

2009 CarswellAlta 1196, 2009 ABPC 209, [2009] A.W.L.D. 4274, [2009] W.D.F.L. 5226

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B. (T.) v. B. (J.)

T.B. (Applicant) and J.B. (Respondent)

Alberta Provincial Court

Steven E. Lipton Prov. J.

Heard: July 6-7, 2009

Judgment: July 17, 2009

Docket: Calgary 090769878F1-01-001

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Counsel: D. Aburto for Applicant father, T.B.

C. **Easton** for Respondent mother, J.B.

Subject: Family

Family law --- Custody and access — Variation of custody order — Factors to be considered — Miscellaneous factors

Parties had children in 2004 and 2006 — Father separated from mother shortly after birth of second child — Father initially accessed children every other weekend — Interim order in 2008 granted mother custody 60 percent of time and father 40 percent of time — Father contravened interim order by going to day care to see children — Father failed to return communications book to mother on several occasions — Father brought application for variation and sought equal, shared parenting agreement — Application dismissed — Parties were made joint guardians, with primary residence with mother — Father was granted alternate weekend and specified holiday parenting time — Despite three year separation, level of conflict between parties was still high — Parties were not able to co-operate in any decision making respecting children — Father's behaviour was obnoxious — Current parenting arrangement was not in children's best interests — Granting father equal parenting time or decision making authority was not in children's best interests either.

**Cases considered by *Steven E. Lipton Prov. J.*:**

*Cavanaugh v. Balkaron* (2008), 60 R.F.L. (6th) 64, 2008 CarswellAlta 1963, 2008 ABCA 423, (sub nom. *E.A.C. v. R.B.*) 442 W.A.C. 302, (sub nom. *E.A.C. v. R.B.*) 446 A.R. 302 (Alta. C.A.) — followed

*Eberle v. Pascoe* (2009), 2009 ABQB 137, 2009 CarswellAlta 303 (Alta. Q.B.) — considered

*Kruger v. Kruger* (1979), 25 O.R. (2d) 673, 1979 CarswellOnt 299, 11 R.F.L. (2d) 52, 2 Fam. L. Rev. 197,

104 D.L.R. (3d) 481 (Ont. C.A.) — considered

*L. (J.K.) v. S. (N.C.)* (2009), 2009 CarswellOnt 1017, 64 R.F.L. (6th) 32 (Ont. S.C.J.) — considered

*Richter v. Richter* (2005), 371 A.R. 1, 354 W.A.C. 1, 2005 ABCA 165, 2005 CarswellAlta 1530, 20 R.F.L. (6th) 396 (Alta. C.A.) — considered

*Ursic v. Ursic* (2006), 2006 CarswellOnt 3335, 32 R.F.L. (6th) 23 (Ont. C.A.) — considered

*Young v. Young* (1993), [1993] 8 W.W.R. 513, 108 D.L.R. (4th) 193, 18 C.R.R. (2d) 41, [1993] 4 S.C.R. 3, 84 B.C.L.R. (2d) 1, 160 N.R. 1, 49 R.F.L. (3d) 117, 34 B.C.A.C. 161, 56 W.A.C. 161, [1993] R.D.F. 703, 1993 CarswellBC 264, 1993 CarswellBC 1269 (S.C.C.) — considered

### Statutes considered:

*Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.)

Generally — referred to

*Family Law Act*, S.A. 2003, c. F-4.5

Generally — referred to

s. 18 — referred to

s. 34(2) — referred to

APPLICATION by father for variation of interim custody order.

***Steven E. Lipton Prov. J.:***

### Introduction

1 This two day trial deals with the request by the father T.B. (hereinafter called "TB" or the "Father") to engage in an equal shared parenting arrangement with the mother J.B. (hereinafter called "JB" or the "Mother"). There are two children of the marriage. They are S.B. born 2004, (hereinafter called "SB") and L.B. born 2006, (hereinafter called "LB")(together referred to as the "Children").

2 The evidence indicates that the Children are currently with the Father roughly forty percent of the time. TB would like this increased to fifty percent of the time.

3 This matter has been in this Court on a number of occasions for just over two years. To date, interim orders and a judicial dispute resolution conference have been held. There has never been a full examination of all of the relevant issues at trial; however, the evidence presented at this trial indicates that there is a change in the needs or circumstances of the Children since the last parenting Order on July 8<sup>th</sup>, 2008, (the "Interim Order"), which justifies this matter being before the Court.

