respondent's children, for example, by having conversations and engaging with them in child-centred activities like baking and crafts.
- [28] Ms. Byrne testified that she knew Ms. Grant as a friend before Ms. Grant entered into a relationship with Mr. Visser. It was apparent that Ms. Byrne resents Ms. Grant and Ms. Byrne often referred to examples of how her children complain about Ms. Grant.
- [29] According to Ms. Byrne, the children are unhappy that Ms. Grant and her children are always present during their parenting time with Mr. Visser. Ms. Byrne denied that the children ever had similar complaints about having to share their mommy-time with her new partner, Scott, or his children.
- [30] I found Ms. Grant to be an open and honest witness regarding the changes and challenges in her relationship with Mr. Visser's children. She described the two youngest children as transitioning more quickly at the start of the respondent's parenting time. Ms. Grant described noticing some increased reticence directed towards her on the part of the two eldest children, especially following the July 2020 vacation they took with Ms. Byrne.
- [31] Ms. Grant testified that when she realized that her presence during drop-off or pick-up was becoming a flash point for tension, she decided to minimize her participation in those exchanges. However, Ms. Grant remains involved in the activities of the children when they have parenting time with Mr. Visser in their home.
- [32] Overall, I found Ms. Grant to be a highly credible and reliable witness. She gave her evidence in a dispassionate manner and she did not appear to exaggerate. While Ms. Grant described some unpleasant interactions with Ms. Byrne, she was factual and concise as she gave her evidence.

- [33] Ms. Grant did not hesitate to give Ms. Byrne credit for her parenting skills. For example, she acknowledged the extensive work that Ms. Byrne undertook organizing the children for at-home learning during the pandemic. Ms. Grant appeared to me to be a patient and reasonable individual who, despite the challenges, considers the best interests of Mr. Visser's children and tries to create a well-adjusted, blended family.
- [34] Mr. Visser alleges that Ms. Byrne has not complied because she does not accept the Final Order.
- [35] According to the s. 211 report, Ms. Byrne was shocked by the reasons for judgment and Final Order. A key concern Ms. Byrne expressed to Dr. Koopman was that the Final Order provided no transition period for the parties and children to adjust to equal parenting time.
- [36] While Ms. Byrne disagrees with some aspects of Dr. Koopman's s. 211 report, she does agree with Dr. Koopman's recommendations that a parenting coordinator and the children's therapist should determine the speed and process by which the parenting time returns to 50/50.
- [37] Mr. Visser testified that he felt compelled to seek the court's help because Ms. Byrne would delay and disagree about every issue involving the children. In his view, if there was not an imminent court date, Ms. Byrne would disagree with every step he tried to take towards restoring his equal parenting time. He pointed out that Ms. Byrne often consented only on eve of hearings, for example, to the appointments of a s. 211 report writer, a therapist and a parenting coordinator.
- [38] Mr. Visser testified that despite his making prompt efforts to identify and retain a parenting coordinator, Ms. Byrne delayed on her end despite consenting to his appointment. It is not disputed that the parenting coordinator ultimately advised the parties that he is no longer available to act for them.
- [39] Ms. Visser submitted that, based on his experience trying to arrange for reunification therapy, he believes Ms. Byrne is using Dr. Koopman's recommendations as further obstacles to impede equal parenting time.
- [40] During her cross-examination, Ms. Byrne agreed with Dr. Koopman's clinical observation that Ms. Byrne fears abandonment and she strives for control, which Ms. Byrne equates with security. However, Ms. Byrne disagreed with Dr. Koopman's opinion that she is vengeful or perceives herself as having been wronged.
- [41] Dr. Koopman stated that Shergill J.'s order has had a significant negative impact on Ms. Byrne, including on her fear of being abandoned. Dr. Koopman also stated that Ms. Byrne cannot accept the negative assessment of her credibility made by Shergill J. nor can she tolerate the Final Order.

[42] Dr. Koopman concludes that Ms. Byrne is alienating the children from their father and the reasons are deeper than usually found, including because they are tied to Ms. Byrne's own suspected psychological problems and her fear of being "erased" from the children's lives. Dr. Koopman states in the s. 211 report as follows (at pp. 65-66):

In many respects Tara is an outstanding mother to her four children. She [is] loving and consistently attentive to their needs. She devotes her considerable skill and knowledge of child development to their care. Her creative play, family fun and intellectual stimulation are above what most parents can provide. However, if she perceives she is being criticized or diminished as a person and in her role as a mother, however false that perception, her fears of being found inadequate and at risk for devaluation overwhelm her and she becomes unable to differentiate her need to defend as separate and contradictory to the needs of her children. They become swept into the unresolvable turmoil.

It is the writer's clinical opinion that Tara's already negative attitude towards Mike was severely impacted by Justice Shergill's Reasons for Judgment regarding evidence of Tara's lack of credibility. Losing decision making power and 50% time with the children was devastating to her emotionally. That decision exacerbated her fear of being seen as unworthy. Tara has not been able to tolerate that decision which she feels is unfair and deeply hurtful. Her deep fears and distrust have become obvious to the children. While she states she is listening to the children's voice they are listening and tuning into her insecurities and trying to provide what they feel Mommy wants them to do. In order to prove herself the better parent Tara appears determined to do that by proving that Mike is a poor parent who the children justly fear.

[43] Dr. Koopman is concerned that Ms. Byrne's actions in the current "very dysfunctional co-parenting of her children" are possibly due to a borderline personality disorder with narcissistic personality traits and she recommends that Ms. Byrne attends a psychological or psychiatric assessment.

