CITATION: A.F. v. J.W., 2011 ONSC 1868
COURT FILE NO.: FS-08-00007251
DATE: 20110627

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
A.F.	)	Zane Handysides, for the Applicant
Applicant	)	
– and –	)	
J.W.	)	Brian Ludmer, for the Respondent
Respondent	)	
	)	**HEARD:** March 21, 22, 23, 24, 25, 28, 30 April 4, 5, 6, 7, 8, 11, 12, 14, 15, 19, 20, 21, 28 May 11, 12, 2010.

REASONS FOR JUDGMENT

HARPER J.

ISSUES

[1] Whether the Applicant, A.F. (A.), should be found in contempt for refusing to comply with access orders of Thomas J. dated October 24, 2008 and Quinn J. dated March 5, 2010.

[2] Custody of the children J.L.W, born August […], 2001 (9), A.C.W., born October […], 2002 (8) and C.L.W. born October […], 2003 (7).

FAMILY PARTICULARS

[3] A.F. (A.) was born April […], 1966 (45) and J.W. (J.) was born April […], 1972, (39), were married on May 23, 1998.

[4] They had three children as described above.

[5] They separated on February 8, 2008.

LITIGATION PARTICULARS

Separation, February 8, 2008

[6] A. left the matrimonial home located at F[…], Amherstburg, Ontario, on February 8, 2008. On that date, she took all three children and moved in with her parents, where they primarily resided until approximately July 2009. At that time, A. purchased her own home and moved into that home with the children. J. continued to live in the matrimonial home. He would not consent to A. moving back into the home and getting exclusive possession of the home and no motion was brought by A. to get an order to allow that to happen.

Access agreement, May 2008

[7] Although there was no court order for custody, the children primarily lived with A. at her parents' home. Immediately after separation the parties attempted to work out access arrangements. Their version of what was arranged for access during this period differed widely in their evidence. A. claimed that J. rarely asked to see the children and when he did she allowed this to happen. J. claimed that he constantly asked to see them and he was frustrated by A. who was determined to limit his contact with the children from the outset. I will discuss the evidence and my findings on this issue later in these reasons. Suffice it to say, at this point that access to the children was limited and no written agreement was put into place until May 2008.

Court Application, July 14, 2008

[8] This Application was issued in this court by A. on July 14, 2008, almost four months after A. took the children to live with her parents. A. brought an emergency motion for custody of the children and exclusive possession of the matrimonial home on July 18, 2008. On August 8, 2008, J. brought a counter motion claiming that A.'s motion was not urgent and also claiming custody of the children and exclusive possession of the matrimonial home. These motions were adjourned three times on consent, despite the claims of urgency.

Case Conference, September 2, 2008

[9] A case conference was finally held on September 2, 2008, seven months after the parties had separated. Although the Case Conference Judge granted leave to allow motions to be heard, all motions were adjourned on consent until the matter was placed before the court on October 24, 2008.

First Court Order October 24, 2008

[10] The consent order of October 24, 2008, provided that an assessment of the custody and access of the children be conducted by a psychologist, Dr. Reuben Schnayer. It also provided that the children were to "reside with their mother A. until the receipt of the assessment." This order was the first order that detailed access terms. It provided that the children shall be with their father:

> (i) each Tuesday from after school until 6:30 p.m.; and
>
> (ii) alternating weekends from Saturdays from 9 a.m. to Sundays at 6 p.m. commencing Saturday, November 1, 2008;
>
> (iii) with the exception of the Tuesday access from the children's school, access exchanges were to take place at the Supervised Access Centre at Glengarda.

[11] Following the October 24, 2008 order, the outstanding motions were adjourned on consent a further five times. When the motion was returnable on April 17, 2009, there was consent to a further adjournment on terms. The motions were then adjourned on consent four more times until they were partially heard on June 5, 2009.

2009

Assessment Ordered October 24, 2008, Completed May 8, 2009

[12] The Assessment of Dr. Schnayer was completed seven months later, on May 8, 2009. On June 5, 2009, Gates J. granted the Divorce Order and allowed the corollary relief claims to proceed. On July 5, 2009, the trial of the claims for support and property was ordered to be bifurcated from the trial of the claims for custody and access. On July 22, 2009, the matter was noted as "not remotely ready for trial" and a new settlement conference was ordered.

[13] J. brought a motion for contempt, originally returnable October 16, 2009. He claimed that A. did not comply with the access terms of the October 24, 2008 order of Thomas J. That motion was adjourned *sine die.* It was brought back by notice and scheduled to be heard February 16, 2010. A further motion by J. was brought seeking an order requiring A. to comply and obey the orders of Thomas J. dated October 24, 2008 and Ducharme RSJ dated November 6, 2009, regarding her cooperation with the Parenting Coordinator in the role as arbitrator/mediator and to report to the court. All of those motions were eventually returned to this trial.

[14] When the motion by J. for contempt was brought before the court on November 6, 2009, A. requested an adjournment to allow for oral evidence to be heard on the contempt motion. That request was granted and the matter was noted as returnable on four days notice. On this same motion, an order was made by Ducharme RSJ, to appoint Mark Donlon to be the Parenting Coordinator to facilitate and *actualize* (my italics) the

recommendations of the assessor Dr. Reuben Schnayer in his report of May 8, 2009. That same order provided for reintegration counselling to be conducted by psychologist, Dr. Ricciardi. After Dr. Ricciardi could no longer provide these services, Dr. Lee became the counsellor.

2010

A.'s Motion to Suspend J.'s Access

[15] A. brought a further motion that was heard on March 5, 2010, asking the court to suspend the access to J. that was granted in the order of Thomas J. back on October 24, 2008. That motion was dismissed, the access to the father as set out in the order of Thomas J. dated October 2008 was to remain in effect and A. was ordered to pay J. $800 costs of that motion. In his endorsement, Quinn J. wrote, "if access is suspended the bond between the father and children will deteriorate further. Access is currently ongoing if sporadic. I cannot find any evidence that would justify suspending access." Quinn J. also ordered Dr. Schnayer to conduct an updated assessment.

Update Assessment October 8, 2010

[16] Dr. Schnayer's updated assessment report was issued approximately 17 months after his first report and seven months after the update was ordered. During the 17 month period, A. made numerous complaints about J. and brought forward many claims that her children feared their father as a result of their life experience with him that included emotional and physical abuse. The Children's Aid Society investigated all allegations put forward. None of the Society investigations resulted in any validation of abuse. Dr. Schnayer's second report recommended very similar access to the access he recommended in May 2009.

[17] In addition, Dr. Schnayer made the following concluding remarks:

> Finally, it cannot be over emphasized that all parties involved in the children's lives, including extended family members, need to understand how important it is for the children to maintain close and caring relationships with each parent and their respective extended families. In this regard, it is hoped that all parties will endeavour and make a sincere effort to foster a positive relationship between the children and the other parent and their respective families. Failure to do so may have a detrimental effect on the children's development.

Final Minutes of Settlement, October 19, 2010

[18] This matter was on the trial list in October 2010. However, the parties entered into final minutes of settlement that detailed their agreement with the custody and access to their children after almost three years from the date of their separation.

[19] The specifics of that settlement are as follows;

1. Major Decision-Making

1.1 The Applicant will have custody of the children of the marriage.

1.2 On each of the custodial issues of education, health and religion, while the Applicant shall have final decision-making authority, she must consult with the Respondent in good faith and consider his opinions in good faith and, if the Respondent in the parties are still not in agreement, the Applicant must discuss these issues with the parties' parenting coordinator before implementing them with a view to compromise and agreement.

1.3 With respect to mobility, the parties shall not be entitled to move their primary residence out of Essex County.

2. Access

2.1 The Respondent shall have substantial access to the children, equivalent to 40 percent of the residential time, following the shortest possible period of transition, not to exceed three months, as recommended by the parties' parental coordinator.

2.2 The long-term access arrangements shall be Tuesday after-school and overnights (pick-up at school or drop-off by the Applicant to the Respondent by 9 a.m. if Tuesday is not a school day) and every alternating weekend from Friday pick-up after school (or drop-off by the Applicant at 9 a.m. if Friday is not a school day) to Monday morning (return to school or to the Applicant by 9 a.m. on Monday if not a school day).

3. Case Management

3.1 Justice Nolan, at the request of the parties and by order of the Local Administrative Judge, has agreed to Case Manage this case for six months after the date of these minutes of settlement unless further extended by Order of the Court.

4. Parenting Coordinator and Family Reconciliation Therapy

4.1 The parties co-parenting will be assisted by the services of a Parental Coordinator (the "PC"), who will have a mediation and parental advice mandate. The Parental Coordinator shall be Mark Donlon.

4.2 The PC shall be appointed by the parties for the purposes of assisting the parties' co-parenting of their three children in accordance with the prevailing custody/access orders and fostering compliance with such orders. The Parental Coordinator shall be compellable as a witness in the event of any litigation dispute regarding custody/access.

4.3 The parties and the children will all participate in family reconciliation therapy to be conducted by Dr. Phillip Ricciardi, unless he is unable or unwilling to accept the mandate, or failing him, Len Granneman, R.S.W. (the "Therapist") under a fully-open, multi-party, goal-oriented and time-limited mandate. Such family reconciliation therapy shall start immediately. The therapy shall be a priority and take precedence over all competing non-school activities.

5, 6, 7, Parenting – Ancillary Matters

Three major subheadings detail the specific rights and obligations of each parent relating to activities, health care and education contacts, etc. I will not detail them for the purposes of this decision.

8. Non-Compliance with Access

8.1 The parents shall be required to utilize all appropriate incentives and consequences, guidance and boundaries so as to require the children to comply with the living arrangements and other parental contact prescribed by court order and as recommended by the Parental Coordinator and Therapist.

8.2 In the event that the respondent father is compelled to bring a motion to enforce his access to the children, costs shall be awarded on a full recovery basis if he is successful.

8.3 If, in the opinion of the Parental Coordinator, the parenting plan contained herein is not being implemented successfully, either the Applicant or the Respondent may return this matter to court for a review of custody and access and further relief to protect the children's right to a relationship with both parents. The Respondent need not demonstrate a further material change if circumstances prior to returning this matter to court.

8.4 If this matter is returned to court for a review by either party, the trial Judge shall have a discretion to deal with all of the costs incurred throughout this case.

[20] The Minutes of Settlement were signed on October 19, 2010. The endorsement of Nolan J. dated October 19, 2010 reads, in part: "if agreement signed, the trial to proceed on financial issues (SS & equalization) only as those issues have been bifurcated. If the agreement re: custody and access is not signed by both parties, custody & access to proceed after the financial issues." Although the Minutes of Settlement was signed on October 19, 2010, there was no order ever taken out pursuant to those minutes. Access pursuant to the Minutes of Settlement never took place. This trial of the custody and access was set by Nolan J. to take place in March 2011 for three weeks.

2011

[21] The financial issue in this matter proceeded to a separate trial. That trial spanned approximately 19 days before Cusinato J. Although the evidence was complete prior to

the commencement of this trial, the submissions in that trial had not been provided by counsel to Cusinato J. by the completion of the evidence and submissions in this trial.

[22] This trial commenced on March 21, 2011. At the outset of the trial, J. brought a motion to ask that the trial be adjourned. He claimed that he was financially and emotionally exhausted and that it would be better to allow a respite from the conflict for all concerned. I ruled that the trial would proceed. The children needed the conflict to end and not be put on hold. The evidence and submissions spanned 22 days over a three month period. This judgment is at the end of over three years of turmoil for three little girls who are now ages nine, eight and seven.

[23] It is not necessary for me to consider if there has been a material change in circumstances since the signing of the Minutes of Settlement on October 19, 2010. Clause 8 makes it clear that the Respondent did not need to demonstrate a further material change if circumstances prior to bringing this matter to court. The trigger for that was the need for the Parental Coordinator to be of the opinion that the parenting plan contained in the Minutes of Settlement is not being implemented successfully. The Parenting Coordinator, Mark Donlon, testified that everything that was tried in order to successfully implement the parenting plan had failed. In my view, the fact that the Minutes of Settlement were signed on October 19, 2010 is only one factor in my consideration of what is in the best interest of these children. The contents of those minutes are also factors to be considered along with everything else.

THE PROFESSIONALS INVOLVED

[24] The following professionals were involved with this family from the date that A. and J. separated on February 8, 2008:

1. Dr. Hellam-Helbich, a psychologist who A. brought the children in to see in October 2008, without the knowledge and consent of J..

2. Dr. Reuben Schnayer, a psychologist that conducted the assessment and an update;

3. Dr. Sol Goldstein was retained by J. to conduct a critical review of Dr. Schnayer's reports and to give an opinion as to whether or not Parental Alienation existed in this case and the options open to the court. He had only partially reviewed the record, and after I conducted a *voir dire* on the issues of qualifying Dr. Goldstein as an expert as requested, I declined to qualify him. Written reasons of that ruling were released at the completion of the *voir dire*.

