

2006 CarswellAlta 1443, 2006 ABPC 285, [2007] A.W.L.D. 1621, [2007] A.W.L.D. 1620, [2007] A.W.L.D. 1622, [2007] W.D.F.L. 1780, [2007] W.D.F.L. 1778, [2007] W.D.F.L. 1781

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M. (J.R.) v. M. (T.D.)

J.R.M. (Applicant) and T.D.M. (Respondent)

Alberta Provincial Court

N.A. Flatters Prov. J.

Heard: November 14, 2005-September 15, 2006

Judgment: October 16, 2006

Docket: Calgary 040429078F101001, 040441990W101001, 050420215W101001

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Counsel: R. Laroiya for J.M.

K. **Medora** for T.M.

L.R. for herself

Subject: Family

Family law --- Guardianship — General principles

Standing — Parties had brief relationship, and several months after relationship ended, woman advised man that she was pregnant with his child — Man arranged for woman to live with him and his mother, R — R cared for woman throughout her pregnancy — Following birth of child, R cared for child for significant period of time, and man was registered as child's father on birth certificate — Parties' relationship deteriorated, incidents of domestic violence occurred, and parties separated — Shortly after six-month supervision order was ordered, woman was arrested for assault and man obtained ex parte custody order and interim private guardianship order for child — Man returned to R's home and resided there with child — Woman advised man that he was not child's biological father and paternity test confirmed this — Woman sought return of child to her sole care and applied to vary interim custody and access in man's favour — Man and R applied for guardianship order in respect of child — Issue arose as to standing for man and R — Man and R had standing to apply for guardianship — Man's genuine belief that he was child's father was removed by woman's declaration and paternity test result, however, man was in loco parentis throughout, and this established his standing — By her own actions, woman created standing for man to apply for guardianship by deceiving man into believing he was child's biological father and perpetuating that deceit — R had care and control of child since April 2004, and had met threshold to apply for standing under s. 23(1)(a) of Family Law Act.

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#### Family law --- Guardianship — Appointment by court — Factors — Best interests of child

Parties had brief relationship, and several months after relationship ended, woman advised man that she was pregnant with his child — Man arranged for woman to live with him and his mother, R — R cared for woman throughout her pregnancy — Following birth of child, R cared for child for significant period of time, and man was registered as child's father on birth certificate — Parties' relationship deteriorated, incidents of domestic violence occurred, and parties separated — Shortly after six-month supervision order was ordered, woman was arrested for assault and man obtained ex parte custody order and interim private guardianship order for child — Man returned to R's home and resided there with child — Woman advised man that he was not child's biological father and paternity test confirmed this — Woman sought return of child to her sole care and applied to vary interim custody and access in man's favour — Man and R applied for guardianship order in respect of child — It was within child's best interests to appoint man and R as guardians, and woman's consent to facilitate appointment was dispensed with — Man had been closely involved with child since birth and had always assumed position as child's father — Role played by man in child's life was that of true father — R was closely involved with child since birth as his grandmother and as significant caregiver while man and woman resided with her, and after — R was suitable and had willingness and ability to assume duties of guardianship.

#### Family law --- Guardianship — Parent as guardian

Parties had brief relationship, and several months after relationship ended, woman advised man that she was pregnant with his child — Man arranged for woman to live with him and his mother, R — R cared for woman throughout her pregnancy — Following birth of child, R cared for child for significant period of time, and man was registered as child's father on birth certificate — Parties' relationship deteriorated, incidents of domestic violence occurred, and parties separated — Shortly after six-month supervision order was ordered, woman was arrested for assault and man obtained ex parte custody order and interim private guardianship order for child — Man returned to R's home and resided there with child — Woman advised man that he was not child's biological father and paternity test confirmed this — Woman sought return of child to her sole care and applied to vary interim custody and access in man's favour — Man and R applied for guardianship order in respect of child — It was within child's best interests to appoint man and R as guardians, and woman's consent to facilitate appointment was dispensed with — Man had been closely involved with child since birth and had always assumed position as child's father — Role played by man in child's life was that of true father — R was closely involved with child since birth as his grandmother and as significant caregiver while man and woman resided with her, and after — R was suitable and had willingness and ability to assume duties of guardianship.

#### Cases considered by *N.A. Flatters Prov. J.*:

*Langdon v. York* (1994), 25 Alta. L.R. (3d) 378, 161 A.R. 279, 1994 CarswellAlta 278 (Alta. Q.B.) — referred to

*M. (S.K.A.) v. A. (C.)* (1995), 11 R.F.L. (4th) 25, 165 A.R. 94, 89 W.A.C. 94, 1995 CarswellAlta 37 (Alta. C.A.) — 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.) — followed

#### Statutes considered:

2006 CarswellAlta 1443, 2006 ABPC 285, [2007] A.W.L.D. 1621, [2007] A.W.L.D. 1620, [2007] A.W.L.D. 1622, [2007] W.D.F.L. 1780, [2007] W.D.F.L. 1778, [2007] W.D.F.L. 1781

*Child Welfare Act*, R.S.A. 2000, c. C-12

s. 52(1) — referred to

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

Generally — referred to

s. 1(f) "father" — referred to

s. 1(k) "parenting order" — referred to

s. 8(1)(f) — referred to

s. 15 — referred to

s. 16 — referred to

s. 18 — referred to

s. 19 — referred to

s. 20 — referred to

s. 20(1) — referred to

s. 21 — referred to

s. 22 — referred to

s. 23 — referred to

s. 23(1)(a) — referred to

s. 23(3) — referred to

s. 24 — referred to

s. 24(2) — referred to

s. 26 — referred to

s. 32 — referred to

s. 33 — referred to

s. 33(1) — referred to

s. 97 — referred to

s. 98 — referred to

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s. 108(4)(b) — referred to

*Provincial Court Act*, R.S.A. 2000, c. P-31

s. 18 — referred to

APPLICATION by woman to vary interim custody order in man's favour; APPLICATION by man and man's mother for guardianship order.

***N.A. Flatters Prov. J.:***

### **Introduction**

1 This case is about the little boy named L., his parentage, and the complication and conflict which swirl around him.

2 The complication is that his mother, T.M., says her former partner, J.M., is not L.'s father. However, this complication was not made known until L. was 18 months old and had resided solely with J.M. and his mother, L.R., for some 8 months. Up to that point J.M. and L.R. believed they were L.'s biological paternal family. J.M. is listed on L.'s birth certificate as his father. T.M. now wants L. to return to her sole care and has applied to vary an existing order of interim custody and access in favour of J.M. J.M. and L.R. believe L. should remain with them. Each have applied for a guardianship order and additionally J.M. has applied for a custody and access order. At present, J.M. has an Interim Guardianship Order and an Interim Custody and Access Order.

### **Issue**

3 Should L. be returned to the sole care of T.M.? Should J.M. and L.R. be appointed as guardians of L.?

### **Background**

4 T.M. is 23 years old. She has two sons born of two different fathers: L. and J.P. who was born in June 2000. When J.P. was aged 8 months, T.M. voluntarily placed him in the care of her maternal aunt who has guardianship of him. She is imminently expecting the arrival of a third child on November 19, 2006. The father is her current partner, M.M.

5 T.M.'s family history is tragic. She had a step-father who sexually abused her and her mother was emotionally absent. By the time she was in grades 3-4 she was having substantial difficulties with interpersonal relationships, disorganized emotional relationships, and self-regulation of her own emotions. She was subject to temper tantrums and problems with anger which was a theme into her adolescent and early adult years. Although the child welfare authorities had intervened in her family and eventually placed her in foster care where she made some gains, on her return home the challenging behaviours and disorganized emotional relationships again emerged. As a teenager and a young adult she had general difficulties managing her life in the community and was involved with the youth and then adult criminal justice system. J.P. was born when she was aged 18. When he was 2 months old, his father disappeared. Shortly after his birth, T.M. was charged with possession of property and was remanded for 21 days. On her release she placed J.P. with her aunt as she recognized she was not stable enough to care for him. Her aunt resides in Red Deer, Alberta.

6 T.M. met J.M. in Spring 2002. J.M. is aged 26. After they met, she stayed with him on and off at his fath-

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er's home in Red Deer. J.M. ended their relationship in October 2002 when he saw her in a bar with another man. This other man was B.L., with whom T.M. had a previous relationship. They resumed their relationship which ended approximately 1 month later.

7 In December 2002, T.M. called J.M. to tell him she was four months pregnant. J.M. did not question the paternity of the child as he knew there could be no doubt he was the father. Accordingly, and even though he knew that their previous relationship was poor and he would otherwise never return to a relationship with her, he took responsibility for the pregnancy and reconnected with her. He decided to start afresh, straighten out his life (which to this point consisted of working, partying and drinking), and make a good home for his child. He asked L.R. if he and T.M. could move to Strathmore, Alberta and reside with her and her husband, who is J.M.'s stepfather. In early January 2003 they welcomed T.M. and J.M. into their home. L.R. was prepared to have them stay until they were stable enough to go out on their own. She was prepared to help them in any way she could as part of providing for her grandchild, which for her was what parents should do in this circumstance.

8 When they moved in with L.M., it was T.M.'s intention to have a family with J.M. because he was attentive and helpful in the early stages of her pregnancy so she thought he would be a good father. L.R. looked after and helped T.M. through her pregnancy. She provided T.M. with a good diet, maternity clothes, medications and anything else she needed because this was her grandchild. She was present at L.'s birth on July 11, 2003, was the first to hold him and, at T.M.'s invitation, named him. J.M. was named on L.'s birth certificate as his father. L.'s last name is hyphenated. T.M.'s last name appears first and J.M.'s last.

9 After L.'s birth, L.R. cared for L. a significant percentage of the time because T.M. was showing little interest in caring for L. She was not particularly engaged with community supports helping her in learning to parent a newborn. J.M. helped at night and L.R. helped him with his parenting as he too needed teaching.