[44] In the s. 211 report, Dr. Koopman also notes that Dr. Bolgar expressed concerns that Ms. Byrne's resentment towards Ms. Grant was negatively impacting Ms. Grant's previously good relationship with the children.

[45] Ms. Byrne points out that Dr. Koopman lacked certain medical records when she prepared the s. 211 report. Ms. Byrne submits that had these medical records been provided, they may have caused Dr. Koopman to reach different conclusions. Ms. Byrne urges me to take this issue into account when deciding the weight that I should give to the s. 211 report.

[46] However, Ms. Byrne agrees that Dr. Koopman is blameless for not considering medical records that Ms. Byrne's counsel allegedly had, but failed to provide to Dr. Koopman. I note that Dr. Koopman did conduct interviews with some of the medical professionals who were involved with the family, so this is not a case where the s. 211 report writer had no medical information upon which to base her conclusions.

- [47] In her cross-examination, and to her credit, Ms. Byrne agreed that some of her behaviour caused the children to become alienated from Mr. Visser. Dr. Koopman noted in the s. 211 report that Ms. Byrne is telegraphing her frustration and dislike of Mr. Visser to the children through her behaviour and words. In Dr. Koopman's view, the children, and especially the older children, are being negatively impacted by this.
- [48] In the s. 211 report, Dr. Koopman included her observations of a January 2021 attempt by Mr. Visser to pick up the children for his parenting time from Ms. Byrne's house. Dr. Koopman was able to make these observations due to being on a video-link interview with Ms. Byrne at the relevant time. Dr. Koopman described what she observed in the following way (at pp. 9):

Note: At this point in the zoom interview Mike arrived to pick up the children. I could hear Tara tell them, "Your Dad is here." I can hear the children say, "I don't want to go." Tara said, "Quick, quick Daddy is here. [K.], you take your shoes and get ready." Tara is heard herding them. The doorbell continues to ring. Tara is trying to get the shoes on the children. They are sobbing. Tara says, "Hold my hand son. You will be fine." Dad rang the bell a couple of more times. Tara appeared to be trying to soothe and encourage them to go with their father. They continued to refuse saying they didn't want to go. I could hear them crying. Tara told one child, "Sweetheart, you talk to Daddy."

As the door is opened to Mike, I heard Tara say, "Please don't ask them why they don't want to come. I can't get them to get their shoes on." There is then some negotiation between Mike and Tara about appointments and picking the children up from school. The children are present during this discussion. Tara asks Mike for assurance about what he will tell the children at school, also with the children present. After more discussion the children do not go with Mike. [Z.] is sobbing most audibly. When Tara returned to the writer, she said the children have gone through a lot of trauma. Notably when Mike left the children were immediately quiet again.

- [49] Dr. Koopman's observations show, at least on one particular day, what happened when Mr. Visser attempted to pick up the children. Dr. Koopman could hear Ms. Byrne attempting to get the children ready and encouraging them to go with their father. However, Ms. Byrne could also be heard sending a contradictory message to the children when, upon opening the door, she announced to Mr. Visser that the children did not want to go with him and that he should not ask about it.
- [50] While the children are present, Ms. Byrne could be heard negotiating with Mr. Visser about parenting issues. At the conclusion of this interaction, none of the children go to participate in parenting time with Mr. Visser.

- [51] Dr. Ouelette, the current therapist working with the family, states in a recent reporting letter that the children are caught between their parents in a "loyalty trap". Dr. Ouelette states that each parent has made known their apparent disdain for the other and this has forced the children to pick a side. Dr. Ouelette states that this behaviour must stop and the children must be released from this trap to move forward.
- [52] Dr. Bolgar, who was the first therapist involved with the family, reported to Dr. Koopman that the eldest child, K., is extremely protective of her mother. For example, during a therapy session, K. ran out of the session to comfort Ms. Byrne, who was in the waiting room. Dr. Bolgar overheard K. asking Ms. Byrne if she was okay.
- [53] In Dr. Bolgar's view, K. is leading the other children in negative beliefs about and actions towards their father because she observes Ms. Byrne's attitudes. Ms. Byrne's negative attitudes toward Mr. Visser are then adopted by the children.
- [54] In my view, K.'s behaviour is both revealing and concerning. It demonstrates that K., and most likely the other children, believe that Ms. Byrne requires their attention, comfort and concern. In other words, caught in the loyalty trap described by Dr. Ouelette, the children appear to have sided with Ms. Byrne against their father.
- [55] According to Mr. Visser, during his attempts to pick up the children, Ms. Byrne would often yell at and berate him for not listening to the feelings and wishes of the children. He concluded that these encounters at the start of his parenting time were highly damaging to his relationship with the children. Mr. Visser began to look for ways to arrange the exchange of the children to minimize the conflict with Ms. Byrne.
- [56] Mr. Visser seeks to avoid approaching Ms. Byrne for fear that she will allege assault or child abuse if he were to pick up the children and carry them away. Mr. Visser decided it was best, for example, to open his front door and stay out of sight when Ms. Byrne arrives to drop off the children. Mr. Visser does this to avoid enflaming the situation because he believes the children are capable of walking the short distance from Ms. Byrne's vehicle to his front door.
- [57] Ms. Byrne denies that she has ever blocked the children behind her when Mr. Visser attended her home to pick them up. However, Ms. Byrne is highly critical of Mr. Visser for failing to exercise his parental authority when he refuses to come into her house to take the children outside or when he fails to remove them from their car seats in her vehicle.
- [58] Ms. Byrne feels that it is unfair to force her into confrontations with the children to physically remove them from her home or vehicle to force them to attend parenting time with their father. In one instance, Ms. Byrne described being kicked in the stomach by their youngest child and she tried to get him out of the car seat to go into Mr. Visser's home.