4. Dr. Perry, the children's family doctor;

5. Mark Donlon, the court ordered Parenting Coordinator;

6. Dr. Ricciardi, a psychologist who conducted family counseling to assist in the reintegration of the children with their father;

7. Dr. Lee, a psychologist who took over from Dr. Ricciardi when he was unable to continue;

8. Katharine Beecroft, a school social worker who conducted counseling for the children;

9. Numerous social workers who either conducted abuse investigations of allegations made against the father by the mother or were assigned workers for the family;

10. Numerous police officers called who investigated allegations of assaults against A. and J. and the children and to deal with access issues;

11. Glengarda workers who observed access visits and exchanges with the children and their father;

12. Allison McKinnon, a worker at Glengarda who was contracted by J. to observe and take notes of the access visits for a period of time;

13. The children's teachers and school principal;

14. A counselor for A. and a separate counselor for J..

THE COLLIDING FORCES

[25] A. and J. separated when their children were four, five and six years old. Their growth and development that should have been highlighted by love, laughter, positive attachments and guidance of both of their parents, instead was marked by conflict and negative interactions between their parents and other care givers. In the last two and a half years the children have been entirely preoccupied with concepts of fear, anger and sadness over their relationship with their father. From shortly after separation in February 2008, A. started down a track that featured claims that all three children were fearful and resistant to being with their father as a result of their life experiences with him. Her version of reality was that J. had been physically abusive to her and not involved with the children. She claimed that she separated from J. out of fear of him and fear the children would get caught up in his abuse of her.

[26] J.'s track became a constant struggle to have a relationship with his children who, as he claimed, were transformed by A. from children who had a loving relationship with him to ones that feared and hated him. He pursued a track that emphasized that A. was the cause of the children's resistance and they were the subjects of parental alienation syndrome (PAS).

[27] The parental tracks were on a direct collision path for over three years. This dynamic of the search for labels and fault deflected many professionals and increased the tension between the parents and their supporters. It also fostered actions and reactions between the parents that exacerbated the emotional stress on the children. In previous cases

involving these high and chronic conflict cases I have urged everyone to stop searching for labels and keep focused on the evidence of how each parent and others' actions impact on the children's functioning and their needs. The desperate need, in these types of cases is for an early identification by focused assessments of what the clinical needs of the children are in order to, at least give them the tools to withstand the actions of their parents. This was certainly not a feature of this case.

[28] A. made numerous allegations to the police, the Children's Aid Society, the assessor and the therapists that the children feared their father and were the subject of abuse by him. J. attempted to provide all professionals involved with what he claimed to be the latest literature on PAS in order to educate them on what he felt to be the root cause of the children's problems.

[29] Many of the professionals identified a serious and increasing concern about the risk of emotional harm to the children. None of the professionals involved did a comprehensive and critical analysis of the root cause of the children's ever increasing distress. I will comment on this all too frequent occurrence later in this judgment.

A.'S ASSERTIONS OF WHY THE CHILDREN ARE RESISTANT TO HAVE A RELATIONSHIP WITH THEIR FATHER, J..

The Allegations of the Foundation of Spousal Abuse

[30] A. claims that the children are fearful of and angry at their father because of their life experience with him. She denies that she has contributed to the negative feelings of the children toward their father in any way. A. stated many times during the course of the evidence that neither she nor any members of her family talked negatively about J. to the children or in their presence. She also asserted that she never conducted herself in a manner that would have turned the children against their father.

[31] A. testified that J. had a problem controlling his anger and this feature of his character was a theme throughout the marriage. She claims J. assaulted her on a number of occasions.. According to A., the children were never present during any of the assaults. Nevertheless, she asserted that they did witness his anger and lived in this milieu of conflict and tension.

[32] A. twice involved the police (first in 1997 in Dearborn, Michigan, and second while on holiday in Florida in August of 2007, the details of which I will recount), and offered evidence of several incidents of violence from 1997 until 2007, claiming that J. was remorseful after each episode. A. testified that she did not report the violence as she is a professional in a small town and did not want everybody to know her personal issues. Regarding one occasion, at a wedding in Cincinnati in March of 1998, A.'s mother, C.F. testified that she noticed A. had a swollen nose and a chipped tooth, but it wasn't until they returned home to Canada that A. told her that J. had assaulted her. J. denied that he was in any way violent toward A.. He stated that the only thing he would do was to hold her arms to stop her from flailing away at him in an attempt to calm her down in the

middle of frequent rages that she would fly into. He also testified that A.'s mother was well aware of A.'s rages as she had often acted in that manner in front of them.

e) August 2007

[33] A. stated that she and J. were on a holiday in Florida and while they were arguing by the pool, he grabbed her by the left arm. Later that night when he wanted to just sleep in one of the children's room, she demanded that he get another room altogether. A. called security and did not realize that they contacted the police. J. was charged with assault and taken to jail. Although the children did not see this incident, they were asking where their dad was. A. admitted that he spent two days in jail while she took the children around Disneyworld before she attended at the police station, arranged bond and told police that this was all blown out of proportion. She swore an affidavit that she never feared him, and would not participate in his prosecution and charges were dropped. J. stated that while at the pool A. was very angry and began yelling at him. She was so angry at one point she started to walk away from him. He grabbed her arms and asked her to stay and talk it out. She swung around while he was holding her arms. J. acknowledged that A. received a bruise on the wrist area of one of the arms he was holding. According to J., A. left the pool area and J. stayed with the children and continued swimming with them for another hour or so. A., J. and the children then had something to eat and spent the rest of the afternoon together at the Disney Park.

[34] According to J., A. kept trying to engage him in argument that night. He had put the children to bed and went to go attempt to go to sleep with J.L.W. While he was lying on the bed he heard a knock on the door and A. had called security in order to get J. out of their room. Security called police.

[35] In A.'s testimony at this trial she stated that the sworn document given to the Florida Police was not truthful.

f) February 8, 2008, the Date of Separation

[36] A. claimed that as a result of the incident in Florida that occurred five months earlier, and other incidents of abuse from the past, she had had enough. She felt that she had taken on all of the family burdens of child care and house management as well as running her clinic full time. She stated that "thus far the children had not seen the violence," but she did not feel it was safe. She decided to take the children to stay at her mother and father's home. She felt that this would not last long and she would be able to move back into the matrimonial home with the children. She left without any warning to J..

[37] On May 14, 2009, A. sent an email to Dr. Schnayer after he had released his report. In that email A. stated "Rick Fryer is the one person who can attest to J.'s anger issues and domestic violence." A. did not call Rick Fryer as a witness; she either did not feel that he could attest to J.'s anger and domestic violence or she was embellishing this fact to the assessor in order to influence him. I draw an adverse inference from the fact that the person who she told the assessor was the only person who could attest to this very

material fact in issue was not called as a witness by the person asserting that J. had serious anger issues and subjected her to domestic violence.

THE CHILDREN'S STRUGGLE

[38] A.'s testimony was replete with desperate pleas that her three children were never listened to by all of the professionals involved in this case. She made it abundantly clear that her children's extreme desire not to see their father was all due to their experience with their father which has caused them to fear for their safety and exhibit anger towards him. She claims J. does not validate their version of their life with him. According to A. she is the only one who validates the children's feelings. A. testified with intense emotion, that it is unfortunate that the law does not recognize the need of children to be heard and to be validated. A. stated that she told one of the Children's Aid Society workers that she has "been to hell and back to try to get someone to listen to her children."

Parenting Prior to Separation

[39] To listen to the versions of parental involvement with the children from their birth to the date of the separation was like watching a movie twice that had been edited to create two different movies. A. described J. as someone who rarely had anything to do with his children. According to A., she cared for the children on a daily basis, along with the extensive help and involvement of her parents. When J.L.W. was born, the parties lived in Dearborn, Michigan. They both worked and A.'s mother would come over from Windsor every day to watch J.L.W. When A. became pregnant with their second child, A. moved back to Windsor and to live with her child at her parents' home. J. would come to Windsor on weekends and also stay at A.'s parents' home. However, according to A., he was preoccupied either with his work in Michigan or properties that he owned in Windsor. This arrangement continued until the parties moved into what became the matrimonial home in Amherstburg. A. and J. built that home and lived in it with all three of their children until they separated on February 8, 2008.

[40] A. started her own physiotherapy clinic in Amherstburg while J. continued to work in Dearborn, Michigan as a physiotherapist. The arrangements with respect to the daily care of the children did not change much. A.'s parents continued to be the daily care givers while A. worked and grew her practice. J. continued to work in Dearborn, Michigan and return home on weekends. At certain times during her testimony, A. stated that she would constantly complain to J. that she was doing everything, including child care, building and working a business. At other times, A. stated that J. was rarely involved with his children but he was not expected to be.

[41] J. stated that he was always an involved parent and he would constantly assist with their care. He admitted that his work did take away the amount of time he could be with his children, but that he did have a reciprocal attachment of love and affection. He admitted that the maternal grandparents played an extensive role in the day-to-daycare of his children as he and his wife advanced their professions. According to J., even when the

children were infants he helped with bath time and bed time. J. stated that as the children grew, he would take them to many of their events, swimming lessons, Italian lessons, and he would help them with their piano practising. J. stated that the children were close to him prior to separation and they had wonderful, happy and loving times.

[42] J. testified that in the last year or so prior to separation, he started to lessen his hours at work, making himself available to be at home for the children on Tuesdays and Thursdays in order to help out with the children and to help A. with her clinic. Shortly before A. left with the children to go to live with her parents, J. advised A.'s parents that they would not be needed as much for child care as he was making himself available. Prior to this, A.'s parents were being paid for doing the child care out of A.'s company. When J. told A.'s parents that they would not be needed as before, this later took on the status of them being fired. At least according to A.'s mother, who was the only one of A.'s parents who testified at this trial.

[43] Shortly after the alleged firing, A. left the matrimonial home and took the children with her.

[44] J. testified that immediately after separation, he would see his children on almost a daily basis. He stated that he often took them out to lunch from school and A.'s father would bring them to his house. This started to change when J. would not agree to A. moving back into the house with the children. From that point forward, J. would complain that A. would attend at the former matrimonial home and take things without even attempting to inform him or get an agreement through their lawyers.

[45] J. claimed that friction over this issue led to a change in the manner that he was treated by A. and her family. He was no longer welcome to attend at A.'s parents' home to see the children off to school on the bus or to take the children to Italian lessons, as he had been doing since separation. A. sent an email to J. stating, "the children are happy when they don't have to see you."

[46] I find that the above-mentioned dynamics constituted the foundation of what became the negative environment that these three children became immersed within the household of A. and her parents following the parties' separation.

TWO AND HALF YEAR STRUGGLES WITH ACCESS

The Nexus Between the Escalating Conflict and Access Struggles

[47] Instead of arriving at an early agreement or obtaining a court order, the conflict between A. and J. can be characterized as early skirmishes that germinated the seeds of discontent that already existed between them. A. admitted that she went over to the matrimonial home, at times, to retrieve some of the children's things and items that belonged to her. She claims that J. was withholding the children's toys and other items that were important to them and she had every right to retrieve them. J. denies that assertion and stated that they did come to agreements from time to time that allowed for A. to come over to the home and retrieve certain items. Unfortunately, police had to be called to

attend at the premises in order to keep the peace on multiple occasions. As the skirmishes turned into battles, the struggles over the children's access with their father increased in almost a direct proportion to the increased conflict.

First Planned Overnight Visit with Their Dad

[48] Between February 2008 and April 12, 2008, despite numerous requests by J., the children had not spent an overnight with their father. On weekend commencing April 12, 2008, the children were to stay with their father in the home that they had lived in for approximately one year prior to separation. This access did not happen. A. and her Mother attended at J.'s home and they would not leave when asked. The police were called. What could have been a wonderful evening with the children and their father did not happen.

May 2008 Parties Enter Agreement on Schedule of Access

[49] Despite the parties entering into an agreement in May 2008 that allowed for the children to be with their father alternating weekends from Saturday mornings to Sunday evenings, and every Tuesday and Thursday from after school until 6:30 p.m., the weekend access never occurred. The October 24, 2008 order did not include Thursday evening. Nevertheless J. testified that he struggled with obtaining any consistent access on any of the agreed upon or court ordered times. During the week, J. started to pick up the children at their school with no problems noted for the balance of the school term.

Changing the Alarm Code

[50] In the month of May 2008, after living in the home for approximately two and a half months from the date of separation, J. changed the alarm code to the matrimonial home. According to J., he was going on a trip to Denver and he felt that this was necessary as A. would constantly enter the home and take things. He stated that he sent an email to advise A., following which the children would call him and ask for the new code promising not to give it to their mother. The email advising A. was filed as an exhibit at trial. Despite having receiving that email, after J. left for Denver, A. attended at the home with the children. In her direct examination she stated that she was not aware that he had changed the alarm and the children were shocked to see a note on the door that they could not get into the house. I accept J.'s version of this event. A. attempted to misrepresent the event in her direct examination as she made no mention of the email from J. that gave her advanced knowledge. I find that she brought the children to the home in order increase their negative feelings within the children about their father locking her and the children out of the home that she equally owned.

[51] J.'s reaction to A.'s actions became a constant theme that represented a part of the escalation of the conflict. According to J., A. used surreptitious means in order to get information about him and his finances. A. admitted that she misrepresented herself to a bank claiming she was J. in order to get the bank to send her information.

