

In the Provincial Court of Alberta

Citation: AH v AM, 2018 ABPC 92

Date: 20180420
Docket: FF026000029
Registry: Lethbridge

Between:

AH

Applicant

- and -

AM

Respondent

Restriction on Publication

Identification Ban – See the *Family Law Act*, section 100.

By Court Order, there is a ban on publishing information that may identify the children or guardians in this matter.

NOTE: This judgment is intended to comply with the ban so that it may be published.

Judgment of the Honourable Judge P.G. Pharo

Introduction

[1] The issue in this case is to how the parenting time for the child CM (the “child”), a six year old girl, should be divided between her mother, AH (the “mother”), and her father, AM (the “father”).

[2] The mother has brought this action under s34 of the *Family Law Act*, SA 2003, c F-4.5 (the "*Act*"), to vary a parenting order dated August 27, 2015. This order has been varied and amended many times since then.

[3] The current situation is that the father has day to day care and primary residence of the child, and the mother gets parenting time every second weekend.

[4] Counsel has been appointed for the child.

[5] The mother seeks more parenting time. The child, through counsel, also seeks to see her mother more often.

[6] A Practice Note 8 Parenting Assessment was done by Ms. Murray, which report was entered as an exhibit, and Ms. Murray also gave testimony in court.

Background of the Mother

[7] The mother is 28 years old and lives in Lethbridge. She is employed full time at a local steel fabricator. She states she works 6:00 a.m. until 2:30 p.m., during the week, but says that her employer is willing to be flexible with her hours. She currently has her own place and is living in a basement suite.

[8] The mother testified that she started drinking and smoking marijuana at age 13. When she met the father in around 2010, she says they were both drinking and smoking marijuana. The child was born on August 22, 2011. The evidence is that the relationship between the father and the mother was always volatile. They separated in 2012, when the child was ten months old. When they separated, they agreed on a shared parenting arrangement, with the child going between the homes on a regular basis.

[9] Unfortunately, the mother started using drugs more heavily after the separation, stating that she tried cocaine while partying in 2014, which then seemed to start her on the road to addiction. The child was three at this time. During this period, the mother would on occasion ask the father, or the child's grandmother, to look after the child while the mother used drugs. The mother testified that she never used drugs when the child was around.

[10] In 2015, the mother went into residential treatment for 28 days at the South Country Treatment Center. While she was in treatment, the father got a court order naming him as the primary caregiver responsible for making all major decisions. When she got out of treatment, after about a month, the mother started visiting with the child.

[11] After being alcohol and drug free for about six months, the mother relapsed in February 2016. She stopped using on her own, and after some drug tests, she got to parent the child on some specified weekends.

[12] In June 2016, she relapsed again for a week. In July 2016 she admitted herself to the Foothills Center in Fort MacLeod for eight days of detoxification, and from there went to the David Landers Treatment Center in Claresholm for an 18 day addictions treatment program. Upon leaving this treatment centre, the mother was granted parenting time on alternating weekends.

[13] On November 13, 2016 the mother relapsed again for one day, when she drank alcohol and used cocaine.

[14] The mother states that she has not used alcohol or any drugs since then. She is currently employed full time, involved in a church, attends a 12 step program, does physical activities, and volunteers in the community. She has had four hair follicle drug tests since then, and they were all clean.

[15] The mother's partner of about a year has also struggled with drug addiction. He is currently living in a recovery centre in Calgary, where he plans to stay for a year.

Background of the Father

[16] The father is 30 years old, and is the owner of a roofing company. However, he has not worked for approximately two years, citing the stress of these court proceedings, as well as the fact that he wants to stay home to look after his children. He is under the care of a doctor for depression and anxiety. He sees a mental health counsellor for these problems, and has taken medication for them as well. The father says he is content with the income he receives from income assistance and the child benefits. He is happy at this point to parent the child. He has another child, Z, from another mother, KC. He currently resides with KC most of the time. He also parents Z as well. Z is one and a half years old. During his teen years, the father indicated that he was a heavy user of drugs. However, he states that he does not use drugs now, and only occasionally uses alcohol. KC is currently pregnant with his child.