- [59] In her cross-examination, Ms. Byrne agreed that she imposed no consequences on the children, for example, for improper behaviour such as kicking or screaming during drop-offs at Mr. Visser's house. Ms. Byrne stated that had changed her parenting style to avoid yelling and threats. She also testified that the psychologist working with the parties and the children advised her not to use threats, punishment or force with the children related their feelings about their father.
- [60] Mr. Visser testified that the July 5, 2020 incident where the children refused to participate in his parenting time became a kind of downward spiral towards increased problems with his parenting time. His parenting time ground to a halt.
- [61] I found Mr. Visser's evidence regarding the events during his attempts to pick up, or get the children into his home, at the start of his parenting time to be credible and reliable. I also note that Mr. Visser's evidence is supported by the observations and opinions of Dr. Koopman and by the police notes of certain attempted exchanges of the children.
- [62]
- [63] As a result, in late July 2020, Mr. Visser applied to the court seeking an order that his parenting time recommence immediately and that the parties engage Dr. Bolgar to assist with restoring his relationship with the children. Mr. Visser also sought, unsuccessfully, a police-assistance clause.
- [64] Ms. Byrne consented to the appointment of Dr. Bolgar, but she opposed the other relief sought. Mr. Visser's application, save and except for the police-assistance clause, was granted by Ball J. on August 6, 2020. Mr. Visser's parenting time was to resume on August 6, 2020, however, that did not occur.
- [65] On August 6, 2020, Ms. Byrne drove the children to Mr. Visser's home at the appointed time. She stopped her vehicle outside of Mr. Visser's home. Mr. Visser and Ms. Grant were inside the house and they could see Ms. Byrne's car from the front window. He texted Ms. Byrne that he was inside and he opened the front door but he did not come outside.
- [66] While Ms. Byrne opposed Mr. Visser's request for a police-assistance clause, she admitted that she telephoned the police to ask them to come by on August 6 while she and Mr. Visser exchanged the children. Mr. Visser was unaware of Ms. Byrne's request to the police. However, he eventually saw a police car drive up and an officer spoke to Ms. Byrne while she was parked.
- [67] The police car drove away down the street. Ms. Grant arranged for Mr. Visser to speak with the police officer and the police officer asked Mr. Visser to go outside and collect the children from Ms. Byrne's vehicle. Mr. Visser said he was unwilling to do that because he feared enflaming the situation and he also believed that Ms. Byrne would accuse him of hurting the children.

- [68] Ms. Byrne and the children sat in the vehicle for some time until Ms. Byrne got out of the vehicle and opened the sliding door to the van. Eventually, Ms. Byrne closed the door again and drove away with the children inside.
- [69] Both Mr. Visser and Ms. Grant testified that they saw Ms. Byrne get out of the vehicle, open a sliding door and stand there for a few minutes before closing the door and driving away with the children inside. Neither of them witnessed Ms. Byrne unbuckle the children or lift them out of their car seats. They could see that Ms. Byrne's father was sitting in the front passenger seat of her vehicle.
- [70] While Ms. Byrne drove up to his home with the children in her vehicle, she did not deliver the children to Mr. Visser's house for the start of his parenting time on August 6, 2020. In cross-examination, Ms. Byrne agreed that she did not unbuckle any child's seatbelt. She did not pull any child from the car seat or walk them over to Mr. Visser's front door which was open.
- [71] Ms. Byrne also confirmed in her cross-examination that she did not impose any consequences on the children for their refusal to cooperate on August 6, 2020, or on any other occasion. She said the therapists recommended not imposing consequences on the children for expressing their feelings or refusing to go with Mr. Visser for parenting time.
- [72] Ms. Byrne submits there was nothing more she could have done on August 6, 2020. She testified that she tried to convince the children to leave the vehicle but they refused. She blames Mr. Visser for failing to use his parental authority to remove the children from her vehicle.
- [73] In the fall of 2021, when Mr. Visser began exercising parenting time with the children on Saturdays, the parties decided that Ms. Byrne would deliver the children to Mr. Visser's house and he would drive them to Ms. Byrne's house at the end of the parenting time. Mr. Visser described incidents during one of those exchanges when the two older children started to run away rather than go into Mr. Visser's house.
- [74] After Ms. Byrne arrived in her vehicle, the two youngest children came into Mr. Visser's house without incident. The oldest two children remained outside with Ms. Byrne near her vehicle. Mr. Visser could observe the scene and hear raised voices. He heard the older children say to Ms. Byrne that they hated Mr. Visser and they didn't want to stay. Ms. Byrne got inside her vehicle at which point the two eldest children ran off. While Ms. Byrne sat in the van watching, Mr. Visser ran after the children. He only managed to catch and bring back the younger child to the house.
- [75] At this point, Ms. Byrne drove away and Mr. Visser got in his vehicle to search for the eldest child. He drove towards the nearby school grounds where he observed the eldest child meeting and getting into the vehicle belonging to Ms. Byrne's father.

