

CANADA / JUDGMENT

Y.G. v. C.L.S.

2024 BCSC 713

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Supreme Court of British Columbia

DECIDED

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2024 BCSC 713 Y.G. v. C.L.S.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Y.G. v. C.L.S.,

2024 BCSC 713

Date: 20240430

Docket: E14469

Registry: Chilliwack

Between:

Y.G.

Claimant

And

C.L.S.

Respondent

Before: The Honourable Justice Schultes

Reasons for Judgment

The Claimant, Appearing on his own behalf:

Y.G.

Counsel for Respondent:

E.A. Berrie

Place and Date of Trial:

Chilliwack, B.C.

December 6-9, 2022;

April 11-14, 2023; July 5-7, 2023

Place and Date of Judgment:

Chilliwack, B.C.

April 30, 2024

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Introduction

- [1] This family law trial dealt with the question of what parenting arrangements for the parties' two children would be in the children's best interests.
- [2] The respondent seeks to vary a 2018 consent order that provided that the children would live primarily with the claimant. She takes the position that since then she has addressed the substance use issues, that made that order necessary, and that the children would now benefit from living primarily with her. The parties' older child has more recently chosen on his own to live with her, and an interim order was made during the trial to recognize that change.
- [3] The claimant, while acknowledging that their older child has reached an age at which his choice about where to live should be respected, and that his relationship with that child is currently strained, raises concerns about the respondent's parenting and her ability to comply with further orders, based on her breaches of the existing one. To address those concerns, he wishes to continue exercising the primary parenting responsibilities over both children, and to have their younger child, who currently sees the respondent on alternate weekends, continue to live mainly with him.
- [4] The parties' conduct in relation to these issues was described in great detail in the evidence, particularly the respondent's substance use. To retain the necessary degree of focus, it is important to emphasize at the outset that pursuant to s. 37(2) of the Family Law Act, conduct is relevant only to the extent that it "substantially affects" the needs and circumstances of the children as described in s. 37(2).

Evidence

Main Participants

- [5] The claimant is currently 46 years old and the respondent is 39. They began a marriage-like relationship in approximately 2005 and separated in 2017.
- [6] Their children are T., who is now 15 years old, and K. who is now 11.
- [7] The claimant also has a young adult son from a previous relationship, E[1], who was regularly involved in the parties' family life when they were together. After the separation he continued to visit the claimant's home regularly and maintained his relationship with T. and K.
- [8] Since separating, both parties have entered new long-term relationships. Those most recent family arrangements and the involvement of their partners in parenting figured prominently in the evidence.
- [9] The claimant began a relationship with S.S. in 2018. They have established a family together in Chilliwack, consisting of T., K. and Ms. S.'s two daughters from her previous relationship, with whom she alternates parenting time with her former spouse. Her daughters are respectively the same ages as T. and K.
- [10] The respondent began a relationship with M.A. about two years before the trial dates. They live in the former family home in Langley, which as of the last set of continuation dates Mr. A. had recently purchased from the respondent's parents.
- [11] Both parties indicated during the trial that their families are firmly established in their communities, and that moving to the other party's community to facilitate any form of shared parenting is not an option for them. The respondent's father and stepmother[2] were extremely supportive of her recovery from addiction, and have a close connection with T. and K. As a result, they figure prominently in the evidence as well.

Substance Use History

- [12] The respondent's problem with substance use, principally alcohol, led her to attend a residential treatment program in late 2016. Until she sought out treatment she had been operating a licensed daycare in the basement of the family home.
- [13] She identified her specific problem as alcoholism but said that her situation before she went into treatment had also included regular cocaine use. She explained that the problem arose from her attempt to numb her feelings and cope with events relating to the decline of her relationship with the claimant. She described him as being "emotionally, financially and mentally abusive" during the relationship, but made it clear that she was not blaming him for the fact that she had become an alcoholic - it was due to her overall life experiences, of which he was a part.

- [14] To provide the context within which her substance use problem had arisen, she also testified about the claimant's own history of substance use, which allegedly included his involvement in selling alcohol and ecstasy to underage buyers in the early stages of their relationship, and later growing marihuana. In particular, she said that cocaine use was something that they engaged in jointly.
- [15] He admitted to some moderate substance use of his own during the relationship (mainly cocaine and ecstasy) and some cocaine relapses after the separation, but denied any of the other allegations, other than to explain that he had taken over a licensed marihuana growing operation in a commercial building he owns after the operator defaulted on his responsibilities. He also denied ever behaving in an abusive manner towards her.
- [16] As a further potential trigger for the respondent's substance use problems, the respondent agreed in cross-examination that she suffered a sexual assault and unlawful confinement as a teenager. This occurred as a result of the negligence of her birth mother, who was a very troubled person. She explained that this event significantly altered her view of what healthy relationships consisted of as she moved forward in her life, especially with the claimant. However, through her subsequent extensive involvement in counselling and Alcoholics Anonymous she has come to see it as something that empowers her.

Overdose and Separation

- [17] After she was discharged from the residential treatment program in early 2017, she initially returned to the family home, before spending several months at her parents' home.
- [18] The parties disagree about whether they had reached an intention to separate yet at this point, but it is clear the catalyst for their final separation was the respondent taking an overdose of prescription medication at the family home in May of that year.
- [19] The respondent provided a narrative of the pressures on her that led to the overdose, including the claimant's failure to respect the separation, his own continued substance use, and his lengthy absences from the home.
- [20] She claimed that she took the excessive number of pills, which were antidepressants that she had been prescribed a considerable time previously, in an attempt to feel better, rather than to take her own life. On that basis, she rejected the claimant's characterization of it as a suicide attempt, although she did use that term once before correcting herself (and her counsel described it in that way in final submissions). She could not recall the exact number of pills she took. She said that she knew that the claimant and her parents were going to be at the house shortly, which I took to be intended as a further indication that it was not serious.
- [21] Both children were at home with her when she took the overdose. T., who was eight at the time, was old enough to appreciate the significance of the incident, and actually attempted to make a call to obtain assistance for her.

- [22] Her parents took her to the hospital, where she spent about eight days.
- [23] She noted that after her release, she was not referred for any psychiatric treatment, either by the doctors at the hospital or her family doctor. Nor has she ever been diagnosed with a mental illness or mental health issues. She did not address the basis on which she had previously been prescribed antidepressants. She also agreed with the suggestion that at the time of the overdose she suffered from anxiety, which she was eventually able to overcome through abstinence, involvement in AA, and counselling, including cognitive behavioural therapy.
- [24] She said that she may have discussed the overdose with the children, "if there were questions directed to [her]", but given their ages at the time she would probably have "redirected" any such questions from them. She was aware that they later underwent counselling to deal with it. She has apologized to T. for the fact that he was present when it occurred, and considers it her job to now "hold space" for either child if they want to discuss it with her, and to prevent anything like it from happening again.
- [25] The Ministry of Children and Families initially placed the children in the claimant's care.
- [26] After her discharge from the hospital, the claimant's view was that it was not safe for the children for her to return to the home. On the other hand, she and her parents took the position that she should occupy the main part of the home with the children and the claimant should live in the basement. In response, he removed the children from the home, took them to Chilliwack (where his parents live), and began the present family action.
- [27] For her part, the respondent testified that she was not prepared to return to the home while he was there. When she did return, after staying at her parents' apartment in Vancouver, she did not know where he and the children were for two to three months. She had seen them "very rarely" since her release from the hospital.

Initial Orders

- [28] Both parties were represented by counsel in the early stages of this action.
- [29] Pursuant to a consent order made in July 2017, the children were to reside primarily with the claimant, and he and the children were permitted to return to live in the family home until a specific date in August.
- [30] The parties were to jointly exercise parenting responsibilities, except that the claimant would have the responsibilities of deciding where the children would live and with whom they would associate. The parties were given the opportunity to agree in writing as to the respondent's parenting time, and if they were unable to agree, she was given liberty to proceed with her own application for specified time. Any such parenting time was to be supervised by her parents, and there was a protection order prohibiting her from attending at any location where the children were, other than in the course of that parenting time.

[31] The parties also agreed that a s. 211 report would be prepared by Robert Colby, an experienced psychologist.

Section 211 Report

[32] Mr. Colby completed his report in September 2017.

[33] He recommended that the respondent continue with individual therapy, "to address her emotional psychological status, her sense of anxiety and fearfulness, that present as a trigger for her depression and substance abuse."

[34] With respect to the main issue of parenting, he offered the following:

2. It has been less than a year since [the respondent] entered a residential alcohol treatment program, and four months since a medication overdose. She reports relapses in the last six months. It is felt that a greater amount of time is needed for [the respondent] to have an assurance of stability. There are reports of at least two, and possibl[y] more, relapses, with [the claimant] presenting six such events.

Therefore it is recommended that [the respondent] not have sole independent care of the children.

[Emphasis in the original].

[35] Instead, he recommended that the children remain primarily in the claimant's care.

[36] For the first two months the respondent's parenting should be supervised, he said, followed by the removal of the that requirement if there were no difficulties.

[37] More importantly for the purposes of this trial, he also recommended that she participate in the "Soberlink" program as part of her parenting time.

[38] Soberlink is a product that monitors alcohol use. It requires the party who is being monitored to provide a sample of their breath into a device that analyzes its blood/alcohol content. The results are then sent electronically to designated recipients. It is a commercial product that requires an ongoing subscription, and according to the respondent it cost about \$150 per month.

[39] Mr. Colby suggested that after four months without any difficulties, the use of Soberlink could be dispensed with.

[40] His other relevant recommendations were that the children should reside in Langley, which would provide "the greatest degree of consistency", especially in relation to T. He also noted that the children remaining there "allows for the expansion of parental involvement, as [the respondent] deals with issues of substance abuse and is able to move forward in taking personal responsibility".

- [41] The claimant explained that he chose to relocate to Chilliwack because that was where his support system was, in the form of his extended family. He pointed out that Mr. Colby's report was released after he had already made that move.

Introduction of Soberlink

- [42] The parties began to use Soberlink in October 2017, and the respondent was immediately able to see the children as a result of using it. The results of each breath test were sent to the claimant and to her father.
- [43] Prior to that she had not seen the children since June, which the claimant said was due to "slip ups" in her efforts towards sobriety, and various other excuses that she had provided. I took him to be saying that not seeing the children was due to her own behaviour, rather than any barriers to it being put up by him. She had occasional phone calls with them however.
- [44] He described the parties agreeing to a process under which the first two months would involve the respondent's parents being present during her parenting time, in addition to using Soberlink. The second two months would involve only Soberlink being used. The goal was to transition to a point at which she could have time with the children without any form of monitoring.
- [45] In a subsequent consent order in December 2017, the parties agreed that the requirement for supervision by the respondent's parents and the prohibition against her operating a vehicle with the children in it would end on December 12. I infer that by then the availability of Soberlink to monitor the situation was thought to have made those measures unnecessary.
- [46] The respondent was unable to attend T.'s Christmas concert that year because of a positive reading on the device, which she claimed was as a result of it malfunctioning. The claimant would not allow her to be in the audience for the concert, despite the fact that it would not have involved any direct contact with the children.
- [47] The respondent had a relapse during the children's spring break in March 2018. She had been having parenting time with them for eight consecutive days. The relapse occurred on the eighth day.
- [48] From May to December of that year she had no physical contact with the children, only occasional phone conversations.
- [49] During this period of her absence, with the claimant's agreement, her parents began to use the alternating weekends that were set aside for her parenting time for them to spend time with the children.