[17] The father also describes the time when he lived with the mother as being very turbulent and volatile. He gave evidence of several incidences of physical violence between them, when the police were called, and charges were laid. There is no evidence that either of them was violent towards the child at any time, but it is not clear if the child witnessed any of the physical violence between them. It is clear that the child has witnessed the verbal conflict between the parents, and I accept that this has had a negative effect on her.

[18] At this point in his relationship with the mother, the father does not have good communication with her, and he does not see it ever improving. He does not believe that she is drug free. Based on comments from members of this Court on previous occasions, he sees the best way to avoid conflict with the mother is to follow the letter of the existing court order. He also tries to have the least amount of contact with her as possible, and not entertain discussions with her about other possible parenting times for her.

Background of the Child

[19] The child is a six year old girl. All the evidence is that she is a very pleasant and thriving young girl. She clearly loves and is attached to both parents. She is also very attached to her younger half-brother, Z. The evidence is that she has been exposed to parental conflict between mother and father, and this makes her sad.

[20] The child was represented by legal counsel at the trial.

Background of KC

[21] KC currently resides with the father most of the time, in a common law relationship, and is the mother of Z, their one and a half year old son. KC's relationship with the father has been on again and off again. They met in May 2014, and during the course of the relationship, they

have broken up two or three times. KC moved back in with the father sometime in the spring of 2017. She is currently pregnant with their next child.

[22] KC works about 40 hours a week at local restaurant, and contributes to their household expenses such as the rent.

The February 2, 2016 Incident (the February Incident)

[23] On February 2, 2016 the father testified that he invited a couple of male work associates to his house, and they consumed some alcohol. They all became intoxicated to some degree. At one point during the evening, the father went out to buy some more alcohol. He said he was gone for 10-15 minutes. The child was in bed. The father testified that when he got back to the house, he found the door locked, which he found to be strange. He forced his way into the house. The evidence was that while the father was gone, one of the men had gone into the child's bedroom, taken out his penis, and told the child to lick it like a lollipop. There was no evidence that she did so. The evidence was not clear as to what else happened, but it is clear the child was sexually abused to some degree.

[24] However, when the father found out what had happened he assaulted this man, and the fight carried on in the house, and outside onto the lawn.

[25] The police attended to investigate the next day, and there was also a Child and Family Services (CFS) investigation. No criminal charges were ever laid, nor was there any CFS action taken. The father testified that he has had no contact with either of these men since the February Incident, and has no intention to do so.

[26] The father did eventually tell the mother about this incident, but only some time later and he never provided her with the details to her satisfaction. The father has not taken the child for counselling, although the mother would like to do so.

Practice Note 8 Parenting Assessment Report (the Parenting Assessment)

[27] There was a court ordered Parenting Assessment in this case, which was done by Ms. Murray. Ms. Murray testified in the hearing, and the Parenting Assessment was entered into evidence.

[28] Ms. Murray did individual in person clinical interviews with the mother, father and the child. She also met with KC in person. She did home visits with both the mother and father. Ms. Murray did phone interviews with a number of other collateral contacts, provided by the parties.

[29] In the Parenting Assessment, Ms. Murray identified a number of what she labelled as vulnerabilities of the child. She identified that the child had been exposed to conflict between her parents, which bothered the child. The child had also been separated from the mother at times, to whom she was attached, firstly because of the mother's drug problems, and then more recently because of time away for treatment, and the limited parenting schedule. Ms. Murray mentioned that there was also the sexual abuse, the physical fight, and the interviews with police and CFS, which occurred as a result of the February Incident, and which were concerns. Ms. Murray noted that both parents had histories of mental health problems, as well as drug and alcohol addiction. Ms. Murray mentioned behavior management techniques, being screamed at

and spanked, for behaviours that were typical of children of her age, as well as expectations of household chores that were not age appropriate while with her father.