- [76] Apparently, the eldest child called the police while she was in her grandfather's vehicle. The police arrived and spoke with the eldest child. Mr. Visser also spoke with the police officer who advised Ms. Visser to let the child go home with her grandfather.
- [77] Around this time, there was another incident involving the eldest children running again away during the drop-off at Mr. Visser's house. Mr. Visser immediately drove his car to the school looking for the eldest child. He could not see her this time but he received a call from the same police officer he spoke to during the earlier incident.
- [78] The police officer told Mr. Visser that the eldest child was with her grandfather and the police officer said she was investigating the incident. Mr. Visser drove home once he learned the eldest child was with Ms. Byrne's father.
- [79] Eventually, the police came to Mr. Visser's house. The police told him that there was little they could do, and they suggested he let it go and hope that things will improve. Later that day, Ms. Byrne successfully delivered the eldest child and she stayed at Mr. Visser's house for a few hours.
- [80] The police strongly suggested to Mr. Visser that he obtain a copy of the police notes. Mr. Visser followed that suggestion and he applied for an order to produce the police records. Ms. Byrne consented to the December 17, 2021 order for the production of the police records.
- [81] The police records were received during the trial and entered as an exhibit. The police notes from August 6, 2020, confirm that Ms. Byrne had called the police asking them to attend the drop-off because she feared things would get volatile. The notes indicate that a police officer spoke with Ms. Byrne via text message, on the telephone and in-person on August 6, 2020. Ms. Byrne advised the police she "was going to stay in her seat and not get in the way" nor would she physically remove the children from the vehicle. After leaving the front of the Visser residence, Ms. Byrne drove to where the police officer was parked and she engaged the police in a conversation. She advised the police officer that her lawyer had advised her to leave.
- [82] The police officer spoke with the children. The notes indicate that the youngest child was crying hard and reaching out toward Ms. Byrne. The eldest two children told the police officer that "they didn't feel safe" as their dad "was neglectful". They mentioned to the officer an incident on Halloween where Mr. Visser lost track of them during trick-or-treating.
- [83] According to Mr. Visser, this was a reference to an incident that took place approximately two years earlier in 2018. Mr. Visser testified that following her attempt to run away, he had asked his eldest child why she feels unsafe at his house but he said she has no specific answer to his question. Shergill J. considered the Halloween incident in her reasons for judgment along with many other incidents raised by Ms. Byrne but she ultimately found Mr. Visser to be a "dependable and loving parent".

- [84] In my view, it is telling that some two years after the Halloween incident, the parties' two eldest children cited that incident to the police as the reason why they felt unsafe with Mr. Visser. Interestingly, there is no record in the s. 211 report that any child mentioned the Halloween incident during their interview with Dr. Koopman. It appears only Ms. Byrne and her mother referred to this incident during their interviews.
- [85] The police officer also interviewed Mr. Visser's next-door neighbour who witnessed the incident outside of Mr. Visser's home on August 6, 2020. According to the notes, that witness told the police officer that he or she only observed Ms. Byrne try to verbally entice the kids out of the car but he or she felt that Ms. Byrne had not put much effort into it.
- [86] The police constable also noted that at no time did they see or hear Ms. Byrne attempt to get the kids out of the car. Ms. Byrne points out that the police were parked around the corner so the police officer could not have observed her actions.
- [87] However, all witnesses agree that the police did initially drive up and speak with Ms. Byrne when she was parked outside of the Visser home. Therefore, I do not accept that the police officer had no opportunity to make observations about Ms. Byrne's actions while she was parked outside of Mr. Visser's home.
- [88] Ms. Byrne testified about her concerns regarding the older children, especially K., running away when she dropped them off at Mr. Visser's house. She explained that she had a conversation with the children involved during which she made it clear that running away was completely unacceptable and unsafe behaviour. Ms. Byrne said that after she had this conversation, the behaviour stopped.
- [89] In my view, this is a telling example of just how effective Ms. Byrne can be when she wishes to influence the behaviour of her children. She made it known that she disapproved of the behaviour and that the behaviour was unacceptable and unsafe. This exercise of Ms. Byrne's parental authority had the desired effect.
- [90] I find that Ms. Byrne has considerable parental authority over the children when she wishes to exert it. Ms. Byrne strikes me as a parent who is not routinely passive or ineffectual. Rather, Ms. Byrne is a parent with a high degree of control and input. In my view, Ms. Byrne has been selective about when she exercises her parental authority. As it relates to supporting Mr. Visser's parenting time, Ms. Byrne often behaves passively, such as when she sits in her vehicle while the children run away, and she often chooses not to exert her full parental authority.
- [91] It is notable that in lead up to the second trial, Mr. Visser's parenting time began to slowly resume. Initially, he saw the children for part of the day on Saturdays and eventually this increased to include some overnight parenting time. While Mr. Visser's parenting time has been on the increase since the trial began, it still has not resulted in anything near equal parenting time.

- [92] After considering all of the evidence, it is clear to me that at the moment Ms. Byrne holds significantly more parenting authority than Mr. Visser. In my view, this situation is not particularly surprising given that Ms. Byrne has, over the objections of Mr. Visser, spent the majority of the time with the children both before and after the Final Order was made. My view is supported by Dr. Koopman's views in the s. 211 report.
- [93] As Ms. Byrne acknowledges that her alienating behaviour is having an impact on the children, and after considering Dr. Koopman's s. 211 report, which is based on extensive interviews of the parties, some of the children and third parties, I find that Ms. Byrne is engaging in behaviour that is alienating the children from Mr. Visser.
- [94] The question Ms. Byrne's position implicitly raises is how much can she reasonably be expected to do in order to comply with the orders of this court and to support Mr. Visser's parenting time?
- [95] Firstly, and most obviously, Ms. Byrne must take immediate steps to identify and redress her alienating behaviour. I acknowledge that Ms. Byrne has participated in the reunification therapy with Drs. Bolgar and Ouelette. However, regarding Ms. Byrne's personal mental health care, there is no evidence she is addressing her alienating tendencies or that she has sought professional assistance to diagnose or treat the psychological conditions queried by Dr. Koopman.
- [96] Following the receipt of the s. 211 report, Ms. Byrne's GP arranged for Ms. Byrne to have a remote consultation with a psychiatrist. Ms. Byrne was adamant that she either told the psychiatrist about the s. 211 report or she provided him with a copy of it.
- [97] The clinical notes from that psychiatric consultation state that Ms. Byrne "did not endorse any symptoms consistent with pervasive depression, OCD, psychosis, or hypomania". The assessment portion of the clinical notes state "major depressive disorder with mild symptoms, generalized anxiety disorder, currently not experiencing panic attacks" with medication prescribed and a recommendation for a follow-up appointment in a couple of months.
- [98] It is unclear from the clinical notes whether the psychiatrist considered the queries raised by Dr. Koopman in the s. 211 report. In my view, Ms. Byrne's evidence about her psychiatric consultation adds little to overall evidence about Ms. Byrne's mental health or the concerns raised by Dr. Koopman in the s. 211 report.
- [99] I agree with Dr. Koopman that Ms. Byrne's alienating behaviour is hurting the children. I accept that Ms. Byrne is a loving parent who may be unconsciously undermining the children's mental health; however, Ms. Byrne must take real steps to address the damage that her alienating behaviour has, and will continue to cause if it is left unchecked.
- [100] Secondly, Ms. Byrne has failed to use her considerable parental authority to encourage the children to participate in their parenting time with Mr. Visser. I heard evidence indicating that Ms. Byrne is a proactive, capable and firm parent when she wishes to be. She promptly