Harassment / Intense Sense of Entitlement on the part of A. and her Family

[52] For a period of time, J. stated that he was stopped at the American customs and immigration on 3 to 4 consecutive days and subjected to a full and extensive car search. This was at the same time as his father-in-law was attending at J.'s home and taking pictures and his mother-in-law was seen by J. just standing across from his home waving at him. He also claimed that A. told him that she told her family about his physical abuse of her and her brother wanted to beat him up as a result but she stopped him. All of these events led J. to believe that A. was also involved in making calls to the American customs to cause him problems.

[53] A.'s father was present in the courtroom on almost a daily basis during the 22 days of this trial. He did not testify despite evidence presented that should have been rebutted. One of the more significant events, A. testified that on one occasion she attended at the matrimonial home with approximately 10 other people, including her father, at a time when she knew J. would not be in the home. Their intention was to retrieve items from the home that A. claimed were hers. This second resort to self help by A. is another example of her aggressive sense of entitlement, irrespective of ongoing negotiations. A. stated in her direct testimony that she entered the garage and pushed the door that went into the house from the garage. She stated that she swung her body into the door with her arm and shoulder in order to gain access to the house.

[54] On cross examination, she admitted that the door was opened by her first using a crowbar as a lever and then by her swinging into the door with her 150 pound body. She admitted that she had given a different version of this incident at the financial trial only a few weeks earlier. On that occasion she denied anyone used a crowbar when pressed by Mr. Ludmer who was suggesting, at that time, that A.'s father had used the crowbar to gain entrance. On this occasion she once again denied that her father had used a crowbar. She attempted to assert that she had forgotten that she had used the crowbar. I find that this testimony by A. of how entry was gained into the home is not truthful. It is inconsistent with her previous testimony in the financial trial, and in my view is tailored to shield her father and others present that day in their involvement in the entry of the house. I find it incredible that A. would be left to her own devices to force the door open with crowbar and the weight of her body. I find that this event is another example of the paternally negative environment in the maternal family environment that the children are enmeshed in.

The Marginalizing of J.

[55] I find that A. and her family set about on a course to marginalize J. from his children. The three children started to show resistance to even talking to their father at about the same time J.'s interaction started to be limited by A. and her family. When J. would call over to speak to his children, he was never allowed to talk without the phone being on speaker phone. A. tried to explain that that was simply the norm at her parents' home and that the children would insist upon using it when speaking to their father. I do not accept A.'s explanation for the use of the speaker phone. This type of conduct further sent the message to the children that their father somehow needed to be monitored. A. should have insisted that the children have a private conversation with their father.

July 4, 2008 Mutual Assault Charges

[56] On July 4, 2008, C.L.W. was visiting her father. Once again, without making arrangements in advance, A. attended at J.'s home that day in order to retrieve some further items she felt were hers. A. claimed she was told by the police that she could do this. No police officers were called to corroborate this assertion. She was in the process of taking some items out of the cabinets when J. came home and according to A., came at her aggressively claiming that that she should not be taking things out of the house without previous agreement. A. claims that he pushed her up against the door and then took her keys and threw her out of the house. A. said that there was a struggle as she tried to get back into the house. The police were called and both were charged with assault. Both A. and J. entered into a recognizance whereby they were not allowed to communicate with each other until the matter was further dealt with by the court.

[57] After returning home that day A. took pictures of bruises that she alleged happened as a result of the incident. She took subsequent photos on July 5 and July 8, to document the various stages of her injuries. The pictures that she offered into evidence showed bruises on her arm, a torn shirt and bruises on her back and neck. A.'s mother and her sister-in-law J.F. took the pictures. A. denied that the children saw any violence. She also stated that she never talked negatively to the children about their father. I do not believe A.'s assertions that the children were not exposed to the aura of concern over J. and the alleged assaults on A.. A. told the Children's Aid worker, Sophie Belleau, that she told the children that the reason she separated from their father and took the children with her to live at her parents was because he had "hit her" in places that he should not have.

[58] I find that A. told the children about their father assaulting her. There is no other reason that J.L.W. would demand of her father, in one of the therapy sessions with Dr. Lee, that he tell her about the three times he was arrested. The police had to report the domestic incident to the Children's Aid Society as a child had been present during the domestic incident. Without being asked to, A. and her mother attended at the Children's Aid Society the very next day in order for A. to give her version of the events of July 4, 2008. The next day, Sophie Belleau, Society worker went to A.'s home to interview the children. J.L.W. would not talk about anything with Ms. Bellea. A.C.W. told the worker that "daddy grabbed mommies arm and daddy went to jail, but it was a very long time ago." She then added that daddy grabbed her arm by mistake. In my view, A.C.W. was talking about what she had overheard in her mother's house about the Florida allegation.

[59] I find that the children over time adopted many of the distortions about their father that were swirling around the maternal home environment. A. had no business simply going into the house on that occasion. The parties had lawyers who were arranging attendances to the home from time to time. I find A.'s action to be provocative on her part, it demonstrates to me that when taken together with many other incidents, A. is extremely aggressive and acts with a sense of entitlement that does not respect the circumstances. On this occasion, the parties had been separated for approximately five months. The father had been in the home for that period of time. J. was to have access with his

youngest daughter on that day and A. chose that day to seek to retrieve items from the home that she felt she had every right to retrieve.

[60] The mutual assault charges against both A. and J. were later dropped. However, they resulted in a lengthy period of time during which neither party could communicate with the other. That fact caused further complications in an already complicated situation for the children.

[61] Access exchanges had to be made either through the maternal grandmother or another third party, a former mutual friend, Rick Fryer.

Reality Distortions

[62] It is most disturbing that there was a continuum of what I refer to as reality distortions that absorbed the children over almost three years.

The Al Incident

[63] In April or May of 2008, A. stated that her children were very upset that a man named Al was at their father's home and they did not know him or like him. According to A. they complained that this man was chasing them around the house taking pictures of them.

[64] Alfredo Pullano, a friend of J.'s testified that he was at J.'s house one evening and the children kept coming to him and wanted to play hide and seek. He did and saw a camera with a flash that he would take and when he found them he would click the flash. There was nothing negative about this interaction until it was reframed by the children at their mother's home. Mr. Pullano was not cross-examined about this incident. I found Mr. Pullano to be an honest witness who was simply and accurately relating a normal adult child playful interaction at J.'s home. I accept Mr. Pullano's version of this event. I draw the inference that the distortions in the children's mind about simple events such as this, when taken together with the massive number of simple daily interactions that turned into near death experiences for these children, had to come from the mother's environment.

July 22, 2008 Jumping Off the Dock

[65] J. was contacted by the Children's Aid Society at the end of July 2008. They informed him that they were investigating another complaint by A. that he jumped off the dock on the former matrimonial home in front of the children and scared them. According to A., the children reported that their father jumped in the murky water and swam "60 ks" away and they could not find him. They were scared and were thinking that one of them was going to jump in the water to find him.

[66] J. said that the incident was in no way frightening. He had just finished mowing the lawn and was all sweaty. He jumped into the water at the end of the dock on this property as he had done many times in the presence of the children. On this occasion, the children were on the dock and the water was waist high. According to J., he was a highly qualified life guard when he lived in Australia and he is well aware of health and safety around the

water. His children had seen him do that many times and there was nothing frightening about what he did in the least.

[67] There are far too many examples of interactions between J. his children that originally occurred as a natural, fun and loving event and were turned into a frightening and traumatic incident in the minds of the children after the children had returned to their mother's home. The dock swim was yet another one of those examples.

Camping in July 2008

[68] J. describes a wonderful and fun time he spent with his children camping in July 2008. He stated that on the way out, going no more than two kilometres per hour, he bumped into a tree while backing up the car; it resulted in a slight stop. No one was hurt and everyone had a laugh about this.

[69] A. stated that the children were frightened and they complained that they were jolted forward and their head jerked and they were sore. I find that there is no evidence to support that this is anything but a minor fender bender that hurt no one. I find that the fear and alleged hurt is another example of the distortion of the children's reality that emanated from the negative zone they were living in with their mother and her parents.

J.L.W.'s Birthday Party, August, 2008

[70] What should have been a happy celebration for their children became a major turning point in the escalation of the conflict between J. and A.. According to J., he was to have access to J.L.W. on the day of her birthday in August 2008. He sat down with the children and planned who would be invited and they all participated in making the invitations. J. stated that he walked around the neighbourhood with the children handing out the invitations to the party that was to take place at J.'s home.

[71] A. claimed that she did not know about J.'s birthday party plans and she went ahead and planned a birthday party that same day. This was in spite of the fact that the day was supposed to be J.'s day with the children. At this time, due to the fact that J. was not able to attend at the F. home within a certain distance, J. attended at the home with the agreed upon access exchange supervisor, Rick Fryer.

[72] Upon his arrival, J. learned that the children did not want to attend with him and that they had already had a birthday party. The police were called and they interviewed the children. The children refused to go with their father or participate in his party. A. had J. charged with a breach of recognizance claiming that he came too far onto her parents' property.

Access Transfers at the School

[73] The children were to be picked up by their father on Tuesdays after school as per the agreement of the parties. That was the only access that the children were attending.

Although access exchanges for the weekends were to start from the exchange taking place at Glengarda Children's Centre, the children refused to go with their father.

[74] Despite the fact that the children were not going with their father for overnight access on the weekends since the parties' access agreement in May 2008, the parties agreed that the very similar terms of access was to be incorporated into the order of Thomas J. of October 24, 2008.

[75] According to A., the children started to show signs of ever increasing anxiety about their father coming to pick them up at the school. She claimed that they would start to complain about stomach aches and headaches from Sunday evening on. By the time Tuesday came around the children were very anxious. A. stated that the children started to request that their father pick them up at the Glengarda Children's Centre instead of the school. A. insisted that the children got to the point that they would refuse to even attend school on Tuesdays so that they would not have to go with their father.

[76] A. testified that it was the children who wanted access exchanges at the Glengarda Children's Centre and the fact that their father would not agree to this was yet another example to the children of their father not listening to the feelings of the children. A. never considered that there was a court order that clearly set out the access terms. For A., the expression that the children's feelings needed to be validated became her mantra throughout the three years of conflict and throughout this trial.

[77] A. started to keep the children home on Tuesdays claiming it was as a result of them being ill. The school sent her a letter indicating that it was not an option for her to keep the children home every Tuesday unless she had medical report justifying their absence. According to the school social worker, Katharine Beecroft, A. wanted to home school the children on Tuesdays. She was advised that that too was not an option.

[78] The only evidence that was filed on consent were very short reports from Dr. Perry, the children's family doctor, that merely documented that A. brought the children to document that she told the doctor that the children were sick. Dr. Perry continually advised A. to take this up with the children's school counsellor.

[79] A. described J.L.W. as a child that was so worried about her father picking her up at school that she would hit herself and pull her hair out. If that were true, I would have expected medical reports to reflect that and not mere self-reports by A..

The Box

[80] J. had moved into his new house in January 2009. His children came over to his house on a visit in March 2009 and they started to play with one of the moving boxes. He decided to play along with them and he got markers to paint the box like a rocket ship. The children each took turns getting inside the box while their father and the other children each shook the box pretending the rocket ship was taking off. J. stated that at one point he made three holes in the sides of the box and they all pretended to place cardboard pieces of wrapping paper roles into the holes as if playing a magic trick.

[81] The box was described by J. as a large moving box with flaps at the tip. He stated that the children had nothing but fun while playing these games. He denied that he ever did or could lay on top of the box to keep any of the children inside. If J. had sat on the box as reported by A. and the children, the box simply would have collapsed.

[82] The children's state of mind is reflected in how they related this event to CAS and others. On March 9, 2009, the Society worker, Shelly Gignac, interviewed all three children together. The children refused to be interviewed alone. A.C.W. told the worker that they are scared of dad. She told them that when they were at their dad's he put them in a box and closed the box on A.C.W. He then said, "lets stab them" and he "stuck wrapping paper at them and almost poked in the eye. She claimed she was screaming. She then stated that C.L.W. "almost broke head off."

[83] A.C.W. and J.L.W. told the worker during this interview that they did not want to visit with their dad. They don't like to go but they have to. C.L.W. is the only one that goes. The children stated that they "don't like to tell why" the children stated that they did go to counselling with Dr. Heather Hellam-Helbich, but they "hate her" because she is mean. On March 16, 2009, A. called the worker to advise that J.L.W. did not want to see her father and she had told her that her dad was "sitting on the box and would not allow her out." A. was the only one to ever make that allegation about J. allegedly sitting on the box. J. is approximately 200 pounds and the box is a cardboard box. This obvious impossibility seemed to escape many of the professionals who were charged with the duty to investigate these issues.

[84] This interaction is yet another example of how the children's reality was distorted into a very traumatic event wherein the children's father represents someone who is neglectful and someone who will hurt them.