[30] With respect to the father's parenting skills, Ms. Murray notes that there is a strong bond between the father and the child, and that he has been consistently available to parent her. Ms. Murray states that with the exception of the February Incident, the father provides a safe and enriching home environment, with well-established routines. He makes sure the child attends school.

[31] However, Ms. Murray writes that the father is fixated on the child not having contact, or being in the care of the mother. He continues to expose the child to conflict and animosity at the exchanges, even after being advised by CFS that it is harmful. Ms. Murray states that the father refuses to involve the mother in any decision making for the child, and does not inform the mother of opportunities for parent involvement at either school or extracurricular activities.

[32] With respect to the mother's parenting skills, Ms. Murray identified that there is a strong bond between the mother and the child, and that the mother provides a safe and enriching home environment. Ms. Murray says the mother sets up appropriate structure, effective behaviour management while being nurturing and showing empathy. The expectations of the child in her home are appropriate. Ms. Murray states that the mother has developed a healthy support network for herself and the child and that the child's needs take priority over conflict with the father.

[33] Ms. Murray states that the mother is flexible with the small amount of time she and the child have together, citing the example of allowing the child to be with her father on Father's Day. Ms. Murray writes that the mother believes that it is in the child's best interest to have both parents involved in parenting.

[34] Ms. Murray makes the following recommendations in the Parenting Assessment:

1. The mother and the father should have a shared parenting arrangement, with the child alternating between them on a weekly basis.
2. The mother and father share the responsibilities for making major decisions for the child. In the event that they are unable to agree on a medical decision, then the mother shall have authority to make the final decision.
3. As a means of ensuring both parents receive information regarding the child, a new email address be established that both the mother and father have access to, for information from the child's school, medical records and extracurricular activities can be shared.
4. Should either the mother or the father need extended child care for the child while they attend to a physical or medical problem, the other parent will assume day to day care of the child until such parent is home and able to meet her needs again. At such time the shared parenting will resume without any repercussions on the parent who required time away.
5. The mother and father will provide the child with a home where she is not exposed to drugs or alcohol.

The Father's Position

[35] The father takes the position that day to day care and primary residence of the child should stay with him. The reason for this is that he has no confidence in the mother's ability to stay off drugs. He comes to this position because of his past experience with the mother, where she was not able to care for the child because of her drug addiction. More recently, he points to relapses by the mother. He seeks to keep primary care of the child, and argues that the mother's concerns can be addressed by adjusting her parenting time.

The Mother's Position

[36] The mother argues that she should get day to day care and primary residence, because she is now in recovery from her drug addiction, and has been clean since November 2016. The mother also argues that she is prepared to be flexible and accommodating towards the father with parenting time. The mother argues that if this Court is not prepared to grant her primary parenting, then she should get shared parenting. Acknowledging the conflict between them, she suggests a parallel parenting regime would work.

The Child's Position

[37] The child was represented by legal counsel at the trial. The child's counsel acted as *amicus curiae*, because of the child's young age. The child, through her counsel, stated that she would like to have seven days with her father and seven days with her mother, because that would be fair.

The Law Applicable to this Case

[38] In this hearing, this Court must consider both the applicable case law and the statute law.

[39] The parties agree that the first step is to determine whether there has been a change in the needs and circumstances of the child since the original court order. Shortly after the mother and father separated, a Consent Shared Parenting Order was granted on October 3, 2013 that provided for shared parenting on an alternating week basis. By 2015, the mother was having difficulties with her addictions, and the parties went back to court. Four orders were granted in 2015, the last being on August 27, 2015 when a Variation Parenting Order was granted by which the father got primary care of the child, and the mother got reasonable and generous parenting time, and it was specified that she would get alternating weekends. Since then six interim variation orders have been made to that August 27, 2015 order, the last of which was in April 2017, whereby the mother got an additional four and one half hours of parenting time in the week when she did not get a weekend.