and efficiently remedied the running-away behaviour of the eldest children. I do not accept that Ms. Byrne is unable to apply the same authority and problem-solving skills to situations where the children are refusing to leave her home or vehicle to go with Mr. Visser.

- [101] Thirdly, Ms. Byrne has repeatedly failed to take common-sense steps to facilitate and avoid undermining Mr. Visser's parenting time. I heard evidence about Ms. Byrne attending at Mr. Visser's home during his parenting time to deliver items. Instead of dropping off the items and promptly leaving, Ms. Byrne created a distraction to the parenting time when she began engaging with the children at the front door and showing them a pet in a pet carrier.
- [102] Once Mr. Visser's front door had been closed, Ms. Byrne began peering through the windows of the door, trying to continue her engagement with the children. If Ms. Byrne truly wished to support Mr. Visser's parenting time, she would attempt to minimize her disruptions and distractions during his time, especially given her knowledge that the children are reluctant to participate in his parenting time.
- [103] I heard a great deal of evidence about the unsuccessful attempt to exchange the children on July 5, 2020 after Ms. Byrne and the children returned to the Lower Mainland from a holiday in Osoyoos, British Columbia. The exchange time was scheduled for 6:00 p.m. However, Ms. Byrne described letting the children have one last swim in Osoyoos before they headed out for Mr. Visser's house at approximately 11:00 a.m.
- [104] In my view, this timing left Ms. Byrne with virtually no buffer for common variables in travel, such as heavy traffic. Not surprisingly, Ms. Byrne and the children encountered an accident and very congested, slow-moving, traffic. This caused the children to become increasingly tired, hungry and anxious about being late to arrive at their father's home. Ms. Byrne also testified that the children knew she intended to drop them off at Mr. Visser's house and then she planned to return back to Osoyoos to continue her holiday without them.
- [105] When I consider Ms. Byrne's apparent awareness of the children's growing reluctance to engage in parenting time with Mr. Visser, I find it unusual that Ms. Byrne would make them aware of her plan to drop them off and then return to Osoyoos to continue vacationing without them. In general, I find that Ms. Byrne's actions on July 5, 2020 lacked common sense and they demonstrate another example of her failure to take reasonable steps to facilitate a smooth transition to the start of Mr. Visser's parenting time.
- [106] As I already mentioned, Ms. Byrne agrees that her behaviours have had the effect of alienating the children from their father. I find that this is also confirmed by the s. 211 report, and I find that this alienating behaviour is an ongoing problem.
- [107] I found Ms. Byrne's testimony that she does everything reasonable in her power to support Mr. Visser's parenting time lacking in credibility and I do not accept her evidence in this regard.

[108] After considering all of the evidence, I find that Ms. Byrne has not complied with the Final Order or the August 6, 2020 order of Ball J. In my view, Ms. Byrne falls well short of her responsibility as a co-parent to take all reasonable steps to support Mr. Visser's parenting time and she has not complied with her obligations under the orders.

Issue 2: Should the Final Order be varied?

[109] As I already mentioned, Ms. Byrne seeks to vary the Final Order in three respects:

- i. The proportionate sharing of s. 7 expenses be varied to require Mr. Visser to pay the full costs of a parenting coordinator and children's therapist costs, or, these costs shall be shared in proportion to the parties' respective incomes.
- ii. Retroactively from January 1, 2020, Mr. Visser shall pay Ms. Visser full table amount child support.
- iii. The default decision-making authority shall be varied and replaced by an order that the parties shall jointly exercise the decisions with respect to the Children and in the event the parties are unable to agree, either party may apply for an order.

[110] The principal consideration on an application such as this is the best interest of the child and whether, as a threshold issue, there is a material change of circumstances: *Gordon v. Goertz*, 1996 CanLII 191 (SCC). Each case turns on its own, distinct, circumstances.

[111] I must also consider whether the proposed variation of the Final Order would protect, to the greatest extent possible, their "physical, psychological and emotional safety, security and well-being": s. 37(3), FLA.

Retroactive child support

[112] Ms. Byrne seeks to vary the Final Order related to child support on the basis that there has been a material change in the circumstances of the children. She submits that child support should be paid retroactively to reflect that, despite the Final Order providing for shared parenting time, the children have resided mainly with her.

