In the Provincial Court of Alberta

Citation: JF v. JK, 2017 ABPC 27

Date: 20170217
Docket: FF901001435
Registry: Calgary

Between:

JF

Applicant

- and -

JK

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.

Reasons for Decision of the Honourable Judge Steven E. Lipton

INTRODUCTION

[1] This family dispute was commenced on May 4th, 2016, when the mother JF (hereinafter referred to as either the "Mother" or "JF") filed an application requesting Court-ordered child support from the father JK (hereinafter referred to as either the "Father" or "JK"). In addition, the Mother requested financial disclosure from the Father, including his 2015 income tax filing, after prior requests by the Mother for his 2015 tax return had been repeatedly ignored.

[2] Within five weeks of the Mother's filing, the Father filed an application on June 10th, 2016, for shared parenting of the child WK, born November 2013 (hereinafter referred to as either the "Child" or "WK").

[3] The applicable legislation is the *Family Law Act*, Statutes of Alberta, 2003 c. F-4.5 (hereinafter referred to as the "*FLA*").

[4] The Mother and Father only cohabited together for a period of approximately nine months.

[5] To his credit, however, the Father voluntarily began paying child support after separating from the Mother, which fact was not disputed by the Mother. Therefore, and despite the Mother's position at the start of this trial that the Father is not a guardian of WK, I advised that section 20(3)(j) of the *FLA* made the Father a guardian of the Child by operation of law.

[6] Near the conclusion of this trial, the Mother and Father agreed on their respective incomes for the years 2014, 2015, and 2016 as indicated below:

(a) for 2014, the mother reported $32,967 and the father reported $70,524;

(b) for 2015, the mother reported $59,740 and the father reported $112,323; and

(c) for 2016, the mother will report $59,299 and the father will report $50,691.

[7] After the appropriate calculations were done, it was determined that the Father had arrears in child support, and the parties agreed on the arrears being fixed at $1,455. I issued an arrears Order only on January 30th, 2017, and set a repayment schedule of $100 per month, as agreed to by the parties, commencing February 1st, 2017. The parties also agreed that if I decline to order a shared parenting arrangement, then the Father would be obligated to pay to the Mother ongoing section 3 base child support of $412 per month reviewable on July 1st, 2018, and ongoing section 7 monthly child support of $241 per month, also reviewable on July 1st, 2018.

EVIDENCE

[8] The Mother, the Father, and the Father's fiancée RR (hereinafter referred to as either "RR" or the "Fiancée") were the only individuals who testified in this trial.

[9] The evidence indicates that from the birth of WK until the present time, the Mother has been the primary caregiver of the Child.

[10] The Father has lived in six different residences since separating from the Mother for the final time in 2013. Five of these residences were not conducive to the Father having parenting time in them with the Child.

[11] Initially, the Father was allowed parenting time with WK in the Mother's residence, which the Mother said averaged approximately one visit per week for a few hours each visit. His parenting time was supervised by the Mother. This schedule was maintained for 2014 and 2015, despite the Father's request for more time with the Child. The Mother claimed the Father's visits were more sporadic in 2015.

[12] At some point in time in 2015, the Father moved into his current accommodation. It is a rented four-bedroom home. In December 2015, RR moved into this home.

[13] The Father requested that the Mother inspect his home to determine its suitability for his parenting time with WK rather than continuing his visits at the Mother's home. In February 2016, the Mother finally inspected the Father's home and agreed that it was suitable for WK.

[14] Commencing in March 2016, the Father consistently exercised parenting time every Sunday from noon until 6:00 p.m. at his home.

[15] Pursuant to Cornfield J.'s Order of June 10th, 2016, the Father's parenting time increased again. The Father was given parenting time every other weekend from Friday pick-up at daycare to Sunday at 6:00 p.m., as well as Tuesday pick-up at daycare and overnight to Wednesday morning with drop-off at daycare. Cornfield J.'s Order did not specify pick-up and drop-off times for the Tuesday overnight to Wednesday parenting time.

[16] A letter was sent home from the daycare to both parents advising that their Child would lose his spot if daycare rules were not observed. The evidence indicates that subsequent to Cornfield J.'s Order, the Father or RR would sporadically pick-up the Child from daycare early on Tuesday and return him late on the Wednesday. The Father advised that he was told this was permissible. He also said that these sporadic pick-up and drop-off times fit in better with his schedule.

[17] The Child has been in the same daycare since August 2014. The daycare fees are only $800 per month.

[18] It wasn't until after RR entered the picture that the Father began registering complaints with the Mother about the quality of care WK was receiving at the daycare. The Father claimed the daycare was not stimulating enough for WK.