10 In late September 2003, J.M. and T.M. moved to Calgary, Alberta to facilitate J.M.'s work as an apprentice cabinet maker. As L.R. was working in Calgary, each two days she saw L. on her way home after work. She would often take L. with her and return him home the next day on her way to work. However, by this time, the relationship between T.M. and J.M. was deteriorating. Its parameters were defined by arguing, and domestic violence was a theme with both being responsible for the physical violence. There was yelling and screaming. L. was in the home and exposed to this. L.R. was often called to come and get him when tension and emotions were running high. On one occasion the neighbours called the police and in the result the child welfare authorities became involved with the family in January 2004. The primary concern was domestic violence. Despite the case service plan developed with the first case worker, the difficulties continued. Eventually they separated on April 11, 2004 when J.M. left and went to reside with friends after another incident of domestic violence. T.M. remained in the home with L. J.M. left L. in her care because he had received legal advice that he was not an official guardian. He applied for an order of private guardianship on April 15, 2004. Within a few days of the separation he was visiting L. daily after work.

11 Despite the separation, the child welfare director applied to the Court for a 6 month Supervision Order which was granted on April 22, 2004. Each of J.M. and T.M. were ordered to attend for domestic violence counselling, not to consume alcohol and drugs in the presence of L., not reside together, and attend mediation to deal with the custody and access issues. T.M. was also to attend for anger management counselling, and child welfare was to provide in-home support. However, on April 26, 2004 T.M. went to J.M.'s residence and assaulted his roommate's wife. T.M. was charged with assault, arrested and spent some 7 days in custody.

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12 On her arrest, T.M. telephoned her aunt in Red Deer to help overnight with L. While expecting she would be released the next day, when she was detained L. went to Red Deer. When J.M. found out T.M. was in custody and L. at the aunt's home, he applied to the Court on April 27, 2004 for an ex parte custody order which was granted by the presiding Judge on the following terms: J.M. was to have day-to-day care of L.; reside with his mother; T.M.'s access was to be as agreed upon between the parties; T.M. was not be under the influence of intoxicants during her access; neither party was to make disparaging remarks about the other in the presence of L.; L. was to be delivered forthwith to J.M.; and the police were to assist as required to ensure compliance with the Order (Ex Parte Order). Additionally, J.M. was granted an Interim Private Guardianship Order for L. J.M.'s position on T.M.'s access was that it should be supervised.

13 J.M. asserted that he applied for the Ex Parte Order because L. did not know his aunt very well, he believed L. would better off with him, and he did not think it appropriate that L. had been taken to Red Deer without his knowledge. He asked for supervised access because he was afraid that T.M. was a flight risk and he wanted the visitation to be safe as he thought T.M. had an anger problem. After receiving the Ex Parte Order, he went to the aunt's home on April 28, 2004, took L. into his care, and returned to L.R.'s home. He has resided there since.

14 It is important to note that up to this point J.M. believed he was L's biological father and L.R. believed she was L's biological grandmother. Indeed, T.M. applied to vary the Ex Parte Order on May 5, 2004 and on the face of her application she makes reference to "my sons (sic) father", and "our son". However, that same month, T.M. had left an angry message on L.R.'s voice-mail saying J.M. was not the biological father of L. and that J.M. and L.R. would not see L. again. L.R. thought that this was in accord with the hurtful things T.M. would say when angry and then would later be regretful. J.M. also told Mr. Choate, who was conducting an assessment of him, that T.M. had been making recent claims that he was not the father. Later, on a January 25, 2005 Court appearance, T.M. formally announced that J.M. was not L's biological father. She asserts that his father is B.L. and that her pregnancy was a result of their brief one month relationship in October 2002. In February 2005, the results of a paternity test confirmed that J.M. was not L's biological father.

15 Since the return of J.M. and L. to reside with L.R., J.M. and L.R. have jointly cared for L. Initially L. was in a daycare however both L.R. and J.M. changed their employment to an employer in Strathmore to facilitate the mutual care of L. L.R. is home with L. during the day. She works 4 or 5 evenings a week and leaves when J.M. returns from work. He is responsible for L.'s care every night, except when he has a babysitter on one weekday evening to play league pool. When he has L. for the weekend, he is responsible for his care and does not work. L. has his own bed and space in J.M.'s bedroom until a former bedroom is reconverted. J.M.'s current plan is to remain living with L.R. for the near future and obtain a separate residence once L. starts school. L.R. will still care for L. before and after school. J.M. financially supports L. without assistance from T.M.

16 As for T.M., when she was released from custody, she returned to find that her apartment had been broken into. She suspected it was J.M. She eventually found new accommodation in a shared room-mate arrangement with M.M. Before their relationship became intimate over a year ago, T.M. was pregnant again however she mis-carried. B.L. was named as one of two possible fathers. As noted, she has been in an intimate relationship with M.M. and is expecting their child on November 19, 2006. M.M. is aged 33, comes from a large and supportive family, and is fully employed. He is working to develop a relationship with L. and describes himself as tolerant and patient with him. T.M. has employment and earns some \$2,000 monthly. She cleans offices in the early evening and is usually home by 10 p.m. M.M. and T.M. have arranged a coordinated parenting schedule between them which allows for L.'s care by both of them when he is there. They reside in a duplex

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where L. has his own bedroom and a play area outside.

17 As to her assault charge, T.M. was convicted some 6 months after she was charged. She received a 6 month conditional sentence followed by 18 months probation which ended in March 2006. As part of her probation, she was required to attend programs for domestic violence and anger management and for a substance abuse assessment. Her domestic violence program was at the Sheriff King Home where she met individually with a therapist for counselling. She finished her therapy late in 2005 as the therapist felt she was not yet ready for the next phase. For this she needed to reach a point of stability in her home and financial situation. T.M. felt she had reached this point in that she was secure with M.M. and in her employment. However, T.M. does not feel secure without L. in her full-time care and the only thing missing for her to stabilize and secure her life is L. She describes her last remaining emotional problem is that J.M. and his mother are allowed to continue to victimize her when they are not involved in her life any longer.

18 T.M. was not always so attentive to L. She did not see him in May, June or for part of July 2004. While she asserts that J.M. was making it difficult for her to see L., she admitted that this was by her own choice in that she was working during the day and could not take time off. When she started visiting him, the visits were in the child welfare offices with L.R. doing the supervision at T.M.'s suggestion. L.R. agreed because the child welfare authorities were having difficulty finding a supervisor and T.M. had not seen L. for some time. However, during the visits T.M. spent most of the time being angry with L.R. instead of visiting with L. T.M.'s anger was at a level where she was warned by child welfare to pay attention to L. during the visits. She was unable to comply and the visits were cancelled. However, by September-October, 2004 those recommenced with a professional visit supervisor supervising a once weekly visit. She cancelled two visits in December 2004 without a valid reason, and missed visits in January 2005 because she was ill or on one occasion because she had new employment. Thereafter, T.M. has been able to maintain a regular schedule, although she missed some of her December 2005 holiday time telling L.R. she had to go on a ski trip. Her supervised visits with L. increased, particularly after an Access Hearing on April 19, 2005. Unsupervised visits began in August 2005 and the time has steadily increased, since then, either by Court order or agreement of the parties, to the current schedule, which is Wednesday evening to Monday morning on alternating weeks. The exchanges are between T.M. and L.R. Overall, J.M. thinks the arrangement respecting scheduling is working well.

19 The increase in T.M.'s parenting time since Spring 2005 has been in relation to the increase in her parenting capacity. She worked diligently with an in-home worker on parenting and with her assistance attended parenting classes. This continued until the late Spring 2006 when T.M. no longer needed this assistance. The in-home worker regularly submitted written reports to child welfare. The last one was for the reporting period June 1, 2006 to July 28, 2006. Again those reports speak to T.M.'s steady improvement in her parenting. However, despite her anger management counselling and gains in this area, her anger in respect to J.M. is still evident and difficult for her to keep under control. On March 31, 2006, an innocuous statement made by the in-home worker observing that L. seemed well-cared for in J.M.'s custody triggered a response, described by the in-home worker in her report for the period March 17 to April 5, 2006, as one where T.M. became unreasonable to deal with, because she was extremely upset, angry, and anxious respecting J.M. and so consumed by her negative reaction to him she did not have regard to L.'s needs, who was in her arms when she reacted. She insisted that L. not refer to J.M. as "dad", notwithstanding this is how L. refers to him. The in-home worker found both T.M. and M.M., who was also present, to be overly aggressive, loud and unable to wait to discuss adult issues until later when L. was not present. When T.M. calmed, she "admitted her blunder." This was a new reaction for the in-home worker who had only experienced T.M. as a "gentle young woman" and had not observed this angry side of her before.

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20 As to the parenting assessments, these were to begin with Mr. Peter Choate in the Fall 2004. J.M. started on time. T.M. did not begin until early April 2005. Her excuse was that the then case worker did not give her the assessor's name and did not return her calls when she called for the information. A trial scheduled for mid-April, 2005 was cancelled as she had not completed her parenting assessment. However, once she started, it was completed. Mr. Choate wrote four reports: two specifically related to J.M. and dated October 22, 2004 and November 10, 2005 and two related to T.M. dated June 1, 2005 and June 12, 2006.

21 As to the continued involvement of child welfare, Darwin Carlson was the family's caseworker from November 2004 until September 2005. When he started, the Supervision Order was still in effect, T.M. was having access once a week, he had Mr. Choate's parenting assessment of J.M., and had no concerns respecting him provided he continued to reside with L.R. With respect to T.M., an issue was the consistency of her access and her non-attendance for the assessment. Throughout Mr. Carlson's involvement, he thought J.M. was the biological father and an appropriate custodian for L. However, when Mr. Carlson had a meeting with T.M. on December 22, 2004 she told him that J.M. was not L.'s father. Despite this, the Director's position was that the file could be closed because there were no protection concerns in that L. was in the full-time custodial care of a competent father and family and T.M. was having access, although somewhat limited then. By January 2005, child welfare had determined that their involvement was no longer required. Nevertheless, child welfare was not permitted to withdraw by the presiding Judge on January 24, 2005 because of the impending issue of J.M.'s paternity. Nonetheless, from the Director's perspective, the fact that J.M. might not be the father did not change the Director's position that L. should remain with J.M. L. was attached to J.M. and by then L. had been in his care for a significant number of months. Additionally, there were concerns respecting T.M.'s inconsistency and poor attachment between T.M. and L. The involvement of child welfare continued through to April, 2006 although since January 2005 the role has largely been one of monitoring. On April 13, 2006 child welfare was permitted to withdraw. T.M. and J.M. had signed family enhancement agreements so services could continue to be provided absent formal Court involvement.