Time-Out Grabbing Incident

[85] A. reported to the Children's Aid Society on March 26, 2009 that the children told her that their father had hurt J.L.W. In the investigation interview conducted by Society worker Ms. Gignac, J.L.W. stated that her father grabbed her by the chest and the skin, and that she was afraid of her father. One of the children said he could have pulled her skin off. When J.L.W. was asked by the worker to give some examples of how her father scared her, she stated that there she could not name them all because there were too many. J.L.W. stated that he grabbed her by the shirt and skin and came right up to her face and said "stop it" when she was insisting that she wanted to call her mother. J.L.W. insisted that she did not want to go to her dad's because "stuff" happens. When A.C.W. was interviewed on this date she stated that dad was mean and she was afraid of him. She too could not be specific. Both A.C.W. and J.L.W. stated that C.L.W. likes to go to visit dad.

[86] J. described this incident as his giving J.L.W. a time out as she was being extremely disruptive. He lifted her up and put her on a stool. She was yelling and crying and got off the stool so he placed her on it again. After a brief period of time, he let her get down

and they sat on the couch together and watched television. There was nothing more to it than that.

[87] The Children Aid Society did not confirm any protection concerns as a result of this investigation of physical abuse.

[88] On March 31, 2009 A. left a voice message with the worker Ms. Gignac. She stated that the girls were already getting anxious about having to see their father on Thursday and telling her they did not want to go. She went on to state that it seems they have no choice. She is not sure what the girls have to say for people to listen to them.

Suscitation

[89] On May 8, 2009 A. left a voice message with the worker Jennifer Georgiou. She stated that she was troubled by the conversation that she had previously had with her. She wanted to know what happened about the call she made about physical discipline (the grabbing incident related to Shelly Gignac). A. stated that she felt that everything is overlooked. She said that she is concerned about the safety of her children when they are with their father. Ms. Georgiou advised A. that the incident was documented; however, abuse was not verified. A. stated that all she wanted was to ensure that it was documented.

[90] On May 13, 2009, A. called the Children's Aid Society to report a concern that she once again said was coming from the children; she stated that the children were being abused. A. left a message three days in row about concerns over what the girls described as "daddy doing suscitation to us." It is important to note that when A. made this call to the Society, J. had not seen his children in approximately four weeks as he had been visiting his family in Australia. It is even more significant to note that Dr. Schnayer's first assessment report had just been released on May 8, 2009. That report recommended access every second weekend for the children and their father and Tuesday evenings as well as substantial holidays. The day before A. talked to the CAS about allegations of potential abuse involving "suscitation", she wrote an email to Dr. Schnayer complaining about his assessment report and the fact that he did not protect the children by not finding validity in any of the alleged incidents of physical abuse by J.. In addition, A.'s email to Dr. Schnayer stated as follows:

> You mention counselling for the kids and I would do whatever is necessary to help them. However, just from what I have seen in the last week since their dad has been gone to Australia, is very telling. I see the frills being more relaxed and kid-like; no stress or anxiety, until I told them that he is picking them up next Thursday. It is clear that the issue they are having has nothing to do with being caught in the middle, pleasing one parent over the other ------it is strictly their interaction with him. Although I try to empower them, the girls say he doesn't stop when they ask him too.

> A disturbing fact came to light a few days ago. A police officer that was involved in a credit card fraud that I had reported, told me that his investigation revealed the card was used for pornographic sites. long story short, there was no fraud. Me being naïve I thought nothing more of it until a few days ago, I ran into him and he told me that the hits came from our home computer. "is your husband into that kind of stuff?" he asked me. I was floored.
>
> Now, last night, the girls recounted again (me naïve again). That their dad does "sussitation" with them. I ask them again what it is and they tell me that he puts his hands on their chest and lays on top of them. I always thought it was a game until last night where all three girls concurred on what he does and how he doesn't stop when they tell him. They say that when they say "we're not having fun but he says "I am". I told the girls they need to tell this to someone. J.L.W. said it is like telling on my friend.
>
> These girls need protection I have been moving heaven and earth to help them. The issues that have occurred, seemed to be dismissed. This is not fair to them. Providing a parenting plan should put the girls needs first.

[91] At no time during the three calls to the Society worker, Jennifer Georgiou, on May 13, 14 and 15, 2009, did A. ever tell her about the alleged "pornography" context that she had written about to Dr. Schnayer. On May 15, 2009, the Society worker interviewed A. and the children about that incident. After her discussions with the children and A., the worker asked A. if she felt that J. could be sexually inappropriate with the children and her response was that she did not know. This worker testified that response elevated the Society's concerns that required a sexual abuse investigation. Her questioning of the children had to include questions that were more intrusive than otherwise.

[92] J. described what "suscitation" was to the CAS worker. J. relayed that he had been a life guard when he lived in Australia and that he had high level training as a life guard for ocean certification and for CPR. When he would play tag and other games with his children that caused them to run around and get out of breath, they would fall on the floor and he would pretend to give them CPR by faking pushing on the chest and blowing by the mouth and then everyone proclaiming that daddy saved their life.

[93] I find this is another example of a loving, fun and natural event this father played with his children. I conclude that A. distorted the reality of the children in a panicked response to the assessment report that recommended that the children have a normal relationship with their father. After the children were exposed to the maternal environment at the F.home, the "suscitation" event was turned into an ugly and frightening thing that seriously distorted the children's reality with their father. It also subjected them to an intrusive form of investigation by the CAS that reinforced in their minds that their father was someone to be feared.

J. as Soccer Coach

[94] J. helped coach the children's soccer team for the 2009 summer months. When A. testified she did acknowledge that J. did coach the girls team. She stated that he was "not listed as a coach on the league web site." I accept J.'s testimony that he was asked by the official coach to assist him. I also find that he coached the team himself on a couple of occasions when the other coach was not available.

[95] According to J. both he and the girls enjoyed his involvement as a coach and this provided a good opportunity for J. to interact with his girls in a normal father/ daughter loving manner. At the end of the season, the league has a final weekend tournament. As their father and coach, J. was looking forward to the day of competition followed by a BBQ and awards. The girls did not attend the tournament. They were given a choice by A., they could chose the tournament or going to an aquatic centre. They chose to go to the aquatic centre with their mother. No one told J. his children would not be at their soccer day. The team he assisted in coaching did not have enough players to field a full team. The disappointment in J. was obvious.

[96] For the summer of 2010, J. was told by his children that they did not want to play soccer. However, one of the children let it slip that they were playing that summer and that their maternal uncle, Angelo, was coaching their team that their mother's clinic was sponsoring.

Professionals Involved from the Fall of 2009

[97] Dr. Schnayer recommended in his first report dated May 8, 2009, that due to the high level of conflict; the children were at risk of emotional harm. He expressed concern that this should be monitored in order to avoid the emotional harm form getting worse. He suggested that a parenting coordinator be engaged in order to assist in implementing the parenting plan and that the children be placed in counselling in order to assist them in re-establishing a relationship with their father. He also suggested that there be counselling in order to re-establish the father/daughter relationships.

[98] Dr. Schnayer was ordered to do an update of his assessment. That report was issued on October 19, 2010. Once again, Dr. Schnayer did not find any reason that the children should not have a normal relationship with their father. I will comment further on Dr. Schnayer's assessment later in these reasons.

Mark Donlon, the Parenting Coordinator

[99] Mark Donlon became involved in this matter in the fall of 2009 as a result of the recommendations contained in the Assessment Report of Dr. Schnayer. He thought his mandate was to facilitate the implementation of the parenting plan that was recommended by Dr. Schnayer. At the very outset he discovered that there was a problem with the plan: A. did not agree with it. By the time Mark Donlon saw A., she had already complained to Dr. Schnayer about his report. A. told Mark Donlon that Dr. Schnayer had not taken into consideration events that took place after his investigation. The "suscitation" allegation was one such incident.

[100] Mark Donlon stated that he did not feel that this case was a matter that a PC could be involved in unless and until the parents agreed to a plan that he could assist in implementing. He expressed to the parties that this matter needed therapeutic involvement before a PC could get involved. He recommended a couple of therapists, one of which was Dr. Ricciardi. Dr. Schnayer's report was released May 8, 2009. Ducharme RSJ ordered the involvement of Dr. Ricciardi for counselling and Mark Donlon for parenting coordination on Dec 7, 2009. By July 2010, Mark Donlon had still not been able to start his work as a parenting coordinator to implement a parenting plan. He was made aware that treatment with Dr. Ricciardi had not gone well. Mr. Donlon testified that by July 26, 2010, he was feeling that the parties need their day in court as there had been no progress in therapy.

[101] From December 2009, A. was delaying the implementation of access until counselling could be initiated. The problem was that she insisted that Dr. Schnayer, who did the assessment, be the one to do the counselling. J. did not agree stating that he would be placed in a conflict if he had to testify and also be eliminated from doing any update. Complicating the problem was that Dr. Schnayer told A. he was prepared to do such counselling. I find that statement of Dr. Schnayer to be a shocking disregard for conflict issues. By telling A. that he was prepared to do the counselling under these circumstances further delayed any effective attempt to implement his recommendations. It also showed a complete lack of insight on his part into how conflicted he would be if he had been unsuccessful in implementing an ambitious plan and the clinical intervention. How could he possibly testify as an impartial objective psychologist about his assessment that took over 17 months to complete, after he placed himself in a therapeutic role designed to reconcile the relationship with the father and the children and implement the parenting plan that he knew that A. did not agree with?

[102] Mark Donlon stated that the matter was scheduled to go to trial on the week of October 25, 2010. By October 14, 2010, Mark Donlon stated that he told the lawyer for A. that this matter was not a PC situation but a counselling one. However, the parties entered into the Minutes of Settlement of October 19, 2010, and Mark Donlon was named as the PC to assist the parties in implementing the parenting plan that was largely a plan that included similar access to that recommended by Dr. Schnayer. Mr. Donlon stated that he was not consulted about this. He felt that the goals set out in the Minutes of Settlement would be difficult to achieve given the history in this case to date. He did not have confidence that could be achieved.

[103] Although the Minutes of Settlement were signed on Oct 19, 2010, October 26, 2010 became yet another day of major deflection from any attempt to reintegrate the children with their father. This event is discussed in detail later.

[104] Mark Donlon stated that he felt that Windsor had given this case everything that it could by way of professional involvement, treatment and coordination. He did not know if he could continue to be involved in this case. He stated that would depend on what this court ordered after this trial.

Dr Ricciardi

[105] Unfortunately, Dr. Ricciardi could not continue with his counselling role nor could he testify due to very serious health issues. The parties agree that he was at a stage that he was feeling that his counselling was not successful. He had not even been able to get the children to be in the same room with their father.

Katherine Beecroft

[106] Katherine Beecroft is a social worker employed by the Windsor Catholic School Board. She has her Masters in Social Work. She has worked as a social worker with the Board for approximately 19 years. She became involved in this case after getting a referral from the principal of the children's school in September 2009. She saw the children over a span of approximately five months. All three children attended 11 sibling group sessions and J.L.W. attended five individual sessions. She stated that her focus was to assist in the transition to see what was underlying the problems the children presented with respect to seeing their father. The school wanted to support the court order for access.

[107] Ms. Beecroft did not see her role as one that would look into the dynamics of the problem. She was trying to assist as to whether J.L.W. would benefit from trauma counselling. Ms. Beecroft identified that the children would have stomach aches and feel anxious in the context of thinking about being with their dad. By January 2010, Ms. Beecroft's involvement came to an end. There was nothing more she could do. She felt that counselling needed to continue. A. complained about her involvement to the school board. A. did not feel that she was competent.

Allison McKinnon

[108] Ms. McKinnon worked for the Glengarda Children's Centre. She had her Bachelors of Social Work from the University of Windsor and she had been working for the past three years as a supervised access worker at that centre. She supervised approximately six or seven visits at the Centre in the spring of 2010. Her general impression was that they went well. The children would play with toys and interact with their father. He was always happy and appropriate with them. On one occasion she recalled one of the children sitting on his lap. She did not recall any major negatives.

[109] Mark Donlon then contacted her in November 2010 and asked if she would agree to contract with J. in order to monitor access at his home. She agreed and worked in this capacity from November 2, 2010 to March 2011. Ms. McKinnon viewed her role as a neutral note taker. She observed and took notes of all the visits. However, she testified that during her observations over this period, the children were, at times, obnoxious toward their father. She felt that they acted more powerful than the parent and were often disrespectful and defiant toward him. For many visits they refused to take off their outside clothing. They rarely ate any of his food despite the fact that he cooked meals and gave them choices. They even refused to drink his water. On one occasion Ms. McKinnon stated that the children saw their mother drink water from a bottle at their

dad's home and when she stated that the water came from their dad's, they said that they would never trust her again.

[110] The children would often remove things from J.'s home and according to J. they would state that they were taking things that he had "stolen from them." Ms. McKinnon confirmed that the children would often remove things from J.'s home. She also stated that on December 28, 2010, J. tickled C.L.W. and she threatened to tell her mom. C.L.W. stated on that occasion, "I am telling mom that dad grabbed me."