[113] On the issue of whether Ms. Byrne has established a material change in circumstances affecting the children, I note that she alleges that the material change in circumstances is that the children have not had equal parenting time with the parties. In my view, the fact that the children have remained largely in Ms. Byrne's day-to-day care results from culpable conduct that includes her behaviour that is alienating the children from their father.

[114] I am not satisfied that Ms. Byrne has demonstrated a material change in the circumstances of the children. Further, I am not satisfied that in all of the circumstances it is appropriate to award Ms. Byrne full table child support when Mr. Visser has been unable to exercise his parenting time largely due to Ms. Byrne's alienating behaviour and her failure to abide by the terms of the orders.

Final decision-making authority

[115] In her reasons for judgment, Shergill J. confirmed that both parents are guardians of the children. In addition to ordering that parties were to share parenting time equally, Shergill J. made the following specific orders:

[102] The parties are to share equally the parental responsibilities stipulated under s. 41 of the FLA. The parental responsibilities are to be exercised in accordance with ss. 42 and 43 of the FLA. In addition:

- a) each party will have the right to obtain information concerning the child directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third party care givers;
- b) each party has the obligation to advise the other party of any matters of a significant nature affecting the child;
- c) each party has the obligation to discuss with the other party any significant decisions which have to be made concerning the child, including significant decisions concerning the health (except emergency decisions), education, religious instruction and general welfare of the child;
- d) both parties have the obligation to try to reach agreement on these major decisions; and
- e) in the event that the parties cannot reach agreement with respect to a major decision despite their best efforts, Mr. Visser has the right to make the decision and Ms. Byrne will have the right to seek a review of any decision which she considers contrary to the best interest of the child.

[116] Justice Shergill determined that given the level of conflict between the parties, the children's best interests were met by granting Mr. Visser final decision-making authority. However, Ms. Byrne remained able to and she has in fact formally challenged his decisions, for example, the school-choice decision.

[117] Ms. Byrne reported to Dr. Koopman that she felt embarrassed and ashamed by the Final Order which gave her "no say" about the children. However, the Final Order contains terms that require the parties to try to make decisions cooperatively and it grants Ms. Byrne the right to challenge Mr. Visser's final decisions, which is a right she has exercised albeit without success.

[118] Ms. Byrne seeks to vary the Final Order to remove Mr. Visser's final decision-making authority on the basis that he has abused it by failing to consult with her on major decisions concerning the children. Ms. Byrne is also concerned that, for example, Mr. Visser does not accept that the children have certain medical or learning-related issues.

- [119] Ms. Byrne questioned Mr. Visser at length about, for example, his alleged delay in signing a form to get one of the children onto a school wait-list for a psychological-educational assessment. She stated that Mr. Visser ignored or downplayed these types of issues contrary to the best interests of the children. Mr. Visser testified that when he asked for opportunities to speak with medical professionals about the children, he was merely trying to verify or gather information so that he could make informed decisions.
- [120] Ms. Byrne also questioned Mr. Visser in detail about his reasons for rejecting her view, apparently supported by medical professionals, that the children should not change schools. Ms. Byrne provided her own testimony in support of the reasons why she thought the school change decision was the wrong decision. Ms. Byrne clearly regards Ms. Visser's decision about school location as yet another reason why his final decision-making ability should be eliminated.
- [121] However, in my view, Mr. Visser cannot be faulted for making the school change decision when Baker J. agreed that this decision was in the best interests of the children. I was provided with no evidence establishing that the school change has, in retrospect, turned out to be incompatible with the best interests of the children.
- [122] When I consider the evidence as a whole, I am not satisfied that Mr. Visser has failed to act in the best interests of the children in utilizing his final decision-making authority. The evidence satisfies me that when Mr. Visser receives adequate information, he has appropriately supported the medical and educational recommendations made by professionals regarding the children. I agree with Shergill J.'s assessment that overall, Mr. Visser is a competent and caring parent to the children.
- [123] In conclusion, I find there is no compelling basis to vary the Final Order to eliminate the term granting Mr. Visser's final decision-making. There is simply insufficient evidence to satisfy me that the best interests of the children would be better served by the proposed amendment.

Cost-sharing of children's therapies and parenting coordinator

- [124] Ms. Byrne requests that Mr. Visser should be required to pay the full costs of the children's therapy and a parenting coordinator. Mr. Visser earns considerably more than Ms. Byrne and the impact of their differing financial situations was addressed by Shergill J. in the reasons for judgment following the first trial.
- [125] Ms. Byrne gave evidence that she was struggling to cover her expenses and that she was paying for therapy costs using her credit card. Mr. Visser testified that he is unable to afford full costs of therapy and the additional costs of a parenting coordinator. He would like the parties to focus their limited means on equally sharing the most critical costs, which he believes is reunification therapy.

- [126] Given that it is Ms. Byrne's behaviour that has caused the alienation of the children, I have concluded that it would be unjust and inappropriate to require Mr. Visser to cover all of the costs of hiring professionals to assist with treating the effects of the parental alienation. I, therefore, decline to amend the Final Order to modify the terms related to the payment of s. 7 expenses.
- [127] Ms. Byrne would like the parties to abide by the consent order requiring the joint retainer of a parenting coordinator. In her view, that person, together with the therapist, should direct the parties on their parenting issues in the future.
- [128] I note that Mr. Visser made good faith attempts to comply with the consent order by taking prompt steps to retain Mr. Boyd as a parenting coordinator. However, Ms. Byrne failed to act promptly and the actions she eventually took were so delayed that Mr. Boyd advised the parties he was no longer available. Despite the consent order to do so, the parties have never proceeded to jointly retain a parenting coordinator.
- [129] I am also concerned that both parties testified that they were presently having trouble covering therapy costs and they would have difficulty paying for both a parenting coordinator plus ongoing psychological therapies for the children. Simply put, the parties cannot afford a parenting coordinator and given the level of parental disagreement thus far, I anticipate the cost might be significant.