[19] Photographs were entered as exhibits by the Father. These photographs show WK's underwear with faeces stains and his pants on backwards. WK would have been around three years of age at this time. WK was in the process of being toilet trained. Part of this process would have involved WK trying to clean himself after a bowel movement.

[20] According to the Father, these issues arose on a few occasions. The Father never did inquire as to whether WK was trying to learn to clean himself properly.

[21] The Mother applied cream on WK's buttock at times to deal with a rash resulting from WK not cleaning himself properly. The daycare was also advised by the Mother to keep a better watch on WK.

[22] The Father is concerned about the Mother's struggles as a single parent. He stressed that WK's maternal grandmother's continual involvement in helping to care for WK was proof of this statement.

[23] The Father's proposal for care of WK is as follows. The Child would spend half of the time under his care. His Fiancée will be going back to a community college to retrain as she is currently an unemployed nanny and cannot find work in her chosen profession. The college where RR plans on attending is near a daycare. RR will take WK to the daycare near her college during that Court-ordered period the Father has his parenting time with the Child while she is attending classes and the Father is working.

[24] The Father is of the view that his communication with the Mother regarding WK is okay. As such, there would not be any obstacle to a shared parenting arrangement.

[25] Alternatively, the Father proposes that RR not return to college but remain at his home and look after WK on a full-time basis. Thus, JK would become the primary caregiver for the Child. RR gets along well with WK and has never complained about the time JK spends with WK.

[26] If awarded full-time care of WK, the Father said the Mother would have to pay him section 3 base child support of $85 per month. Towards the end of this trial, the Father indicated that he would waive support from the Mother.

[27] The Father works as a union scaffolder. JK's work sites at times have taken him out of the city which has resulted in him receiving greater compensation. It is possible in the future for the Father to be out of town at work sites such that WK would only see his Father for very limited periods of time while being cared for by RR.

[28] The Father repeatedly stated that he is having difficulty paying his monthly bills, including his monthly child support obligations. He borrowed $60,000 from his parents, of which $20,000 went to service his financial obligations. Some of these obligations include a truck loan of $525 per month, financed for seven years, on a 2015 fully-loaded Chevy Silverado four-door, half-ton truck, $200 per month on an ATV loan, and $1600 per month rent for his four-bedroom home.

[29] The Father is also financially supporting RR. He testified that this is not a problem.

[30] The Father thought that he only spends $350 per month on groceries for RR and himself.

[31] The Father is convinced that the Mother is making it difficult for him to see WK in order to get more child support money from him.

[32] The Father requested more parenting time over Christmas on December 8th, 2016, but was denied this time by the Mother.

[33] The Mother is adamantly opposed to a shared parenting relationship with the Father. She insists that WK is too young to be away from her primary care for alternating weeks throughout the year.

[34] The Mother is also opposed to shared decision making with the Father because he either doesn't respond to her queries or disagrees with her decisions.

[35] The Mother pointed out that RR is the Father's third relationship since 2013 when her relationship with the Father finally ended. She questions the stability of his current relationship with RR.

[36] The Mother said the Father has been financially irresponsible. She queried why the Father would agree to be financially responsible for his Fiancée given his debt load.

[37] The Mother allowed the Father to take WK to Ontario for one week in 2015 to visit the Father's extended family.

[38] The Mother only gave the Father Christmas parenting time from 1:00 p.m. Christmas day until 11:00 a.m. on Boxing Day in 2016 despite repeated requests for more time by the Father. The Mother claimed that the Father never accepted her proposal for additional time with the Child.

[39] The Mother was most appreciative of the help that she has been receiving on many occasions from WK's maternal grandmother.

[40] The Mother initially asked that the parenting terms of Cornfield J.'s Order be finalized with the exception that the Tuesday overnight parenting time to the Father be cancelled due to the Father not complying with the Child's daycare hours of operation.

[41] When questioned, the Mother agreed to be flexible with respect to trading days with the Father. She would be willing to alternate the Christmas holidays and proposed that whichever parent had WK on Christmas Eve could have the Child in their care until December 28th. Additionally, school breaks could be equally split. For Easter, the Mother would not be opposed to the Father always having Good Friday through to Easter Monday as he is Catholic. The Mother was also agreeable to the Father having WK in his care for Father's Day, U.S. Thanksgiving, and for one week during the summer. The Mother wanted Mother's Day and Canadian Thanksgiving. The Mother was agreeable to alternating years with JK for WK's birthday.

[42] The Father is also a citizen of the United States. His extended family, however, all live in Ontario. Regarding travel by the Father with WK and the Mother's fear of the Father not returning the Child to her care at the end of his parenting time, it was explained to JK that a mobility prohibition clause could be inserted in a parenting Order with respect to any travel both inside Canada and to the United States.