### **T.M.'s Position**

22 T.M. has a number of comments and complaints regarding J.M. Some of those set out below have been previously noted.

She asserted she called a meeting over coffee with J.M. and B.L. in October 2004 to tell them she was pregnant.

J.M. testified that no such meeting took place. He does not know B.L. and only met him on the one occasion in the bar when he saw T.M. with him. He has had no contact with him since and does not know where he resides.

She asserted that J.M. assaulted her while they were residing with L.R. She went to the hospital. The hospital records do not indicate she was there for a domestic assault. Rather, she then said that she was vulnerable because L.R. told her she would lose her child so she was afraid to say anything.

She asserted to the police on April 11, 2004, when the police attended over the domestic assault incident, that J.M. had possibly sexually assaulted L.

The police came to the conclusion, as set out in a synopsis, that the assertion was very vague at best. It was referred to child abuse and the allegation was unfounded.

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As to the domestic assault, the synopsis states that the majority of the physical assaults were instigated by T.M. and that J.M. received the majority of the injuries. The synopsis of various domestic assaults and the descriptions were entered as an exhibit.

She asserted that earlier in the day on which she was charged with assault (April 26, 2004), J.M. had choked her. When the police attended on the assault committed by T.M. later that same day, they saw the red marks but no charges were laid against J.M. because she was too afraid to say anything to the police.

The police synopsis notes she had a small red mark on her arm.

She complained to the police that her home was broken into and told them that she suspected J.M. because the only things missing were his property and a few of her photo albums.

No charges were laid because there was no evidence.

She asserted that after the separation J.M. interfered with her access. She also asserts that it is because of J.M. that her access was supervised by child welfare and had nothing to do with any child protection concerns that child welfare may have had.

She asserted to the police on June 30, 2004 that J.M. had threatened to burn down her property.

The police synopsis of June 30, 2004 sets out:

... On 2004/06/29 the Complaint [T.M.] phoned [J.M.'s] workplace and started arguing over a dispute over money and cheques. As this argument got more heated, [J.M.] told [T.M.] that if she did not quit her custody battle over [L.] he would burn down her property.

Police attended the scene, interviewed the complainant, and concluded that the threats made by [J.M.] have no intent to them for several reasons: 1) [J.M.] live in [blacked out] and does not know [T.M.'s] address in Calgary, 2) the two have had an ongoing custody battle and it appears they use any resources, including police, to win this battle, finally, [T.M.] was the one who contacted [J.M.] at his workplace and started an argument over a different dispute, and it appears that the threat was just thrown out by [J.M.] to get [T.M.] to leave him alone....

She complained to the police in June 2004 that everyone was drunk in L.R.'s home, including J.M. who was slurring his words.

The police attended at the home, interviewed J.M. and found that he had not been drinking that evening. T.M. says the police only told her that somebody there was sober.

J.M. denies this. He testified that child welfare and the Court mandated the supervised visits.

She complained to the police that J.M. threatened in an August 2004 e-mail to burn down her house and so she had to move.

J.M. testified that he did not write the e-mail. He also did not think it was a real e-mail because there was no I.P. address, noting that when an internet e-mail is sent the computer automatically stamps it with an I.P. address of the computer from which the e-mail was sent or forwarded. He consulted with Telus and was ad-

vised that any e-mail that is sent will have an I.P. address on it saying whose house it came from, because every modem, every connection has its own I.P. address. The address is a series of numbers appearing under the subject line. This e-mail cannot be traced because it did not have an I.P. address. He stated that is easy to create an e-mail using any e-mail originating from elsewhere and then fill in the blanks. He says he does not have T.M.'s e-mail address and so he could not have sent the e-mail. He does not know where she lives. He gave a statement to the police and recalled telling them that he did not make the threat and wondered how he was going to burn down her house if he did not know where she lived. T.M. had testified that she forwarded the e-mail to her mother to print as she did not have a printer and so that explained why another e-mail address appeared at the top.

She telephoned Mr. Carlson on May 30, 2005 and asserted that J.M. might abduct L. and not return him from a family function J.M. was attending in Lethbridge, Alberta.

She asserted in August 2005, J.M. tried to run her over with his car after a mediation session and J.M. had court on April 29, 2006.

J.M. denied this, and said he did not have court on that day for anything. When child welfare advised him of this allegation, he telephoned the Calgary City Police, who confirmed that there were no charges pending against him and that he had no court appearance on the date in question.

She asserted during Mr. Carlson's tenure on the file that J.M. was not providing medications, was not providing access, was being neglectful as a parent, and gave as an example that J.M. was causing L.'s diaper rash.

Mr. Carlson followed up with J.M. and nothing was substantiated.

She telephoned Mr. Carlson on August 23, 2005 and asserted that L. had bruising on his penis area, severe diaper rash and she had taken L. to a Medi-Centre.

Mr. Carlson checked with the Medi-Centre. They had no record of T.M. attending there under the last name that they tried. Mr. Carlson asked T.M. during two conversations with her in September 2005 to provide him with the doctor's name. T.M. did not do so.

She asserted that there was a girlfriend or woman living in J.M.'s home, she was using cocaine and maybe shared the same bedroom with J.M.

Mr. Carlson visited J.M. to discuss this. In their conversation outside, J.M. advised that a woman did not live with him in the home. Mr. Carlson did not check inside because as far as he knew J. M. did not have a woman in his life.

She complained that J.M. and L.R. were not attending to L.'s teeth which required attention by a dentist.

L.R. testified that it was problematic to find a dentist who would see L. with just his medical number but without a card. L.R. did not have the card as T.M. declined to give it to either J.M. or L.R. saying that J.M. had the card because he had stolen it from her apartment.

She complained that L.'s asthma was due to J.M. smoking in the home and had dogs inside. T.M. also smoked in her home. J.M. testified he smoke outside and asserted it was due to the animals in her home. L.'s

asthma now appears to have settled.

23 Other assertions made by T.M. are set out in Mr. Choate's November 10, 2005 assessment of J.M. Additionally, T.M. recently continued her complaint that J.M. continues to interfere with her access which would be demonstrated in the final report of the in-home worker. I ordered that the report for the final reporting period from June 1, 2006 to July 28, 2006 be entered as an exhibit once received. All parties waived cross-examination of the in-home worker. I entered this report in the best interests of L. so that the fullest of information would be before the Court.

24 As to her parenting plan, she proposes that if L. is returned to her care, she would be at home during the day and work in the evening. M.M. would then care for him while she was at work.

25 If L. is returned to her care, she will not cut J.M. or L.R. out of L.'s life as she sees there is some bond although she asserted it is greater with J.M.'s step-father than with J.M. or L.R. She proposed that anytime J.M. or L.R. or L.R.'s step-father are in Calgary, then they can call her and take L. out as long as she has no prior plans. Additionally, they can have L. on alternating weekends and one night a week overnight, provided those visits are in L.R.'s home. They can share the long weekends but it is not necessary for J.M. or his family to have Christmas, Easter or birthday time because she feels L. should spend those times with her and with J.P. to increase his bonding with them. It is important to T.M. that L. should continue to rebuild his bond with her and be with her full-time.

#### **J.M.'s Position**

26 As to J.M.'s parenting plan, he hopes that he and T.M. can get along by being able to talk to each other. He sees them both having a role and participating in important aspects in L.'s life such as school events and parent teacher interviews. He says that this is not for one of them but both of them as L. is part of both of their lives. L.'s residence should be with both of them, but not yet. First he wants T.M. to prove that sharing will work because he wants to make sure L. will be safe. He wants T.M. to follow through with recommendations made by Mr. Choate. He thinks that it will take a great deal of work for the two of them to co-exist and co-parent but believes with some time and work they could do it. He is hoping that will become easier once the Court process is finished. He says their communication is poor and they need assistance in finding a way to better communicate. He also believes he has straightened out his life. He does not know much about what T.M. has been doing but believes that she probably has changed since he first knew her. He is not allowed to contact her and does not know her phone number. As for J.P., J.M. wishes L. and J.P. could have more time with each other to know each better as brothers. He is willing to facilitate contact. He has yet to complete his programs.

27 J.M. believes the routines between his home and T.M.'s home should be consistent. He thinks that L. may be a little slow in his speech and is trying to have him pronounce words more effectively. He is open to having T.M. coming out to Strathmore to take L. to his swimming lessons as long as he knew where she was going with him.

28 When J.M. discovered that he was not L.'s biological father he was hurt that he had been lied to and deceived for so long. However, his feelings towards L. have not changed and he loves him like his son, as he always has, and he always will, stating that he is my little boy. He did not return L. to T.M.'s care when he found out he was not the biological father because as far as he was concerned L. was still his boy and believed he could give him a better home than she could. His feelings to L. have not changed in the slightest since he found out he was not the biological father and says he will always be there for L.

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### **L.R.'s Position**

29 L.R. is of the view that T.M.'s role is to complete the tasks which she needs to complete so that she can do better, which is L.R.'s hope, and spend more time with L. She wants the arguing to cease. She recognizes that communication needs to improve amongst all the adults. She thinks they all need to go to counselling to sort out their communication or implement communication strategies to minimize contact. While she still receives angry calls from T.M., these are less as T.M. continues making strides forward. She acknowledges T.M. may be angry because she does not have L. in her care.