[40] Pursuant to s34(3) of the *Act*, this Court must first find that there has been a material change in the child's needs or circumstances since August 2015. If this Court so finds, then the next step is to determine what parenting regime is in the best interests of the child. The factors to consider in determining the best interests of the child are set out in s18 of the *Act*.

[41] In coming to a decision this Court must also consider the Maximum Contact Principle: *W(DS) v W(DL)*, 2009 ABQB 279. This principle states that it is in the child's best interest to spend as much time as possible with each parent, and applies to matters heard under the *Act*.

[42] A corollary to the Maximum Contact Principle, is the “Friendly Parent Rule”, which states that the Courts are likely to favour the friendly parent, that is the parent who will help encourage contact between the child and the other parent: *AE v TE*, 2017 ABQB 449.

[43] The question also arises as to whether it is open for this Court to consider a shared parenting regime. During her testimony, Ms. Murray acknowledged that she considered these parties to be high conflict. She also acknowledged that shared parenting is not usual in high conflict situations. I am further mindful of the comments of Chief Justice Fraser where she held that “as a general proposition, joint custody and shared parenting arrangements ought not to be ordered where the parents are in substantial conflict with each other,” and joint custody requires a sincere and genuine willingness by both parents to work together to ensure the success of the arrangement: *Richter v Richter*, 2005 ABCA 165, 371 AR 1, at para 11 (*Richter*).

[44] However, Alberta courts have sometimes found that in shared parenting situations where there is high conflict, a parallel parenting regime may be in the child’s best interests: *M(PL) v H(DJ)*, 2004 ABQB 827.

[45] I will now proceed to weigh the evidence, and consider the above principles and statute law in the context of all the evidence.

Was there a Material Change in the Needs and Circumstances of the Child?

[46] As noted above, s34(3) requires there to be a material change in the needs and circumstances of the child before a parenting order can be varied. The father concedes that there has been a change to the mother’s circumstances, but argues that it is the child’s needs and circumstances that must be considered, and they have not changed.

[47] I find that there has been a material change to the child’s needs and circumstances, for the following reasons:

1. I accept that the mother is on the road to recovery, and based on the evidence is no longer using drugs. I find that she has a reasonable chance of staying on this road because she has taken concrete steps to get there. In 2015, when the Order was granted, the mother was in the midst of struggling with her drug addiction, and had just completed a month long rehabilitation program. She gave evidence at the trial that she has not used drugs or alcohol since November 2016. She provided hair follicle test results that support this statement. She is employed at a full time job, and has her own residence with a separate room for the child. She regularly attends 12 step meetings, and she has a sponsor. She is a member of a support group which meets regularly in a home. She is a member of a local church, which she attends regularly, where she receives support and fellowship. She has a boyfriend who lives in Calgary. She recognizes that her troubles often started in the past when she started drinking, and she then had difficulty not consuming drugs. Having gained this insight, she testified that she will not use alcohol or drugs in the future. I have no difficulty finding that having a healthy mother is a very large and positive change for the child. These facts resemble those in the case of *P(TJ) v C(LD)*, 2010 ABPC 265, where the judge found that the mother’s “dramatic improvement in her lifestyle and circumstances” constituted a significant change in circumstances.
2. The Parenting Assessment by Ms. Murray recommends that there be a change of the parenting regime. As noted above, the Parenting Assessment gives several reasons

for the recommendation to go to a shared parenting situation, instead of the existing situation. The case of *Ralstin v Hupalo*, 2016 ABQB 48, states that a parenting assessment can constitute a material change in circumstances.