[43] Both the Mother and Father acknowledged that the other is a good parent to WK. Neither have any concerns about the safety of WK while in the care of the other. The Mother acknowledged that WK is happy to see his Father. The Mother also acknowledged that WK appears to like the Father's Fiancée.

[44] RR has been living with the Father since December 2015. She first met the Child in January 2016.

[45] RR worked as a nanny before becoming unemployed. She made less than $20,000 in 2016. Her current plans are to go to college and retrain for a new career.

[46] RR confirmed that she has arranged for someone to watch WK for four hours a day for those days when she attends classes at the college. The cost for this care would be $200 per month.

[47] RR also offered to look after WK when the Mother and Father are working.

[48] RR denied quitting her prior work as a nanny in order to watch the Child. RR offered to quit her upgrading in order to stay at home and look after the Child on a full-time basis. The advantage of doing so is that there would be flexibility in this arrangement. For example, WK would not have to be woken up early in order to be taken to daycare.

[49] RR expressed a few concerns about WK's daycare including inflexible hours of operation, faeces stains on the Child's underwear on four or five occasions, a couple of rashes on the Child's buttock, and the Child's pants on backwards on occasion.

[50] RR estimated that the Child spends approximately one-third of the time alone with her during the Father's parenting time as JK is at work.

[51] RR prepares the majority of the meals. RR usually bathes WK, cuts his nails, and both the Father and RR put the Child to bed at night.

[52] RR would often pick-up the Child from daycare on Tuesday for the start of the Father's Court-ordered parenting time, and would drop-off the Child on Wednesday at the conclusion of his parenting time due to the Father being at work. She acknowledged that the Father usually saw the Child for only two hours on Tuesday, and not at all on Wednesday because of his work schedule.

[53] RR would also pick-up the Child on Friday from the daycare at least one-half of the time for the start of the Father's weekend parenting time.

[54] RR is the person that usually communicates with daycare staff. She now understands the need to follow daycare operating hours.

[55] RR offered to consult with the Mother about daycare choices.

[56] RR said that JK is a good parent and that WK is happy to spend time with both of them. Nobody has ever expressed concerns about JK's parenting skills and the Child has never asked to go back to his Mother's care while spending time with the both of them.

[57] RR also said that the Mother is a good parent. Communication between the Mother and her is, however, by text message.

ANALYSIS OF THE EVIDENCE

[58] My initial suspicion of the Father's true motive in applying for shared parenting shortly after the Mother requested financial disclosure from the Father was confirmed by the Father in his evidence.

[59] In a shared parenting arrangement, the Father would likely not have to pay the Mother any section 3 base child support.

[60] The Father never did explain, however, how the Child could possibly be in two different daycares in a month. It goes without saying that no reasonable person in Calgary could dispute the fact that $800 per month for daycare is extremely cost effective.

[61] The Father then went on to suggest in the alternative that full-time care of WK be awarded to him. His Fiancée would drop out of her college program and stay at home to watch WK. The Mother could then pay him section 3 base child support. The Father later waived any claim for base child support from the Mother.

[62] At the heart of the Father's case are his financial difficulties with money management. Evidently, JK could not service his monthly obligations on his salary, a loan from his parents, and $20,000 that his Fiancée brought into their relationship.

[63] The Mother is right. The Father does need to get his finances in order.

[64] The Father admitted in cross-examination that he never asked the Mother for more parenting time because he didn't want any arguments with her. Therefore, JK's response that he sought out legal advice in 2016 because he thought he didn't have any other choice is, in my opinion, unpersuasive.

[65] In response to my query as to whether it was permissible for me to consider the current science on brain development in infants and children in order to assist me in determining this matter, Father's counsel stated that there are differing and evolving views in this area.

[66] Mother's counsel provided me with the decision of the Supreme Court of Canada in *R. v. Spence*, [2005] 3 SCR 458 and submitted that I was prohibited from doing so. At page 460, the Supreme Court stated:

> "The permissible scope of judicial notice varies according to the nature of the issue under consideration, and the closer a fact approaches the dispositive issue the more a court ought to insist on compliance with the stricter criteria for judicial recognition. Under the strict criteria accepted by this Court in *Find*, a court may properly take judicial notice of facts that are either (1) so notorious or generally accepted as not to be the subject of debate among reasonable persons, or (2) capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy. [53][60-61]"

[67] I accept that there are evolving views in this area and that debate amongst reasonable persons is probable. I am thus bound by the decision in *Spence, supra* and will not delve into the brain science surrounding child development.

[68] I agree with the submission of counsel for the Father that section 34 of the *FLA* does not apply in this case. Cornfield J.'s Order of June 10th, 2016, was the initial Order granted in this matter with a specified return date. It is an interim Order. This is not a situation where the Father has made a new application requesting a variation, suspension, or termination of a final Order and would therefore be required to demonstrate that there has been a change in the needs or circumstances of WK.