Issue 3: What are the consequences of non-compliance?

- [130] The FLA provides the court, in Part 10, divisions 5 and 6, with various powers to enforce conduct and orders generally. Mr. Visser seeks relief under these parts and he submits that unless the court imposes consequences on Ms. Byrne for her non-compliance, she is unlikely to comply in the future.
- [131] As I have already mentioned, Ms. Byrne has submitted that in her view, she has done everything reasonably possible to comply with the orders and to encourage the children to engage in parenting time with Mr. Visser. I have already explained my reasons for concluding that Ms. Byrne has failed to comply with court orders.
- [132] Mr. Visser's counsel submitted that it would not be appropriate for Mr. Visser, at this stage, to seek an order for committal or the imposition of a fine, given that Ms. Byrne already owes him costs of nearly \$30,000 for the first trial and subsequent applications. Ms. Byrne is paying the costs by making nominal monthly instalments.
- [133] Ms. Byrne testified that she is in debt and struggling to meet her ordinary living expenses. She stated that she is borrowing from her family and paying her share of the therapy costs using her credit card.

- [134] Mr. Visser is strongly of the view that the only consequence that will have an effect on Ms. Byrne is Mr. Visser receiving make-up parenting time. That is why he seeks an order for an extended period of parenting time for one month during which he requests that Ms. Byrne shall be obliged to attend psychological counselling. After this period, he requests that equal parenting time shall resume.
- [135] After considering the evidence, I am satisfied that it is appropriate to grant Mr. Visser an extended period of make-up parenting time from 11:00 a.m. on July 24, 2022 to 6:00 p.m. on August 21, 2022 (the "Make Up Parenting Period"), to allow him make-up parenting time and a realistic opportunity to establish a routine surrounding his parenting time.
- [136] To ensure that the Make Up Parenting Period occurs, I further order that on Sunday, July 24, 2022, Ms. Byrne shall deliver the children to Mr. Visser's home by 11:00 a.m. and she is responsible to ensure that the children enter the front door of Mr. Visser's home.
- [137] During the Make Up Parenting Period, Mr. Visser shall telephone or video-call Ms. Byrne for her parenting time with the children on Wednesdays from 7:00 p.m. to 8:00 p.m. Mr. Visser or Ms. Grant may remain present with the children during Ms. Byrne's remote parenting time during the Make Up Parenting Period.
- [138] During the Make Up Parenting Period, Ms. Byrne shall arrange for and attend a minimum of four psychiatric or psychological counselling sessions for the specific purpose treating Ms. Byrne's alienating behaviour. If Ms. Byrne cannot arrange for these sessions to occur during the Make Up Parenting Period, she must arrange for and attend the sessions by no later than three months from the date of these reasons. The cost of these sessions shall be paid for by Ms. Byrne.
- [139] The regular parenting time schedule provided in the Final Order shall continue following the completion of the Make Up Parenting Period and for clarity, the first two occurrences of the regular parenting time shall take place as follows:
- a) on Sunday, August 21, 2022, Mr. Visser shall deliver the children to Ms. Byrne's home by 6:00 p.m. and ensure that the children enter the front door of Ms. Byrne's home for the commencement of her regular parenting time as provided by the Final Order; and
 - b) on August 28, 2022, Ms. Byrne shall deliver the children to Mr. Visser's home by 6:00 p.m. and ensure that the children enter the front door of Mr. Visser's home for the commencement of his regular parenting time as provided by the Final Order.
- [140] The parties may, by written consent, adjust the dates and times for the Make Up Parenting Time and the regular parenting time schedule.

- [141] I am also asked to provide a police assistance clause pursuant to s. 231(5) of the FLA. Mr. Visser submits that a police assistance clause is necessary because Ms. Byrne has already involved the police and the police have interacted with parties and the children during past exchanges of the children. In his view, the police presence would allay his fear and distrust of Ms. Byrne and protect the children from, for example, the risk that they would run away.
- [142] Despite Ms. Byrne opposing the police assistance clause during the hearing before Ball J., she did ask the police to attend during the exchange of the children on August 6, 2020.
- [143] Given his mistrust of Ms. Byrne and their history, Mr. Visser was not prepared to engage with Ms. Byrne in any way on August 6, 2020 other than to text her while she was outside to state that he was inside his home. He opened the front door while Ms. Byrne and the children were parked out front and he waited for the children to enter the open door.
- [144] The police officers that Mr. Visser dealt with on August 6, 2020 and subsequent occasions when the eldest child ran away, strongly encouraged Mr. Visser to apply for a copy of the police notes. The police notes were produced. The notes support my conclusion that Ms. Byrne is alienating the children against Mr. Visser including because the police noted that a child they spoke to knew about details of her parent's relationship that a child of that age would not normally be expected to know.
- [145] If Ms. Byrne truly believed that involving the police was not in the children's best interests, it is inexplicable that after opposing Mr. Visser's request for same, she would ask the police to attend during the exchange of the children. As for the potential trauma to the children, I note that K. contacted the police on two days after she had fled from Mr. Visser's home. The police spoke with K., with Mr. Visser and Ms. Byrne on these occasions. This confirms that the parties' eldest child is aware of and has, in the past, sought out police involvement related to Mr. Visser's parenting time.
- [146] The police notes indicate that K. adamantly refused to go to Mr. Visser's house. Mr. Visser told the police officer that while he wanted K. to be included in that day's parenting time, he was not going to force her to come to his house.
- [147] The police officer then telephoned Ms. Byrne. Despite attempting multiple times to explain "police authority concerning custody arrangements", Ms. Byrne was unwilling to accept that, in her view, the police had allowed Mr. Visser to "opt-out of the parenting on this date".
- [148] After a fourteen-minute telephone conversation with Ms. Byrne during which she continually interrupted and argued, the police officer terminated the phone call with her. The officer described Ms. Byrne as "twisting words to fit a narrative that just was not there". In her testimony, Ms. Byrne stated that she was unhappy with the police assistance and she viewed Mr. Visser as the source of the problem since he failed to make the children participate in his parenting time.