The 2018 Order

- [50] Mr. Colby's recommendations were eventually reflected in the consent order that is the main subject of this trial. The order was arrived at during a judicial case conference in November 2018. Both parties were still represented by counsel at that point.
- [51] The claimant said that the respondent appeared at the JCC, after not having been heard from in quite some time, and advised that she was "clean and sober". She was also engaged to a new partner. The claimant described himself as being elated at this news, and wishing to move the parenting process forward.
- [52] The consent order purported to be "by way of final order".
- [53] The parenting issues were to be dealt with by a two-year parenting plan. If possible, the parties were to retain a specific named parenting coordinator to assist in implementing the plan.
- [54] In addition to specific types of decisions that were described in the order (for example, increasing or decreasing parenting time in the children's best interests), the parenting coordinator was able to "make any decision or recommendation on any issue the parties agree in writing to have the parenting coordinator make such decision or recommendation."
- [55] All of the parenting responsibilities were allocated to the claimant, as was the children's primary residence, but with the respondent having the ability to make day to day decisions on matters affecting the children when they were in her care. The parenting co-ordinator was given the authority to alter this allocation of responsibilities whenever he considered it appropriate.
- [56] In addition to specified parenting time on certain upcoming dates, the respondent was allocated alternating weekends with the children, from after school on Friday to dropping them off at school on Monday morning. She was also to have "phone time" with them on Sundays "around dinner time" on the weekend on which she did not have parenting time, and at any additional times that were agreed to by the parties or recommended by the children's counsellor or the parenting coordinator.
- [57] The order also provided that "[b]oth parties are obligated to immediately inform the other of any significant issue involving the children while the children are in his or her care".
- [58] The provisions dealing with the use of Soberlink were:
10. BY CONSENT and by way of final order, the Respondent is to set up and use Soberlink, as per the Soberlink protocol, for a minimum of three months on the following terms and schedule:
 - a. she is to provide a breath sample 30 minutes prior to the Children being picked- up from the Claimant;

- b. every two hours from the time the Children are picked-up from the Claimant until the Children are returned to the Claimant;
 - c. the Respondent will not drive a vehicle with either or both Children in it for so long as she is required to use Soberlink under the within order or as directed by a parenting coordinator, unless otherwise agreed in writing by the parties; and
 - d. in the event the Respondent requests the Claimant's consent to her driving with either or both Children while she is using Soberlink, the Respondent will, prior to driving either or both Children, use the Soberlink device at the time that she makes such request to the Claimant and any such driving of either or both of the Children will be restricted to that which the parties agree in writing.
11. BY CONSENT and by way of final order, in the event the Respondent has a positive test alert from Soberlink, she is to do the following:
- a. remain at the location she is in at the time of blowing into the Soberlink device;
 - b. she is to contact her parents to ask if they can immediately come and pick up the Children;
 - c. if either of her dad or step-mom (the "Parents") are able to pick up the Children in under one hour from the time of the positive test alert, they are to do so and they are to stay and supervise the respondent's parenting time, within earshot and eyesight of the Children when with the respondent, until the earlier of:
 - i. the end of the Respondent's parenting time; or
 - ii. the time the Parents are not able to continue to supervise the parenting time;
 - d. immediately after contacting the Parents, provide written confirmation to the Claimant that either of her parents can pick up the Children in less than one hour from the positive test alert or she is to make whatever arrangements the Claimant directs in regards to him or his delegate coming to pick up the Children.

[Emphasis added]

[59] The requirement that the respondent "set up and use" Soberlink was understood by the parties to include her responsibility for its ongoing cost.

[60] Unfortunately, the order did not indicate what circumstances had to exist before the respondent would no longer be required to use Soberlink to exercise her parenting time, including how the "minimum of three months" of its use was to be calculated. Nor did it explicitly authorize the claimant to withhold her parenting time if she did not use it. The claimant said that he envisioned that those matters would be dealt with under the direction of the parenting coordinator.

- [61] The respondent explained that she was not in favour of the conditions in the order, but felt that if she did not agree to them she would not be able to see the children. She did not feel that her lawyer was protecting her interests and that the children were being "dangled as a carrot" to get her to agree to things that she might not normally have accepted. She accepted the suggestion that in effect she was saying that her counsel was inept, but explained that changing lawyers was difficult and time-consuming because of the amount of money she had spent by that point, and the complexity of the case. It took her some time to realize that it would still be worth doing regardless of those obstacles.
- [62] She also conceded that her life "was a struggle" at that time and that there were things in the order that she "was not able to achieve".
- [63] She resisted the suggestion that the s. 211 report could also be looked to as the basis of the parties' responsibilities under the order. While they "drew knowledge, inspiration, spirit" from that report, in her view "what was in the order was what was in the order". Contrary to the claimant's assertion, it was not her understanding that the minimum three months of Soberlink use would be extended each time there was a positive reading.
- [64] In addition to the parenting provisions, the order dealt with all of the outstanding property and support issues. With respect to child support, the parties were deemed to be earning approximately the same income, and their resulting identical support obligations were to be set off against each other until November 2023. This meant that no support would be payable by either of them until then.

Response to the 2018 Order

- [65] After being able to see the children over the Christmas holiday break, the respondent had a positive Soberlink result before her scheduled parenting time in January 2019. As a result, the claimant would not permit her father to pick the children up for that visit.
- [66] According to the claimant, after conveying through counsel that she had a blood disorder that caused false positive results, the respondent then admitted that she had been drinking wine at that time.
- [67] The respondent explained that in general, she had a lot of trouble with Soberlink, and she was sent a new machine "a couple of times". She described an occasion in which her parents came to supervise her parenting following a positive reading, as required by the order. Despite the reading, she maintained that she had not been drinking on "that occasion". At another point the service attributed the positive readings of another Soberlink client who had the same name to her.

- [68] The claimant said that there was an incident in January or February of 2019 in which the respondent called him to pick up the children early from her parenting time, because she had an appointment. When he arrived, she told the children that he had come early to pick them up without including the fact that it was pursuant to her request. This made T. extremely upset. Ms. S., who was acting in the role of a stepmother by then, described T. as "completely hysterical", and repeatedly demanding to be returned to the respondent.
- [69] The parenting coordinator became available to take up his role in February of that year. There were ongoing problems with the respondent complying with his directions. She did not register for an online communication tool for family cases that he had directed the parties to use. More significantly, starting at the end of March the Soberlink service was disconnected due to her non-payment.
- [70] The respondent testified that there were times when she was unable to afford to continue with Soberlink. After the separation she was working in a part-time retail job, had no assets, and had to pay for accommodation. Her debts, especially her legal fees, were extensive. These same financial concerns were also the reason that she did not use the parenting app that the parenting coordinator had directed.
- [71] She said that she notified the claimant of the issue in the hopes of coming up with a different agreement or collaborate on alternatives, but nothing came of it except a very hostile email from him. However, she agreed with his suggestion in cross-examination that she had cancelled Soberlink "on [her] own accord."
- [72] In April 2019 she wrote to the claimant advising that the payment of the \$20,000 that was due to her under the property provisions of the order "would help [her] exponentially in the stabilization of [her] Soberlink". She explained that when the claimant eventually paid her that money, it was eaten up by her child support and special and extraordinary expense obligations, and by her lawyer's fees, leaving nothing to reinstate Soberlink.
- [73] As a potential contradiction of this version of events, her stepmother testified that she paid for the respondent's Soberlink service.
- [74] Although the claimant accepted responsibility for her struggles with sobriety during this period, her experience was that Soberlink was used by the claimant to punish her, rather than as a tool to provide the children with safe access, as it was intended.
- [75] In April the parenting coordinator wrote to the parties advising, among other things, that the use of Soberlink was mandatory, and that its use would continue until at least the end of May of that year.
- [76] In May the respondent failed to show up for a Mother's Day visit that had been arranged through counsel.

- [77] The respondent's version of this incident was that she had left it to her lawyer to arrange the details of the visit but did not hear back from him, so she had no idea that she was able to see the children. She explained that she did not know what was going on with the visit because "my capacity was small and I have left it in the hands of my lawyer". She initially testified that after she "got the message the next day" from the claimant, she tried to "save face". She then said that she believed that she had received the claimant's message on "Mother's Day after it--quite a while after it had been sent".
- [78] However in the email that she sent to the claimant at 2:19 pm that day, in response to one from him at 10:10 that morning expressing concern that she had not sent her Soberlink results in advance of the scheduled pickup time, she wrote that "I wasn't planning on headed out that way until this afternoon and I should have communicated that." She also acknowledged that the children were disappointed and that she would "own that one" for her lack of communication. In her testimony, she acknowledged that this email appeared to conflict with her explanation.
- [79] The claimant also referred to numerous instances of her failing to follow through with calls to the children at prearranged times. As an example, he presented the respondent in cross-examination with an email that he had sent her in March 2019, in which he referred to a missed call to her from the children. She could not recall the incident that had prompted the email.
- [80] Ms. S. described missed or late calls from the respondent occurring particularly in reference to birthdays and holidays. She also did not believe that she had ever seen mail from the respondent to the children. More generally she described having to comfort T. and K. numerous times when they were confused and upset about missing the respondent and "not understanding where she is". T., she observed, would bury his emotions about the situation and then become upset later.
- [81] E., the claimant's son from his previous relationship, recalled these kinds of incidents as well, and said that they would be very emotional for T., and would lead to him acting out. He was present "a few times" when T. and K. were supposed to receive a phone call from the respondent but did not. In one incident during the Christmas season, the children were not sure whether they were going to get a call, so T. called the respondent, which was the first time that they had spoken in a "substantial amount of time".
- [82] K.N., a family friend who testified on behalf of the claimant, has a close relationship with T. and K. She testified that T. would get very upset and then "shut[] down" when a planned meeting or call with the respondent would not end up taking place.

Second Treatment Program

- [83] In May 2019 the respondent entered an addiction recovery house in Kamloops, where she remained until July. She saw the children the day before she entered that facility, but because of the unavailability of Soberlink the claimant did not permit in-person parenting time after she left it, although there were sporadic phone calls between her and the children.
- [84] The respondent testified that she achieved sobriety as a result of her attendance at this program, which provided her with greater assistance than the first one, and that her last drink of alcohol was at the end of May 2019. She candidly conceded that she had relapsed "multiple times" before then, explaining that recovery is not linear, but rather "a lot of up and down". However, later in her direct examination she said that she relapsed "once or twice".
- [85] The problem was that the support system she had acquired in the first treatment program was not readily accessible to her when she returned home to Langley.
- [86] When she was asked why her sobriety had not remedied her ongoing non-compliance with the order, she said that the two were not related. Even though she stopped drinking as a result of the program, her life did not get better until she started to apply the principles of recovery to her daily living. I took her to be saying that her abstinence, in itself, did not resolve all of her problems.

Events Leading to Cessation of Contact with the Respondent

- [87] The parenting coordinator withdrew from his role at the end of January 2020. His notice of withdrawal indicated that the respondent was no longer communicating with him, and was refusing to work with him, follow the relevant provisions of the parenting agreement, or pay any of his invoices.
- [88] The respondent explained that the cost of the parenting coordinator ended up being much greater than she had anticipated when she entered into the order. She had understood that the initial retainer would be enough to have him continue throughout the two-year period that was envisioned for the parenting plan in the order, and was shocked to receive another invoice of an amount equal to or greater than that. She described herself as being unable to communicate with the parenting coordinator due to "fear surrounding financial insecurities". She had hoped that with his assistance she and the claimant would be able to co-parent successfully.
- [89] The claimant then made the decision to prohibit any in-person contact by the children with the respondent. At that point he still permitted video and phone calls (he referred to a subsequent decision to no longer have video as a component of the calls, but this was not expanded on, and nothing appears to turn on it).