[69] The same conclusion with respect to the applicability of section 34 was reached by Ho J. in *D.L. v. T.H.*, [2008] A.J. No. 1381 (Alta. Prov. Crt.).

[70] The factors to be considered in a 'best interests of the child' analysis are set out in section 18 of the *FLA*.

[71] I was provided with a number of decisions by counsel which considered the 'best interests of the child' under both section 18 of the *FLA* and section 16 of the *Divorce Act*, R.S.C. 1985, c. 3(2nd Supp.) (hereinafter referred to as the "*Divorce Act*").

[72] While section 18 of the *FLA* is not inclusive of all factors that a Court may consider, it is important to keep in mind the difference between a 'best interests of the child' analysis pursuant to section 16 of the *Divorce Act* and an analysis pursuant to section 18 of the *FLA*.

[73] For example, section 16(10) of the *Divorce Act* reads as follows:

> "**Maximum contact** – In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child, and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact."

[74] The end result of an analysis pursuant to section 18 of the *FLA* may well lead a Court to conclude that both parents should have maximum parenting time (or contact) with a child. Maximum parenting time (or contact) is not, however, the default position in a 'best interests of the child' analysis pursuant to section 18 of the *FLA*.

[75] Other presumptions which are not applicable under a 'best interests of the child' analysis pursuant to section 16 of the *Divorce Act* are, in fact, applicable under a 'best interests of the child' analysis pursuant to section 18 of the *FLA*.

[76] For example, one of the factors under section 18 of the *FLA* is the prior history of care of the child, or the *status quo*, per section 18(2)(b)(ii) of the *FLA*. Another factor is the ability of the parents to communicate and co-operate on issues affecting the child, per section 18(2)(b)(viii)(B) of the *FLA*.

[77] The decision in *Botticelli v. Botticelli*, 2009 ABQB 556 points out the confusion that sometimes arises when one applies the *ratio decidendi* in custody decisions under the *Divorce Act* to parenting disputes under the *FLA*. At paragraphs 3 and 4 of *Botticelli, supra*, Veit J. stated:

> 3 "As our Court of Appeal has recently clarified, there are no presumptions in parenting disputes; the only standard is what is in the best interests of the child: **Cavanaugh**. While this means that there is no rebuttable presumption in favour of shared parenting, it also means that there is no presumption, among many potential examples, in favour of the primary caregiver or in favour of the status quo ..."
>
> 4 " ... Although the court cannot rely on parenting presumptions, it must consider Parliament's maximum contact principle. The court must "ensure" that what Parliament has deemed to be beneficial contact with each parent, "is maximized": **Young**. There is no evidence here that maximum contact with each of the parents, which is obviously another way of saying 50/50 time spent or shared parenting, conflicts with the best interests of their son."

[78] The decision of Graesser J. in *TT v. JT*, 2012 ABQB 668 also points out this confusion. Graesser J. ordered a shared parenting arrangement during a bitterly fought custody and access dispute because of his concern that the mother was intent on preventing the father from having more time with the children. At paragraphs 34, 35, and 58 of his decision, he stated:

> 34 "As I recently held in **Hestbak v. Hestbak**, 2012 ABQB 633, I am of the view that while communication difficulties are a concern in custody and access issues, they do not by themselves negate a shared parenting arrangement. The nature, cause and source of the difficulties must be explored. In some cases, shared parenting has the beneficial effect of maximizing contact between each parent and the children (satisfying one of the custody and access objectives under the *Divorce Act* and as discussed in **Botticelli v. Botticelli**, 2009 ABQB 556). Determining the best interests of the children is first and foremost a factual determination, not a question of law."
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> 35 "Mr. Mawani argues that "maximizing contact" does not equate to shared parenting or equal contact. I agree, but where there are no geographical issues, significant schedule issues or capability issues between the parents, it is difficult to see why the principle of maximizing contact does not lead to serious consideration of shared parenting as a regime that is in the best interests of the children."
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> 58 "In my view, the communication difficulties between the parents, and their increasing hostility towards each other, may be neutralized or minimized by equalizing their parenting time. In that way, neither parent has any greater opportunity to influence the children than the other; neither parent has any greater opportunity to undermine the children's relationship with the other. Control issues will be minimized. There is nothing in the circumstances before me that I consider to make shared parenting contrary to the best interests of these children at this time. Indeed, I find that shared parenting is in their best interests, and is necessary at this time to help ensure that they have a healthy and appropriate relationship with both parents."

[79] Of course, there are decisions pursuant to section 16 of the *Divorce Act* which can be applied to disputes under the FLA.