[111] Ms. McKinnon stated that sometimes when one of the children would drift over to be with and interact with their father normally, the others would call her back. There was a definite pact mentality and the child J.L.W. was the leader of the pact. On December 23, 2010, J.L.W. stated that they would never change their mind and they did not want to see their dad. The children told their father that they were no longer related to them and they had changed their name to F.. The children made it clear that they were only coming to these house visits because the judge was making them come and they will tell the judge on their father.

[112] The children told their father that he kept their mother's money. They would also come over on many occasions and search for their father's girlfriend, Sarah despite their father telling them that she was not present. Ms. McKinnon stated that despite this conduct by the children, J. was always appropriate and sensitive and showed patience to the children. After the children left he expressed to her how hard it is for him to see them like that. When J. would drive the children to their mother's the children would talk to her and not engage with their father. Upon arrival at their mother's the children would not say goodbye to their father. On one occasion, when the children were dropped off at their mother's, A. invited Ms. McKinnon to talk to her. A. wanted her to know that the CAS had investigated abuse by J. and she felt that Ms McKinnon should know the results. Ms. McKinnon stated that she was neutral and that her contract was with the PC Mark Donlon. On December 9, 2010, A. then proceeded to tell Ms. McKinnon that CAS had confirmed the abuse by J.. On March 1, 2011, Ms. McKinnon noted that A. pinched the child A.C.W. and A.C.W. said, "ow." A. replied that if she did not obey her she would pinch her even harder. The Children's Aid Society received copies of all of the McKinnon notes and did nothing about that incident.

[113] Ms. McKinnon stated that there was no improvement in the children's behaviours during the whole time that she was involved with the family.

[114] The children were so disrespectful that they would lock themselves into their room and refuse to come out. J. had taken the locks off the doors. On other occasions J. told the children that they could play anywhere in the house except for his den where he kept important papers. A. criticized J. for restricting the children, not listening to them and following them around the house.

Police Constable Melissa Taylor

[115] Constable Taylor stated that A. attended at the Amherstburg Police Station on September 13, 2008. She wanted to report that she had observed strange behaviour going on around J.'s home. She stated that there was a Michigan plated vehicle parked outside of J.'s home and that she was becoming concerne**d** for her safety. When asked why she was concerned, she stated that she would end up being the next woman murdered by her ex-husband in Amherstburg, referring to a woman who had been murdered in that City. Constable Taylor told her not to cloud criminal issues with custody issues.

[116] The second contact this officer had with this family was when J. had called the station in order to enforce his access. Constable Taylor attended at the F. home where A., her father and mother and brother were present along with the children. The children did not want to go with their father and according to Constable Taylor, J.L.W. was markedly upset emotionally. She was crying and shakingand she was concerned about her mom going to jail. Constable Taylor talked to her for a short period of time in the garage and J.L.W. seemed to get comfortable. She could not give specifics about why she was saying that their dad was mean. She did say that she had a burn from a treadmill. Constable Taylor said that J.L.W. used adult language to describe her not wanting to go with her father, and to describe a father who was bad. She stated that in her 16 years on the police force she had experience with interviewing children of these children's age and she felt that the language the children used represented large words beyond their years. She could only recall one word the children used and that was their father being "irresponsible."

[117] Constable Taylor wrote in her report that "it is clear that someone has tainted their views." Later A. would insist on a meeting with Constable Taylor's supervisor to complain about her and attempt to get her to change the wording of her report to take out the phrase "it was clear that someone has tainted their views." Constable Taylor would not change her report and she stuck by her views in her testimony. Constable Taylor was so concerned for J.L.W.'s emotional health she felt she needed to report this incident to the CAS. She concluded that based on the heightened reaction of J.L.W. and the fact that neither the children nor the adults could verbalize the reason for such fear.

[118] Constable Taylor suggested that the children visit with their father at MacDonald's. This was arranged and did take place.

Constable Aaron Chambers

[119] Constable Chambers was dispatched to J.'s home on October 26, 2010. He was called as a result of a missing child report. By the time he arrived at the home, the child was found, and he talked to the children about how unsafe it was to run away. J.L.W. told the police officer that her dad had hit her arm. When the officer said that he did not see any marks on her arm, J.L.W. stated that it happened a long time ago. Without any prompt or question, J.L.W. then said that their father was bad and when he asked her why she said he has a motor cycle, a girlfriend and he is a gambler. All three girls then started to complain that their father tired to break their backs in a "box."

[120] Constable Chambers stated that he felt they were given misinformation in order to make them feel bad about their father. He used the example of the children referring to him being bad because he is a "gambler." After dropping the children off at A.'s home, A. told Constable Chambers that she did not believe J. is abusive to the girls as he "has never done that in the past."

[121] The October 26, 2010 incident became another turning point. Despite A stating to Constable Chambers that she did not believe J. is abusive to the girls, she set about that very evening to take numerous pictures of each of the children. These pictures were only of sites on their body that the children allegedly told her a scratch or bruise existed as a result of their father hurting them by slapping, hitting, spanking, grabbing, and throwing them down. Like she did when she had pictures taken of herself when she alleged that J. assaulted her on July 4, 2008, A. claimed that she took these pictures in order to document the abuse perpetrated by J.. The next day, A. brought those pictures to the CAS to show them the proof of this abuse.

[122] The CAS took their own pictures of the children in order to document the alleged abuse. However after they conducted the complete investigation, Ms. Georgiou stated that physical abuse was not confirmed. She stated that the children's statements were not consistent both internally and externally. J.'s version of events was accepted. He described the children as being completely out of control. The one child ran from the home and that precipitated the missing persons call. The other children trashed certain rooms including tearing blinds off windows and scattering the bedding all over the room. According to J. they arrived at this first visit with the clear intent to sabotage the visit. He admitted that at one point J.L.W. was out of control and he had to grab her by the upper part of her body to take her off of the banister or she could have gotten hurt. He stated that he gave her one spank on her fully clothed bottom and told her to stop. That resulted in what later became a concern by the CAS that inappropriate discipline may have been used. J. was encouraged to, and agreed to always have a monitor present during access in order to protect himself from further false allegations.

[123] The children did not testify. The statements that were attributed to them by the society worker during this investigating and by others were all admitted in order to establish their state of mind, not as proof of the facts. It is clear that their state of mind, by October 26, 2010 had become rooted in fear, dislike and disrespect of their father. It is significant that this disastrous visit came approximately one week after the parents had supposedly signed final Minutes of Settlement to end the war by setting up a parenting regime that would bo**r**row largely from the assessment recommendations - recommendations that A. did not agree to and conflicted with her view of J. as an abuser who must be feared.

[124] The very next visit after the October disaster started out with A. bringing the children and while handing them off she stated, "here they are kicking and screaming just like your lawyer wanted." I find that the children's extreme behavioural overreactions manifest in the October visit are directly connected to A.'s views of J. that have been transformed into the views of the children.

The Children's Aid Society Involvement

[125] The Windsor Essex Children's Aid Society opened a file on this family on July 4, 2008. Over the next two years and 11 months, they would open and close their file and assign five different family service workers. The Society investigated numerous allegations of physical abuse and neglect made against the father, J.. They include many of the incidents related in this decision. They include what I have set out as subtitles in these reasons as: the "box", the "grabbing", the "jumping off the dock", the "October 26, 2010 incident" that included allegations of slapping, hitting spanking, throwing the children on the floor, and detaining them improperly.

[126] Except for J. admitting that he spanked J.L.W. on her bottom with one slap over her clothes in the middle of the chaotic behaviour of the children, none of the investigations validated abuse on the part of J..

[127] However, the Society constantly coded the file as, "risk of emotional harm due to high conflict." The present worker, Tara Ivancic, and her immediate predecessor, Jennifer Georgiou, both testified that the Society never had an internal meeting and reviewed the complete file in order to determine if all of the incidents amounted to emotional abuse as defined in the *Child and Family Services Act*, R.S.O. 1990, C. C-11, section 37(2)(f)(g). I find that omission on the part of the Society amounted to a failure to perform the functions assigned to them by section 15 of that Act. Section 15 provides, among other things, that it is the functions of the Society to, "investigate allegations or evidence that children who are under the age of sixteen years or are in the society's care or under its supervision may be in need of protection; to protect, if necessary…to provide guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children." In this case the Society did not attempt to see the forest for the trees. They simply had a periodic open file monitoring the situation as a result of their coding of "risk of emotional abuse due to high conflict." All too often Children's Aid Societies code files in this manner and then do not proceed to investigate emotional abuse as defined in the *Child and Family Services Act.* It is not sufficient to merely classify concerns for emotional abuse and then to assign the cause to a high conflict custody trial that can wait until the trial is over. The Children's Aid Society's duty to investigate children who may be in need or protection requires much more than that. I find it significant, however, that the Society has chosen to keep their file open at present.

Doctor Lee

[128] Dr. Lee took over the counselling from Dr. Ricciardi. She is a clinical psychologist who obtained her PhD from the University of Windsor in 2005. She started to provide therapy in this matter on December 6, 2010. She issued a report on January 17, 2011. Dr. Lee met with J. and the children weekly. Between sessions she would receive and review copies of Allison McKinnon's notes of the access that had taken place in the father's home between therapy sessions. Dr. Lee stated that she did not spend a significant

amount of time with A. throughout the therapy process. Her goal in the therapy was directed toward reunification between the father and his children.

[129] She understood that J. felt that the children were the subjects of Parental Alienation Syndrome (PAS). She told him that there were a number of psychologists who did not agree with the construct of PAS and that she was one of those psychologists. She was of the view that there were many other factors that may be the cause of children's estrangement. Dr. Lee stated that J. gave her a number of articles to read on the subject and that he never changed his view on the cause of the problem. On December 18, 2010, J. brought a DVD to the therapy session and wanted to show it to the children. Dr. Lee wanted to review it first and when she did, she felt that it was not age appropriate for the children. It was a DVD that was geared to children who have been victims of PAS. Dr. Lee stated that she tried to get J. to focus on therapy and not PAS. Dr. Lee stated that although J. never gave up his view relative to PAS, he did engage in therapy.

[130] The report of Dr. Lee dated January17, 2011 noted a number of observations and concerns about the three children. Dr. Lee identified that the children had inappropriate knowledge of past events and it was very concerning that J.L.W. was telling her father to "tell us about the three times you were arrested." After J. attempted a general explanation, J.L.W. boldly stated, "you're lying." Dr. Lee also observed that the children seemed to know about the Minutes of Settlement and some verbal discussions that had taken place with a judge during one of the conferences. It is significant that Dr. Lee noted that A. had told the children that, "it is ok if we give the gifts your father gave to you for Christmas to charity."

[131] Dr. Lee noted that the children often acted in concert and J.L.W. was "the leader of the pact." The other children would follow her direction or look to her for direction. One occasion, when J. apologized to C.L.W. for apparently hurting her finger, C.L.W. looked at J.L.W. and said, "is it still ok to be mad at dad." During another therapy session, Dr. Lee was attempting to talk to the girls about school generally, J.L.W. directed the other girls "don't answer any questions." Dr. Lee stated that she agreed that these children are extremely over-empowered.

[132] Dr. Lee concluded that A.C.W. and C.L.W. were still responsive to working through their feelings of conflict with their dad. J.L.W. shockingly responded that she will, "give him a taste of his own medicine." Dr. Lee agreed with the suggestion of counsel for J. that the children, throughout most of her involvement with them treated their father in an "obnoxious and disrespectful manner." That same observation was made by Katherine Beecroft, Allison McKinnon and Dr. Schnayer.

[133] After approximately nine sessions, Dr. Lee felt that A. has started to slowly come around in the last two sessions. Prior to that A. did not feel it was up to her to consequence the girls for any of their actions relative to their father, she felt it was up to him to work it out. She felt that the progress was very slow in therapy. Dr. Lee acknowledged that it would be difficult for A. to support access between the children and their father if A. felt

that the children's feelings of fear and dislike of their father caused by their life with him needed to be heard and validated.

[134] Dr. Lee stated that she did not do any critical analysis of the veracity of the allegations of abuse against J.. She was not in a position to determine whether the intense fear and anger in the children was caused by their life experiences with him or as a result of manipulation by their mother.

[135] Dr. Lee felt that J. contributed to his difficulties with the girls by some of the actions he took. She criticized him for placing his den off limits to the children and taking the locks off of their doors when they would lock themselves in their room. She also criticized him for engaging the children in argument even when the discussion was an attempt to set a distorted fact the child had straight. I find it difficult to accept that these children should be allowed to live in a distorted reality of unwarranted fear and anger of their father given my review of the evidence and the findings that I am making.

I agree with Dr. Lee's criticism of J. in the manner that he dealt with the fact that he was getting married to his girlfriend Sarah. I also agree that J. appeared to be obsessed with pushing the concept of PAS on to all who would or would not listen to him. This dynamic exacerbated the reactions of A. and participated in some professionals losing the focus of what they needed to do.Like many of the other professionals involved in this case, Dr. Lee did not state what she felt the conflict was between A. and J. other than A. felt that J. was abusive and J. thought that A. was the thrusting the children into the grip of parental alienation syndrome.