30 She recognizes that the relationship between T.M. and J.M. is poor and they cannot seem to talk or communicate with each other. She thinks they both have a lot of growing up to do. She says J.M. has done much to better himself in that he a good job and works hard. She says he does a very good job of looking after L. but she has been coaching him in his parenting and sees that he still needs that kind of support from her. She says T.M. has been making strides more recently.

31 She is still committed to T.M. and J.M. and says she is the one who has to communicate between the two of them and try and do what is best for the two of them. She volunteered to supervise T.M.'s visits out of love and for L.'s sake as he needed to bond with his mother as well as J.M. While she supported unsupervised visits by T.M., she was unhappy those commenced, and especially overnight, when T.M. had still not completed the tasks which she had to do either through her probation order or the Supervision Order. She acknowledged there had been no incidents. Nevertheless, she remains concerned because T.M. still shows a great deal of anger in some of their planning around L. (for example, swimming lessons). Despite this, L.R. is prepared to support any equalization of parenting if T.M. completes her tasks. Eventually it is her hope that all of them can equally share L. in T.M.'s life and theirs. She will do whatever it takes for L. to have a good and happy life and provide what he needs because this is about him. She thinks there should be as much close contact as possible between J.P. and L. She frequently speaks to the aunt over the internet, and they e-mail and send pictures to each other. However, when she mentioned to T.M. that she was communicating with the aunt, T.M. told her not to have any contact with her aunt or her own mother.

32 As to the issue of L.'s biological descent, at no time in 2003 or before L. was born did she have any indication that J.M. was not the biological father. T.M. telephoned her on two occasions, one just prior to a scheduled judicial settlement conference, to inform her that she was advising the Court that L. was not J.M.'s child. Prior to that, and as noted, she had received an angry telephone call from T.M. in May 2004 saying that L. was not J.M.'s child however she attributed that to T.M.'s anger and pattern in saying hurtful things and taking them back when she was feeling better about her herself. L.R. said the most hurtful thing that ever happened to her was receiving the DNA results and discovering that J.M. was not L.'s father. Right up until then she thought L. was her biological grandchild and J.M.'s son. Nonetheless, her feelings have not changed for L., whom she loves with all her heart. She says she will always be his grandmother and is committed to L. for the rest of their lives.

### **The Expert Evidence**

33 Mr. Peter Choate was qualified as an expert in clinical social work with sub-specialities in the assessment of parenting, family violence, and assessments. In addition to his testimony, he prepared the four reports as noted. He was examined and cross-examined on the first three reports. The fourth report, that of June 12, 2006, was received after the evidence concluded. Counsel for T.M. had received funding approval for Mr. Choate to conduct a further and more recent assessment of T.M. I allowed the June 12, 2006 report to be entered as an ex-

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hibit in the best interests of L. to ensure all relevant material was before the Court prior to the decision being made, especially in light of T.M.'s desire to demonstrate to the Court her continued improvement as a parent. The report was entered on consent and all parties waived cross-examination of Mr. Choate on that report.

34 When he testified, Mr. Choate had completed three reports: two for J.M. and one for T.M. He testified that if J.M. and his family had a biological connection to L., there would be no question that one would choose to leave L. where he is presently because L. will now have formed the view that J.M. and his family constitute his nuclear family. His attachments clearly lie in that family unit.

35 For the purpose of his first report dated October 22, 2004, Mr. Choate visited L. in the family home. He observed that there was no question that L. felt secure and attached in that environment. If he were to be moved from that environment then such a move would require an extremely high degree of sensitivity to his emotional needs, the provision of highly stable parenting and significant consistency of emotional availability. If he were to move, it can be anticipated that L. will find the loss of J.M. and his family very difficult. Mr. Choate rather doubted that given the history there was a probability that a continued connection with J.M. and his parents would likely to be successful over the long term. Accordingly, it would not be appropriate to take chances with L. to move him into a situation that may or may not be stable.

36 As to J.M. as a father, he wrote in his first assessment of J.M. that he was a somewhat immature father who would benefit from the continued support of his mother in the raising of L. He also wrote that: "An attachment has clearly grown and it would not be in the best interests of [L.] to disrupt that attachment in the absence of any overwhelming evidence that there are problems with his care with these three adults [J.M., L.R. and L.R.'s husband]. I do not see such evidence and, to the contrary, believe that [L.] is extremely well cared for in this arrangement." As well, if J.M. was prepared to continue residing with L.R. for a period of time, that he saw no reason for child welfare to continue to be involved from the perspective of J.M.

37 Mr. Choate's case formulation as set out in his June 1, 2005 report of T.M. mirrored to some extent his formulation in his October 22, 2004 report. He wrote that if J.M. and his family had a biological connection to L. then "... there would be no question that one would choose to leave [L.] where he presently is". However, he was cognizant that J.M. did not have that biological connection and if a change is going to be made in his custody, it ought to be done fairly soon. He went on to say, though, "... one needs to bear in mind that [L.] will now have formed a view that [J.M.] and his family constitute his nuclear family. His attachments clearly lie in that family unit. When I observed [L.] there was no question that he felt secure in that environment". He went on to say that if he was to be moved from that environment, then it would "... require an extremely high degree of sensitivity to his emotional needs, the provision of highly stable parenting and significant consistency of emotional availability. It can be anticipated that [L.] will find the loss of [J.M.] and his family very difficult. Thus, it would not be appropriate to take chances with [L.], to move him into a situation that may or may not be stable." He wrote that if the decision of the Court was that L. should be placed with biological family, then he would not support the transfer of L. to T.M.'s care but rather it was highly probable that the aunt and her husband in Red Deer constituted the best choice. The aunt had demonstrated already through her commitment to J.P. that she was prepared to see such a responsibility through and had indicated a willingness to do this again. Mr. Choate was cognizant that he had not assessed the aunt and thus it would be incumbent upon child welfare to contemplate in the final analysis whether she was the appropriate placement.

38 As noted, Mr. Choate was not prepared to support the transfer of L. to T.M.'s care. Her stability was relatively new and her consistent follow-through was not necessarily strong. Contemplating the totality of the case

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though, he believed that T.M. was in a position where she would be able to provide basic essential physical care which would include bathing, clothing, food, cleanliness and other aspects of the physical care of L. Dr. Choate was more concerned with her capacity to provide age appropriate emotional care. He noted T.M.'s extremely damaged upbringing and said that she often remained in an egocentric position with her own parenting and concern regarding her own emotional needs. Mr. Choate thought that her feelings towards L. appeared to be more associated with two themes: her need to have someone to care for and her need to not have someone like J.M. or his family care for L. Thus, he was concerned about T.M.'s capacity to provide primacy of L.'s needs over her own.

39 For his November 10, 2005 second report of J.M., he also visited the home. He wrote in terms of his then current impression:

An important feature of this case is that [L.] presents as having a strong and appropriate attachment relationship with his family unit....

This family unit continues to constitute an important emotional situation for [L.] and, from an emotional as opposed to biological point of view, this constitutes his family. I have no reason to believe that he receives inappropriate care and would suspect the opposite is the case. I base this upon the fact that not only does [L.] demonstrate appropriate attachment relationships with these adults, but his behaviour is developmentally appropriate, these adults demonstrate patience with him, encouragement of developmentally appropriate play activity as well as the encouragement of responsible behavior with evidence of appropriate boundaries. From an emotional point of view, I have little reason to believe that [L.] should be moved from his home.

40 In his June 12, 2006 report Mr. Choate's recommendation as to the maintenance of L.'s primary residence did not change. Nonetheless, he noted T.M.'s continuing steps in positive parenting attitudes, interaction, and maturity, and the real progress she had made which was reflected in the quality and nature of her interactions with L. He wrote that L.'s best interests will be served by allowing both J.M. and his family and T.M. to all participate in the raising of L. He suggested a highly structured approach using a mandatory alternative dispute resolution mechanism to address conflicts as those may arise, and all in the form of a detailed order. As well, T.M.'s involvement in terms of time and decision-making should be significant.

41 However, he was also of the opinion that what goes on between T.M. and J.M. and his family was likely detrimental to the best interests of L. He noted that L. is likely aware of the conflict between the adults and would be more so as he grows. This conflict did not serve the interests of L. In addition, it appears that continuance of the conflict would be counterproductive for T.M. personally.

42 In summary, he recommended that:

1. T.M. play a significant role in the life of L. including aspects of decision-making, time and involvement in his activities;
2. L. continue to live where he now resides as his primary day to day care home;
3. The Court put into place a very structured custody/access plan that will serve to minimize the basis for conflict;
4. Where conflict does arise that cannot be solved between the parties, that they be required to use a service

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such as Family Mediation to resolve the dispute with a goal of avoiding further court based conflicts;

5. L. have a speech language assessment;

6. The in-home worker be permitted to continue working with T.M. as part of the transition to working with whatever order the Court makes.

## The Law

43 This matter commenced under the then provisions of the Child Welfare Act, R.S.A. 2000, c. C-12 (*CWA*), section 52(1) (Any adult who has had the continuous care of a child for a period of more than 6 months may apply to the Court in the prescribed form for a private guardianship order in respect of the child if the child or the applicant resides in Alberta), and section 18 of the Provincial Court Act, R.S.A. 2000, c. P-31. The initial Orders given for J.M.'s Interim Guardianship Order and the Interim Custody and Access Order were each granted respectively under the legislative provisions as noted. The sections were repealed on October 1, 2005 with the implementation of the Family Law Act, S.A. 2003, c. F-4.5 (*FLA*). The parties consented to continuing their actions under the *FLA*. This is permitted by *FLA* section 108(4)(b). Decisions under the *FLA*, as with the repealed sections, are to be made in the best interests of a child (section 18). Unlike the repealed sections, the responsibilities of guardianship and parenting are enumerated under sections 21 and 32 respectively. The Court may grant a guardianship order appointing the person as a guardian of the child on the application of a person who is an adult and who has had the care and control of a child for a period of more than 6 months (section 23(1)(a)). The Court, on a guardianship application, shall consider the suitability of the proposed guardian, and the ability and willingness of a proposed guardian to exercise the powers, responsibilities and entitlements of guardianship in respect of the child, and whether it is in the best interests of the child that the applicant be appointed as a guardian of the child (section (23)(3)). The relevant *FLA* sections are set in Appendix A.