3. The child wants to spend more time with her mother. The child is only six years old, and the father's counsel warns that little weight should be placed on the child's evidence, because he argues that the child just wants to be fair to both her parents, and she loves each of them. I do accept this as a valid argument, and the Courts are often skeptical of such evidence, for the very reasons argued by counsel. However, in this case, those wishes are not coming to the court through the mouth of the party who wants more parenting time, which is often the case. The message is coming to the Court in this case through the submissions of two seasoned and experienced professionals. Ms. Murray has extensive experience, and she indicates that she was told by the child, and Ms. Murray accepts, that the child does sincerely want to spend more time with her mother. The child's counsel, an experienced professional, also relayed the child's wishes, which were the same. I therefore am prepared to accept, based on all this evidence that the child does want to spend half her time with her mother. Based on the case of *N(T) v S(C)*, 2010 ABQB 465, which was affirmed on appeal, a change in a child's wishes can be considered to be a change in needs or circumstances for the child.

What is in the Best Interests of the Child Pursuant to s18 of the Act?

[48] I am mindful that s18(1) of the *Act* is clear that in the proceedings before this Court, I am only to consider the best interests of the child. In s18(2)(a), the Court is directed to determine what is in the best interests of the child by ensuring the greatest possible protection of the child's physical, psychological and emotional safety. In s18(2)(b) the Court is directed to consider all the child's needs and circumstances, which are specified, and which I will now consider.

The child's physical, psychological and emotional needs, including the need for stability, taking into consideration the child's age and stage of development - s18(2)(b)(i)

[49] I find that both parents currently have the ability to meet the child's physical, psychological and emotional needs, based on the evidence at trial. She has her own room in both homes. She has stimulating activities at both homes, and there were no safety concerns when Ms. Murray did home visits. There was food in both residences, and both homes have a proper structure with house rules. Both parents are loving, nurturing and supportive of the child.

[50] The question of the future stability of each of these homes is much more difficult to determine.

[51] With respect to the father's home, there are several risks to future stability. The evidence was that he has some mental health challenges. His evidence was that he has not worked since the February Incident. This incident caused him stress and depression. He sought care for this from his medical care provider, and a counsellor, and has been on medication. He says he has no plans to go back to work until his children are enrolled in school. Since his current partner is now pregnant, this could be a number of years. In the meantime, his main income is insurance for his medical condition. His evidence was unclear as to whether he still has this medical condition or not. This raises the question of whether this medical insurance will still be paid to

him in the future. Other income comes from KC, who is a waitress, child tax benefits and child support. They will soon become a household of two adults and three children. At this point, they do need to get assistance from the food bank once a month. The other main risk to his stability is that the father's relationship with KC has been on again and off again. The evidence was that KC spends most of her time with him, but still has some of her belongings with her own father. The father and KC have broken up a number of times recently, and have actually had to go to this Court to resolve some of their issues. Although the February Incident occurred while the father was intoxicated in his home in the presence of the child, I accept his testimony that he no longer drinks to excess around the child, and therefore this risk has been mitigated. In my view, these two issues as noted above are the main risks to the stability of the father's home.

[52] With respect to the mother's home, the biggest concern is that the mother will relapse into substance abuse again. The mother testified that she has had a couple of relapses since she first began treatment for drug and alcohol addiction after the separation. She has been on the road to recovery since November 2016, and appears to have put in place a support network that will mitigate the risk that she will relapse. The father is concerned that she will relapse again, and this will have a negative impact on the child's physical, psychological and emotional well-being. I find it is very difficult to assess this risk of relapse, but I do acknowledge that it exists.

The history of care for the child - s18(2)(b)(ii)

[53] During the months after the child was born, the mother was on maternity leave, and she looked after the child while the father worked as a roofer. They separated when the child was about ten months old, in June of 2012. The parents then shared the parenting, two on and two off, because the child was so young. In August of 2015, the father got an order for primary care of the child because the mother was having difficulties with drug addiction, and was not able to fulfil her parenting duties. Since then she has parenting on alternating weekends, with some time during the alternate week. It is conceded that since becoming the primary care giver, other than the February Incident, the father has done a good job as the primary caregiver of the child.