[136] On March 3, 2011, J. requested a meeting with Mark Donlon, Dr. Lee himself and his lawyer, Mr. Ludmer. Much of that meeting was taken up by Mr. Ludmer, advancing his beliefs that these children are the subject of PAS, and questioning the familiarity and knowledge each had with PAS. Dr. Lee stated that the Parenting Coordinator got quite angry about the nature of the discussion and Dr. Lee told Mr. Ludmer that she did not accept what he was saying about PAS. D**r**. Lee stated that Mr. Ludmer told her that it was unprofessional and astounding that she should take such a position. According to Dr. Lee, J. ended the session by expressing his upset and stating that he was no longer willing to participate in therapy or visits.

[137] The last session referred to came after the failed therapy session of February 19, 2011. It was that session that J. told his children that he was going to marry Sarah in two weeks. According to Dr. Lee, the children expressed shock and surprise and then J.L.W. started sobbing and yelling at her father. She curled up on the chair and turned away from her father. C.L.W. and A.C.W. first expressed shock and surprise and A.C.W. stated that she was going to crash the wedding and pull pranks. C.L.W. did not say much she went off to play.

[138] Dr. Lee described the rest of the therapy session as one in which she tried to engage J.L.W. but could not. A. arrived and also tried to engage J.L.W. unsuccessfully. J.L.W. started to angrily yell and kick at her mother. At this point in her testimony, Dr. Lee

became choked up and started to cry for a brief period. At one point J.L.W. stated: “no one would understand and appreciate what she is going through.”

[139] Dr. Lee stated that she may have been more helpful when things had calmed down. Unfortunately, J. would no longer participate in therapy or visits.

[140] Dr. Lee was willing to continue her involvement depending on the order of the court. However, J., through his counsel takes the position that Dr. Lee has lost her objectivity and he has lost his confidence in her ability to move matters forward after a lengthy period of very minimal gains.

THE LAW AND ANALYSIS

CONTEMPT

[141] Rule 31 of the *Family Law Rules,* O. Reg. 114/99, governs Contempt Motions in family law proceedings. Subrule 31(1) states that an order, other than a payment order may be enforced by a Contempt Motion made in the case in which the order was made, even if another penalty is available. Subrule 31(5) provides for the following sanctions, which the court may order if the person is found in contempt:

(a) be imprisoned for any period and on any conditions that are just;
(b) pay a fine in any amount that is appropriate;
(c) pay an amount to a party as a penalty;
(d) do anything else that the court decides is appropriate;
(e) not to do what the court forbids;
(f) pay costs in an amount decided by the court; and
(g) obey any other order.

[142] The Ontario Court of Appeal outlined the primary object of contempt in family law matters, as follows:

> The court's jurisdiction in respect of civil contempt is primarily remedial, the basic object being to coerce the offender into obeying the court judgment or order... (*Kopaniak v. MacLellan* (2002), 27 R.F.L. (5th) 97, 212 D.L.R. (4th) 309 at para. 25 (Ont. C.A.)).

[143] In *L.(A.G.) v. D.(K.B.),* [2009] O.J. No. 1342 (Ont. S.C.J.), the court said that in relation to each of the alleged breaches, the court must make the following findings:

1. That the relevant order was clear and unambiguous;
2. The fact of the order's existence was within the knowledge of the respondent (on the Motion) at the time of the alleged breach;
3. That the respondent intentionally did, or failed to do, anything that was in contravention of the order;

> 4. That the respondent was given proper notice of the terms of the order.
>
> (See: *Haywood v. Haywood*, [2010] O.J. No. 4317 at paras.41-43 (S.C.J.))

[144] In *Gerenia v. Harb*, [2007] O.J. No. 305, (S.C.J.), Quinn J. discussed the issue of what steps a custodial parent should be expected to take to ensure that the provisions of an access order take place. At paragraph 44, he wrote:

> (a) Mr. Wilson argues that our law does not require a parent, who wishes to avoid a contempt citation, to physically force a child to go on an access visit. I respectfully disagree with that argument as a general legal principle. Whether a child should be physically forced by the custodial parent to go on an access visit depends upon the facts of the case. Certainly, the force used should not be such as to cause physical harm to the child. And, although the specter of emotional harm is far more problematic, a custodial parent would be advised to ensure that the evidence supports such a risk before declining to physically force the child to abide by an access order for that reason. Undoubtedly, there are many tasks that a child, when asked may find unpleasant to perform. But ask we must and perform they must. A child who refused to go on an access visit should be treated by the custodial parent the same as a child who refused to go to school or otherwise misbehaves. The job of a parent is to parent.

[145] The Children's Aid Society worker, Shelly Gignac, testified that A. told her that she had been encouraging the children to go for visits until recently when she started to feel torn. She also told her that she was trying to, "empower them to use their voice and make their wishes known with respect to not wanting to see their father…" Ms. Gignac stated in her investigation summary of April 6, 2009, "A. has expressed frustration that despite the children's expressed wishes, service providers and school staff still encourage them to go for access. She is also not pleased that the Society has not found any information to warrant overriding the current court order with respect to the father's access and say that the children do not have to go."

[146] The mother's own testimony is very instructive of her intentions relative to obeying the court ordered terms of access. She stated that she "has been to hell and back trying to get someone to listen to the children's feelings and to validate those feelings about their father." Incredibly, in response to counsel in cross-examination when asked whether she would comply with a judge's order, were the judge to find her in contempt and order fines per each future missed access, A. responded, "if I had to go into further debt in order to get my children's feelings heard and validated I will."

[147] From her proclamation to J. shortly after separation, that "the children don't want to see you and they are better off without you" until her testimony in this court room, A. has actively set about to excise J. out of the children's life. The children started out a few weeks after separation protesting that they did not want to go with their father. They all

transformed into children who feared and professed to have an intense dislike of their father. I find that transformation of the children was primarily caused by A.'s role in helping to create a distorted reality of their father within the children.

[148] On the facts before me, and on the reasons as set out herein, I find that all of the above four indicia as established in *L.(A.G.)* have been met. The October 24, 2008 order of Thomas J. was clear and unambiguous. The access terms were not complicated. The complication that prevented the access occurring was A.'s belief that was transferred to the children that J. was and still is an abusive father who must be feared. Despite A's multiple articulations that she wanted the children to see their father, her actions exposed her true intentions that were that she would "go to hell and back" in order to ensure that her children's feelings (manifested by not wanted to see their father) would be heard and validated.

[149] I find that the children's expressed fear and dislike of their father was rooted in the mother's fear and dislike of J.. I find that no event that was brought out in the evidence as an attempt to demonize J. had a basis in reality. All investigations, either by police or Children's Aid confirmed abuse. Anyone who disagreed with A.'s attempts to establish abuse on the part of J. was met with her complaints of incompetence or her attempts to manipulate the process further. One very significant example of this is her email to Dr. Schnayer immediately after his assessment report was released.

[150] When A. was faced with a court order she chose to participate in a course of conduct that increased the anxiety within her children. She held them back from school when no medical evidence justified such withholding. That only served to support the children's anxiety and fear of their father. On one occasion she brought the children to a medical emergency clinic claiming they were under a severe anxiety state. She did not call any evidence to justify her claims of severe anxiety.

[151] She brought a motion to suspend the access ordered by Thomas J. on October 24, 2008. Her motion was dismissed with costs against her and the order of Quinn J. clearly stated that there was no evidence to support changing the access order. Access as set out in Thomas J.'s order was to remain in full force and effect. The problem was that by A.'s course of conduct as I have set out above, the order of Quinn J. for access had no force or effect. A.'s conduct sabotaged the access and the relationship of the children with their father.

[152] Her counsel's final submission to me, on behalf of A., was that the children needed a respite from the anxiety they have been living. The only way the court could give them that respite is to stop access altogether and review it in six months to see how the children are doing. I not only reject that submission, I find that it reflects her continued adherence to her intended goal of severing the relationship between the children and their father.

[153] I find beyond any reasonable doubt that A. is in contempt of the order of Thomas J of October 24, 2008 and the order of Quinn J. dated, March 5, 2010. My disposition of the sentence shall be set out in the order detailed at the conclusion of these reasons.

CUSTODY
The Divorce Act

[154] Section 16 of the *Divorce Act*, R.S.O. 1985, c.3 (2nd Supp), is as follows:

> Order for custody
>
> 16. (1) A court of competent jurisdiction may, on application by either or both spouses or by any other person, make an order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage.
>
> Interim order for custody
>
> (2) Where an application is made under subsection (1), the court may, on application by either or both spouses or by any other person, make an interim order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage pending determination of the application under subsection (1).
>
> Application by other person
>
> (3) A person, other than a spouse, may not make an application under subsection (1) or (2) without leave of the court.
>
> Joint custody or access
>
> (4) The court may make an order under this section granting custody of, or access to, any or all children of the marriage to any one or more persons.
>
> Access
>
> (5) Unless the court orders otherwise, a spouse who is granted access to a child of the marriage has the right to make inquiries, and to be given information, as to the health, education and welfare of the child.
>
> Terms and conditions
>
> (6) The court may make an order under this section for a definite or indefinite period or until the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just.
>
> Order respecting change of residence
>
> (7) Without limiting the generality of subsection (6), the court may include in an order under this section a term requiring any person who has custody

> of a child of the marriage and who intends to change the place of residence of that child to notify, at least thirty days before the change or within such other period before the change as the court may specify, any person who is granted access to that child of the change, the time at which the change will be made and the new place of residence of the child.
>
> Factors
>
> (8) In making an order under this section, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.
>
> Past conduct
>
> (9) In making an order under this section, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of a child.
>
> Maximum contact
>
> (10) In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

[155] These claims for custody and access in this matter are brought under the *Divorce Act* and in the alternative the *Children's Law Reform Act,* R.S.O. 1990, c.c-12. Section 27 of the *Children's Law Reform Act* provides that: "where an action for divorce is commenced under the *Divorce Act (Canada),* any application under this part in respect of custody or access to a child that has not been determined is stayed except by leave of the court." Under the circumstances of this case, I grant leave to continue under the *Children's Law Reform Act* concurrently with the *Divorce Act*. My reasoning for this will be clearly detailed in the disposition section of these reasons.

High Conflict, Alienation and Estrangement

[156] All too often children are in the middle of parental conflict that is chronic and extreme. In these cases, the logic that should lead both parents to consider the best interests of the children is sadly lacking.

[157] Another feature of these extreme high conflict cases is that they often polarize far too many of the adults and professionals in their search for solutions, causing self-serving results and too narrow analysis.

[158] High conflict cases are multi-faceted and complex. They should not be treated otherwise by professionals who are engaged to assist the parties and the court in attempting to define the needs of the children and the solution that best meets those needs.

[159] Each case must be determined on their own facts. These cases of high conflict do not lend themselves to simple solutions. Even if the court determines that alienation is either the complete or partial cause of the rejection by the children of one of the parents, the court is still left with a complicated balance of considerations that keep the best interests of the children as the sole focus in any order that is made.

[160] In *El-Murr v. Kiameh*, [2006] O.J. No. 1521 (O.C.J.), Katarynych J. stated at paragraphs 16 - 18:

> To try to force-march this boy to a reunification would be an unconscionable invasion of his emotional life. The price is simply too high for him.
>
> It is not the task of any clinical intervention to go ripping about in the realm of a child's emotions with no regard for the consequences to the child. …

[161] Katarynych J. went further in *El-Murr* at paragraphs 28 - 31:

> Perhaps this boy is best served at this time in his life by being left in peace. He has been given the opportunity to open himself to a reunion with his father. He has declined the opportunity.
>
> There is no benefit for the father at this time – just a faint hope. It is cruel to keep alive hope that is faint, when there is no indication on the evidence that this child is likely to open himself to his father in the near future.
>
> Whatever the benefit, it is no more than a potential. At this point in this child's life, his actuality is that he has moved on to establish a father-and-son relationship with his stepfather. From his perspective, he does not need any other father-and-son relationship.

[162] In *Reeves v. Reeves*, [2001] O.J. No. 308 (S.C.J.) at paragraphs 22, 23 and 24, Mossip J. quoted paragraphs 9, 15 and 16 of *Tremblay v. Tremblay* (1987), R.F.L. (3d) 166 (AB Q.B.) with approval:

> 9. I start with the premise that a parent has the right to see his or her children and is only to be deprived of that right if he or she has abused or neglected the children. Likewise, and more important, a child has a right to the love, care and guidance of a parent. To be denied that right by the other parent without sufficient justification, such as abuse or neglect, is, in itself, a form of child abuse.

> 15. The court should not automatically change custody if the custodial parent refuses access or otherwise interferes with the development of a normal parent and child relationship between the non-custodial parent and the child of the marriage. However, where the parent refuses access, serious questions are raised about the fitness of that person as a parent. The refusal to grant access after it is ordered is a change in circumstances sufficient to satisfy s. 17(5) of the Act.
>
> 16. In deciding questions of custody one needs to take into account the best interest of the child. It is in the children's best interests to live with the parent who is prepared to be co-operative with respect to access in cases where both parents can equally well look after the children or, even if there is a divergence in parenting skills, as long as the co-operative parent is fit to look after the children.