[80] For example, in *Richter v. Richter*, 2005 ABCA 165, Fraser CJA stated at paragraph 11:

> "First, as a general proposition, joint custody and shared parenting arrangements ought not to be ordered where the parents are in substantial conflict with each other, and certainly not before trial especially when there is also significant disagreement on the evidence. The best interests of a child are not well served by imposing regimes which invite continued court applications on all matters, big and small ..."

[81] The reasoning in *Richter v. Richter*, *supra* is applicable to section 18(2)(b)(viii)(B) of the *FLA*.

[82] In my opinion, a proper starting point in a best interests analysis is the decision of Poelman J. in *Rensonnet v. Uttl*, 2016 ABQB 95. This case is most relevant as it is a decision based on section 18 of the *FLA*. Poelman J. comments on the applicability of section 16(10) of the *Divorce Act* to disputes under the FLA.

[83] At paragraphs 199, 202, 203, 204, 205, 206 and 207, Poelman J. stated the following:

> 199 "Mr. Uttl proposes that parenting time be shared equally between the parties, while Ms. Rensonnet submits that she should have primary care with limited, specified access to Mr. Uttl. He submits that the court must not rely on any presumptions, such as maintaining the *status quo* under which primary care and responsibility is with Ms.

Rensonnet: *Cavanaugh v. Balkaron*, 2008 ABCA 423, [2008] A.J. No. 1393 (Alta C.A.); and *Botticelli v. Botticelli*, 2009 ABQB 556, [2009] A.W.L.D. 4199 (Alta Q.B.). He also relies upon the "maximum contact principle," where the court strives to maximize the time children spend with each parent and indicating that shared parenting is the preferred arrangement: *Botticelli v. Botticelli*; and *Gordon v. Towell*, 2010 ABQB 396, 29 Alta. L.R. (5th) 141 (Alta Q.B.)"

202 "Further, the maximum contact principle has been given particular significance in divorce proceedings because, as the Supreme Court of Canada has pointed out, its codification in section 16(10) of the *Divorce Act* "stands as the only specific factor which Parliament has seen fit to single out as being something which the judge must consider "in determining a child's best interests: *Young v. Young*, [1993] 4 S.C.R. 3, [1993] S.C.J. No. 112 (S.C.C.), para. 204. That specific section does not apply in this case, although it is well established that maximum contact with each parent is an important factor. As with every other factor, it must give way to the overriding best interests consideration ..."

203 "Thus, as with the *status quo*, there is no presumption in favour of equal parenting time. In fact, the cases caution against equal parenting in high conflict relationships. Fraser C.J.A. 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 A.R. 1 (Alta. C.A.), para 11 ..."

204 "The authorities that caution against an order of joint custody or shared parenting where the parents cannot cooperate are, in effect, applying principles identified in section 18(2) of the *Family Law Act*, such as sections 18(2)(a),(b)(ii),(vii)(B), and (viii)(B)."

205 "Where shared parenting and joint custody are not indicated because of the parents' demonstrated inability to work cooperatively, without conflict, the court must determine who should have primary care and decision-making responsibility ..."

206 "One factor is the child's need for stability under section 18(2)(b)(i), which is also implied in the need to consider the history of care for the child under section 18(2)(b)(ii). The cases recognize stability and the *status quo*, to the extent it provides a positive environment, as an important consideration: *Mcinulty v. Dacyshyn*, 2013 ABQB 538, [2013] A.W.L.D. 5030 (Alta. Q.B.), para 13; S.(V.) v. S.(G.), 2011 ABQB 818, [2012] A.W.L.D. 3828 (Alta Q.B.), paras 17 to 20."

207 "Having regard to the existing arrangement, particularly when it has been in place for some time, is not to defer to a presumption. Rather, "the *status quo* is a factor to be considered when determining the best interests of the child": Ackerman v. Ackerman, 2014 SKCA 86, [2014] 10 W.W.R. 429 (Sask. C.A.), para. 32"

[84] Poelman J.'s decision was subsequently appealed. In *Rensonnet v. Uttl*, 2016 ABCA 196, the Alberta Court of Appeal upheld Poelman J.'s reasoning at trial and dismissed the father's appeal. At paragraph 25, the Court of Appeal stated:

> "Rather the trial judge correctly understood that the maximum contact principle cannot be followed on some occasions, including in many high conflict situations where the parents' ongoing inabilities to put their children's interests ahead of their own have demonstrated that it is impossible to impose any scheduling scheme which requires regular, even daily, cooperation and coordination ..."

[85] The following conclusions regarding the care of WK may be drawn from the evidence.

[86] The Child is only three years of age. In my opinion, there is an important need for stability in WK's life given his age and stage of development (*FLA* section 18(2)(b)(i)).