The child's cultural, linguistic, religious and spiritual upbringing and heritage - s18(2)(b)(iii)

[54] Based on the evidence at the trial it appears that the parents have similar cultural and linguistic heritages. It appears from the evidence that the mother is a fairly regular church attendee, and that her faith community is an important part of her support network. However, there was no evidence that the father had any difficulty with this being a part of the child's life.

The child's views and preferences - s18(2)(b)(iv)

[55] As already noted, the child has expressed her views to the professional assessor, Ms. Murray, indicating she would like shared parenting, and that she remembered having shared parenting before. Ms. Murray was specifically asked in court how she could be sure that the child was giving a sincere answer to that question, and was not simply giving an answer that was safe and neutral. Ms. Murray testified that she did address that concern by asking the child what her preference would be if she didn't have to worry about pleasing either parent, and she felt that she had built a sufficient rapport with the child during this discussion during the home visit to get a frank answer. As a result, Ms. Murray was confident that the child's true wishes were to be

with both parents seven days on and seven off. I will say at this point that I was impressed with the testimony of Ms. Murray, and am prepared to give it some considerable weight.

[56] Furthermore, the child's counsel, Ms. Hegberg, also submitted that the child had advised her that she wished to have shared parenting, seven days on and seven off. I acknowledge that Ms. Hegberg is also a seasoned and experienced professional, and I am therefore prepared to give her submissions on behalf of the child some considerable weight as well.

[57] As stated before, the Court will often be skeptical of the child's wishes as expressed through a parent. However, in this case where the wishes of the child were expressed through two different independent professionals, I am prepared to give the child's wishes substantial weight.

The nature, strength and stability of the relationship between the child and each person residing in the father's household, and any other significant person in the child's life - s18(2)(b)(vii)

[58] The evidence clearly shows that the child has a strong relationship with her father. It is also clear that she is attached to her half-brother, Z. The child also has a strong bond with KC who the evidence shows has stepped into a maternal role in that home, to the extent that the child sometimes calls her "Mom". KC is pregnant, and there will soon be another half sibling in this household. However, as noted before, I do acknowledge the somewhat volatile relationship between the father and KC, and recognize the risk of instability that this factor imports into this household. There was also evidence that the father's mother, being the child's grandmother, also plays an important role in the child's life. This grandmother lives in the Lethbridge area, and visits the child, and has the child over for sleepovers on a regular basis. I find that the child has a strong relationship with the father, KC, Z, and the paternal grandmother, and it would be disruptive and not in her best interests to greatly alter these relationships.

The nature, strength and stability of the relationship between the child and each person residing in the mother's household and any other significant person in the child's life - s18(2)(b)(vii)

[59] The evidence is that the mother lives alone, and her boyfriend visits on weekends on a regular basis. I accept that the mother has a strong relationship with the child, which is subject to the risks of instability previously discussed. The evidence is that the child has a good relationship with the mother's boyfriend as well. The maternal grandmother, the mother's sister, and her sister's four children all live in this area and they try to see the child as much as possible.

The ability of the mother and father to care for and meet the needs of the child and to communicate and co-operate on issues affecting the child - s18(2)(b)(viii)

[60] The evidence is clear that the father is able to care for and meet the needs of the child, subject to the risks previously noted. The issue of his ability to communicate and co-operate with the mother is more difficult. The evidence shows that at times he seems reluctant to communicate with the mother about the child. The father's evidence was that the mother was constantly requesting more time with the child. He says that if he refuses her request, then the mother gets annoyed, and a conflict arises between them. To avoid conflict, the father testified

that he would often ignore the mother's calls and texts, and just not respond if he felt it was not important. For the same reason, the evidence was that although he was directed by the Court to give the mother reasonable and generous parenting time, the father just gives her the bare basics, being every second weekend and some time during the week on Wednesdays. He has also given her some additional time by dropping the child off a little early, and picking her up a little late. However, the evidence shows that the mother has been given little other parenting time. There was also evidence that the father enrolled the child in school without consulting with the mother. There was further evidence that the father was reluctant to advise the mother of any more than the bare facts after the February Incident. To get the information she wanted, the mother had to make a FOIP request of the police service. The father testified that he would not let the mother attend the child's extracurricular events, unless she paid for them. The father's evidence was that he was reluctant to entertain the mother's views on what extracurricular activities, such as gymnastics, that the child should be involved in.