[163] In *Reeves, supra*, Mossip J. concluded that the father had conducted a campaign of alienation in respect of 13 and 16 year old sons who had not seen their mother for many months, did not want to see her, and were experiencing emotional trauma as a result of the pressures upon them. I agree with her observations at paragraph 38 of her decision:

> Based on a significant number of studies and case law in this area, any support or encouragement by one parent that the children not have a relationship with the other parent simply demonstrates the irresponsibility of the parent who has the children and demonstrates that parent's inability to act in the best interests of their children. Children do not always want to go to school or want to go to the dentist's or doctor's. It is the responsibility of good parents to manage their children's health and safety issues without necessarily the consent or joy of their children. A healthy relationship with both parents is a health and safety issue that good parents ensure takes place.

[164] Mossip J. went on to order that custody be changed from father to mother and she required the father's and paternal grandmother's access to be supervised. She ordered on-going counselling for the children and recommended the father seek counselling too. She also imposed numerous other terms.

[165] In *C.S. v. M.S.*, [2007] O.J. No. 878 (S.C.J.), at paragraph 92 Perkins J. described parental alienation as follows:

> Children who are subject to the parental alienation syndrome (I will call them PAS children) are very powerful in their views of the non-alienating parent. The views are almost exclusively negative, to the point that the parent is demonized and seen as evil. […] PAS children feel empowered and are rewarded for attacking the other parents and feel no remorse or shame for doing so. […] PAS children have a knee jerk, reflexive response to support the alienator against the targeted parent, often on the

> basis of minimal evidence or justification. PAS children broaden their attacks to encompass members of the other parent's extended family. […] PAS children are recruited by the alienating parent and alienated siblings to the alienating parent's cause. […] With PAS children, you cannot be sure who you are listening to – is it the child, is it the alienating parent, or is it Court Watch [an advocacy group supporting the father]?

[166] In *J.K.L. v N.C.S.* (2008), 54 R.F.L. (6th) 74 (Ont. S.C.J.), Turnbull J. granted custody of a 13 year old boy to his mother with no access to the father. In that case, Turnbull J. found that the child was the subject of severe parental alienation. The child, in that case, had been in the custody of his father. Turnbull J. found that the father conducted himself in a manner that severely alienated his child from his mother.

[167] In the *J.K.L.* case, the father had been found in contempt of five counts of breaches of previous court orders that were designed to preserve the parental relationships with the child.

[168] I find that it is not necessary or helpful to engage in the controversy within the clinical profession about the merits of concepts of parental alienation, realistic estrangement, or family systems based "alienated child" approach. I do find that the focus on the concept of parental alienation creates an environment that could lead to narrow and limiting analysis of very complicated dynamics of family interaction that must be understood in order to find a solution that has the best chance of success. In this case, the pursuit of the label of PAS, diverted many of the professionals. I find that one of the most significant diversions is illustrated in the testimony of the assessor Dr. Schnayer.

[169] Dr. Schnayer stated that he never analysed the root cause of the children's resistance toward their father. In his first report he stated that the risk of emotional harm to the children was significant if the conflict was not resolved. His second report reiterated this concern. He testified that the risk had increased over time. He also stated that the children's reactions to their father are out of proportion to reality. He had found in his assessment that J. was a normative parent and the children were well bonded to him. Despite that opinion he did not do a root cause analysis. Dr. Schnayer stated that he would need to be 100 percent comfortable in making a diagnosis of PAS, this would require a high standard because the impact of such a diagnosis is great. In my view that opinion tailored his recommendations and diverted his analysis away from looking into protection concerns relative to his opinion that the children were at ever-increasing risk of emotional harm.

[170] The relevant inquiry by assessors should not be the search for a diagnosis or a label. The relevant inquiry must be the critical review of the actions of the parents as they impact on the children's functioning and their needs. If emotional abuse is a serious risk the professionals and the protection agencies must attempt to be more specific as to the cause of the emotional abuse and be more specific as to the depth of the negative consequences, both short term and long term on children in each case.

Children in Need of Protection

[171] I find that all three children are in need of protection in accordance within the meaning of that term as set out in the *Child and Family Services Act,* R.S.O. 1990 c. C. 11 s. 37 (2)(f) and (g). However, that finding is extremely complicated in this case due to the legislative structure presently in existence in Ontario. In order for me to make such a finding I must find that I am able to exercise the *parens patriae* jurisdiction as a Superior Court Judge. I find that is necessary as a result of a critical analysis of the *Courts of Justice Act*, the *Child and Family Services Act* and the various comments of the Ontario Court Appeal relative to the use of *parens patriae* jurisdiction.

The Child and Family Services Act

[172] Section 37 (2) (f) and (g) reads as follows:

> A child is in need of protection where:
>
> (f) the child has suffered emotional harm, demonstrated by serious,
>
> (i) anxiety,
>
> (ii) depression,
>
> (iii) withdrawal.
>
> (iv) self destructive or aggressive behaviour, or
>
> (v) delayed development,
>
> And there are reasonable grounds to believe that the emotional harm suffered by the child results from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having the charge of the child;
>
> ...
>
> (g) there is a risk that the child is likely to suffer emotional harm of the kind described in subclause (f) (i), (ii),(iii),(iv) or (v) resulting from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child:

[173] I find that these children have shown signs of serious anxiety, self destructive and aggressive behaviour. I have also found that these manifestations of emotional harm are as a result of the actions of the mother, A., by her entrenching the children in such a distorted view of their father that they have an intense dislike and fear of him. I find that A. is so fixated on her view of J. that she is unable to appreciate all of the consequences of her actions and therefore, although she has consented to treatment for her children, in

the past, she is unable to effectively support such treatment. The result is a cyclone of distortions within the children about their father.

Child and Family Services Act: The Functions of the Society

[174] Section 15 provides that the functions and the duties of the Society are to:

> (a) investigate allegations or evidence that children who are under the age of sixteen years or are in the society's care or under its supervision may be in need of protection;
>
> (b) protect, where necessary, children who are under the age of sixteen or are in the society's care or under its supervision;
>
> (c) provide guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children;…

The Courts of Justice Act

[175] The *Courts of Justice Act*, R.S.O. 1990, c C-43, Section 21.1(1) creates a branch of the Superior Court of Justice known as the Family Court. Section 21.1(4) states that the Family Court has jurisdiction in the City of Hamilton and in the additional areas named in accordance with subsection (5). Subsection (5) states that the Lieutenant Governor in Council may, by proclamation, name additional areas in which the Family Court has jurisdiction. To date the Family Court exists in 17 of the 52 Superior Court sites in Ontario. Windsor is not one of those Family Court sites.

[176] The *Courts of Justice Act*, section 21.8.3, among other things, sets out a schedule of statutes that the Superior Court of Justice, Family Court has jurisdiction. The *Child and Family Services Act* is one of those statutes. In the City of Windsor, where this case is heard, the Ontario Court of Justice has the jurisdiction to hear applications brought under the *Child and Family Services Act*. Under the present structure, the Superior Court in Windsor would only sit on matters dealing with the *Child and Family Services Act* by way of appeal from a finding in the Ontario Court of Justice.

[177] The *Courts of Justice Act*, section 21.9, however provides that, "Where a proceeding referred to in the schedule to section 21.8 is commenced in the Family Court and is combined with a related matter that is in the judges jurisdiction but is not referred to in the schedule, the court may, with leave of the judge, hear and determine the combined matters". A similar provision does not appear to apply in order to combine matters that are in the jurisdiction of the Ontario Court of Justice with related matters in the Superior Court.

[178] I find that this situation creates an apparent unfairness to litigants in the Superior Court sites that are non Family Court sites. In those sites litigants are left with two levels of courts. The Superior Court of Justice and the Ontario Court of Justice. The same body

of facts and legal concerns for the welfare of children must be dealt with in different courts under the present legislative scheme. The Superior Court is left with fewer options in Windsor than it would have in Superior Court Family sites in for example London or Hamilton. Because this matter before me is in a non-Family Court Superior Court site, I am limited in the dispositions available that would otherwise be available if this matter was heard in another jurisdiction within the same province. If this matter were held in a Family Court site of the Superior Court, any person could bring an application to that court to consider whether the child is in need of protection regardless of whether the Children's Aid had brought such an application, as long as the terms of the *Child and Family Services Act*, section 40(4) have been met. In this non-family site of Windsor a section 40(4) application can only be made in the Ontario Court of Justice and the Superior Court would only consider such a matter on appeal of the Ontario Court.

[179] The additional complexity and potential for abuse of process is the possibility that I may as the Superior Court Judge on this matter find the children in need of protection but due to the lack of jurisdiction the matter would have to be sent to the Ontario Court of Justice where a different judge might make a different finding on the same body of facts with the same legal criteria being applied. That Ontario Court Judges finding could then be appealed back to the Superior Court.

[180] No Constitutional question has been placed before me. I am not able to consider the issue of equal access to justice given the present legislative scheme. I am detailing all of these issues as I feel that it is necessary to draw on all potential legal avenues in order to be in a position to act in the best interests of these children and protect them as part of that consideration. Since this case is in Windsor, I find that I am limited by the statutory framework of the *Courts of Justice Act* in my ability to access important tools that I feel are necessary to protect these children. I find that I must resort to invoking the *parens patriae* jurisdiction of the Superior Court in combination with utilizing the *Children's Law Reform Act*, section 34, in order to protect these children and act in their best interests.

Parens Patriae

[181] In the case of *Bahjan v. Bahjan* (2011), 104 O.R. (3d) 368 (C.A.), Weiler J.A. considered the issue of the use of *parens patriae* to order the Office of the Children's Lawyer (OCL) to investigate or to represent the children. She stated at paragraph 11:

> The overarching issue on this appeal is whether it was appropriate for the court to exercise its *parens patriae* jurisdiction to order the OCL to investigate or to represent the children. For the reasons that follow, I would hold that it was not appropriate for the judge to exercise the court's *parens patriae* jurisdiction.

[182] Weiler J. elaborated on the issue of when *parens patriae* may be invoked:

[23] The Superior Court's power to exercise its inherent *parens patriae* jurisdiction is not specifically ousted by sections 89(3.1) or s. 112. *Parens patriae* is the power of the court to act in the stead of a parent for the protection of a child. Prior to the amendment to the *Courts of Justice Amendment Act, 1984*, S.O. 1987, c. 1, in 1987, s. 125 of the *CJA* required the official guardian to do an investigation and report to the court in every divorce action in which there was a child of the marriage, regardless of whether there was a claim made for custody or access to the child or whether there was any dispute respecting custody or access. Hansard records that the amendments to the Act meant that an automatic Official Guardian's report would no longer have to be filed. There is no discussion as to what happens in the event that the Official Guardian, now the OCL, refuses to act: see 1994 c. 12 s. 37 and 1999 c. 12 Sch. B s. 4(1), respectively. Similarly, when the provisions giving the Children's Lawyer the discretion to act as the legal representative of a child were introduced and later amended, there is no discussion in Hansard as to what is to happen in the event that representation is refused. Nor is there any discussion of the Superior Court's *parens patriae* power.

[24] Assuming, without deciding, that absent words clearly ousting the Superior Court's inherent *parens patriae* jurisdiction the Superior Court has the power to order the OCL to act outside the *CJA*, it is reasonable to assume that the legislature intended that judges would respect the legislative scheme and not create a parallel procedure. To *order* and not *request* the OCL to act ignores the discretion embodied in the wording of the *CJA* and the underlying reason for that discretion. The OCL has limited resources and it, not the court, is in the best position to decide when and how to utilize its limited resources. Failure to respect the legislative scheme by pre-empting the exercise of the OCL's discretion is an error in principle.

The *parens patriae* jurisdiction must be exercised in a principled manner; it should not be exercised when other effective alternative remedies exist; it should not be used to second guess or to pre-empt a decision within the mandate of the OCL.

[25] In *E (Mrs.) v. Eve*, [1986] 2 S.C.R. 388 (*Re. Eve*), the Supreme Court of Canada reviewed the history and application of the *parens patriae* jurisdiction and held, at p. 427, that "[t]hough the scope or sphere of operation of the *parens patriae* jurisdiction may be unlimited, it by no means follows that the discretion to exercise it is unlimited. It must be exercised in accordance with underlying principle. Simply put, the discretion is to do what is necessary for the protection of the person for whose benefit it is exercised."

...