- [90] He had been informed by the children early in 2020 that the respondent's parents were allowing her to visit with them during their grandparenting time, so he told her parents that he would stop their grandparenting time if they permitted that practice to carry on any longer. The respondent's stepmother testified that the claimant reiterated this warning "pretty much" every time they got to see the children. They abided by the rules that he imposed because they wanted to maintain that contact.
- [91] He testified that during separate video calls with each child in March, the respondent blew into a Soberlink mouthpiece and showed them a negative reading on the machine, without explaining to them that the system was not being monitored, as required by the order. This sowed conflict between the children and the claimant, which came to light when T. angrily told Ms. S. that the respondent "was blowing into the machine" but that she and the claimant were keeping him from her. Ms. S. said that it was difficult to explain to a child T.'s age how the machine had to be connected in order for the results to be sent. T. was upset about the issue for a week.
- [92] The respondent denied that she ever engaged in this behaviour.
- [93] The claimant also described that when the respondent spoke to the children by phone she would tell them that she had been trying to call them all week, thereby falsely implying that the claimant was not passing on her messages to them. This added to his difficulties with them.
- [94] After the incidents in which she had unauthorized parenting time with them at her parents' home and demonstrated her supposed use of Soberlink to them, he told the children that communication with her (by which I took him to mean in-person contact) could resume when the respondent "starts to follow the instructions laid out for her." Once she did those things, contact "would be reinstated right away". He added that the children had her phone number (and could call her themselves, I took him to mean). He said that the children understood what Soberlink was and how it operated.
- [95] Ms. S. said that she and the claimant described the respondent to the children as someone who "has a mental illness" and "needs to get better and prioritize their mental health". Later in her evidence Ms. S. added that the claimant would tell them that the respondent "had issues with addiction", that she needed to "blow in her machine", and that she was not allowed to drive with them.
- [96] When she was asked if she and the claimant discussed the litigation in front of the children, she conceded that the children could be within earshot when that occurred, because they have a small house. She agreed that he told them "what was outlined in some of the court orders about parenting time" - that is, the conditions under which she was allowed to exercise it. E. agreed that the claimant was "very open" with him, T. and K. about the litigation.

- [97] The respondent sent him an email in May, in which she said she had "Soberlink set up and running regular daily testing three times daily". She envisioned connecting the claimant with the service. She described this as "putt[ing] up a white flag" on the issue and suggesting that she and the claimant cooperate. Her intention was to put the possibility out there and begin a discussion. In cross-examination, she said that she did not have any positive readings during this use of Soberlink. She did not recall when she had last used it during this period.
- [98] The claimant testified that he was "not aware" of whether he had responded to this suggestion or not, but said that if there was no reply from him in the email records then he would not have. He also did not respond to emails from her in July and August of that year suggesting that she see the children.
- [99] The claimant was shown text messages between T. and the respondent that same month in which T. expressed a desire to "go back home" and live with her. T. referred to "only being allowed to call on Sunday nights" and later added that "daddy's going to be pissed because I'm talking to you when I'm not supposed to". He also told the respondent that at the claimant's house "they just yell and yell". The claimant agreed that T. was not to have contact (in person, I took him to mean) with the respondent at that time. He received a message from the respondent telling him that T. was in distress, but did not respond to it. He explained that he regarded her as the creator of this situation by failing to adhere to the requirements of the order. He added that T. later told him that he was "testing" the respondent in these messages to her, and wanted her to make good on what she had been telling him.
- [100] In his communications during this period arranging for the children to spend time with her parents, the claimant continued to stress that they were not to allow any in-person contact between the children and the respondent.

Cessation of Contact with the Respondent

- [101] Starting in August 2020 the respondent began to post videos on social media, including some which she referred to the claimant in negative terms and expressed what he considered to be a defiant attitude towards her situation. He described some of her other videos as "lewd". It appeared to him that she was under the influence of alcohol when she recorded these videos. Ms. S. described them as reflecting anger and sarcasm, and said that they were "on the side of being aggressive towards" the claimant.
- [102] A further troubling aspect from the claimant's perspective was that the posts were publicly available so, the children were able to view them, and were "tagged" with his name, so they would come to the attention of any friends or family who were following him on those social media platforms. In his view, they were undermining his efforts to raise the children in her absence.

- [103] The respondent clarified that only one of the videos was directed at the claimant. She described herself as being extremely frustrated, as well as "hurt, trapped and not feeling heard" in relation to the parenting situation. She had severed ties with her former counsel and was "learning to have a voice". She conceded that this was an inappropriate way to communicate, one that she would not repeat. She later "made amends" to the children in relation to them.
- [104] In the absence of clear information about the respondent's sobriety and mental health at this point, and without her "coming to the table" to discuss her situation, the claimant decided that it was necessary for the children's well-being to cut off all contact with her.
- [105] In response to her email in early August requesting to see the children, he wrote a lengthy tirade about her behaviour. It included the statement that "in the interests of our children's mental health and wellbeing, at this time your communication will be stopped" (although he had already cut it off by then). He also referred to her "grand manipulation suicide event" in 2017.
- [106] He advised the respondent's parents that, "We have for the time being suspended all communication" with her, and asked the parents to guarantee that they would adhere to that restriction as well.
- [107] The claimant testified that he took "full responsibility" for the period that then passed with no communication between the children and the respondent. He believed that the communications that had been occurring between her and the children up to that point had been "manipulative".
- [108] In her subsequent application for parenting time, the respondent alleged that there were ten occasions in which she had sent him an email requesting a call with them and had not received an answer. He agreed that he had received emails from her of that nature, but stressed that there was a significant difference between her making such requests and actually following through with the calls. I took him to be saying that he did not consider her requests to be credible.
- [109] She said that during this process she became somewhat estranged from her parents, in the sense that there would be delays in her being able to see them, because they were fearful that contact with her would lead to the loss of their grandparent time. Her stepmother testified that she and the respondent's father stayed out of Langley when they had the children with them, for fear of running into the claimant and being accused by the claimant of letting them see her. They also restricted their phone contact with her because they did not want her to feel bad that they were seeing the children when she was unable to.

- [110] The claimant sent the respondent an email on the evening of Christmas Day 2021, advising that the children would be calling her cellphone in 10 minutes for "a short Christmas hello". He agreed that this would have been her first contact with the children of any kind in 16 or 17 months.
- [111] The respondent emphasized that there was never a time in which she "simply disappeared" from the children's lives. Throughout this period she was indicating her availability to the claimant, but in a manner that would not aggravate the situation. While at times the claimant would explicitly advise her that she was prohibited from contact, at other points she would simply be met with "radio silence".

T.'s Initial School Difficulties

- [112] At the end of the 2021 school year, T. was suspended for a week for possessing two vape pens at school, which he had stolen from a locked container in the claimant's home. One pen was designed for smoking cannabis and the other for tobacco. Ms. S. elaborated that T. and his friend were actually caught vaping outside the school, and that after meeting with the principal they immediately involved him in counselling, resulting in approximately 22 sessions.
- [113] She also said that they notified the respondent's parents about the suspension, because he was not allowed to have a scheduled visit with them as a result of it.
- [114] Both the claimant and Ms. S. said that they were not aware of T. using marihuana before this incident.
- [115] A few weeks later, after school was out for the summer, the respondent sent T. a stereo system as a gift through her parents. It was labelled as a birthday present even though his birthday was several months earlier. The claimant viewed this as sending the message that T. should be rewarded for his conduct at school, rather than punished. It violated the message of accountability and responsibility that he and Ms. S. were trying to send.
- [116] The respondent explained that during the periods that she was not permitted to see the children in person, she could only send gifts to them through her parents. There would often be a delay between the holiday involved and when she was actually able to see her parents. Her stepmother confirmed the general process of them passing on "care packages" for the children.
- [117] The respondent added that she did not know that T. had been suspended and was not intending to reward him for it. This gift had actually been left for her parents to pick up some time previously, and there had been difficulty in connecting their schedules. Once again, her stepmother confirmed the circumstances under which they had received the stereo from her, and that there was up to a month between them receiving it and passing it on to T.

- [118] Following this incident, the respondent, who was still not having any contact with the children at that point, got in touch with officials at T.'s school and attempted to set up a meeting to address the situation. The claimant advised her that she was "overstepping the boundaries put in place to protect our children" and that he had cancelled the meeting.
- [119] It was brought to his attention in cross-examination that the order allowed either parent to initiate a meeting with "school staff", as long as the other parent was advised of it, and was either able to attend or waived that right. He agreed that if that was the language in the order, he had breached it. He then suggested that the term that prohibited her from attending was in the protection order that had been issued in 2017. After it was pointed out to him that this order had expired that same year, he said that "I assumed [that he could make the decision] because I'm their father" and that he had acted "out of the safety of my kids".
- [120] He elaborated that once the parenting coordinator was gone he had stepped in to make the decisions, there being no one else left to do so. The general allocation of parenting responsibilities to him also provided him with the authority. As he later expressed it, he had "cut her off from contact with the school because she hasn't followed any of the other things that she was supposed to following in the orders." There was a further concern that he did not know the current state of her mental health. Still later in his cross-examination he suggested that his ability to prohibit her attendance fell within his authority to "dictate who my kids see and are around".
- [121] The respondent explained that she did not learn about the reason for T.'s suspension until the claimant testified about it in this trial.

The Claimant's Own Compliance with the Order

- [122] It was brought to the claimant's attention in cross-examination that he had arguably failed to comply with some of the provisions of the order himself.
- [123] For example, he struggled to find support for his interpretation of the Soberlink provisions in the actual language of the order. Although it only referred to using it for "a minimum of three months" he referred to the agreement, based on Mr. Colby's report, that there would be two months of parental supervision of her parenting with Soberlink, followed by two months with just Soberlink. This was the process that he had described agreeing to immediately after the parties received the report.
- [124] He suggested that the administration of Soberlink fell under the authority of the parenting coordinator, but it was pointed out to him that it was not one of the listed duties in the agreement, so the respondent would have had to agree in writing in order for the parenting coordinator to have had that authority. His response was that her failure to engage with the requirements of the parenting order meant that no such agreements were possible.

- [125] Nor, he agreed, was there any support in the agreement for his contention that the minimum three-month period for using Soberlink would re-start whenever the respondent registered a positive test.
- [126] Later in his cross-examination he suggested that the words "as per the Soberlink protocol" in the order imported the structure that was previously agreed to as a result of Mr. Colby's recommendations. He rejected the suggestion that in this context "protocol" meant the operational instructions provided by Soberlink.
- [127] The respondent's counsel also pursued the suggestion that the claimant had imposed conditions on the respondent that exceeded those contained in the order. For example, in May 2019, after the respondent asked him to put the start of her weekend parenting off until the following day because her father was unavailable to pick up the children, he required her to provide an immediate Soberlink sample, although the order would not have required it until 30 minutes before the new pick up time. He explained that he wanted her to "demonstrate the truth" of the excuse she was offering, and that she was not just trying to avoid compliance (because she had been drinking, I took him to mean).
- [128] Similarly, in September 2019, when she emailed him seeking to resume a regular parenting time schedule with the children with their upcoming return to school, he imposed several conditions on his agreement. He attributed his requirement for these conditions to not having heard anything about her treatment centre stay in Kamloops. In cross-examination he added that requests of this nature were supposed to go through the parenting coordinator, with whom she had failed to stay in contact (and one of his conditions for resuming visits was the respondent would be "active and online with our parenting coordinator").

Parenting in the Claimant's Home

- [129] The claimant testified that all of the children in his blended family get along well with each other - in particular K. and Ms. S.'s younger daughter, who are inseparable.
- [130] Ms. S. and T. also have a good relationship, although they had to go through a "learning curve" first, since she had never raised a son and he was not used to receiving discipline from a mother figure. She and K. formed a strong relationship early on.
- [131] Similarly, E. testified that Ms. S stepped into the maternal role with both T. and K. effectively. Although T. respects and loves her, he had difficulty adjusting to "the two moms idea" and would get upset about it. Eventually it became a regular thing for him to refer to Ms. S. as "mom". E. said that she he and K. spend a lot of time together and, like the claimant described it, have a very strong relationship. Overall, he described the situation in the claimant's home as "a perfect blend of a family".
- [132] The claimant said that K. has an "extensive" support network at home, in the form of her stepmother and stepsisters, as well as a large network of friends.