[61] The evidence is clear that the mother is able to care for and meet the needs of the child, subject to the risks previously discussed. The mother testified that she does update the father on medical issues with the child when they occur. She also said she would be willing to co-operate with the father on parenting issues.

[62] In court, Ms. Murray testified that it is unlikely that the father will provide the mother with any additional parenting time beside the specified time in the court order if he is the primary parent, and that he is currently not providing the mother with enough parenting time, or involving her in decision making. Ms. Murray further testified that the father's personal frustrations with the mother get in the way of a good co-parenting relationship with the mother. On the other hand, it is Ms. Murray's opinion that the mother is a friendly parent and is capable of co-parenting.

[63] Based on this evidence, I agree with the assessment of Ms. Murray and find that the mother is a friendly parent.

The benefit to the child of developing and maintaining meaningful relationships with each of the guardians - s18(2)(b)(ix)

[64] It was Ms. Murray's evidence that the child would benefit from having both parents involved in all aspects of her life. I agree with this assessment.

The ability and willingness of each guardian to exercise the powers, responsibilities and entitlement of guardianship - s18(2)(b)(x)

[65] The evidence is clear that both parties are willing to parent the child. However, the ability of each of them is compromised somewhat by the risks noted above. It is the opinion of Ms. Murray that these risks to the parents' abilities can be mitigated by shared parenting. Ms. Murray expressed the view that both parents are under stress, and so each of them having half time parenting would allow them time to take care of themselves. In doing this, they would benefit both themselves and the child. Ms. Murray stated that it was in the child's best interests to have two parents who are functioning at their best. By being at their best, Ms. Murray said they are better able to meet the child's needs. I agree with this assessment.

Conclusion

[66] I am mindful of the comments of the Alberta Court of Appeal in the *Richter* case that a shared parenting regime is not generally indicated where there is a high conflict situation between the parents, such as in this case. However, on the particular facts of this case, I find that a shared parenting order is in the best interests of the child, for the following reasons:

1. The evidence is clear that the child wants to be with her mother more, in the context of a shared parenting regime. As noted above, I have confidence in the child's expressed wishes in this case because they were expressed through the conduit of two experienced professionals, and not via a parent who is seeking more parenting time.
2. The Parenting Assessment of Ms. Murray recommends shared parenting. Ms. Murray interviewed the parties, the child and talked to the suggested collaterals. Ms. Murray is a very experienced and seasoned professional, and I was impressed by her testimony, and am prepared to give it substantial weight.
3. The Maximum Contact Principle. Currently, the mother only gets two weekends a month, and some time during the week during the alternate week. The evidence is that the child would like more time with her mom. Shared parenting would further maximize the time each of the parents get with the child, in compliance with this principle.
4. The Friendly Parent Rule. The Courts are more likely to favour the friendly parent, being the parent who will help encourage contact between the child and the other parent. The evidence here is clear, and I have found that the mother is the friendly parent. However this evidence is counterbalanced by the fact that the child is very attached to her father, her half-brother Z, and KC, all of whom currently reside with her in the father's home. I find that to remove the child from the father's home to the primary care of the mother would be very disruptive to the child, and therefore not in her best interests.
5. It is the view of Ms. Murray that with shared parenting, there is a chance that the conflict between the parties, which is disturbing to this child, may be reduced. I agree with this position. There was considerable evidence at the trial that the conflict between the parents was a very negative influence on the child. Therefore, any reduction in conflict between the parents would clearly be in the best interests of the child.
6. Ms. Murray also stated that given the stresses both parents are currently dealing with, shared parenting gives them each time to look after themselves, which allows them to be at their best when they are with the child, which is ultimately in the child's best interests. I agree with this view as well.