44 In *Richter v. Richter*, [2005] A.J. No. 616 (Alta. C.A.) (*Richter*), the Court reviewed the general propositions for joint custody and shared parenting arrangements. The Court stated in para. 11 that this:

... ought not to be ordered where the parents are in substantial conflict with each other, and certainly not before trial especially where there is also significant disagreement on the evidence. The best interests of a child are not well served by imposing régimes which invite continued court applications on all matters, big and small. As the British Columbia Court of Appeal noted in *Stewart v. Stewart* (1994), 2 R.F.L. (4th) 53 at para. 9 (B.C.C.A.), citing *Kruger v. Kruger* (1979), 11 R.F.L. (3d) 52 at p. 79 (Ont. C.A.):

[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 ...

45 Notwithstanding the Court of Appeal was writing in the context of a divorce matter, in my opinion it is a statement in principle which is applicable to disputes relating to a child regardless of the nature of the application which brings the child before the Court.

## Analysis

46 I have considered the evidence as a whole. I assessed the credibility of the witnesses. Where there is a difference in the evidence of J.M., L.R. and the child welfare case-workers, I accept their evidence over that of T.M.

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47 Mr. Choate is a well-known expert before the Court. He was carefully cross-examined on his three reports, his conclusions, his recommendations and preferences, and how he reached those. I find he gave appropriate and credible responses. He was a credible witness and his opinion is entitled to significant weight. I am satisfied that everything I heard in this trial did not undermine his opinion.

48 The first matter to be determined is whether J.M. and L.R. have status to apply for any order relating to L. It is necessary for J.M. to apply for guardianship in the unique circumstances of this case because he cannot meet the legal test for guardianship under section 20(1) of the *FLA*. He and T.M. did not reside together for a 12 month period during which L. was born nor were they interdependent partners having regard to the definition of "father" under section 1(f). While he is registered as L.'s biological father on the birth certificate, his genuine belief that he was L.'s father was removed when T.M. made her declaration, later confirmed by the paternity test, that J.M. was not the biological father of L. In any event, he was continually *in loco parentis* throughout. His standing to apply was thereby established. (See *Langdon v. York*, [1994] A.J. No. 1002 (Alta. Q.B.)) That was recognized by the presiding Judge of the Court who granted J.M. an Interim Guardianship Order on April 27, 2004. His standing has continued as he has since had care and control of L. by way of the Ex Parte Order.

49 As well, T.M., by her own actions, created standing for J.M. to apply for guardianship by deceiving J.M. into believing he was L.'s biological father and perpetuating that deceit until December 2004. I do not believe her evidence that she called a meeting with J.M. and B.L. to announce her pregnancy. J.M. was also registered as L.'s father on the birth certificate. When she filed her variation application with the Court on May 5, 2004, she used the terminology of family in her references to J.M. and L. and herself and J.M. and specifically: "my sons [sic] father", "our son", "his parents". She herself created a family unit by her own choice. They lived as a family until they separated.

50 With respect to the standing of L.R. to apply for guardianship of L., L.R. too has had care and control of L., together with J.M., since April 2004. She has thereby met the threshold to apply under section 23(1)(a) of the *FLA* as was the case under then section 52(1) of the *CWA*.

51 The next matter to be determined is the test to be applied in determining L.'s future and whether it is one of T.M.'s fitness or L.'s best interests. Counsel for T.M. submits that fitness is the applicable test and a legal stranger cannot wrest a child from a mother who is fit. Counsel for J.M. submits that the applicable test is best interests. In the unique circumstances of this case, J.M. and L.R. are not legal strangers to L. They are in an integral part of his life as outlined. J.M. is L.'s psychological father. L.R. is his psychological grandmother. They form L.'s nuclear family as described by Mr. Choate. They have each attained the status to apply under *FLA* section 23(1)(a) for guardianship and before that under section 52(1) of the *CWA*. Having attained standing, the test to apply is that of best interests. (See *Langdon v. York*, *supra*) In *M. (S.K.A.) v. A. (C.)* (1995), 165 A.R. 94 (Alta. C.A.) at para. 7, Russell J.A. said that "... the application of the best interests of the child test demands a broad view of past, present and future circumstances and needs of the child".

52 I note that Mr. Choate does not support the collapse of L.'s first family unless it is for biology and not psychology. I am not prepared to do that to L. In my opinion that is not in L.'s best interests. I note that despite T.M.'s recent gains, Mr. Choate does not support a move by L. to T.M.'s home in his June 12, 2006 report. I am certainly not prepared to move him to the care of T.M.'s aunt. She is truly a stranger to L. What is rather in L.'s best interests is to expand his horizon of family to include T.M. in the manner described by Mr. Choate in paragraph 1 of his recommendations set out in his June 12, 2006 report. In doing this I want T.M. to understand that I am giving her full acknowledgement and credit in respect to her hard work dedicated to improving her parent-

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ing with a view to becoming a full participant in L.'s life. I know she wants to be the exclusive parent for L. However, if I were to do that then I would be focussing on that which is best for her and not what is best for L. I am charged with doing what is in L.'s best interests and not in the interests of the adults who surround him. Accordingly, and in my opinion, doing justice to L.'s best interests is best met by leaving L. in the primary care of J.M.

53 I recognize that T.M. has strong feelings regarding the past continuing involvement of J.M. and L.R. in L.'s life. Her simmering anger related to J.M. and L.R., was evident. I am sure she would have preferred that on April 28, 2004 he had remained in the care of her aunt together with J.P. However, in April 2004 J.M. was on the birth certificate as his father. He believed, as did L.R. and child welfare, that he was L.'s biological father. It was certainly in L.'s best interests that he was with his father and not with a stranger, legal or otherwise, even though it was T.M.'s aunt. J.M., despite his concerns about and obvious dislike of T.M., appreciates the importance of facilitating a relationship between T.M. and L. and has demonstrated a willingness to work towards that. He is able to acknowledge that T.M. has probably changed. L.R. wants to facilitate and see an increasing relationship between L. and T.M. although L.R. has some difficulties in dealing with T.M. as set out in the in-home worker's final report. Clearly, none of them are perfect. Overall, though, I am concerned that T.M. does not have a similar appreciation of the importance and necessity of the relationship between L. and J.M. as his psychological father and L. and L.R. as his psychological grandmother. I am concerned she does not have the same ability to support L.'s relationship with J.M. and L.R. as they have to support her relationship with L. She is opposed to either of them being appointed a guardian of L.

54 I also recognize that it is a puzzling source of frustration for T.M. that L. is not in her care now that she has made the strides and changes she has. However, the reality is he has two families: his family with J.M. and his family with T.M. L.'s future parenting plan must reflect that fact. He must have a relationship with each. It is for the adults to move to a business-like relationship and communication in order to surround him with a whirl of calm and not conflict. Their role is to make that commitment to L. He deserves nothing less. A future parenting plan will be necessary in its structure to preserve L.'s relationship with each family in so far as that is practicable within the law to reduce the potential for future Court applications and ensure that the parties take responsibility for the myriad of decisions which will have to be made for L. over time and use forums which are more appropriate for those discussions than the Court.<sup>[FN1]</sup> While sections 97 and 98 of the *FLA* empower the Court to refer parties to mediation and by the regulations, courses and programs (Parenting After Separation), in my opinion section 33(1) permits the Court to include any other terms the Court considers appropriate. For those matters which are instrumental then mediators and parent coordinators are more effective and efficient venues than the Court for the resolution of those matters. If the parties end up in a quagmire of dispute around those sorts of issues, the Court will again have to be involved and then decisions may entail which may serve to narrow and restrict L.'s contact with one or the other family. That would be regrettable and the parties must take the necessary steps to ensure that never happens to L. The arguing must stop. The dismissal by T.M. of J.M. and L.R. and they of T.M. must stop and be replaced by business-like, principled and task-focussed decision-making for the sake of this little boy. It is time for the adults to be adults so L. can move between the two homes without tension and conflict following him.

55 In making a parenting order, the primary consideration is L.'s best interests and its considerations as set out in section 18 of the *FLA*. I am mindful of *Richter* in setting the future guardianship/parenting order for L. The prognosis for improvement in this poor relationship between J.M. and T.M. is guarded. As noted by Mr. Choate L. is aware of the conflict between the two homes. Mr. Choate spoke of the importance for attitudes to soften if the situation was to evolve. This softening may be emerging as J.M. and T.M. have shown on a few oc-

2006 CarswellAlta 1443, 2006 ABPC 285, [2007] A.W.L.D. 1621, [2007] A.W.L.D. 1620, [2007] A.W.L.D. 1622, [2007] W.D.F.L. 1780, [2007] W.D.F.L. 1778, [2007] W.D.F.L. 1781

casions that they can cooperate even if minimally. I believe they should have the opportunity to work together for L.'s sake. I am of the view, and based on Mr. Choate's recommendation, that it would be better for L. that a highly detailed parenting order be crafted between T.M. and J.M. rather than to leave L. solely in the care of J.M. I am concerned that if I were to do that, it would invite continuing court applications by T.M. over matters "big and small" which would pose a greater risk to L. than if there is a different balance between the two homes. Accordingly, this is an appropriate case in which to implement a highly structured parenting plan which I am satisfied is in L.'s best interests.

56 The last matter is whether J.M. and L.R. should be appointed as guardians of L. In my opinion it is an appropriate order for both of them and in L.'s best interests.