- [133] Ms. S. said that the focus in her and the claimant's home is on communicating "accountability and responsibility" to the children, as well as that every action has a reaction or a consequence. Discipline in their home usually consist of "timeouts", writing lines, or loss of phone or TV privileges, she said.
- [134] In his testimony, the claimant focused particularly on writing lines as the usual punishment.
- [135] With respect to their parental conflicts with T. Ms. S. said that he likes to "push the boundaries" and that as a result he and the claimant would get into "fights", about once per month. These did not involve physical contact or yelling however.
- [136] E. does not find the claimant's style of discipline to be anything out of the ordinary. He described him as "honest" and that in the course of imposing discipline "he'll tell you what you need to hear." Punishments, which he said do not usually end up being needed, tend to be the loss of cellphone or TV privileges.
- [137] Their family friend Ms. N. said that discipline in the claimant's home involved nothing that was "out of the normal routine". She gave an example of the children getting angry after being told to do their homework or clean up their rooms. Along the same lines, Ms. N. said that T. does not like rules, and does not want to do homework or assume the normal responsibilities in the home. In particular, he likes to play video games and gets upset when he does not get "all his hours".
- [138] She described the claimant and Ms. S. as providing for all of the children's physical needs and said that they are "always there" when the children are "feeling a little emotional about certain things". In particular, she has observed that the claimant and K. have "a really special bond".
- [139] As previously described, both children have been involved in counselling at various times since the separation, K. on an intermittent basis. T. was seeing a counsellor at the claimant's instigation until his departure from the claimant's home.
- [140] The claimant described T.'s current issues as stemming from the trauma of the respondent's overdose, which from the perspective of a young child put T. in the position of "saving" her. Her subsequent "abandonment" of him and K. caused him anxiety because he felt that he would not be able to help her in that way if it became necessary again.
- [141] E.'s perspective is that because T. was older when the separation occurred he "took it harder" than K., and "has more emotion about it". He attributed T.'s wish to live with the respondent to "making up for lost time" with his mother, because when they were apart "it just occupied his mind that he missed her that much."

Resumption of the Respondent's Parenting Time and the Change of T.'s Residence

- [142] The respondent made an application in April 2022 that resulted in parenting time being allocated to her on two specified weekends, after which it was to continue on alternating weekends, from after school Friday to dinner time Sunday. There was also to be a phone or Facetime call with the children on the intervening Sundays.
- [143] Ms. S. said that whenever possible after that order was made she and the claimant made efforts to provide the respondent with parenting time in addition to what was required by the order. At their longest, these additional periods of parenting time were slightly less than a week long. The respondent agreed that she received additional time with the children in this period.
- [144] According to the claimant, both children enjoy their time with the respondent because it is quite "deregulated", with "lots of gifts and lots of candy and what not". Ms. S.'s experience was that whenever K. and T. returned home for a visit it was necessary to re-establish the rules and boundaries that she and the claimant expected the children to adhere to.
- [145] Shortly before the start of the 2022 school year, the claimant disciplined T. for getting around the parental controls on his phone in order to view pornographic material, which K. and her younger stepsister inadvertently saw as well when they used the phone. His punishment was the loss of the phone for a week. Before it was physically taken away from him T. forwarded to the respondent some files on it that he did not want the claimant to be able to access. The respondent said that T. sent her a message saying that his phone was being taken away and asking her to "take some contacts" (that is, receive some material from his phone) for him. It appeared to her as well that he did not want the claimant to see this material.
- [146] The claimant said that he had informed the respondent by text message that T. had had his phone confiscated. In preparation for her testimony she checked her text messages for that period and said that she did not have one from the claimant mentioning that.
- [147] During his next visit with the respondent, she gave T. a new phone that had access to the internet and no parental controls on it.
- [148] T.'s subsequent resistance to the claimant's direction that this new phone had to have parental controls on it or it could not be brought into the house led to T. deciding to move in with the respondent on a trial basis.
- [149] The claimant said that he respected T.'s decision, but was unhappy with the secretiveness and deception on the respondent's part that accompanied the move. His concern was that, as in the case of the gift of the portable stereo following his suspension from school, T. was being rewarded by the respondent for a failure to follow the rules of the home he was living in. In effect, rather than learning to reach the goals that have been set for him, he was learning from the respondent to "go around" them.

- [150] The claimant also learned from T. that the respondent had previously told him that at 13 he was old enough to decide where he lived, or old enough to make his own decisions.
- [151] However, while the claimant was not in favour of the move, he was "going to make it work". He did not want there to be hostility between him and T., or create a situation in which T. would run away. He was somewhat reassured by the presence in the respondent's home of her partner Mr. A., whom he understood had taken an interest in T. and would ensure that he was safe.
- [152] T. then left the claimant's home and moved in with the respondent, and has had only limited contact with the claimant since then.
- [153] He was extremely reluctant to take any of his belongings with him to the respondent's house, telling Ms. S. that he had, or would receive, new clothes and other personal items there. Ms. S. later delivered his video game console and associated paraphernalia to him.
- [154] The respondent's version of this change of residence was that shortly after she had dropped the children off at the claimant's home after a visit she received a call from T. asking her to pick him up. He told her that he, the claimant and Ms. S. had "sat down and had a conversation and I want to come and live with you this year. They think that I should come and live with you this year." After seeking legal advice, she picked him up.
- [155] With respect to the phone issue, she said she was aware of the restrictive rules on phone use at the claimant's house, including that the children's phones did not have any plans for cell service attached to them and that their time to use apps for chatting with their friends were limited. She wanted the children to have their own phones at her house so she could "keep track of them in the neighbourhood". She initially considered only allowing them to have the phones that she had provided to them when they were at her house.
- [156] Mr. A. confirmed that T. was given a phone at their house so that they could communicate with him and have an emergency contact. Mr. A.'s understanding was that the catalyst for T. to move was not being given the phone, but rather the discussion that he had with the claimant and Ms. S. he added that there are parental controls on it when he uses it through the wi-fi in their home.
- [157] Later in September Ms. S. sent T. a text message advising him that the claimant was struggling with T.'s decision to move out, and was "feeling very upset and disappointed". She told him that she did not think the claimant was "ready for you to come back for the weekend just yet". The claimant agreed that Ms. S. was conveying his emotions accurately in that message.
- [158] When he returned to the claimant's home for a visit, T. attempted to use the phone that the respondent had given him, but the claimant found out and took it from him for the duration of the visit. T. told E. that he knew that he was not allowed to have the phone at his father's house, but was hiding it.

- [159] Ms. S. described T. as having "a little bit of bravado" when he returned with the new phone because "he had gotten what he wanted". He was also bragging about having it and various social media apps on it to K. and his stepsisters, which upset them.
- [160] The respondent said that in the initial stages of T. living with her, she was able to get him to visit the claimant "a couple of times" by checking with him in the middle of each week to see if he had made contact. As matters progressed, it became necessary to have more in-depth conversations with him about the importance of maintaining his relationship with the claimant, as well as of seeing K. and E. regularly. Once T. flatly refused to visit, she encouraged him to visit the claimant's parents, who also live in Chilliwack, in the hopes that they could be a bridge to contact with the claimant. Her sole attempt to push T. more forcefully to visit resulted in him going to a friend's house and refusing to come home until the suggestion was dropped. This convinced her that such an approach will not work.
- [161] She said that T. told her that he and the claimant do not have a good relationship, they often "argue and fight", and that they "can't get along".
- [162] After the move, the claimant was not cooperative in providing the necessary written approval for T. to attend his new school in Langley. The respondent said that she had to be "a little bit forceful" to get any response from him on the topic.
- [163] She conceded that the parenting in each of the parties' homes is quite different, but stressed she was not critical of the claimant's approach. Instead, her view was that it was "simply not working" for T., who had been expressing concerns about it to her since they re-established contact in April.
- [164] The claimant agreed that before the trial began he had a discussion with T. in which he advised him in the course of the trial T. would "be placed in front of a judge". This was apparently in response to the respondent's trial brief, which indicated that she wished to make an application to have T. "speak with the presiding justice in chambers to provide his view on parenting." The claimant's explanation for providing this information was that one of T.'s fears is of being caught in the middle of this dispute and that since "his mother was putting him in a room with a judge [h]e has a right to know that.". He provided this information to T. "the minute" he saw that trial brief "because that's the transparency that we have".
- [165] He denied that sharing such information breached the prohibition on discussing "any inappropriate court or legal matters" with the children that was included in the April 2022 order.
- [166] This conversation occurred during a visit to the claimant's house over the Thanksgiving weekend of 2022. After the conversation occurred, T. called the respondent and asked to be picked up, and had not had any further conversations with the claimant as of the dates in December on which the claimant testified.

- [167] Ms. S.'s observation was that T. left early because he was not prepared to engage in the kinds of serious conversations that she and the claimant wanted to have with him about "the situation", by which I took her to mean where T. was living.
- [168] As of the time that E. testified (also in December 2022), he and T. were in regular contact, playing video games together online (from different locations) and conversing by voice chat throughout. E. said that T. was online playing video games "all the time, all through the night" and that there were no rules in the respondent's home governing T.'s involvement in that activity. He agreed in cross-examination that this may not be the exact situation in the respondent's home, but that "maybe [T.]'s just got it easy and he's going to want to tell his brother about that". In general, he understood that there were fewer rules in the respondent's home, and he believes that is one of the reasons why T. prefers to live there.
- [169] T. has also told him that since he has been living with the claimant he has made friends in Langley and has been enjoying them.

T.'s More Recent Situation

- [170] Shortly after the first trial dates concluded, the respondent sent a text message to the claimant advising him that she had made an appointment for K. to have a flu shot. The claimant responded that they had a doctor's appointment for K. coming up the following week and that as the "primary parent" he did not consent to her having the shot. He explained in his testimony that K. had had the flu twice recently and "was just fine for her flu antibodies and whatnot". The respondent asked when the doctor's appointment was set for and expressed her wish to attend as well. The claimant told her that it was that upcoming week and that he would inform her of the outcome.
- [171] Despite this, on September 12 the respondent had K. immunized at a pharmacy in Langley.
- [172] This was the second such incident of having K. treated without the claimant's consent. In September, shortly after the incident that led to T. changing homes, the respondent sent the claimant a message advising that K. had had two cavities filled at the dentist, and passing on information from the dentist that she possibly had an abscess. The claimant was not aware in advance that an appointment had been made.
- [173] With respect to the dentist appointments, the respondent explained that once the children's visits with her resumed following the April 2022 order, she defaulted to her "normal mother role", because she had been responsible for those appointments when the parties were still together. K. advised her that they had not been to the dentist in quite awhile. She did not see any harm in taking them for a checkup.
- [174] More recently, K. required emergency dental treatment because of an abscess, which the respondent also looked after. She did not notify the claimant because of the urgent circumstances.