[87] The Mother has been the primary caregiver of the Child since birth, and the Child has been in the same daycare since August 2014. A transfer of day-to-day care to the Father would, in my opinion, be difficult for the Child (*FLA* section 18(2)(b)(ii)).

[88] The Father's plan for shared parenting is not feasible. The Child cannot be in two daycares. The Father is also at work for significant parts of his parenting time. It would be the daycare near his Fiancée's college or his Fiancée that would be looking after WK during a significant part of JK's parenting time (*FLA* section 18(2)(b)(v)).

[89] The Father's insistence that a daycare have flexible hours is a claim without merit, as is his claim that WK is the oldest toddler in the daycare and therefore presumably suffers from a lack of stimulation. JK has no idea whatsoever what programs or outings the children at the daycare are involved with.

[90] The Father's complaint that the daycare provides less-than-desirable care because the Child came home on four or five occasions with faeces-stained underwear and his pants on backwards is picayune. This Child is a toddler and in the process of being toilet trained.

[91] I accept as fact that the Mother was too inflexible at times in accommodating the Father's requests for some additional parenting time. Father's counsel referred to the Mother as a 'gatekeeper'. I accept as fact that the Mother on occasions threatened to cancel the Father's parenting time until he paid child support arrears. I accept as fact that the Mother allowed WK to stay at his Father's home during JK's scheduled parenting time even though the Child was sick at the time.

[92] I accept as fact that the Father missed some scheduled visits because he went to Ontario to visit family, but was deceitful in his explanation to the Mother. I accept as fact that the Father did not give the Mother sufficient notice when he requested additional Christmas parenting time on December 8th, 2016. I accept as fact RR and the Father thought the daycare was unreasonable in insisting that WK be picked-up and dropped-off at fixed times. I accept as fact that RR was of the belief that she could keep WK past the Father's scheduled parenting time as WK was asleep in bed at their home due to not feeling well.

[93] It serves little purpose, however, to go through all of the petty complaints that each parent has about the other. These complaints, however, do emphasize the difficulty in ordering a shared parenting arrangement.

[94] The Father believes that he can get along with the Mother in a shared parenting arrangement. Based on the evidence that I heard, my observations of the parents in Court, as

well as my observation of the Fiancée, I do not agree. Whatever difficulties the parents have now would, in my opinion, be significantly magnified.

[95] There is clearly poor communication between the Mother and Father. Their ability to co-operate on issues affecting the Child on an ongoing basis is doubtful (*FLA* section 18(2)(b)(viii)(B) and (2)(b)(x)).

[96] I accept that WK has both a strong and loving relationship with each parent (*FLA* section 18(2)(b)(vii)(B)).

[97] I accept that both parents have the ability and willingness to care for and meet the needs of WK (*FLA* section 18(2)(b)(viii)(A)).

[98] While I acknowledge that WK appears to like RR, I am nevertheless cognizant of the three relationships that the Father has had since terminating his relationship with the Mother. JK and RR have only cohabited together for 14 months. If his relationship with RR should end, this could have a deleterious effect on the Child (*FLA* section 18(2)(b)(vii)(A)).

DECISION

[99] It is most ironic that the Father could have avoided these Court proceedings had he just provided the Mother with financial disclosure when requested.

[100] This incongruity between what the Father sought and what ought to have been the expected result continued notwithstanding Cornfield J.'s order of June 10th, 2016, whereby the Father's parenting time was significantly increased. JK chose to pursue his action for shared parenting despite his limited involvement with WK since the Child's birth.

[101] JK's response, in filing for shared parenting some five weeks after the Mother filed an application for child support and financial disclosure was, in my opinion, an attempt by him to reduce or get out of paying ongoing child support.

[102] As with the vast majority of parenting disputes, neither JK nor JF can hold themselves blameless.

[103] Nevertheless, the facts of this case lead me to conclude that shared parenting would not be in the best interests of WK.

[104] As pointed out by Poelman J. in *Rensonnet v. Uttl*, *supra*, the *status quo* is a factor to be considered when determining the best interests of a child. The Mother has always been the primary caregiver of WK and I did not hear any evidence which would remotely suggest that she is not a caring and attentive parent to WK's needs. The ability of the Mother and Father to communicate and co-operate on issues affecting WK is poor.

[105] A new parenting Order will issue effective today, which will replace all prior parenting Orders between the Mother and Father. This Order will have the following terms.

[106] Both the Mother and Father will be recognized as guardians. The Mother is a guardian by virtue of sections 20(2) and 3(f) of the *FLA*, and the Father is a guardian by virtue of sections 20(2) and (3)(j) of the *FLA*.