4 Accordingly, I am satisfied that the requirements of section 34(2) of the *Family Law Act*, Statutes of Alberta, 2003 C. F-4.5 (hereinafter called the "*FLA*") have been met.

5 The governing legal test with respect to parenting issues is the best interests of the child. This test is defined in section 18 of the *FLA*.

### **Evidence for the Father**

6 The Father separated from the Mother in June, 2006, shortly after the birth of LB. While living with the Mother, the Father claimed that he helped take care of SB, including getting up at night to feed SB and changing her diapers. He also claimed to have participated in school activities. TB admitted taking naps at home but only when SB was sleeping.

7 The Father testified that he separated from the Mother due to her abusive behaviour. He said that JB yelled, hit and threw objects at him. TB asserted that on two occasions, the Mother's abusive behaviour occurred in front of the Children. TB testified that he refused to call child welfare out of fear that both JB and he would be found unfit as parents. He acknowledged that the police came to their home on one occasion but denies that he was escorted from the house by the police.

8 At the time of their separation, TB said that he was promised shared parenting of the Children if he agreed to pay child support to JB. TB said that JB later reneged on this offer. TB said that he has made ongoing requests for shared parenting time with the Children since separation.

9 Despite JB reneging on her offer for shared parenting, TB said that he commenced to pay child support from separation which included 75 percent of swimming fees for SB. He acknowledged missing child support payments for three months the end of 2007. TB denied being brought to Court in June, 2007, due to a failure on his part to pay child support.

10 TB denied that the Court records indicate a correlation between the Mother's filings with respect to allegations of unpaid child support and his filings for additional parenting time.

11 Based on TB's evidence, it appears that he started out having parenting time with the Children every second weekend for a period of six to eight months. In 2007, TB said that JB gave him an additional day during the week in between his bi-weekly times. In July, 2008, TB got every Wednesday and Thursday added to his parenting time in the Interim Order such that as of the date of this trial, he had the Children in his care forty percent of the time.

12 TB asserted that his parenting time became more difficult to exercise when the Mother moved SB to a school in a different quadrant of the city. He alleged the Mother did so without telling him and that she routinely made decisions regarding the Children without telling him ahead of time. TB acknowledged that the school change was done in order to accommodate SB's speech disability. TB was of the opinion, however, that the Mother changed the daycare because it was near her house and not because it was near SB's school.

13 TB took the position that because there was not a Court Order at the outset prohibiting him from attending the daycare, he was entitled to do so notwithstanding the parenting time that he was already receiving. TB acknowledged that after the Interim Order was issued prohibiting him from going to see the Children in the daycare, he nevertheless did so on two occasions in contravention of the Interim Order.

14 TB said that he took SB to her ballet lessons, tap dancing lessons and singing lessons while she was in his care. He claimed that SB only missed one ballet class due to illness on his part. He also said that SB missed

another lesson due to illness on her part.

15 TB acknowledged that he received a written notice from SB's ballet teacher changing the time of her recital to an earlier time. He acknowledged not telling JB of this change but claimed the time was later changed back to the original time in a subsequent e-mail.

16 When pressed under cross examination, TB admitted to changing SB's tap dancing classes to a different part of the city. TB said that he advised the Mother of this.

17 While in his care, TB said that he routinely applied lotion to SB as per the doctor's instructions. He also said that LB received his medication as instructed by the doctor and that on one occasion, he had to point out a rash on LB's leg that occurred because the Mother was not applying enough cream.

18 TB admitted to taking SB for a haircut without telling the Mother.

19 TB said that he has taken the Parenting after Separation course as well as a communications course.

20 TB said that the Mother and he use a communications book and text messaging. He denied keeping the book for extended periods and admitted to only keeping the book for a two week period on one occasion only. The Father later admitted to forgetting to return the book on three occasions.

21 Finally, TB advised that he had bought a house in Calgary which is quite distant from the school that SB attends as well as distant from the daycare.

### **Evidence for the Mother**

22 The Mother testified that while she was on maternity leave, she had primary care of the Children. She said the Father napped, watched television, played x-box, or went out with his friends. Under cross-examination, JB acknowledged the Father had worked two jobs for a period of time and therefore might have been tired after work. She denied the Father got up at night to attend to the Children.

23 JB claimed the Father was mad after she became pregnant for the second time. He refused to participate with her in any prenatal care. JB claimed the marital counsellor told them that if TB loved her, he would agree to having a second child. The Mother said that she took birth control and claimed her second pregnancy with LB was an accident.