[67] There will be an order for a shared parenting regime between the mother and the father, as follows:

1. The mother and father shall have shared parenting on the basis of seven days on and seven days off, being alternating weeks, with the transfer of the child to occur on Sundays at 5:00 p.m., or on Mondays at 5:00 p.m. where that Monday is a holiday.
2. The parent who is to have the child for the coming week will pick up the child from the other parent's home.
3. The mother and father will not argue with each other in the presence of the child, or allow her to witness a disagreement between them in any way.

4. The mother and father will not speak or communicate with each other in a disrespectful manner in the presence of the child, or communicate with each other disrespectfully in any manner which the child can witness.
5. The mother and father will not speak to the child, or anyone else in the presence of the child, about the other parent in a disrespectful or disparaging way at any time.
6. The parents will share all decision making for the child, however in the event of disagreement the mother shall have final decision making authority for all medical and health related matters, including counselling.
7. In the event of disagreement over the extra-curricular activities for the child, then one parent may enrol the child in such activity, at that parent's sole cost, and such parent shall be solely responsible for the transport of the child to and from such activity during that parent's week, but shall not schedule any such activity for the other parent's week.
8. The parents shall share all relevant information about the child, including information about her health, school, extra-curricular activities and vacations.
9. The parents shall share all such information in writing, by way of a shared email account for such purpose, or failing that, by way of an access book that they exchange. The child shall not be asked to deliver verbal messages.
10. Both parents may attend all the child's extracurricular activities, even if such activity was arranged by the other parent during the other parent's week.
11. When the child is with one of the parents for the week, such parent will arrange for the child to communicate with the other parent by a live electronic means such as telephone, Skype, or Facetime, on Wednesday of that week. If the parents have not agreed on an alternate time in advance, then such communication shall take place at 5:00 p.m. on Wednesday.
12. Should either the mother or the father require child care for an extended period while they attend to a physical or medical problem, like surgery, residential treatment, or hospitalization, the other parent will assume the day to day care of the child until such parent is home again and well enough to meet the child's needs.
13. Neither parent shall consume any alcohol or non-prescription drugs while parenting the child, nor shall they allow the child to be in the presence at any time of anyone else who has done so.
14. The mother and father may agree to different parenting times on Christmas, Easter, school breaks, Mother's and Father's day, summer vacations, birthdays or other special occasions. However, if no such prior agreement is made by them, then the parenting regime will continue as set out above.
15. The order shall include a police enforcement clause.

[68] This order will be effective and commence at 5:00 p.m. on Sunday, April 29, 2018, and the mother shall have the child for the following week.

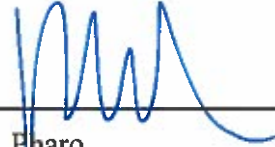
[69] There will be a publication ban pursuant to s100 of the *Act*, prohibiting the publication of any part of this proceeding that may identify the child.

[70] With respect to court costs, since success was divided, the mother and father shall each bear their own costs. However, I order that the court costs of the child shall be borne equally by the mother and the father.

[71] I express my sincere thanks to counsel for their efforts in this case, and especially for the preparation of the written arguments, which were very helpful.

Heard on the 28th day of September, 2017, the 29th day of September, 2017, the 5th day of October, 2017, the 21st day of December, 2017, the 4th day of January, 2018, and the 23rd day of January, 2018.

Dated at the City of Lethbridge, Alberta this 20th day of April, 2018.



P.G. Pharo
A Judge of the Provincial Court of Alberta

Appearances:

R. McKenzie
for the Father

C. Hirano
for the Mother

J. Hegberg
for the Child