[107] The definition of "parenting time" will be included in the Order.

[108] The Child WK will ordinarily reside with the Mother and she will have parenting time and responsibility for the Child at all times except for when the Father has his parenting time.

[109] The Father will have parenting time as follows:

(a) every second weekend from Friday pick-up at the Child's daycare, and with drop-off at the daycare on Monday morning. If the Friday or Monday is a statutory holiday, the Father's parenting time shall commence on the Thursday with pick-up at daycare, or end on the Tuesday with drop-off at daycare, as the case may be. This parenting time shall commence on Friday, February 24th, 2017;

(b) when WK commences his formal education in kindergarten, the Father's parenting time shall commence every second weekend with the pick-up of the Child at school at the end of class on Friday, and end at 6:30 p.m. on the Sunday. If the Friday or Monday are statutory holidays or these are professional days, the Father's parenting time shall commence on the Thursday at school after class, or end at 6:30 p.m. on the Monday, as the case may be;

(c) pick-up at the Child's daycare on Tuesday every week, overnight, and with drop-off at the daycare on Wednesday morning;

(d) at all times, the Father and RR shall comply with the daycare rules of operation, especially with respect to pick-up and drop-off times;

(e) when WK commences his formal education in kindergarten, the Tuesday to Wednesday weekday overnights shall terminate; and

(f) such other parenting time to the Father as agreed to in writing, by text or by e-mail with the Mother.

[110] The following special occasions shall override the regular parenting time schedule mentioned in the preceding paragraph:

(a) if Father's Day does not occur during the Father's scheduled parenting time, then JK shall have the Child in his care from 9:00 a.m. Sunday to 6:30 p.m.;

(b) if Mother's Day does not occur during the Mother's scheduled parenting time, then JF shall have the Child in her care from 9:00 a.m. Sunday onwards;

(c) if the Easter holiday does not occur during the Father's scheduled parenting time, then JK shall have the Child in his care from 9:00 a.m. Good Friday until 6:30 p.m. Easter Sunday;

(d) if American Thanksgiving Thursday does not occur during the Father's scheduled parenting time, then JK shall have the Child in his care from after school that Thursday until 8:00 p.m. that evening;

(e) if Canadian Thanksgiving Monday does not occur during the Mother's scheduled parenting time, then JF shall have the Child in her care from 9:00 a.m. that Monday onwards;

(f) commencing Christmas 2017, and in every odd-numbered year thereafter, the Father shall have the Child in his care from 9:00 a.m. December 23rd until 9:00 a.m. December 31st. The Mother shall have the Child in her care for this time period in even-numbered years;

(g) commencing summer 2017, the Father shall have the Child in his care for one week in July and for one week in August, excluding the last week in August. When the Child is six years of age, the Father may have the Child in his care for two consecutive weeks during the summer months. The Father shall communicate by e-mail, text or writing his preferred dates to the Mother no later than May 31st of every year. In default of any agreement, the Father will have the first week in July commencing on a Saturday and the first week in August commencing on a Saturday;

(h) Halloween and the Child's birthday will be celebrated with the parent that has the Child on these days;

(i) the Father may take the Child to visit family in Ontario for any of his parenting time that is over the Christmas break or during the summer months, but shall provide the Mother with an itinerary and contact information;

(j) the Father is prohibited from taking the Child outside of Canada on vacation until the Child is six years of age. Should the Father request of the Mother permission to take the Child on vacation outside of Canada, the Mother shall not unreasonably withhold her consent to such travel plans, and shall provide the necessary consent and Child's passport to facilitate such travel. The passport shall be returned to the Mother at the end of the vacation. The Father shall provide the Mother with an itinerary and contact information; and

(k) the Mother shall be allowed to travel with the Child without the written consent of the Father inside Alberta, inside Canada, and outside Canada. The Mother shall provide the Father with an itinerary and contact information. The Mother shall communicate by e-mail, text or writing her travel dates to the Father with at least thirty (30) days' notice. The Mother's travel dates shall not conflict with the Father's parenting time specified in this Order, unless the Mother and Father otherwise agree.

[111] The Mother shall not permanently remove the Child from the City of Calgary without a prior Court Order or the prior written consent of the Father.

[112] The Father is prohibited from permanently removing the Child from the City of Calgary.

[113] The Courts of the Province of Alberta shall maintain exclusive jurisdiction on all parenting issues between the Mother and Father.

[114] Where not otherwise specified, the pick-up and drop-off of the Child at the beginning and end of the Father's parenting time shall occur at the Mother's home. In all cases, the Father shall

be responsible for pick-up and drop-off unless the parties otherwise agree by e-mail, text or writing.

[115] The Mother and Father shall not communicate through the Child, and shall do so only by or through writing, e-mail, or by text.