- [175] The same was true of the children's immunizations, which she and the claimant had always kept current during their relationship. The urgency that attached to getting the flu vaccine was the ongoing public concern about the spread of flu and RSV in the province, and the announcement of a popup clinic that weekend in Langley. She provided the claimant with government information about the situation to give him some comfort on the issue.
- [176] Rather than reflecting high-handedness on her part, she said that this is an example of the parties' inability to communicate effectively as parents. Nevertheless, she said that this specific incident has changed her behaviour "going forward", by which I took her to mean that she would not be exercising such parental responsibilities unless they are allocated to her.
- [177] She hoped that an outcome of the trial process would be to clarify this kind of decision-making on behalf of the children, to address the degree of division between the parties. One possibility she raised was some form of structured communication between them, to assist them in eventually getting to something that is more free-flowing.
- [178] The claimant agreed that during the relationship the respondent was the person who looked after arrangements for the dentist and vaccinations. When he was asked why he would not allow her to attend the doctor's appointment he said, "She's high conflict and we don't attend anything together". More fundamentally, he did not want her there.
- [179] T.'s visit during the first week of the Christmas break came to a premature end after he was caught using the respondent's Netflix account information and his phone to circumvent the claimant's prohibition of watching a TV show that had mature content. This led to an argument with the claimant, and T.'s decision to leave the next day.
- [180] Ms. S. tried to comfort T. after the argument, and, as a potential indication of his state of mind, he told her that "It's pretty fucked up when your mom's an alcoholic and your parents spend your whole childhood fighting in court."
- [181] According to the respondent, T. asked her to pick him up because after their argument he could hear the claimant pacing upstairs and he "didn't feel safe". On the way home, he told her that the claimant was "impossible". Getting T. to visit the claimant even for those 48 hours had taken a lot of encouragement, she said.
- [182] He only visited for five minutes on Christmas Day, just long enough to retrieve items that he had left behind on the previous visit.
- [183] Over Christmas, T. purchased a knife in a sheath that could be worn around his neck. Ms. S. described it as shaped like a hook and "aggressive looking". She explained that he has a strong interest in knives and had a collection that had been given to him by various members of the respondent's family (although the respondent pointed out that the claimant had also given him knives). In cross-examination she clarified that T. had a swiss army knife that had been given to him by his grandfather and another knife, also for whittling wood, while he was living with her and the claimant.

- [184] Ms. S. explained that T. was back in Chilliwack several times after that, including dropping by his former school to visit a friend, visiting and spending a four-day weekend with the claimant's parents, without her or the claimant being informed of it. They only found out about these visits when K. and her stepsister saw him at the school, and K. went over to their grandparents' house herself part way through his visit.
- [185] One of her daughter's friends forwarded seven Snapchat videos to her, in which T. was shown vaping and blowing smoke into the camera. He later assured Ms. S. that he did not "vape anything but weed". In the last video he was holding what appeared to be a joint.
- [186] That last video led Ms. S. to prohibit T. from accompanying the family to a planned trip to the U.S. during spring break, out of fear that T. would be found in possession of an illicit substance at the border. Despite his assurances that he would not do so, she said that she did not trust his decision-making.
- [187] T. was invited to stay with the family for the part of his spring break that did not include this trip, but he told Ms. S. that he was not "mentally ready" to return to their home yet. When she asked him to explain that comment he said that he did not really know what it meant either. He assured her that it was not because he was angry with her or the claimant. During this conversation T. responded to her question about marks that she saw on his neck by explaining that they were hickeys.
- [188] On the evening of April 11, the day that Ms. S. testified about the videos, the claimant received a text message from T. stating, "Hey stay out of my videos there mine not yours". The claimant responded by reiterating his previous advice to T. that everything that is put on the internet becomes publicly accessible. His concern is that T.'s complaint indicates that the respondent has shared the evidence in the trial with him.
- [189] The respondent explained that she asked T. questions about the videos to "validate" them - meaning that as a parent she had to determine what he was doing in them. She did not discuss the court proceedings, and T. decided to send the message to the claimant on his own, she maintained.
- [190] Ms. S. had stayed in contact with T. in the period leading up to the continuation dates in April. By video he showed her his room, which contains a TV and both an Xbox and a PlayStation (in their home the TV and the sole gaming console were kept in the living room). He also described having lots of time on his hands to go play video games, go to the mall with friends, or work out at the gym. In relation to his gym attendance he told Ms. S. that he did not like waiting for the bus so he often took taxis home.
- [191] On the Easter weekend of 2023, which occurred shortly before those continuation dates, T. did not come over for a scheduled visit, providing the explanation that he had a stomach ache and was not feeling well.

- [192] During that same period before the April continuation dates, T. was suspended from school for four days because a swiss army knife was found in his backpack during a locker search. As a result, the respondent took his knife collection away from him and he was required to carry out certain tasks during his suspension in order to have his usual privileges, such as the use of his phone, restored to him. Mr. A. took four days off of work to supervise T. during this suspension, and according to the respondent he did well "with the consequences we laid out".
- [193] The respondent did not inform the claimant of T.'s suspension because T. asked her not too. He was "quite emotional about it", she said. The respondent denied the suggestion that by doing so she was allowing T. to dictate her parenting, but rather saw it as "taking counsel" from T.'s "feelings and opinions". When pressed on the issue she added that she was trying to preserve the minimal relationship between the claimant and T. that still remains, by following T.'s wishes. She also did not believe that a discussion with the claimant was possible at that point, because of the state of the communications between them. However, she confirmed that she would report an injury to T., or other emergencies involving him, to the claimant.
- [194] More generally, she said that because of the relationship between the parties her approach to communication was to do whatever would cause the least friction. As she put it, she avoids him "at a top priority".
- [195] The respondent revealed in her testimony that T. was then suspended for the last nine days of school for an incident in which he and some friends got into a confrontation with some younger students and ended up scaring them. The cause was an allegation that T. and his friends had stolen a scooter that they believed had been abandoned as junk. The police became involved, but the respondent's inquiries with them suggested that an additional allegation by the younger students that a knife was involved were not accurate, despite T.'s school principal having suspended him on that basis. Instead, the police dealt with it purely as a recovery of stolen property.
- [196] Once again, the respondent encouraged T. to tell the claimant about this suspension, but he was not willing to do so.
- [197] While the respondent prefers not to use the term "punishment", the consequences for this action that she and T. arrived at was a two-week long grounding (Mr. A. said that they actually lifted it after a week and a half, when the more accurate information from the police became available), during which T. complied with the restrictions on his activities and carried out all of the household tasks that were assigned to him. In her view, these consequences had a good outcome.
- [198] Because the initial allegation involved a knife, the respondent confiscated T.'s knife collection at the outset. She said that this confiscation will be permanent, even though she and Mr. A. ended up being satisfied that no knife was actually involved.

- [199] The claimant had the respondent confirm yet another recent act of misbehaviour by T. that had resulted in a grounding (in that case for 48 hours) and a loss of privileges. In that incident, T. went into the respondent's phone and blocked his school's number to prevent her from receiving calls from it, presumably about his behaviour. She characterized this as a further example of T. making "bad decisions", but took comfort in the fact that their relationship was open enough that he would disclose such actions to her.
- [200] As a broader preventive measure, she and Mr. A. have installed cameras at all the entrances to the home, so that if necessary they are able to monitor T.'s arrivals and departures, and the friends who come to the home.
- [201] As of the last set of continuation dates in July 2023, the respondent had not yet been able to access T.'s final report card, which is only available online, but was making arrangements with the school to get a printed copy. She agreed with the suggestion that he had been late "a fair bit" in his last term, which she attributed to lack of sleep due to literal growing pains, and a general lack of motivation that is typical of his age. When it was suggested that marihuana use was a further factor undermining his motivation, she disagreed that he was smoking a significant amount at that point, although he was still doing it. In addition to trying to help him avoid using marihuana as a way to deal with stress, she has been encouraging him not to spend time with certain friends (who are heavier users, I took her to mean).

K.'s More Recent Situation

- [202] The respondent's recent parenting of K. also raised concerns for the claimant and Ms. S. The respondent gave K. a phone for Christmas, and she was permitted to join Instagram and Snapchat by some means, even though the minimum age for an account on those platforms is 13. The respondent says that she monitors K.'s use of Instagram, and checks with her before posting anything. K. only uses Snapchat for the photo and video filters.
- [203] The respondent also pointed out that K. was posting TikTok videos with one of Ms. S.'s daughters before she ever gave K. her own phone. However, she is open to negotiating parameters for the children's social media use with the claimant. Mr. A. added that he is open to K. using social media as long as her contacts are restricted to friends and family.
- [204] In cross-examination Ms. S. agreed that recently K. had been experiencing problems at school that have caused her to be disciplined there, as well as taking things in the home that she was not entitled to and then not telling the truth about it. To try to identify the cause of these issues, she and the claimant have involved her in counselling again. Ms. S. said that she also believed that K. was "conflicted" about the situation with her parents.
- [205] The respondent's understanding of K.'s problem at school was that she acted as a "cheerleader" encouraging the crowd of students that was watching a fight between two other classmates.

- [206] She said that she has requested extra parenting time on weekends with K., but the claimant's response was that she does not have the right to ask for it, and needs to "earn" it.

Parenting in the Respondent's Home

- [207] The respondent described her success in maintaining her sobriety since 2019 as being due in part to her ongoing involvement in AA. She attends a minimum of three meetings per week. Her spouse Mr. A. is a longstanding member as well, and her AA sponsor and the sponsor's husband have become close family friends - the equivalent of grandparents to the children.
- [208] She described service to others as being even more important than attending meetings, and accordingly she has become involved in the arm of AA that reaches out to people who are incarcerated, to inform them of the benefits of the program.
- [209] She conceded that her recovery took "a lot longer" than she had hoped and that there were hardships caused because of it. As she put it later in her evidence, "Do I have regrets that caused a lot of chaos and destruction to our family? Absolutely." She believes that it would also be beneficial for them to "heal as a family".
- [210] She has to prioritize her recovery in order to maintain it, she explained. In her view it is "solidified" by having the children in her life. She expressed the view that the children "are content with the mother they have", and with the work she does to make amends for the time with them that was lost.
- [211] When the trial ended she was on the verge of completing her training, in an accelerated program, to become a licenced practical nurse.
- [212] Mr. A. has recently switched to a job with regular daytime hours a short commute from their home, so he is able to assist in all aspects of their family life.
- [213] Her parenting style contrasts quite sharply with the claimant's more rules-based approach. She described a process of dialogue with the children, in which the nature of the particular issue is addressed from both the parent's and the child's perspective, and the child is involved in arriving at the solutions. She sees her role as a parent as being "to shepherd [the children] toward being empowered young adults who make conscious and well thought out decisions."
- [214] She and Mr. A. also rely on the support provided by her parents, her AA sponsor and the sponsor's husband, as well as her and Mr. A.'s own counsellor. (Mr. A. added that their counsellor has been very helpful to them in dealing with T.'s challenges.)

- [215] A significant benefit of this parenting approach is that T. confides things in her about his activities that she would not otherwise be aware of. For example, in response to the claimant's question about whether he was sexually active yet, she was able to say that he has been "frisky", but has not reached the point that she would describe as being sexually active.
- [216] Mr. A. said that when T. first came to live with them, he was very timid and withdrawn - "almost depressed". Over time, he has become more open to telling the truth, trusting that they will be helping him make the right decision rather than punishing him for everything he is doing.
- [217] T. attended primary school in Langley before the separation, so it was easy for him to re-establish his friendships in that area after moving in with the respondent. She had enrolled T. in lacrosse (although he had quit by the time of the Views of the Child Report in May 2023) and he also enjoys working out at the local community centre and attending youth events there.
- [218] He performs numerous household chores on a regular basis, for which he is given an allowance that he uses mainly to buy video games.
- [219] Mr. A. said that he and T. have developed a solid relationship. While there are times when he is in his role of stepfather that they disagree "because of the testosterone", in general T. shares the things that are going on in his personal life and asks Mr. A. for advice. With respect to T.'s behavioural problems, he views his and the respondent's job as being to guide T. along the process and "use everything we can to make it a teachable moment." The respondent does most of the actual disciplining.
- [220] Mr. A. said that he has had multiple conversations with T. about the importance of having the claimant in his life, and when the claimant comes over to pick up or drop off K. he encourages T. to go out and speak to him.
- [221] To counter the suggestion that T.'s marihuana use is the result of excessive permissiveness of her part, the respondent explained that T. has told her that he was smoking it every day while he was still living with the claimant. She and Mr. A. do not condone his marihuana use but recognize that at his age they cannot prevent it. They do not allow him to have it in the house. The respondent has alerted him, based on her own experience of addiction, of the dangers of excessive use, and encouraged him to "reach out" to her and Mr. A. if he feels unable to stop.
- [222] In addition to marihuana use being something that a lot of his peers engage in, T. also uses it to help to cope with his feelings. This latter use troubles the respondent, and she wants to help him develop the ability to manage those feelings without resorting to a drug. He has support from a counsellor and a youth worker at school but she wanted to arrange a private counsellor who can transition with him from middle school to high school. The challenge is that T. has great difficulty trusting counsellors, because he feels that his privacy has been

breached in previous counselling relationships. As an example, after the claimant told him in April 2023 that he wanted to speak to his counsellor, T. did not want to see that counsellor anymore.