> [26] ... Having regard to these circumstances, it is perhaps not surprising that in *C.R. v. Children's Aid Society of Hamilton* (2004), 8 R.F.L. (6th) 285 (Ont. S.C.), Czutrin J. came to the conclusion that reading the Court of Appeal's recent decisions in such a manner as to suggest that a legislative gap was the *only* method by which the *parens patriae* jurisdiction could be exercised was simply too narrow. At the same time, he made it clear that the exercise of the discretion should not be the first "go to" solution but, in most cases, the last. He concluded at para. 129:
>
> > *Patrens patriae* jurisdiction is not meant, nor do I suggest by the facts of this case, to open up a general right to go before a Superior Court judge, to review the actions of the Children's Aid Society after Crown wardship in every case. In fact, it should be discouraged and be a remedy of last resort in most cases. However, in the proper circumstances *where the society has not acted fairly or otherwise met the needs of children*, the inherent *patrens patriae* jurisdiction of a Superior Court judge should not be ousted automatically. [Emphasis added.]
>
> [27] The question of when it is appropriate for a Superior Court judge to exercise the court's *parens patriae* jurisdiction also arose in *A.A. v. B.B.,* a case decided after *D.N.,* and one in which the court had the benefit of argument from an *amicus curiae.* The issue before the court in *A.A. v. B.B.* was whether the non-biological parent of a child born to a couple in a lesbian relationship could also be recognized as a mother of the child. The court first considered whether the Superior Court's *parens patriae* jurisdiction needed to be exercised to rescue a child in danger. Having concluded that this was not the case, Rosenberg J.A. turned to the question of whether a gap in the legislation existed. At para. 27, Rosenberg J.A. held:
>
> > The court's inherent *parens patriae* jurisdiction may be applied to rescue a child in danger *or* to bridge a legislative gap. This is not a case about a child being in danger. If the *parens patriae* authority were to be exercised it would have to be on the basis of a legislative gap. [Emphasis added.]
>
> ...
>
> [30] The exercise of the court's *parens patriae* jurisdiction is a very fact specific exercise.

[183] I agree with Czutrin J. as quoted by Weiler J.A. at paragraph 26 of *Bahjan* (supra), "…however, in the proper circumstances where the society has not acted fairly or otherwise met the needs of children, the inherent *parens patriae* jurisdiction of a Superior

Court judge should not be ousted automatically." Having regard to the discussion and analysis above, I turn to the specifics of this case.

[184] In the case before me, the legislative scheme of the *Courts of Justice Act* allows for the Lieutenant Governor to designate regions in which the Superior Court Family Court is to be established. If such a region is designated, the *Child and Family Services Act* would come within the jurisdiction of that court. Windsor has not been so designated and therefore the present legislative scheme prevents me from using the tools within that statute to act in the best interest and protection of children, which is the primary purpose of that legislation.

[185] Since the principles respecting the exercise of the *parens patriae* power are very fact specific I must look to the facts I have found in this case that bring me to the consideration of using *parens patriae* in order to act in the best interests of the children and for their protection.

1. The Children's Aid Society has kept a periodic open file for over 2 years coding the risk as one of emotional harm to the children. That has merely led them to monitor the file on a periodic and issue specific manner.

2. None of the professionals, including all of the therapists, the Assessor and the Children's Aid Society ever scrutinized or otherwise investigated this case to determine if all of the facts taken together established the risk of emotional abuse.

3. I find that the mother, A., has acted in a manner over the past two and half years that has on a balance of probabilities caused her children to be in need of protection for both emotional abuse and risk of emotional abuse. However, an application pursuant to the *Child and Family Services Act* cannot be brought before me under the present statutory scheme.

4. I find that the emotional abuse of these children cannot continue. There must be an order that stops their reality distortion and yet is sensitive to their present attachment issues with their mother.

5. An order to immediately transfer custody to the father might have emotionally devastating effects on the children. Their last contact with their father was the disastrous therapy session where they were told of the impending marriage of their father and Sarah. The father has not been to any therapy sessions since that date nor has he even seen the children since March 3, 2011.

6. A.'s position is that access to the father should be suspended to give the children a respite from their anxiety. I reject that option as something that would further entrench the children in their sense of false reality. I have no confidence that they could ever recover from the long term impact of what would amount to a severing of the paternal relationship.

7. J. submitted that he felt that an expanded order for joint custody similar to the Minutes of Settlement the parties entered into on October 19, 2010, should be granted. He did not argue that a transfer of custody would be necessary at this stage. He submitted that if I made strong findings, it would be more likely that A. would comply. However, if I felt a transfer of custody was in the best interest of the children, he would adjust his work schedule and his present wife, Sarah and her family would assist with the child care. I find both of these submissions unrealistic. I have no confidence, given sustained fixation by A. on her view of J., that an order similar to the October Minutes of Settlement is achievable. In my view the cyclone of distorted paternalistic fear and dislike would continue unless the conduct of A. is closely supervised.

8. I also do not feel that custody of the children can be transferred to the father at this stage. The events of early March 2011 from the disaster visit when the children were told about the marriage between Sarah and their dad created a real sense within the children that their father had chosen Sarah over them. J. exacerbated that wrong perception of him by terminating therapy and not seeing his children since early March 2011.

[186] I find that this case has created an exceptional difficulty resulting in the need to resort to exceptional solutions. I agree with the testimony of the parenting coordinator Mark Donlon that, "Windsor has thrown everything at this case and has failed." The Assessor, Dr. Schnayer, was at a loss as to what could be done at this stage. He did not feel that chances of success were good. Dr. Lee felt that this case would need long and slow therapy and even then it would be a guarded prognosis. J. has lost confidence in Dr. Lee. His counsel pointing out that J. perceives that Dr. Lee has lost objectivity. He directed me to Dr. Lee's tearful testimony when describing J.L.W.'s distress during the last visit. He also felt that very little gains had been made in all attempts at therapy starting with Katherine Beecroft in 2008. However, J. did not offer into evidence any alternative forms of therapy. His counsel attempted to allude to a website of a clinical therapy group in Toronto. I would not allow any reference to this into evidence unless someone from that group or institution was going to testify. No one testified from that or any other clinical therapy group or person.

[187] I am left with a most difficult search to achieve justice in this case. I find that the confines of the present legislative structure that limits my options also limit my ability to craft a workable solution for these children. I am not prepared to give up on these children and their need to have a close relationship with both parents. It is not in the interests of justice, when the justice interest is the protection and welfare of children, to be bound by the complexities and restrictions of the *Courts of Justice Act* preventing me from resorting to legislation that has as a primary purpose the protection and wellbeing of children.

[188] I exercise this courts *parens patriae* jurisdiction in order to accomplish what is needed on behalf of these children. I do not feel that I can co-opt the *Child and Family Services Act* to make a finding on that legislation. However, my findings are clear on that. These

children are in need of protection as defined by section 37(2)(f) and (g) of the *Child and Family Services Act*. However, I feel that I am able to combine my ability to structure terms of probation and with the utilization of the *Children's Law Reform Act*, section 34 and my *parens patriae* in order to craft an order that gives these children and this family a chance to break out of this destructive and abusive situation.

[189] Section 34 of the *Children's Law Reform Act* states:

> (1) Where an order is made for custody of or access to a child, a court may give such directions as it considers appropriate for the supervision of the custody or access by a person, a children's aid society or other body.
>
> (2) A court shall not direct a person, a children's aid society or other body to supervise custody or access as mentioned in subsection (1) unless the person, society or body has consented to act as supervisor.

[190] I find that the Children's Aid Society has an open ongoing file as a result of their concern that these children are at risk for emotional abuse. They have assigned a family service worker to the file. They have not, in my view gone far enough to protect these children given my findings as set out above. However, I imply their consent to act as a supervisor given their lengthy and historical involvement with this family and their present assignment of a worker. *Black's Law Dictionary*, 7th ed., defines implied consent as: consent inferred from one's conduct rather than from one's direct expression. In keeping an open file for two and a half years, continuing to the present, and having coded the file as "risk of emotional harm due to high conflict," I find that this demonstrates the Society's willingness and implied consent to play a substantial role in the protection of these children. That willingness and implied consent will be a factor in my disposition in this matter. As a result I find that I am able to resort to the *Children's Law Reform Act*, section 34 to order the Children's Aid Society to supervise the custody and access order that I set out below. If for whatever reason the Society disagrees with my finding of implied consent to act as supervisor pursuant to section 34, they are to notify all parties within seven days of the receipt of this judgment and set up a time to make representations before me with the trial coordinator.

[191] I make the following order:

1. A.F. is found in Contempt of the order of Thomas J. dated October 24, 2008 and the order of Quinn J. dated, March 5, 2010.

2. Pursuant to the *Family Law Rules* to enforce my finding of contempt I sentence A.F. to 6 months probation. The terms of her probation being that she shall comply with all of the terms of the custody and access order as set out below.

3. If there is a breach of probation the matter is to be brought back to me for submissions on sentencing for that breach.

a) The mother, A., shall have custody of the three children under the supervision of the Society.

b) This order shall be the subject of a review before me in six months to determine if any gains are being made. The expected gains to include:

i) The mother has transformed her present projection of the children's father as a person to be feared to someone who is a safe and loving father who should be respected and trusted.

ii) The father has stopped any pursuit of having the mother designated as someone who has infused parental alienation syndrome into her children. He must recognize that my findings in these Reasons are findings that relate to the mother's and his conduct and functioning, based on all of the evidence, that impact on the children's needs and define each parents' ability to meet those needs.

iii) The negative actions of one parent that lead to the negative reactions within the other parent must the stop now.

iv) Both parents must work with the Children's Aid Society and any therapist recommended by the Society in accordance with this order.

c) The mother shall allow the Society to attend at her home without prior notice to her, and interview the children and supervise the custody.

d) The mother shall not speak negatively about the father or his present wife Sarah and she shall promote the father, J., positively to the children at all times.

e) The mother shall not permit the children to be subjected to any negative comments or actions of anyone that would negatively impact on the relationship with father and the children.

f) The children shall meet with me immediately following my oral presentation of these Reasons to the parents. I will then present my reasoning to the children.

g) The mother shall attend at a meeting with the children and me, immediately following my oral presentation of these Reasons to the parents and the children. She shall tell the children that she promotes the contact and the loving relationship they should have with their father and she will participate in whatever the judge sets out in his judgment in order

to make this family work so that the children can have both parents for the rest of their lives.

h) The Children's Aid Society shall arrange for counselling for the children to deal with the emotional abuse, their distorted reality of their father and promote the reunification of the children and the father.

i) The Children's Aid Society shall arrange for such counselling for the mother to deal with her anger and need to learn to communicate with the father in order to allow the children to have a positive relationship with their father.

j) The father shall attend at a meeting with me and the children immediately following my separate meeting with the children and then the children and the mother. This meeting with the father, me and the children is to start the reunification of his relationship with the children and he shall tell the children that he loves them and will do whatever is necessary as the judge directs in order to have a positive loving and healthy relationship.

k) The father shall attend counselling to deal with his negative perceptions and anger toward the mother and to learn communication skills in order to communicate with his children, given this six months period of transition to the goal of achieving a normalized relationship. The counsellor shall be arranged by the Children's Aid Society.

l) The father and the mother shall each produce reports from their respective counsellors detailing the progress, if any, in the father and the mothers counselling. These reports are to be sent to the other side and filed in court no later than one week prior to the review of this matter.

m) The parents shall sign any releases necessary for the Children's Aid to receive any report form their counsellors and the children's counsellors.

n) The father shall have access to the children in accordance with the schedule below that is a stepped up transition access scheme:

    i) The first access after the meeting with the father, myself and the children to outline this judgment to them shall be from 4 p.m. to 6 p.m., supervised at the Children's Aid Society, on the first two Thursdays following the release of this judgment. At that access visit the father shall tell the children that his wife Sarah will never replace their mother. That he loves them in a way that will never change and cannot be compared to his love for anyone else. Sarah wants to have a close relationship with them but she too does not want to replace their mother.

ii) The father shall have access to the children on the Saturday following the second access visit at Glengarda Children's Centre. This access shall be monitored by Glengarda. It shall commence at 10 a.m. and end at 1 p.m. The father's wife Sarah may attend this access.

iii) On the Thursday following the Saturday access as above, the father shall have access to the children from 4:30 p.m. to 7:30 p.m. This access shall not be monitored. The father shall pick up the children and drop off the children at the children's residence with their mother. The mother shall bring the children to the father and promote the access in a positive manner.

iv) On the weekend following the above Thursday, the father shall have access to the children, unsupervised at his home from Saturday at 10 a.m. to Saturday 7 p.m. The mother shall deliver the children to the father's residence and ensure their transfer to the father and promote the access in a positive manner. The father's wife Sarah may be present during this access. The father shall return the children to the mother's home.

v) On the following weekend the father shall have the children from Saturday at 10 a.m. to Sunday at 7 p.m. The mother shall deliver the children to the father's home and the father shall return the children to the mother's home.

vi) Following the weekend set out in (v) above the father shall have the children during the week, on Tuesday evenings with no supervision from 4 p.m. to 7 p.m. in each week. And on weekends from Fridays at 6 p.m. until Sunday evenings at 7 p.m. alternating from the weekend after the Tuesday set out in this paragraph.

vii) Neither parent shall take the children out of the province without the written consent of the other or further order of this court.

viii) The children's names shall not be changed.

ix) The Children's Aid Society shall provide a report to me once per month setting out the progress and describing the therapy and counselling that has been put into place pursuant to this order.

x) Costs of this trial shall be reserved to me to the hearing of the review of this matter as provided in this order.

Original signed “Justice Harper”
R. John Harper
Justice

Released: June 27, 2011

CITATION: A.F. v. J.W., 2011 ONSC 1868

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

A.F.

Applicant

– and –

J.W.

Respondent

REASONS FOR JUDGMENT

Harper J.

Released: June 27, 2011