57 J.M. has been closely involved with L. since birth, always assumed the position of his father, and from J.M.'s perspective he is L.'s father and from L.'s perspective J.M. is his father. As Mr. Choate noted, from L.'s perspective, a biological attachment is not relevant. L. has a bond and attachment to J.M. J.M. also provides love, guidance, care, emotional support and financial support for L. He helps to provide a home for L. There can be no doubt that the role J.M. plays in L.'s life is that of a true father. His role in L.'s life is significant. L. should continue to have J.M.'s major contribution in his life. For J.M. to have guardianship would be a benefit to L. J.M. is suitable, and has the willingness and ability to exercise the powers, responsibilities and entitlements of guardianship, and I am satisfied it is in L.'s best interests that J.M. be appointed as L.'s guardian. I hereby make that appointment and dispense with the consent of T.M. to facilitate the appointment (as provided in *FLA* section 24(2)).

58 L.R. has been closely involved with L. since birth as his grandmother and as a significant caregiver both while T.M. and J.R. resided with her and after. She provides love, guidance, care, emotional support and financial support for L. She also helps provide a home for L. L.R. has also been very significant in L.'s life. L. should continue to have L.R.'s major contribution to his life. L.R. is suitable and has the ability and willingness to exercise the powers, assume the responsibilities of guardianship and I am satisfied that it is in L.'s best interests that L.R. be appointed as L.'s guardian. I hereby make that appointment and dispense with the consent of T.M. on the same basis as for J.M. In my opinion for her to have this legal status is in L.'s best interests because both of the parents are young, both still have to mature into their roles as parents, both are at risk to allow their past relationship to negatively impact their continued future parenting of L., and to otherwise not act appropriately in relation to each other. L.R. continues to be a stabilizing, consistent, and positive force in L.'s life.

59 The Parenting Order follows and in respect to which I will no longer use the artifice of initials but rather the term "mother", "father" and "grandmother" to describe T.M., J.M., and L.R. respectively because that is L.'s reality.

### ***1. Guardianship and Parenting Responsibilities***

- (a) The father and grandmother shall be appointed as guardians of L. together with the mother;
- (b) The guardian mother and father shall share the parenting of L;
- (c) L.'s primary residence shall be with the father unless the father and mother otherwise agree in writing and signed by both parties;
  - (i) Each guardian has the right to obtain information/documents concerning L. directly from third

parties, including school teachers, school administrators (for school annual calendar/special events/report cards and other like related documents), counselors, medical/dental professionals, third party caregivers, extra-curricular organizers/coaches/teachers (including schedules) and other third-parties for any other activities or attendances with third-parties;

(ii) Any guardian has the right to meet with the L.'s teachers, and attend at extra-curricular activities regardless of whether those occur during their parenting time or whether that guardian has parenting time;

(iii) Any guardian having the care of L. as set out in this Order shall advise the other guardians of any matters of a significant or emergent nature affecting L. and may make decisions in an emergency affecting the health or safety of L. on the condition that guardian informs the other guardians immediately of any such decision;

(iv) Each guardian has the obligation to discuss any significant decisions which have to be made concerning L., including significant decisions related to dental and health (except emergency decisions), education, extra-curricular activities, and spiritual instruction, provided that in the event of a disagreement concerning a major decision, unless otherwise provided herein, then the parties shall attend mediation prior to making an application to the Court;

(v) The father shall be entitled to determine where L. shall attend for school, L.'s health care providers including doctors, dentists, orthodontists, therapists, counselors, and other like related service providers as required provided he shall advise the mother forthwith and keep her informed, and the mother shall be entitled to take L. to appointments; if L. is hospitalized then all guardians are permitted to visit him in the hospital regardless of whether or not it is their parenting time;

(vi) The mother and father may make changes to the parenting arrangements for the regular parenting schedule or holidays and special days as set out below, provided all changes are in writing and signed by both parties;

(vii) The mother and father may make any other changes to these responsibilities to which they both agree in writing and signed by both parties;

## **2. Scheduling**

### **(a) Regular and General**

(i) The father shall have parenting time for all times other than when the mother is not exercising parenting as set out herein, which parenting time reflects L.'s primary residence with the father;

(ii) The mother shall have parenting time with L. until he starts school on alternating weekends from Wednesday at 5 p.m. to Monday at 12 noon and in the intervening week, from Wednesday at 5 p.m. to Thursday at 5 p.m. No later than 6 months prior to L. commencing school, the mother and father shall negotiate the restructuring of the mother's parenting time;

(iii) The mother shall have parenting time with L. on the long weekends in May and September, regardless of whether or not it is her regularly scheduled weekend, and if is not, then from Friday at 6:30 p.m. to Monday at 6 p.m.;

(iv) Any other times as agreed to in writing the mother and father and signed by the parties;

(v) The regularly scheduled parenting time for the mother and the father shall be suspended during the holidays and special days as set out herein so that the holiday and special days take precedence over the regular schedule of parenting time as set out above; it is recognized that in giving precedence to holidays and special days that in some years there may be consecutive weekends of parenting time with L. for either party depending on when the schedule for regular parenting time falls for each of the mother and the father;

(vi) For the number of determined holidays, the school calendar where L. shall attend school in Strathmore shall be utilized and notwithstanding he is not yet in school;

(vii) All exchanges of L. for parenting time and holidays and special days shall be at the father's home unless otherwise agreed to in writing and signed by the father and the mother;

(b) Holidays and Special Days

(i) Christmas

(A) The definition of Christmas is the day following the last day of school to the day preceding the return to school where L. attends school in Strathmore, Alberta (Christmas); the Christmas holiday period is to be divided equally into two parts. The first part shall include Christmas Eve, Christmas Day and Boxing Day;

(B) In even-numbered years L. shall spend the first part of Christmas with the mother and the second part with the father;

(C) In odd-numbered years L. shall spend the first part of Christmas with the father and the second part with the mother;

(ii) Spring Break

(A) The definition of Spring Break is the day following the last day of school at 9 a.m. to the day preceding the return to school at 6 p.m. where L. attends school in Strathmore, Alberta (Spring Break) provided Spring Break is not preceded nor followed by Easter. If Spring Break is immediately preceded by Easter then Spring Break begins at 5:00 p.m. on Easter Monday. If it is followed immediately by Easter then it ends at 6 p.m. on the Thursday immediately preceding Good Friday and the Easter weekend provision as set out below takes effect.

(B) In even-numbered years L. shall spend Spring Break with the father;

(C) In odd-numbered years L. shall spend Spring Break with the mother;

(iii) Easter

(A) The definition of Easter is from 5:00 p.m. on the Thursday immediately preceding Good Friday, Good Friday, Easter Saturday, Easter Sunday, and Easter Monday. If there is no school on Easter Monday and L. is with the mother then he shall be returned home by 6 p.m. and if there is

school the next day, then he shall be returned to school. If Easter and Spring Break are consecutive holidays, then L. shall either be returned or picked up at 6:00 p.m. on Thursday as set out herein.

(B) In even-numbered years L. shall spend Easter with the mother;

(C) In odd-numbered years L. shall spend Easter with the father;

(iv) Summer

(A) Until L. is age of 8 years, in even-numbered years he shall spend the first two weeks of July and the first two weeks of August with the mother and the last two weeks of July and the last two weeks of August with the father; in odd-numbered years he shall spend the last two weeks of July and the last two weeks of August with the mother and the first two weeks of July and the first two weeks of August with the father; for all periods, the commencement and ending time shall be 6 p.m.

(B) When L. turns age 9, then he shall spend the entire month of July with the mother and the entire month of August with the father in even-numbered years; in odd-numbered years he shall spend the entire month of July with the father and the entire month of August with the mother; for all periods, the commencement and ending time shall be 6:00 p.m.

(v) Birthday

(A) The birthday of L. shall be celebrated with the parent having L. on his birthday and the other parent shall celebrate with him at some other time;

(B) The guardians not having L. on his birthday shall have a telephone call with him on his birthday between 5 and 6 p.m.;

(C) A guardian's birthday shall be celebrated with L. if L. is with that guardian and otherwise shall be celebrated at another time;

(vi) Mother's Day and Father's Day

(A) The mother shall have the entire Mother's Day weekend with L. regardless of whether or not it is her regularly scheduled parenting time and if it is not, then the time shall be from Friday at 6:30 p.m. to Monday at 10 a.m. until L. starts school and then if there is school on Monday morning then he shall be returned to his school on time on Monday morning;

(B) The father shall have the entire Father's Day weekend with L. regardless of whether it is his regularly scheduled parenting time commencing on Friday at 6:30 p.m. to the following Monday;

(vii) Halloween

(A) If Halloween falls on the weekend, then the parent having L. on that weekend shall have him for Halloween;

(B) If Halloween falls on a weekday, the celebration shall be in Strathmore; in even-numbered years the father shall have L. and in odd-numbered years the mother shall have L. from 6-7 p.m. if

it is not her regular scheduled weekend and shall provide a costume; if in those odd-numbered years there is no school on the next day, then the mother may pick L. up at 5:00 p.m. on Halloween Day and return him home at 6:00 p.m. the next day unless it is a Wednesday or a Thursday and the start of the mother's regularly scheduled parenting time;

(viii) Thanksgiving

(A) The father shall have L. for the entire Thanksgiving holiday weekend in even-numbered years regardless of whether or not it his regularly scheduled parenting time, commencing at 6:30 p.m. on Friday and continuing through to the entire holiday Monday;

(B) The mother shall have L. for the entire Thanksgiving holiday weekend in odd-numbered years; if Thanksgiving is not her regularly scheduled parenting time then commencing at 6:30 p.m. on Friday through to Monday at 6 p.m.; if it is her regularly scheduled parenting time then that time is extended to 10:00 a.m. on Tuesday morning following Thanksgiving Monday and if L. is in school then he shall be returned to school, on time, on Tuesday morning;

(ix) Family Day

(A) The father shall have L. for the entire Family Day holiday weekend in odd-numbered years regardless of whether or not it his regularly scheduled parenting time, commencing at 6:30 p.m. on Friday and continuing through to the entire holiday Monday;

(B) The mother shall have L. for the entire Family Day holiday weekend in even-numbered years; if Family Day weekend is not her regularly scheduled parenting time then commencing at 6:30 p.m. on Friday through to Monday at 5 p.m.; if it is her regularly scheduled parenting time then that time is extended to 10 a.m. on Tuesday morning following Family Day Monday and if L. is in school then he shall be returned to school, on time, on Tuesday morning;

(C) Changes to this schedule may be made by the mother and father in writing and signed by both of them.