24 JB said that TB's anger continued after LB's birth. LB was in the intensive care unit for one month after birth. She claimed the Father only saw LB on five occasions during this one month period.

25 JB said TB routinely assaulted her. He kicked her in the stomach while pregnant when they lived together. JB said that she was too scared to call the police. On the one occasion that she did, JB claimed the police told her they would not charge the Father unless she had visible evidence of bruising or was dying. She also claimed to have thrown objects at the Father in self-defence.

26 JB said that she discussed the Father's assaultive behaviour with a social worker while in the hospital recovering after LB's birth.

27 After their separation, JB said she offered the Father parenting time with the Children every Saturday

during the day. After LB had been completely weaned, JB said she offered the Father parenting time every other weekend.

28 The Mother vehemently denied she had ever agreed to shared parenting with TB. JB asserted that the only time this issue was brought up was in the Father's Court filings. The Mother produced *Exhibit number 1*. This is a photocopy of a brief written agreement between the Mother and Father signed at the time of their separation in June, 2006. The document indicates the Mother was to have sole custody in return for the Father having visitation rights.

29 From their date of separation until June, 2007, JB said that TB voluntarily paid child support. She was, however, forced to come to Court in June, 2007, when TB was not current on his payments. I note the Court record indicates the first child support Order was generated February 7, 2008.

30 JB said she was also forced to request fixed parenting times for the Father in June, 2007 because he kept going to the daycare and disrupting the Children's routines despite the generous parenting time he was then being given. The 2007 Court Order, however, did not expressly prohibit the Father from attending the daycare so the Father continued to do so.

31 The Mother said she found out about the Father's ongoing visits to the daycare from SB. She later verified this information with the daycare. As a result, the Mother attended Court to obtain the Interim Order. JB said she later learned the Father continued going to the daycare to see the Children notwithstanding the Interim Order prohibiting the Father from doing so.

32 JB testified that on one occasion, the Father was late in getting SB to her tap dancing lesson and one half hour late in picking her up. JB also said she never gave the Father permission to change SB's tap dancing class to a different studio nor did TB ever communicate this fact to her. JB said that she had prepaid for the tap dancing classes and had lost money as a result of the Father's actions. The Mother said she was also unaware, until contacted by SB's teacher, that SB had in fact missed four tap dancing classes while in the care of the Father. *Exhibit number 2* produced by the Mother is a letter dated January 15, 2009 from the owner of SB's tap dancing studio. This letter indicates that SB missed four tap dancing classes.

33 With respect to the change in SB's ballet recital time, JB testified she attended at the original time given and as a result, she missed the recital. JB also claimed the Father brought SB to this recital too late to participate and without her ballet shoes.

34 JB testified she had put SB's hair into a bun for a picture and that TB had later taken SB for a haircut without her permission.

35 *Exhibit number 3* is a letter from the Mother to the Father dated December 19, 2008, wherein the Mother advised the Father of the change in daycare locations. The Mother claimed that she tried on numerous occasions to tell the Father about this change but that he hung up the phone on her. The Mother also testified that because the Father refused to return the communications book, she was unable to tell the Father about the planned change in SB's school and the change in daycare. As a result, the Mother generated *Exhibit number 3*.

36 I am not sure if *Exhibit number 3* was ever received by the Father.

37 The Mother stated she changed the daycare because it was located near SB's school.

38 The Mother testified that on one occasion, the Father left the communications book at the daycare and she had to start another book. On yet another occasion, JB said the Father refused to return the communications book to her at the end of his parenting time.

39 As of the date of this trial, the Mother said the Father has had the communications book in his possession for the past three weeks.

40 The Mother claimed that SB's homework was not always done while she was in the care of her Father. JB said that given SB's speech disability, it is critical for homework to be done.

41 The Mother claimed that during the Father's mid-week parenting time, he had on occasion dropped off the Children at the daycare late. As a result, SB missed her school bus and was forced to remain at the daycare for the entire day thereby missing school.

42 JB claimed the Father did not properly apply medicated cream to SB while in his care resulting in SB getting a rash. On another occasion, JB claimed the Father didn't return the Children's medication to her. On yet another occasion, the Father was instructed to pick up the Children at the daycare and to get their medication and failed to do so.

43 JB said the Father never attended parent-teacher conferences, never attended SB's swimming classes or soccer games, and has only attended two of SB's recitals.