[149] In *Patterson v. Powell*, 2014 ONSC 1419 [Patterson], Justice Pazaratz provided a comprehensive analysis of the issue of police assistance clauses:

78. If a judge anticipates future disputes or non-compliance, the court may wish to remain seized of the matter, and establish a framework to quickly deal with disputes -- including contempt proceedings -- to ensure that the parties clearly understand expectations and consequences.
79. In the absence of ongoing judicial intervention, and serious consequences for disobedience of court orders, long-term police enforcement clauses may prove to be both ineffectual and potentially counter-productive. Non-compliant parents are unlikely to be influenced by repeat police visits to their homes; but children are likely to be deeply (and negatively) influenced.
80. As Justice Quinn recently commented in a footnote in *Stirling v. Blake*, 2013 ONSC 5216 (Ont. S.C.J.):

When parties involve police in their access disputes, they might as well climb onto the roof of their house, straddle the peak, and, with outreached arms, proclaim to the heavens that they have failed as parents and as human beings.

[150] While police assistance clauses are not to be granted lightly, I am satisfied by the evidence before me, including Ms. Byrne's conduct in failing to deliver the children to Mr. Visser on numerous past occasions and involving the police during an exchange of the children, that pursuant to s. 231(5) of the FLA, this is a case where a police assistance clause is justified.

[151] In my view, the police assistance clause should have a specific focus and not be open-ended.

[152] Therefore, I order that in the event Ms. Byrne fails to deliver all of the children by 11:00 a.m. on Sunday, July 24, 2022, to Mr. Visser's home by ensuring that they enter the front door of his home, then police officers from the Ridge Meadows RCMP Detachment are directed to apprehend the children and take the children to Mr. Visser in accordance with ss. 231(5) and (6) of the FLA.

[153] Despite the history and the evidence before me, I am confident that Ms. Byrne will comply with this court's order. Ms. Byrne has considerable parental authority over the children and she is now called upon to use it. Ms. Byrne assured me during her submissions that she will comply with the court's order.

[154] I agree with Pazaratz J.'s comments in *Patterson*, that where future conflicts may arise, a judge ought to seize herself. Therefore, I am seizing myself of all future applications in this proceeding for a period of 12 months.

Disposition

[155] In respect of Mr. Visser's application, I order as follows:

- a) Mr. Visser shall receive a period of make-up parenting time from 11:00 a.m. on July 24, 2022 to 6:00 p.m. on August 21, 2022 (the "Make Up Parenting Period");
- b) on Sunday, July 24, 2022, Ms. Byrne shall deliver the children to Mr. Visser's home by 11:00 a.m. and Ms. Byrne shall accompany the children to the front door of Mr. Visser's home and supervise them until they enter the front door;
- c) during the Make Up Parenting Period, Mr. Visser shall telephone or video-call Ms. Byrne for her parenting time with the children on Wednesdays from 7:00 p.m. to 8:00 p.m. Mr. Visser or Ms. Grant may remain present with the children during Ms. Byrne's telephone or video-call parenting time during the Make Up Parenting Period.
- d) During the Make Up Parenting Period, Ms. Byrne shall arrange for and attend a minimum of four psychiatric or psychological counselling sessions for the specific purpose treating Ms. Byrne's alienating behaviour. If Ms. Byrne cannot arrange for these sessions to occur during the Make Up Parenting Period, she must arrange for and attend the sessions by no later than three months from the date of these reasons. Ms. Byrne shall be responsible to pay for the cost of these sessions.
- e) The regular parenting time schedule provided in the Final Order shall continue following the completion of the Make Up Parenting Period and for clarity, the first two occurrences of the regular parenting time shall take place as follows:
- f) on Sunday, August 21, 2022, Mr. Visser shall deliver the children to Ms. Byrne's home by 6:00 p.m. and ensure that the children enter the front door of Ms. Byrne's home for the commencement of her regular parenting time as provided by the Final Order; and
- g) on Sunday, August 28, 2022, Ms. Byrne shall deliver the children to Mr. Visser's home by 6:00 p.m. and Ms. Byrne shall accompany the children to the front door of Mr. Visser's home and supervise them until they enter the front door for the commencement of his regular parenting time as provided by the Final Order; and
- h) if Ms. Byrne fails to deliver all of the children by 11:00 a.m. on Sunday, July 24, 2022, and by 6:00 p.m. on Sunday, August 28, 2022, to Mr. Visser's home, then police officers from the Ridge Meadows RCMP Detachment are directed to apprehend the children and take the children to Mr. Visser in accordance with ss. 231(5) and (6) of the FLA.

[156] In respect of Ms. Byrne's application, I order the application dismissed.

[157] Unless I direct otherwise, I am seized of all future applications in this proceeding for the next 12 months. The parties may, by contacting SC Scheduling, request a time to appear before me, for example, to seek further direction or to address issues of non-compliance.

[158] As the successful party, Mr. Visser is entitled to costs in respect of the applications.

"E. McDonald J."

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Prepared on 26 October 2026 · Esheria