### ***3. Telephone Contact***

(a) Each guardian shall have daily telephone contact with L. between 5 and 6 p.m. when he is in the home of the other guardian, including for holidays, special days, and L.'s birthday;

### ***4. Transportation Costs***

(a) The mother shall be responsible for all transportation relating to her parenting time and holidays and special days with L and for all transportation costs for so long as she is not paying child support;

### ***5. Other Provisions***

(a) Extra Curricular Activities

(i) No guardian shall schedule an extra-curricular activity during the parenting time of another guardian, unless that guardian otherwise agrees in writing and is signed by that guardian, in which case that

guardian shall assure L.'s attendance when he is with that guardian;

(ii) If the parties cannot agree on L.'s attendance at an extra-curricular activity, then the guardian wishing the activity may enrol L. in the extra-curricular activity recognizing that L. may attend only on that guardian's parenting time;

(iii) If a guardian who has L. for parenting time and so is responsible for taking L. to an extra-curricular activity may agree in writing and signed by that guardian, that another guardian may take L. to the activity on the request of another guardian to take L. to the activity;

(b) Travel

(i) Any guardian may travel inside Alberta with L. without the consent of the other guardians provided that for other than a one day trip an itinerary shall be provided to the non-traveling guardians;

(ii) Any guardian may travel outside Alberta with L. provided that for such travel the other guardians shall consent in writing; when the traveling guardian makes the request for the letter of consent and other travel documents as required, then within one week of the request the other two guardians shall provide the consent letter and documents, failing which the traveling guardian shall have the right to bring an application to the Court on 2 days notice and to ask for costs of the application, provided that the father shall retain L.'s passport in his possession and it shall be produced to the other guardians as part of the necessary travel documentation as required;

(iii) The guardian mother, father and grandmother shall all sign L.'s passport application;

(c) Mobility

(i) In the event any guardian wishes to change L.'s residence from Strathmore, Alberta, then that guardian shall give the others a minimum of 60 days prior written notice;

(ii) L.'s residence shall not be changed unless all the guardians agree in writing and signed by all guardians;

(iii) In the event the guardians cannot agree as to whether L. shall move, then any guardian who is opposed has the right to bring an application to the Court to have the move determined;

(d) Contact Information

(i) At times each guardian shall keep the other guardians informed as to a current *contact* address and telephone number;

(e) Remarks

(i) At no time shall any guardian make disparaging or unflattering comments or remarks regarding another guardian to L. or when L. is present;

(ii) At all times, every guardian shall undertake his or her best efforts to ensure that any person who is associated with L. or is visiting does not make disparaging or unflattering comments or remarks regarding another guardian to L. or when L. is present;

(f) Completion of Programs

(i) The mother and father shall immediately complete any all outstanding programs they have yet to complete under the Supervision Order, and/or on the recommendation of the in-home worker or Mr. Choate;

(g) Exchanges

(i) At all times each guardian shall be polite and respectful of the other guardian on the exchanges of L. for the times as set out herein;

### **8. Dispute Resolution**

(a) The guardians have the obligation to try to reach agreement on decisions relating to L;

(b) Each guardian shall attend Parenting After Separation for High Conflict Families immediately;

(c) The guardians shall attend at mediation forthwith, to discuss parenting matters related to this Order, with Alberta Justice, Family Mediation Services provided they meet the criteria of that service to attend; if they do not meet the criteria then they shall attend with a parent coordinator, the cost for which shall be paid by the parties proportionally in accordance with their income, and if the mother is not working, then her share shall be based on her household income;

(d) In the event of a dispute regarding a major decision relating to L., then the guardians shall first attend mediation with Alberta Justice, Family Mediation Services, if they so meet the criteria to attend, and then if there is no resolution in mediation, then for Brief Conflict Intervention for so long as L. is eligible, and which attendances shall be completed prior to any guardian filing an application with the Court, and if the guardians do not meet the criteria, then the same provisions shall apply as set out in immediately preceding sub-paragraph (c) herein;

(e) In the event of a dispute regarding minor parenting decisions, the mother and father shall attend with the same professionals as set out in immediately preceding sub-paragraph (d) herein, and in the event there is no resolution, then the parties shall attend with a parent coordinator, the cost for which shall be paid by the parties proportionally in accordance with their income on the same basis as set out in immediately preceding sub-paragraph (c) herein;

### **3. Notice**

(a) In the event of an application to the Court to vary, amend or cancel this Order, then the guardian applying shall give the other guardians a minimum of 7 days notice;

(b) After the first Court appearance, the parties shall attend a judicial settlement conference prior to setting a trial date.

60 I believe that T.M. will be disappointed by my decision especially in light of the strides she has made, for which she must be fully commended, and her hopes and aspirations that I would return L. solely to her care. I hope that one day she will be able to accept what I have done and why I have done it. However, my greatest

hope, and I say to the guardians, is that L. is never again the subject of a court application about his best interests. If that transpires, then it will mean for him that the parties have truly put his interests ahead of their own which in my opinion is the truest act of love for any child and especially for L.

*Order accordingly.*

## Appendix A

### Definitions

**1** In this Act,

(f) "father" means

(i) Unless subclause (ii) or (iii) applies, the biological father of a child, including a male person described in section 13(2)(a),

(ii) in the case of an adopted child, a male person who adopts the child, or

(iii) a male person described in section 13(2)(b);

(k) "parenting order" means an order made under section 32;

### Part 1 Establishing Parentage

#### *Presumption of parentage*

**8(1)** For all purposes of the law of Alberta, unless the contrary is proven on a balance of probabilities, a male person is presumed to be the biological father of a child in any of the following circumstances:

(f) the male person is registered as the father of the child at the joint request of himself and the mother of the child under the Vital Statistics Act or under similar legislation in a province or territory other than Alberta;

#### *Blood Tests, etc.*

**15(1)** On the request of a party to an application under this Part or Part 3 or on its own motion, the court may make an order granting leave to obtain blood tests, DNA tests or any other tests that the court considers appropriate from any person named in the order and to submit the results in evidence.

(2) An order under subsection (1) may be made subject to any terms and conditions the court considers appropriate.

(3) No test shall be performed on a person without the person's consent.

(4) If a person named in an order under subsection (1) is not capable of giving consent because of age or incapacity, the consent may be given by the person's guardian.

(5) If a person named in an order under subsection (1) or the person's guardian, as the case may be, refuses to consent to a test referred to in the order, the court may draw any inference it considers appropriate on behalf of the child without prejudice to the child in future proceedings.

## **Part 2 Guardianship, Parenting and Contact Orders and Access Enforcement**

### ***Definitions***

16 In this Part,

- (a) "guardianship order" means an order made under section 23;
- (b) "place of residence", in respect of a child, means the place where a child is living, either temporarily or permanently;
- (c) "proposed guardian" means a person who applies or on whose behalf someone else applies for an order appointing the person as a guardian of a child.
- (d) repealed 2004 cM-18.1 s21.

### ***Best interests of the child***

18(1) In all proceedings under the Part, the court shall take into consideration only the best interests of the child.

(2) In determining what is in the best interests of a child, the court shall

- (a) ensure the greatest possible protection of the child's physical, psychological and emotional safety, and
- (b) consider all the child's needs and circumstances including
  - (i) the child's physical, psychological and emotional needs, including the child's need for stability, taking into consideration the child's age and stage of development,
  - (ii) the history of care for the child,
  - (iii) the child's cultural, linguistic, religious and spiritual upbringing and heritage,
  - (iv) the child's views and preferences, to the extent that it is appropriate to ascertain them,
  - (v) any plans proposed for the child's care and upbringing,
  - (vi) any family violence, including its impact on
    - (A) the safety of the child and other family and household members,
    - (B) the child's general well-being,
    - (C) the ability of the person who engaged in the family violence to care for and meet the needs

of the child, and

(D) the appropriateness of making an order that would require the guardians to co-operate on issues affecting the child,

(vii) the nature, strength and stability of the relationship

(A) between the child and each person residing in the child's household and any other significant person in the child's life, and

(B) between the child and each person in respect of whom an order under this Part would apply,

(viii) the ability and willingness of each person in respect of whom an order under this Part would apply

(A) to care for and meet the needs of the child, and

(B) to communicate and co-operate on issues affecting the child,

(ix) taking into consideration the views of the child's current guardians, the benefit to the child of developing and maintaining meaningful relationships with each guardian or proposed guardian,

(x) the ability and willingness of each guardian or proposed guardian to exercise the powers, responsibilities and entitlements of guardianship, and

(xi) any civil or criminal proceedings that are relevant to the safety or well-being of the child.

(3) In this section, "family violence" includes behaviour by a family or household member causing or attempting to cause physical harm to the child or another family or household member, including forced confinement or sexual abuse, or causing the child or another family or household member to reasonably fear for his or her safety or that of another person, but does not include

(a) the use of force against a child as a means of correction by a guardian or person who has the care and control of the child if the force does not exceed what is reasonable under the circumstances, or

(b) acts of self-protection or protection of another person.

(4) For the purpose of subsection (2)(b)(vi), the presence of family violence is to be established on a balance of probabilities.