44 The Mother said she was fearful of the Father moving back to Croatia with the Children. She questioned whether the Father's visa had expired earlier this year.

45 Finally, the Mother asserted she has not caused any of the difficulties between the Father and her while they were together or since their separation. JB claimed the Children do not wish to see their Father but does not understand why. JB denied planting suggestions with the Children regarding their Father. She denied that she had or would tell the Children how bad their Father has been until they are eighteen years of age.

46 Although this trial deals with the request by the Father for equal parenting time, the Mother testified that she would like the Father's mid-week access denied.

### **Analysis of the Evidence**

47 The evidence presented at this trial demonstrates that the level of conflict between the Father and Mother is still high even after a three year separation. The Mother and Father are still not able to cooperate in making any decisions regarding the Children.

48 There are numerous examples of this lack of cooperation.

49 I accept the Mother's evidence with respect to her attempts to notify the Father of her need to change SB's school and move the daycare. When the Mother wished to move SB's school in order to accommodate SB's speech disability, TB refused to take her calls or return the communications book so that she could advise the Father of her plans. The decision by the Mother to locate the daycare near the school is most reasonable. The Father has no valid basis upon which to complain about the Mother's actions in this regard.

50 It is somewhat trite to say that communications books are often used by the judges of this Court in situ-

ations where parents do not communicate with each other effectively or a high level of conflict exists. The evidence is unequivocally clear that the Father has forgotten to return this communications book to the Mother on at least three occasions. The Mother's statement that the Father has had this communications book in his possession for the past three weeks was not challenged.

51 The Father, by his own admission and in contravention of the Interim Order, attended at the daycare to visit the Children on more than one occasion.

52 I accept the Mother's evidence that she was not notified by the Father of his intention to change SB's tap dancing class to another location. Having prepaid for the lessons, it would not make sense for the Mother to let the Father's actions go unchallenged. The Mother's evidence is to be preferred, especially in light of *Exhibit number 2* received by the Mother from the owner of the studio.

53 The Father did not notify the Mother of the change in SB's recital time with the ballet class. As a matter of common courtesy, he should have given this notice to the Mother. Showing up late to this recital without SB's ballet shoes is inexcusable.

54 The Father's actions in taking SB for a haircut without the Mother's approval also shows the lack of cooperation between TB and JB.

55 The Father has returned the Children to the daycare after the pick-up time of SB's school bus resulting in SB missing school on more than one occasion. I accept the Mother's evidence that at times, SB's homework has not been done while she was in her Father's care.

56 The evidence indicates that disputes occurred as to whether the Children's medication was applied in accordance with the doctor's recommendations.

57 The evidence also discloses that except for two recitals recently attended by the Father, he has been absent from parent-teacher meetings and other activities.

### **The Best Interests Test and Applicable Case Law**

58 Father's counsel provided me with three cases.

59 The first case is *Cavanaugh v. Balkaron*, [2008 ABCA 423](#) (Alta. C.A.) The Court of Appeal in this case held that with respect to matters under the *Divorce Act*, R.S.C. 1985, c.3 (2<sup>nd</sup> Supp.), the proper test is the best interests of the child. Furthermore, the Court stated that there are no longer any presumptions or default positions that regulate custody and access decisions.

60 I agree that a similar conclusion is appropriate with respect to an analysis of the best interests of a child under the *FLA*. I leave for another day, however, the question of whether mobility decisions under the *Divorce Act*, *supra*, requires one to conclude that the Court of Appeal's comments regarding presumptions or default positions in *Cavanaugh v. Balkaron*, *supra*, be somewhat modified.

61 The second case is *Eberle v. Pascoe*, [2009 ABQB 137](#) (Alta. Q.B.). Acton J. confirms in her decision that under the *FLA*, section 18 is the governing provision and sets out the factors to consider in applying the best interests of the child test with respect to parenting decisions.

62 The third case is *Ursic v. Ursic*, [2006] O.J. No. 2178, 32 R.F.L. (6th) 23 (Ont. C.A.) In this case, Laskin J.A. on behalf of the Court of Appeal held that where a pattern of considerable parental conflict exists, joint custody can still be ordered where the parents are largely able to promote their child's interests above their own, are able to cooperate on major decisions affecting the child, and do not expose the child to their differences.