- [223] She described her ultimate task as a parent as providing T. with the necessary coping skills so that he does not need to use marihuana.
- [224] To attempt to repair their relationship, she has suggested to Ms. S. that she and the claimant come out and take T. for coffee or dinner. In view of T.'s age and the negative relationship between the parties, she considers it more productive for them to make those arrangements directly through T. She offered to send a text message if T. is going to be in Chilliwack on a weekend that he is supposed to be spending with the claimant.
- [225] Although K. did not have friends in Langley previously, she has made four or five there just on the basis of her weekend visits, the respondent said, including a "best friend" who lives nearby. In addition, the respondent has enrolled her in a community dance program in Langley. K. has a strong interest in makeup and beauty products, which the respondent supports. She and K. were also engaged in a project of redecorating K.'s room together.
- [226] She conceded that K. is "quite spoiled" in her home at the moment. She referred to the developmental milestone of children becoming more interested in material things at certain ages, as well as the limited time that K. is able to spend there and the long period during which they were unable to see each other. The respondent recognized that this approach is not sustainable, but did not believe that the "new normal" could take effect until she has more equal parenting time with K. She denied the suggestion in cross-examination that she was laying the groundwork for persuading K. to move permanently to her home in the same way as she had with T.
- [227] The claimant suggested that the respondent puts him in a difficult position by having K. request additional time with her at the end of a weekend visit, casting him in a negative light if he says no. The respondent said that she hopes to achieve a situation in which she and the claimant can discuss such issues cooperatively with K. when they arise.
- [228] When it was suggested to her that K. is often away from school sick on the Mondays after a weekend with the respondent, she explained that her understanding is that K. is often extremely tired because of how late the claimant picks her up. Mr. A. testified that the claimant is routinely between 30 and 90 minutes late for pickups, because of the traffic between Chilliwack and Langley.
- [229] In response to the suggestion that K. is sick because of the poor diet that she is provided with when she is at the respondent's home, the respondent emphasized her knowledge of proper nutrition in her capacity as a trainee LPN. She has been letting K. choose her meals because K. complains about the uniformity of the dinners in the claimant's home. K.'s current favourite meal in her home is in fact a nutritious one.

- [230] With respect to family life in their home, the respondent said that she and Mr. A. engage in a variety of activities with T. and K., such as going to movies or the mall together. There are also a lot of social gatherings with their extended families. The children are exposed to the positive AA culture and know the respondent and Mr. A.'s friends from that organization.
- [231] T. and K.'s relationship remains close, but because of her relatively limited time at the respondent's house, they miss each other, the respondent indicated.
- [232] Her belief that K.'s interests would be best addressed by living primarily with her is based on the premise that "it's really important for a young girl to have a good relationship with her mom". She is also keenly aware of the fact that she has missed a lot of time with K. over the years, and wants to have a relationship with her that is of the same quality as the one that the claimant has.
- [233] Mr. A. said that he has also developed a strong relationship with K. and that they enjoy spending time together. He has observed that she becomes upset and withdrawn as the time comes for her weekend visit to end, but he and the respondent consider it part of their parental roles to encourage her to go.
- [234] If she is successful in having K. live primarily with her, the respondent considered it vital that K.'s strong relationship with the claimant is preserved. She believed that can be achieved, even if living with her would limit K.'s availability to see him during the week.
- [235] She also expressed her willingness to work with the claimant to find "common ground" in their parenting, including mediation or counselling if it would be beneficial. Her objective is to meet the children's need for the parties "to be able to be in the same room". Mr. A. also expressed the hope that the parents and stepparents would get to the point that they could all sit down together and cooperate on parenting issues. He conceded that at this point there is "a lot of animosity and stress and internal anger".
- [236] The respondent emphasized that the point of the trial was the children's best interests, not the accusation that she had been improperly deprived of parenting time. In her view, a trial was necessary because the parties differed on the "areas of interpretation" in the existing order, which need to be cleared up. Reflecting on the dispute over the 2018 order, she said that it was not about her and the claimant but about the children "and their right to a relationship with both parents." Her understanding is now that when there is something in an order that is not working, the parties need to come back to court to sort it out. The trial is a way of remedying the situation by "doing things properly by the book."
- [237] Potentially relevant to the claimant's ability to co-parent, Mr. A. testified that a few weeks before the continuation dates in April he came to the claimant's house to pick up K. for a visit. While he was there the claimant told him that he wanted to send him all of the court documents, and told him that the respondent was going to "take [him] for everything". Later in his testimony he said that the claimant offered him "the court files from the last time they were in court". According to Mr. A., K. was in his vehicle and able to hear the

claimant's comments. His observation of her was that she was "kind of put off by the whole thing." Mr. A said that he tries to remain as neutral as possible in the disputes between the parties.

- [238] The claimant's version was that he said in passing, "I would love to be able to send you all of the history and documents that I have". He did not recall making the remark about the claimant and said that K. was not yet in the vehicle when he made the comment that he did recall. Rather, she was getting in.

Views of the Child Report

- [239] At the end of the second set of continuation dates, the parties agreed to have Mr. Colby prepare a follow up report dealing only with the views of T. and K., pursuant to s. 211 (1)(b) of the FLA. His methodology was to conduct interviews with them on two separate dates, with each parent bringing them on one of the dates.
- [240] T. informed Mr. Colby that when he was 13 he wanted to move to the respondent's house, and that he was allowed to make that decision. He was aware that an order was made that permitted this to occur.
- [241] He said that at the claimant's house the requirement that he do chores was continuous, and he would not get time to spend with his friend. He also felt that some of the rules were unnecessary. The result, as he later expressed it, was that he did not have a childhood there.
- [242] In addition, he had disagreements with Ms. S., which resulted in her yelling at him. He felt that she favoured her own children, but accepted that it was her role to do so. More generally, he said that he was not comfortable living in a house with three younger girls.
- [243] In contrast, he has more freedom at the respondent's home, which enables him to engage in the usual activities for someone his age, including spending time with a close friend. He stressed that he is not interested in breaking rules, but just wants to have more time to interact with others.
- [244] He sometimes has arguments with Mr. A., but they are never bad and "do not result in yelling."
- [245] A further contrast that T. highlighted was that there is "fun" at the respondent's house, whereas at the claimant's house "it is all routines and they are homebound".
- [246] Overall, he described his life as being "much better now" and said that he would like "more of the same". His only wish for the future is that his parents would not argue anymore.

- [247] He initially told Mr. Colby that he has not maintained contact with claimant, but later indicated that he did so through text messages. He asked to go back to the respondent's home after his argument with the claimant at Christmas because he did not want to "ruin anyone's holiday". He expressed an interest in getting together with the claimant, and added that Ms. S. would be able to attend as well. His preference would be for events with them outside the home, such as going for lunch or dinner.
- [248] K.'s preferred arrangement would be equal time with each parent, scheduled on alternating weeks. She believes that the current arrangement gives her too little time with the respondent, and that equal parenting would be a benefit because the respondent "cares about her". She recognized that because neither parent is in a position to relocate, such an arrangement is not currently possible.
- [249] She told Mr. Colby that when making choices it is important to her that the claimant not be "sad", which he would be if she spent more time with the respondent. However, later in the interview she said her concern was more that the claimant would miss her.
- [250] She also expressed the wish that "court would be over", at which point she believes that her parents would be able to get along.
- [251] Based on what T. has told her, she will be allowed to decide herself with whom she should live when she is 13.
- [252] She told Mr. Colby the claimant does not like the respondent and also does not like it when K. goes to see her. On the other hand, the respondent does not say anything about the claimant.
- [253] She confirmed that she sometimes missed school on a Monday after parenting time with the respondent. This was because the pickup time by the claimant would get her home after her usual bedtime. She conceded that she eats junk food at the respondent's, and said that it would be better if the respondent would not let her eat as much of it.
- [254] She gets along well with her stepsisters but "can be an outsider" (at times, I took her to mean). She believes that Ms. S. favours her older stepsister in terms of the amount of makeup that stepsister has.
- [255] In her view T. is now "better" at the respondent's house than he was at the claimant's. At the claimant's house "it was hard for him to deal with his stepsisters and [Ms. S.] would yell at him."
- [256] Mr. Colby observed that "K.'s decisions appear to be based on a heavy agenda-based association with her mother and the mother being more inclined to provide her with makeup which is a top priority for [K.]".
- [257] More broadly, he wrote that "[t]he children's views are heavily influenced by the age-related benefits they perceive at a more accommodating household."

Positions

Claimant

- [258] As I mentioned at the outset, the claimant seeks to exercise what he describes as the "rights of [the] Primary Parent", which I took to mean the list of parental responsibilities set out in s. 41 of the FLA, for both children. He has included T. in this request despite his concession that the young person "is old enough to choose where he lives" and that the interim order reflects his exercise of that choice.
- [259] He would allocate parenting time for the respondent to alternating weekends, with familiar and uncontroversial provisions for dividing holiday time, exchanging information about the children, and modifying the schedule if necessary. In his testimony he referred to a preference to have parenting time with T. on the same alternating weekends that S.'s children currently spend in their home and K. is not seeing the respondent. Among its other benefits, it would have T. and K. together on weekends in both homes. It would also provide him and Ms. S. with a much-needed break in their parenting responsibilities on the alternating weekend, when T. and K. would both be with the respondent and Ms. S.'s children are with her former spouse.
- [260] If K. ends up living primarily with the claimant, he would prefer that she come to his home for parenting time on the same weekends as T.
- [261] While he expected that he and the respondent could eventually have verbal conversations about parenting issues, he thought it would be best to begin with text or email as "baby steps" in rebuilding the necessary trust between them for an effective parenting relationship.
- [262] His position is that the root of the parenting issue is the respondent's ongoing refusal to comply with the provisions of the 2018 consent order, especially her rejection of the Soberlink program, which was intended to ensure the children's safety while they were in her care. He emphasizes that her non-compliance with that essential measure is actually what led to the gap in her contact with the children, rather than any intention on his part to deprive her of it. His subsequent prohibition of any form of contact was due to her providing the children with false Soberlink results, which escalated to her publicly posting videos with inappropriate content targeting him.
- [263] He submits that an objective indication of the significance of the respondent's noncompliance can be found in the parenting coordinator's decision to terminate his relationship with the parties because of it.
- [264] Her actions in dealing with the children while the trial has been ongoing, such as taking them to the dentist and having K. immunized without consulting him, show that this defiant attitude continues.