### ***Division 1 Guardianship***

#### *Children subject to guardianship*

19 Every child is subject to guardianship except a child who becomes a spouse or adult interdependent partner.

#### *Guardians of child*

- 20(1) This Section is subject to any order of the court regarding the guardianship of a child.
- (2) The Mother and the father of a child are both the guardians of a child.
- (a) the mother and the father were married to each other at the time of the birth of the child,
  - (b) the mother and the father were married to each other and the marriage was terminated by
    - (i) a decree of nullity of marriage granted less than 300 days before the birth of the child, or
    - (ii) a judgment of divorce granted less than 300 days before the birth of the child,
  - (c) the mother and the father married each other after the birth of the child,
  - (d) the mother and the father cohabited with each other for 12 consecutive months during which time the child was born, or
  - (e) the mother and the father were each other's adult interdependent partners at the time of the birth of the child or became each other's adult interdependent partners after the birth of the child.
- (3) Where the mother and the father of a child are not the guardians of the child under subsection (2), the mother and the father are both the guardians of the child until such time as the child begins to usually reside
- (a) with one of the parents, at which time that parent becomes the sole guardian of the child, or
  - (b) with both parents or alternately with each parent for substantially equivalent periods of time, at which time both parents become the guardians of the child.
- (4) Despite subsection (3), a parent with whom the child has usually resided for one year is a guardian of the child even if the child no longer resides with that parent.
- (5) Despite subsection (3)(a), if both parents so agree in writing, both parents continue to be the guardians of the child even after the child begins to usually reside with only one of them.

*Powers, responsibilities and entitlements of guardianship*

- 21(1) A Guardian shall exercise the powers, responsibilities and entitlements of guardianship in the best interests of the child.
- (2) Where a child has more than one guardian, the guardians
- (a) may each exercise the powers, responsibilities and entitlements of a guardian, unless the court orders otherwise,
  - (b) shall provide information to any other guardian relating to the exercise of powers, responsibilities and entitlements of guardianship, at the request of that other guardian,
  - (c) shall use their best efforts to co-operate with one another in exercising their powers, responsibilities and entitlements of guardianship, and

(d) may enter into an agreement with respect to the allocation of powers, responsibilities and entitlements of guardianship among themselves.

(3) A guardian who is neither a parent of the child nor a person standing in the place of a parent referred to in section 48 has no legal duty to support the child from the guardian's own financial resources.

(4) Except where otherwise limited by a parenting order, each guardian is entitled

(a) to be informed of and consulted about and to make all significant decisions affecting the child in the exercise of powers and responsibilities of guardianship described in subsection (5), and

(b) to have sufficient contact with the child to carry out those powers and responsibilities.

(5) Except where otherwise limited by law, including a parenting order, each guardian has the following responsibilities in respect of the child:

(a) to nurture the child's physical, psychological and emotional development and to guide the child towards independent adulthood;

(b) to ensure the child has the necessities of life including medical care, food, clothing and shelter.

(6) Except where otherwise limited by law, including a parenting order, each guardian may exercise the following powers:

(a) to make day-to-day decisions affecting the child, including having the day-to-day care and control of the child and supervising the child's daily activities;

(b) to decide the child's place of residence and to change the child's place of residence;

(c) to make decisions about the child's education, including the nature, extent and place of education and any participation in extracurricular school activities;

(d) to make decisions regarding the child's cultural, linguistic, religious and spiritual upbringing and heritage;

(e) to decide with whom the child is to live and with whom the child is to associate;

(f) to decide whether the child should work and, if so, the nature and extent of the work, for whom the work is to be done and related matters;

(g) to consent to medical, dental and other health-related treatment for the child;

(h) to grant or refuse consent where consent of a parent or guardian is required by law in any application, approval, action, proceeding or other matters;

(i) to receive and respond to any notice that a parent or guardian is entitled or required by law to receive;

(j) subject to the Minors' Property Act and the Public Trustee Act, to commence, defend, compromise or

settle any legal proceedings relating to the child and to compromise or settle any proceedings taken against the child;

(k) to appoint a person to act on behalf of the guardian in an emergency situation or where the guardian is temporarily absent because of illness or any other reason;

(l) to receive from third parties health, education or other information that may significantly affect the child;

(m) to exercise any other powers reasonably necessary to carry out the responsibilities of guardianship.

(7) A guardian who exercises any of the powers referred to in subsection (6) shall do so in a manner consistent with the evolving capacity of the child.

(8) Subsections (2) and (4) do not apply to decisions of a director under the Child, Youth and Family Enhancement Act.

#### *Testamentary appointment of guardian*

22(1) A guardian who is a parent of the child may by deed or will appoint a person to be guardian of the child after the death of that guardian.

(2) An appointment under subsection (1) does not take effect unless accepted by the person either expressly or impliedly by the person's conduct.

(3) Unless the guardian expressly states otherwise in the deed or will,

(a) the guardianship takes effect immediately on the guardian's death, and

(b) if more than one person is appointed as a guardian under subsection (1), any one of the persons may accept the appointment even if one or more of the other persons appointed decline to accept.

(4) A guardian may revoke an appointment under subsection (1).

(5) A person appointed as a guardian under subsection (1) has only the powers, responsibilities and entitlements of guardianship that the guardian had at the time of the guardian's death.

(6) If a guardian who is subject to a parenting order dies without appointing a guardian under subsection (1), a surviving guardian who is a parent of the child may, subject to any limitations imposed by the court, exercise the powers, responsibilities and entitlements of guardianship that had been allocated to the deceased guardian under that order.

#### *Guardianship Order*

23(1) The court may, on an application by a person who

(a) is an adult and has had the care and control of a child for a period of more than 6 months, or

(b) is a parent other than a guardian of a child,

make an order appointing the person as a guardian of the child.

(2) The court may, on application by a child, make an order appointing a person as a guardian of the child if

(a) the child has no guardian, or

(b) none of the child's guardians is able or willing to exercise the powers, responsibilities and entitlements of guardianship in respect of the child.

(3) The court on hearing an application for a guardianship order shall consider, and may require the applicant to provide the court with a report prepared by a qualified person respecting,

(a) the suitability of the proposed guardian as a guardian,

(b) the ability and willingness of the proposed guardian to exercise the powers, responsibilities and entitlements of guardianship in respect of the child, and

(c) whether it is in the best interests of the child that the applicant be appointed as a guardian of the child.

(4) Subject to subsection (5), a person may not apply for a guardianship order unless the child or proposed guardian resides in Alberta.

(5) If it is satisfied that there are good and sufficient reasons for doing so, the court may waive the requirement

(a) that the child or proposed guardian reside in Alberta, or

(b) in the case of a application under subsection (1)(a), that the applicant has had the care and control of the child for a period of more than 6 months.

(6) Subject to the regulations, the court may at any time on its own motion make a guardianship order appointing a guardian of a child, other than a director under the Child, Youth and Family Enhancement Act, to act jointly with another guardian of the child.

(7) The court may, in making a guardianship order under this section or terminating the guardianship of a guardian under section 25, make a parenting order on its own motion or on application by one or more of the parties.

(8) No order may be made under subsection (1) or (2) if the purpose of the application is to facilitate the adoption of the child.

#### *Consent to Guardianship*

24(1) A guardianship order shall not be made without the consent of

(a) each guardian of the child,

(b) the child, if the child is 12 years of age or older, and

(c) the proposed guardian

(2) Despite subsection (1), the court may make an order dispensing with the consent of one or more of the persons referred to in subsection (1)(a) or (b) if the court is satisfied that there are good and sufficient reasons for doing so.

#### *Duration of Guardianship*

26 A person continues to be a guardian of a child until the earliest of

- (a) the guardian's death,
- (b) the child's attaining the age of 18 years,
- (c) the child's becoming a spouse or adult interdependent partner, and
- (d) the termination of the guardian's guardianship under section 25.

#### *Parenting Order*

32(1) Where a child has more than one guardianship and the guardians

- (a) are not able to agree with each other in exercising the powers, responsibilities and entitlements of guardianship in respect of the child, and
- (b) in the case where the guardians are the parents of the child, are living separate and apart,

the court may, on application by one or more of the guardians, make an order relating to the exercise of the powers, responsibilities and entitlements of guardianship in respect of the child

(2) A parenting order may contain any or all of the following:

- (a) an allocation, generally or specifically, of the powers, responsibilities and entitlements of guardianship among the guardians;
- (b) an allocation of parenting time, which may be by way of a schedule, unless a schedule is unnecessary in the circumstances;
- (c) a dispute resolution process for any or all future disputes regarding guardianship or parenting arrangements, if the process has been agreed to by the persons who are bound by that process;
- (d) any other provisions that the court considers appropriate.

(3) Subject to any limitations imposed by the court, parenting time allocated to a guardian under subsection (2)(b) is exclusive to that guardian.

(4) Unless the court orders otherwise, if a guardianship power or responsibility is allocated to one guardian, the other guardian or guardians remain entitled to make inquiries and to be given information about any significant matter that arises in connection with the exercise of that power or responsibility.

2006 CarswellAlta 1443, 2006 ABPC 285, [2007] A.W.L.D. 1621, [2007] A.W.L.D. 1620, [2007] A.W.L.D. 1622, [2007] W.D.F.L. 1780, [2007] W.D.F.L. 1778, [2007] W.D.F.L. 1781

(5) In this section, "parenting time" means time during which a guardian has the power to make day to day decisions affecting the child, including having the day-to-day care and control of the child and supervision 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.

*Terms and Conditions*

33(1) The court may make a parenting order for a definite or indefinite period or until a specified event occurs and may impose terms, conditions and restrictions in connection with the order as the court considers appropriate.

(2) Without limiting the generality of subsection (1), the court may include in a parenting order a term requiring a guardian who intends to change his or her place of residence or that of the child to notify the other guardian or guardians, at least 60 days before the change or within such other period before the change as the court may specify, of the change, the date on which the change will be made, and the new place of residence for the guardian or the child, as the case may be.

**FN1** As an example, the resources of the Court should not be utilized to resolve arguments around decisions concerning the participation of a child in a certain extra-curricular activity, and otherwise for the operational and functional consistency between parental homes regarding meals, bed-time, play-time, discipline, effective communication, and similar other matters that challenge parents differently when a child is moving back and forth between two homes.

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