63 Noteworthy from these three decisions given to me by Father's counsel are the following observations.

64 In *Cavanaugh v. Balkaron*, *supra*, the Court of Appeal at paragraph 11 quoted with approval the comments of McLachlin J. (as she then was) in *Young v. Young*, [1993] 4 S.C.R. 3 (S.C.C.) to the effect that maximum contact would be in the best interests of the child but:

...To the extent that contact conflicts with the best interests of the child, it [contact] may be restricted. But only to that extent...

65 Acton J. in *Eberle v. Pascoe*, *supra*, at paragraph 10 stated that the mother had not raised any concerns with respect to the father's parenting.

66 Laskin J.A. in *Ursic v. Ursic*, *supra*, stressed that the parents had put their child's best interests above their own and were able to cooperate in making major decisions.

67 I also wish to refer to the following decisions.

68 In *Richter v. Richter* (2005), 20 R.F.L. (6th) 396 (Alta. C.A.), Fraser C.J.A. stated at paragraph 11:

First, as a general proposition, joint custody and shared parenting arrangements ought not to be ordered where the parents are in substantial conflict with each other, and certainly not before trial especially when there is also significant disagreement on the evidence.

69 In *Kruger v. Kruger*, [1979] O.J. No. 4343 (Ont. C.A.) at page 678, Thorson J.A. stated that joint custody:

...requires a willingness by both parents to work together to ensure the success of the arrangement. Such a willingness must be sincere and genuine; by its very nature it is not something that can be imposed by a Court on two persons, one or both of whom may be unwilling or reluctant to accept it in all of its implications. Like marriage itself if it is to succeed, it is an arrangement that has to be worked out by two persons who are determined, on their own will and in good faith, to make it work.

70 In my opinion, all of the aforementioned decisions, including those provided by Father's counsel, are in accord as they deal with the issue of shared parenting in conflictual situations. All of these decisions make it clear that joint custody or shared parenting can only work where there is little or no conflict, or if there is a high level of conflict, the parents are able to set aside their differences, cooperate in making major decisions and not expose the children to their differences.

## Conclusion

71 I have concluded, based on the evidence presented at this trial, that there continues to exist a significant level of conflict between the Father and Mother. Furthermore, the level of cooperation between the Mother and Father required for decision making purposes does not exist.



72 I have also concluded, based on the evidence, that the existing parenting arrangement needs to be modified.

73 I find the Father's behaviour to be obnoxious. I do not believe that affording him equal parenting time is in the Children's best interests. I do not believe that affording him any decision making authority at this time, other than with respect to the cost of any additional leisure activities for the Children and major medical decisions, is in the Children's best interests. I also do not believe that the current parenting arrangement is in their best interests. I am not satisfied that mid-week access to the Father during the school term is in the best interests of the Children.

74 The Mother should not interpret this statement as absolving her of all blame. I would go further and remind the Mother of the recent decision of Turnbull J. in *L. (J.K.) v. S. (N.C.)*, [2009] O.J. No. 804 (Ont. S.C.J.) released January 26, 2009. This case is authority for the proposition that where a custodial parent engages in behaviour which results in alienation of a child from the non-custodial parent, there is a steep price to be paid by that custodial parent up to and including a transfer of custody to the other parent. Neither SB nor LB should be exposed to the ongoing dispute between their parents.

75 A parenting Order will issue containing the following terms:

(A) This is a final Order. This Order replaces all prior Orders with respect to the parenting of SB and LB (the "Children");

(B) The guardians of the Children at the time of this Order are both TB (the "Father") and JB (the "Mother") (together, the "Parents");

(C) Parenting time means time during which a guardian has the power to make day to day decisions affecting a child, including having the day-to-day care and control of the child and supervising the child's daily activities, whether the child is in the guardian's presence or out of the guardian's presence with the guardian's express or implied consent;

(D) The Mother shall have parenting time with the Children and responsibility for them at all times except for when the Father has his parenting time;

(E) The Children shall ordinarily reside with the Mother;

(F) The Father shall have parenting time with and responsibility for the Children as follows:

(i) On alternate weekends from 5:00 p.m. Friday until Sunday at 6:00 p.m. commencing July 24, 2009, and continuing every alternate weekend thereafter until further order of the Court. The Father shall pick up the Children from the daycare on the Friday and return the Children to the Mother's home on the Sunday night;