- [265] The concern that this leads to, he says, is that any orders that result from this trial will not be followed unless they happen to suit her wishes, due to her "immense issue with authority".
- [266] In addition, he seeks to have fines imposed on her to address this ongoing failure to comply with orders.
- [267] The claimant also raises concerns about what he characterizes as the respondent's overly lenient approach to parenting, which has led to T. engaging in increasingly concerning behaviour since he has been living with her. Giving him primary parenting responsibilities would assist him in addressing T.'s problems, which the respondent has so far prevented him from doing.
- [268] This absence of appropriate structure and boundaries is likely to have an equally negative influence on K. if she were also in the respondent's full-time care, he suggests.
- [269] As to the question of K.'s best interests, he points out that she has been living in her current family for an extended period, and has a strong relationship with him, Ms. S. and her step-sisters. She has an established group of friends and her school is located close by. Having her live full-time with the respondent would deprive her of this essential support system.
- [270] In his view, the respondent has downplayed the effects of her traumatic upbringing, her mental health challenges, the true nature of her suicide attempt, her deliberate non-compliance with court orders, and the seriousness of T.'s current disciplinary problems in her evidence. I took him to be arguing that her lack of personal accountability in these areas prevents her from being able to parent in the children's best interests, especially by allowing T. to take the "easy road" as she has done in her own life, and weighs in favour of the main parental responsibilities being allocated to him.
- [271] He also notes that her claims to want a collaborative parenting relationship with him going forward are undercut by her repeated attacks on his character in her evidence.

Respondent

- [272] Her essential point is that the material changes in circumstances that have occurred since the JCC order weigh strongly in favour of her being the one to exercise the parenting responsibilities for both children. That is the order that she says would have resulted if the current circumstances had existed in 2018.
- [273] The positive material changes have consisted of her achieving sobriety, embracing the recovery movement, upgrading her career training, and establishing a stable relationship with a new partner. She has also created a support network, consisting of her parents, her partner's parents and the friends she has made in AA.

- [274] On the negative side, there has been a material change caused by the claimant's efforts to keep her apart from the children, despite her efforts to comply with the order and its allocation of regular parenting time to him. Aggravating the problem was the poor wording of the Soberlink provisions of the order, which permitted conflicting interpretations by the parties. However, the claimant also ignored the respondent's explicit efforts to engage with those provisions, when she informed him that she had Soberlink "up and running" in May 2020 (the claimant responds that crucially there was no confirmation, through the required procedure, that the link to it was "live and active"). He sought to restrict her involvement in T.'s problems at school and even suggested that the telephone contact with the respondent that was provided for in the order was something that the children had to be protected from. She argues that her non-compliance is an after the fact justification for the claimant's actions that he has raised for the purposes of the trial.
- [275] The only thing that was capable of changing his behaviour was the April 2022 order that provided for the respondent's specific parenting time with them.
- [276] Also qualifying as a material change is T.'s estrangement from the claimant. The respondent submits that the evidence at trial indicates that T. is experiencing underlying psychological and emotional problems that require attention. The parties' adversarial relationship has been a barrier to effective communication between them about this issue, with the result that they both received information about T. during the trial that they did not previously have. In contrast to her acknowledgement that professional assistance and community support will be needed to address T.'s challenges, the claimant remains convinced that there is nothing wrong with his parenting approach, even though T. made negative comments about their effects in the views of the child report.
- [277] To her credit, the respondent acknowledges that the current estrangement between T. and the claimant is not conducive to T.'s best interests and that counselling specifically targeted to restoring their relationship is essential. She offers to share equally in the cost of such a program and, if it does not succeed, to make any recommendations that may result from it the basis of a review of future parenting arrangements. (The claimant initially said that he is receptive to this kind of counselling as well, but on reflection and discussion with his partner he advised that he is reluctant to invest any more money in programs that do not have a good likelihood of success.)
- [278] However, she stressed that T.'s privacy must be respected in relation to his communications with his own counsellor.
- [279] As the claimant concedes, T. should remain in the respondent's care as that process unfolds.
- [280] Dealing with K., the respondent submits an important objective of the parenting orders should be to address the three years of her relationship with the respondent that were essentially lost because of the claimant's actions. Also important are K.'s own comments in the views of the child report that she sees the respondent too little, and her "evolving

female identity" as she enters adolescence, such as her interest in makeup. These attributes are not "facilitated" in the claimant's home, the respondent asserts, and are better supported by K. living primarily with her female parent.

[281] In addition, she points to K.'s description of the claimant openly stating that he does not like the respondent, or K. going to visit her, which contrasts with the absence of any comments to K. about the claimant by her. (I took the respondent to be saying that having K. live primarily with her would therefore be more conducive to K. maintaining her relationship with both parents.)

[282] The further factor that weighs in favour of allocating all of the parental decision-making responsibility to the respondent is the claimant's disdain for her and her approach to parenting, which contrasts with her stated desire to work cooperatively with him. This attitude on his part, which causes her to avoid engaging with him, makes it extremely unlikely that a shared allocation of responsibilities could be effective. The reunification counseling may offer a forum in which the parties can address their own communication issues and recognize the negative effect that their conflict is having on T.

[283] Finally, the respondent took the very fair position that regardless of the outcome each party should bear their own costs.

Governing Principles

[284] The parts of Section 37 of the FLA that potentially apply to this case provide that:

37(1) In making an order under this Part respecting parenting arrangements the court must consider the best interests of the child only.

37(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 has or seeks parental responsibilities to exercise the person's responsibilities;
- 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

37(3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.

37(4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.

[285] Although the 2018 order purported to be a final one, Rule 10-11 of the Supreme Court Family Rules provides that a final order can only be obtained at trial or by a summary trial. The scope of orders available by consent pursuant to Rule 10-7(1.1) does not include final orders. This means that a material change in circumstances is not required in order to vary that order. Instead s. 216(3) of the FLA, which deals with variations of interim orders and simply requires "a change in circumstances" or "evidence of a substantial nature that was not available at the time the interim order was made", viewed in light of a list of specific considerations, applies.

[286] Fortunately, that distinction does not end up mattering, because even at the higher threshold applicable to final orders the material changes identified by the respondent's counsel have unquestionably occurred.

[287] The other relevant provision, in light of the significant number of statements by the children that were narrated by the parties and other family members in their testimony is s.202 of the FLA, which provides that:

In a proceeding under this Act, a court, having regard to the best interests of a child, may do one or both of the following:

- a) admit hearsay evidence it considers reliable of a child who is absent;
- b) give any other direction that it considers appropriate concerning the receipt of a child's evidence.

Discussion

Preliminary Comment

[288] This case is an example of the harm that can be caused in family cases by breaches of court orders and, just as importantly, by a failure to return the matter to court promptly to deal with the breaches.

[289] Of course, the respondent should have complied with the terms of the JCC order, but the claimant should not have taken it upon himself to impose his own remedy for her non-compliance, in the form of prohibiting in-person contact with the children, and eventually contact of any kind.

- [290] If her failures to maintain Soberlink in good standing and cooperate with the parenting coordinator had been brought to the court's attention promptly, the likely outcome would have been a restriction of her contact with the children to professionally supervised visits, until she could demonstrate that her parenting was not affected in any way by substance abuse. That would have given her the time to overcome her struggles, without jeopardizing her connection with them. She could also have made her own application to address the denial of her parenting time.

The 2018 Order

- [291] Despite the amount of time that was spent on the parties' responses to the order in this trial, it is important not to allow that issue to assume a disproportionate degree of influence over the outcome. What matters is what the nature of the respondent's breaches of that order, and the manner in which the claimant chose to enforce it, can tell us about their present abilities to meet the children's needs, as an aspect of the children's overall best interests.
- [292] Dealing first with the respondent's situation, there is nothing about the way in which her substance use arose, or the alleged role played in its development by the claimant, that is helpful for present purposes. I do not consider it necessary to resolve the conflicts in the parties' evidence on those points. On either version it was a serious problem, and its relevance to parenting is how the respondent went on to address it, and how it affected and/or continues to affect the children.
- [293] To her credit, the respondent acknowledged her struggle to achieve sobriety in a general way, including her failures along the way and the harm they would have caused the children. That said, she did not always address the most concerning aspects of her situation directly, or convincingly.
- [294] For example, she minimized the seriousness of her overdose, which was a very dangerous act even if her specific intention was not to end her own life, and she did not refer to T's presence when she was describing how it occurred. In addition, her claim not to have been able to afford Soberlink was contradicted by the evidence that her stepmother paid for it, and her explanation for the email she sent when she missed the 2019 Mother's Day visit did not really make sense. In fact, she really did not address any of the evidence about missed calls with the children. She also unwisely chose to make a point of never having been diagnosed with any mental illness, when her other evidence and Mr. Colby's first report identified anxiety as an issue underlying her substance use, and her overdose involved antidepressants that she had been previously prescribed.
- [295] Most seriously, it was clear that her inability to follow through with Soberlink and her lack of cooperation with the parenting coordinator continued for a lengthy period after the date on which she claimed to have achieved sobriety. In fact, her evidence of what she was actually doing during this period was practically non-existent. I realize that she

distinguished between stopping drinking and actually beginning to achieve recovery, but her continued lack of cooperation with the order long after her claimed sobriety date raises the concern that she was either not being truthful about that date, or that she still had significant problems in her life that went beyond substance use.

- [296] Standing on its own, this lack of openness might lead to concerns about the sustainability of her recovery and the risk to the children of a relapse. At the very least, she seemed to be minimizing some aspects of her behaviour during those years.
- [297] Fortunately for her, the strong evidence of her recovery and the length of time for which has endured since she has been in contact with the children, as well as the robust support system that appears to be in place - including Mr. A., who struck me as a balanced and sensible person - satisfy me that while her situation in the years immediately following the separation was likely somewhat worse than she was willing to admit, it has a meaningful degree of stability now, including a strong commitment on her part to maintaining her recovery.
- [298] The concern for present parenting that arises from the claimant's involvement with the order is in the extent of his hostility towards the claimant that it demonstrated.
- [299] There is no question that the extent of the respondent's substance use and such aggravating factors as the overdose required him to be vigilant about the children's safety in her care. In the initial stages following the 2018 order it was reasonable for him to regard the use of Soberlink as the precondition to her exercise of parenting time.
- [300] However, as time passed he began increasingly to apply terms from the parties' previous discussions that were not actually contained in the order (most significantly that the duration of Soberlink use was indefinite and the minimum period re-set upon each positive reading) and to enforce it in an increasingly harsh and punitive way, on his own initiative.
- [301] In particular, the order did not authorize the prohibition of in-person contact that he imposed in response to the resignation of the parenting coordinator, or the total cessation of contact in response to her provocative behaviour in 2020. In effect he set himself up as the sole arbiter of her access to the children, instead of seeking to have the court address her non-compliance, as he should have.
- [302] It is particularly concerning for present purposes that he ignored her claim to have Soberlink available, as well as her other requests for contact, apparently because he did not think they were legitimate.

- [303] I also think he failed to demonstrate to the children the necessary balanced and compassionate attitude towards her behaviour that would have been in their best interests, and instead inappropriately shared his views as to her mental illness and her lack of "accountability" with them. His concept of "transparency" in communicating with them about her was and is misguided, and became a thinly-veiled means of expressing his own hostility.
- [304] What all this tells us in terms of fulfilling the children's present needs is that he still finds it impossible to let go of the moral high ground that he believes himself to occupy in relation to the respondent's substance use problems, and persists in characterizing her in the most negative possible way, rather than as a person who is subject to a lifelong, potentially debilitating illness, and who has now taken convincing steps to address it. This raises concerns for the likelihood that he can engage in constructive co-parenting.