(ii) During the summer holiday or spring break when the Children are not in school, the Father shall also have parenting time each week from Wednesday at 5:00 p.m. until Thursday at 8:00 p.m. The Father shall pick up the Children from the daycare on the Wednesday and then return the Children to their Mother's home on the Thursday evening. If requested by the Mother or if the Father is unable to watch the Children himself, the Children shall be returned to the daycare by the Father on Thursday morning and picked up from the daycare on Thursday at 5:00 p.m. by the Father before

they are returned to the Mother at 8:00 p.m.;

(iii) The Parents shall share the Christmas break equally such that each of them is entitled to Christmas eve commencing at 4:00 p.m. until noon on Christmas day in alternating years commencing with the Father in 2009. The remainder of the Christmas break shall be shared as mutually agreed upon between the Parents. This Christmas arrangement supercedes any other parenting time afforded the Father as stated above. All pick-up and drop-offs for Christmas shall be at the Mother's home; and

(iv) Such other parenting time as agreed to in writing between the Parents;

(G) The Father is expressly prohibited from attending at the daycare except for pick-up and drop-off of the Children unless the Mother has given prior written permission for the Father to do so;

(H) The Mother shall be entitled to receive information directly from the daycare, school, and for extra-curricular activities. The Father shall be entitled to receive this information directly from the Mother or at source if the Mother has given prior written permission for the Father to do so;

(I) Neither Parent shall speak negatively about the other in the presence of the Children;

(J) Only the Mother shall be entitled to have input into, and access to all professional records regarding all major decisions affecting the Children, including educational, dental, or religious up-bringing. The Father shall be entitled to receive this information directly from the Mother or at source if the Mother has given prior written permission for the Father to do so. Major medical decisions shall be joint except in cases of medical emergencies where the Mother shall have the final decision if agreement cannot be reached between the Parents;

(K) Each Parent shall be responsible for ensuring the Children's attendance at daycare and all extra-curricular activities on time for both drop-off and pick-up during their respective parenting times. To the extent the Father receives any notices about such activities during his parenting time, he shall deliver these notices to the Mother;

(L) Each Parent shall ensure that all homework is done during their parenting time;

(M) The Mother shall be entitled to continue to enrol SB in her dance classes and singing classes, and shall be entitled to enrol the Children in swim lessons without the Father's consent. Costs of these classes shall be shared in accordance with any child support Order then in existence. The cost of any additional extra-curricular activities shall require the prior written approval of the Father, such approval not to be unreasonably withheld. The Father shall not enrol the Children in any activities or change any of their existing activities without the Mother's prior written approval;

(N) Each Parent shall ensure that notice is given to the other, where possible, at least forty-eight hours in advance, of all school, athletic, daycare, and extra-curricular activities referred to in this Order. The Father shall be permitted to attend all school, daycare, athletic and extra-curricular activities referred to in the notices;

(O) Each Parent has the authority to take either of the Children for medical treatment while in their care. Each shall notify the other by phone as soon as is practicable. Each shall ensure that all medica-

tion is properly administered to the Children;

(P) If an alternate method of communication is not otherwise specified in this Order, the Parents shall continue to use the communications book. Each must ensure the other receives back the communications book at the end of their parenting time;

(Q) Should a dispute arise concerning this Order, the Parents may return to Court on ten (10) days notice to the other or, under emergent circumstances, without notice;

(R) The Mother shall be entitled to, without the consent of the Father, apply for a passport or any other necessary travel documentation for the Children and travel inside Canada and internationally with the Children without the Father's consent. The Father shall be permitted to travel with the Children only within Canada and upon receiving prior written approval of the Mother, such approval not to be unreasonably withheld. Travel by the Father outside of Canada with the Children shall require prior written approval of the Mother or Court order. Each shall provide the other with an itinerary including contact information prior to the trip;

(S) The Mother shall not permanently relocate from the City of Calgary with the Children without first providing the Father with at least ninety (90) days written notice of her intention to relocate; and

(T) If either of the Parents or any other person on their behalf breaches any terms of this Order, then a Peace Officer shall provide assistance to ensure that the offending party complies with its terms. Before enforcing the terms of this Order, a Peace Officer must first ensure that the offending party has been served with a copy of this Order. If not served, the party must be shown a copy of this Order by the Peace Officer and be given a reasonable period of time to comply with its terms. If the party fails or refuses to comply with this Order, the Peace Officer shall do such lawful acts as may be necessary to give effect to its terms, including, if necessary, arresting, detaining, and bringing the offending party at the earliest possible time before Court to show cause why the offending party should not be cited for contempt.

76 The Mother is awarded costs of this trial. Counsel may address me as to quantum.

*Application dismissed.*

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