Parenting Since April 2022

- [305] Turning to the period since the respondent has resumed contact, I would say that the respondent's expressed attitude towards co-parenting and the eventual development of a functional relationship with the claimant is very constructive. Her written communications with him, which are restrained and civilized, show that attitude in practice, as do the ongoing efforts that she and Mr. A. describe, which I accept as accurate, to encourage T. to see the claimant.
- [306] However, a remaining shortcoming is her tendency to take unilateral action concerning the children's medical and dental care, despite the primary parenting responsibilities still being allocated to the claimant. The facts that she finds the claimant difficult to deal with, or that she fulfilled those roles before separation may explain it, but they do not excuse it.
- [307] The same is true for her failure to inform him of T.'s serious misbehaviour and the disciplinary consequences that the school has taken. Her preference for T.'s requests that she not do so shows misplaced priorities and a failure to understand the necessary degree of communication that will be needed to co-parent effectively with the claimant. Once again, this is regardless of how difficult the claimant may be to communicate with.
- [308] In addition, while the evidence falls short of convincing me that she has deliberately set out to undermine the claimant by means of the benefits that she has provided to the children, as he alleges, I think she has at least been willfully blind to the fact that setting up an environment in which everything that is denied to the children in the claimant's home is available in hers (including, as she admits, "spoiling" K.) will inevitably draw the children (who, consistent with their ages, lack the ability to discern whether the less "fun" household might also offer important benefits) closer into her orbit. As Mr. Colby insightfully observes, the children's expressed preferences for time with her are mainly materially and rules-based.

- [309] The claimant's present liability in terms of addressing the children's needs is obvious, and has carried on from the period before contact resumed - it is his overtly hostile and accusatory attitude towards the respondent, in which her failures in complying with the 2018 order are kept alive in perpetuity, despite the fact that she has obviously achieved a highly functional lifestyle since then. I think it is fair to say that he has made it extremely difficult for the respondent to communicate with him, unless she wants to be subjected to a barrage of accusations.
- [310] The most egregious recent example of this attitude was his sharing the respondent's trial brief, which indicated that the judge would be asked to speak to T., with T. himself. This was highly inappropriate, and could have served no other purpose than to create hostility in T. towards the respondent. Sadly, the effect was instead to further alienate T. from the claimant.
- [311] Put simply, the co-parenting relationship will go nowhere, and the children will continue to be harmed, until the claimant learns to let go of his hostility arising from the respondent's years of substance use, and begins to see her as above all else the children's mother - someone with whom he will need to have a constructive relationship in some form for many years.

Evidence of the Children

- [312] In this case I consider that the appropriate use of the children's statements is pursuant to the hearsay exception relating to expressions of their state of mind or intention: *R. v. Starr*, [2000] 2 S.C.R. 144, at paras. 168-69. Statements admitted under this exception are not admissible to prove the truth of the events described in them. This is consistent with the appropriate scope of the children's participation in this trial, which was to provide their own views of their needs and circumstances, to the extent that it ends up being appropriate to receive them.
- [313] The children's views were obtained by Mr. Colby in an objective manner, consistent with his role, so the only potential concern about relying on those statements arises from whatever parental influence may have been exerted on the children before his involvement. I did not see any indications of that. The children made candid comments about both parents, and did not seem to be parroting an adult viewpoint that had been imposed on them.
- [314] This is not a case in which it is necessary to consider the application of the principled hearsay exception, to admit any of their statements to prove the truth of the events that they described. While the children described some contested events, the question of whether those events occurred is not central to the outcome. The attitudes expressed by the children in those situations, as indications of their state of mind, are what matter in the present analysis. For example, whether or not the respondent simulated using Soberlink, T. was unquestionably upset because he believed that he was being wrongfully deprived of time with her. Similarly, whether or not the claimant or Ms. S. actually yell in the course of

disciplining him, the point is that he has reacted negatively to their approach.

Needs and Circumstances of the Children

- [315] Viewing these matters in light the factors in s.37(2), I will start by pointing out that, except to the extent that any of those factors are engaged, the FLA does not favour any particular style of parenting.
- [316] Depending on how it is implemented, a strict rules-based parenting style can safeguard a child's physical, psychological and emotional safety, security and well-being to the same extent as a more collaborative one, and it is not for judges to impose their own preferences. It is all in how a particular parenting approach is carried out.
- [317] In this case the respondent seems to be more flexible in dealing with the children, especially T., than the claimant, who can be quite rigid and whose overwhelming focus is on the concept of accountability, but I would not downgrade his parenting solely on the basis that it is stricter. He is unquestionably also a competent parent, and T. left before he had a chance to develop any greater flexibility in dealing with T.'s behaviour.
- [318] Leaving aside T.'s current semi-estrangement from the claimant, which needs to be addressed separately, the evidence suggests that most of the factors in 37(2) can be met equally well in both homes, especially with the strong support provided by the respective step-parents. I recognize that the children likely still have some pent-up demand for time with the respondent based on their long period of deprivation, which slightly favours their emotional needs when they are in her care, but for the most part both parents are capable of addressing these needs and providing an overall stable and loving environment.
- [319] Not all of the children's views are worthy of significant weight in this case, even given T.'s more advanced age, because, as Mr. Colby pointed out, they were responding largely to the disparity in the material benefits and number of rules in each household. There are some useful insights in the most recent report however, having to do with the parties' expressed attitudes towards each other in K.'s presence, the children's views of how their step-siblings are treated compared to them, and T.'s reaction to being yelled at by Ms. S. All of these views should be taken into account. By far the most important information in this report however, is that these children are desperate for the conflict between their parents to cease.
- [320] I have considered carefully how the parties' current inability to communicate and cooperate impacts the type of order that should be made. It is superficially attractive to vest all of the decision-making responsibilities in one or the other of them in an effort to reduce conflict, but I think at the end of the day that is more likely to entrench each of them in their respective attitudes, with further resentment on the part of the one who is not allocated the responsibility.

- [321] What is preferable in my opinion is a clear regime for consultation and decision-making - one that compels them to engage in the minimum level of civilized communication on co-parenting that the children require in order to thrive.
- [322] There is no question that T. needs to reside primarily with the respondent. Nothing else can realistically be achieved at this point without a degree of coercion that would be harmful to him. In reaching this conclusion, I do not say that the respondent's approach to discipline is the only one that could have been effective. T. is clearly going through a very troubled period in his life and, as I have said, we will never know how the claimant would have addressed it in the long-term, because his stand on the use of devices in the home led T. to depart. I am simply recognizing that T.'s primary residence with the respondent, which is clearly a positive one in many ways, is presently the only option.
- [323] Despite the claimant's lack of enthusiasm for it, in T.'s best interests there needs to be professional assistance to restore their relationship and if their relationship can be improved, opportunities for him to spend more time with the claimant.
- [324] I accept that K. wishes to spend more time with the respondent, quite aside from the material benefits that she receives in that home, and that it would be beneficial for her to do so. Without expert evidence I am reluctant to accept the stereotypical conventional wisdom that the parent of the same gender is more beneficial to a child in adolescence, as the respondent suggested, but I do accept that the present alternating weekends, with some longer vacation periods, do not offer sufficient time together to meet K.'s legitimate needs.
- [325] K. herself is quite correct that equal parenting on alternating weeks would have been in her best interests - by permitting her to enjoy the benefits of both family units equally. For the same reason, it would also have been a beneficial longer-term goal for T. to work towards. It is unfortunate that the parties' rootedness in their respective communities, and the untenable commute between those communities (which I take judicial notice of) prevent it.
- [326] Faced with that reality, I do not think that a convincing case for reversing the parenting time and responsibilities in relation to K. has been made by the respondent. Aside from disrupting K.'s schooling and other connections in Chilliwack, I think having her reside primarily with the respondent before the material benefits that are currently provided to her in that home are moderated will ultimately marginalize the claimant's role, and lead K. to align fully with the respondent in the same manner as T. has. I am not satisfied that her home is necessarily a more beneficial parenting environment to the claimant's overall, even if it is more enjoyable on a day to day basis.
- [327] Instead I think that K.'s time with the respondent should be substantially enhanced, within the existing structure of her primary residence with the claimant.

Conclusion

[328] Therefore I conclude that the following orders are necessary in the children's best interests:

- T. will reside primarily with the respondent and she will exercise all of the responsibilities in relation to T. as set out in s. 41 of the FLA except "requesting and receiving from third parties health, education or other information respecting the child" pursuant to ss(j), which the claimant will also exercise;
- Before exercising any parental responsibility in relation to T. that has the potential to significantly affect his health, education or well-being, the respondent will inform the claimant of that matter by email, and consider any input he wishes to provide with respect to it before exercising that responsibility;
- For greater clarity, the respondent will immediately inform the claimant of any school discipline that has been imposed on T., regardless of whether T. wishes her to do so;
- The claimant will have liberty apply to court if he does not agree with the manner in which that responsibility has been exercised;
- K. will reside primarily with the claimant and he will exercise all of the responsibilities in relation to K. as set out in s. 41 of the FLA except "requesting and receiving from third parties health, education or other information respecting the child" pursuant to ss(j), which the respondent will also exercise;
- Before exercising any parental responsibility in relation to K. that has the potential to significantly affect her health, education or well-being, the claimant will inform the respondent of that matter by email, and consider any input she wishes to provide with respect to it before exercising that responsibility;
- The respondent will have liberty apply to court if she does not agree with the manner in which that responsibility has been exercised;
- The parties will communicate with respect to the children by email. Their emails will contain only factual information with respect to the children and questions of the other parties of a purely factual nature. They will not contain any criticism, express or implied of the other party, or any other negative comments. The receiving party is not required to respond to an email that fails to conform to these requirements;
- In an emergency affecting the health or well-being of a child the parties may communicate in person or by phone or text message. The same requirements as to the content of their email communications apply to these less formal communications;
- The children may communicate with the parent in whose home they are not currently staying by phone or video at any time, and that parent may communicate with them at any time in the same manner;

- K. will have parenting time with the respondent on alternating weekends from Friday after school to Sunday at 6:00 pm;
- If the Friday is a holiday or school professional day her parenting time will began after school on Thursday. If the Monday is a holiday or school professional day her parenting time will end at 6:00 pm on a Monday;
- After every two cycles of alternating weekends as described above, K.'s next two weekends with the respondent will be consecutive, before reverting to alternating again, after which this pattern will continue (in other words, her weekend cycle will be: weekend 1 - weekend 3 - weekend 5 - weekend 7- weekend 8 - weekend 9 - repeat);
- In addition, by May 1 of each year, the respondent will identify a 30-day period in the summer vacation months during which K. will reside continuously in her home. If the remaining usual parenting periods during summer vacation are not sufficient to allow K. a 14-day block of vacation time exclusively with the claimant, he may select such a block after the respondent has selected hers;
- Christmas school break and spring break will be shared equally, with the respondent selecting her half first and then the first choice alternating from year to year. The selection must be communicated to the other parent a minimum of 90 days in advance;
- Parenting time by the claimant and T. will be as agreed to by direct communication between them. The respondent is to facilitate any such parenting time. unless it interferes with a significant family or educational commitment on T.'s part; and
- The claimant will participate in a program of counselling with T. that has the specific purpose of repairing their relationship. The parties will share equally in its cost. The counsellor or program selected must have specific expertise in that subject matter. In the interests of ensuring T.'s participation, the respondent will select the counsellor or program.

[329] Although the period during which no child support would be payable under the 2018 order has expired, neither party provided a sufficient evidentiary basis on which to determine the question of child support, so that must be left to an agreement between the parties, or an application if necessary.

[330] I also see no benefit whatsoever in fining the respondent for her breaches of the 2018 order. The severe consequences that the claimant visited on her, which as I have found exceeded markedly what the order permitted, are more than a sufficient deterrent to her or to other like-minded parents.

[331] Quite aside from the respondent's laudable decision not to seek costs, I would say that success on the most important issues was more or less evenly divided, so that the parties should each bear their own costs.

"Schultes J."

- [1] I have used a different initial of his first name to anonymize it, to avoid confusion with the claimant's partner.
- [2] I will refer to them as the respondent's parents because they have been her main parental figures in recent years and she does not have a close relationship with her biological mother.
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