[116] The Mother and Father shall always keep one another informed of their current: home telephone number (if available), cell phone number, home address, and e-mail address.

[117] The Child's medications and any prescribed treatment protocol shall accompany the Child at all times. Each parent shall always keep the other informed of any medical issues or health concerns affecting the Child.

[118] The Mother shall forthwith provide the Father with the Child's Alberta Health Care number. Both the Mother and Father shall forthwith register the Child on any benefit plan coverage available through their employment, if not already done, and shall forthwith provide the other with a copy of such benefit plan coverage.

[119] The Mother shall always provide the Father with the name of the Child's doctor, dentist, daycare and school.

[120] The Mother shall have sole major decision-making authority with respect to choice and location of daycare, school, dental treatment, and major medical decisions, including treatment of the Child. The Child shall be allowed to attend a Catholic church with the Father and his family, but the Child will not be baptized without the Mother's prior written permission.

[121] While the Mother will have all of the rights and responsibilities of guardianship, the Father shall be entitled to the following:

(a) to be given at least forty-eight (48) hours' notice, whenever possible, of all extra-curricular activities, and the opportunity to participate or observe, including, but not limited to, school activities (including parent-teacher meetings), athletic activities, and such other activities in which parental participation or observation would be appropriate;

(b) to obtain at his cost, and subject to school rules to receive directly from the school, copies of the Child's report cards and any other records;

(c) the Father will have the right to take the Child for emergency medical treatment and consent to same during his parenting time, but shall immediately inform the Mother by phone; and

(d) unless otherwise provided by law, the right to receive copies of the Child's medical, health or other treatment records directly from the physician or health care provider who provided such treatment or health care. However, the Father must follow the rules and must pay the fees (if any) set by the physician or health care provider for providing such copies of information.

[122] The Mother shall be entitled to, without the consent of the Father or any other person, apply for a passport or any other necessary travel documentation.

[123] Neither party shall be permitted to file any *ex parte* parenting applications. All such applications shall be on notice to the other parent.

[124] As to the matter of child support, a new child support Order will issue effective today, which will replace all prior child support Orders between the Mother and Father. This Order will have the following terms.

[125] For 2016, the Father's income is set at $50,691 and the Mother's income is set at $59,299.

[126] The Father shall pay to the Mother the sum of $412 a month as section 3 base child support. In addition to the base child support, the Father shall pay to the Mother the sum of $241 a month towards section 7 daycare costs, for a total of $653 per month.

[127] The Father shall also be responsible for 46% of the Child's medical and dental expenses, net of any benefit plan rebates that the Mother and Father have through their respective employment.

[128] The Mother is prohibited from incurring any additional section 7 special or extraordinary expenses without the Father's prior written consent, such consent not to be unreasonably withheld.

[129] In all cases, the Mother shall provide the Father with the appropriate receipts as proof of payment.

[130] The above payments shall commence January 1st, 2017, and shall be paid on the 15th day of every month commencing January 15th, 2017, and on the 15th day of every month thereafter until subsequent Court Order. For 2017, the Father is entitled to a credit of any monies already paid to the Mother in January and February of this year, except for payment on any arrears which accrued prior to 2017.

[131] Arrears of child support up to December 31st, 2016, are fixed at $1,455 to be repaid at the rate of $100 per month. As February 2017's payment should have already been made, the balance of the arrears shall be paid at the rate of $100 per month commencing March 15th, 2017, and on the 15th day of every month thereafter until paid in full.

[132] Effective July 1st of every year, the Mother and Father shall exchange with each other their tax returns and Notices of Assessment for the years 2016 and onwards, as well as proof of the prior month's income to date.

[133] Commencing July 1st, 2018, and every July 1st thereafter, the section 3 base child support and the section 7 special or extraordinary expenses shall be adjusted based upon the Mother and Father's assessed incomes from the prior taxation year.

[134] The required Maintenance Enforcement Program clause, but excluding the recalculation clause, will be added to this Order.

[135] As to the issue of costs, I am cognizant of the decision of the Alberta Court of Appeal in *Metz v. Weisgerber*, 2004 ABCA 151. At paragraph 47 of this decision, Côté J. stated:

> "There is no presumption against costs awards in custody cases. In custody cases, R. 601(1) and its enumerated factors, including results, should be fully weighed, as should any other legally relevant factors present in the particular case. That means that costs usually follow the event. The topic of costs is discretionary, as it is in civil cases generally."

[136] The Mother incurred a significant legal expense to collect a relatively small amount of arrears in child support. This was as a direct result of the Father's refusal to make timely financial disclosure and his subsequent application for shared parenting of WK.

[137] Section 93 of the *FLA* and section 10(1) of the *Provincial Court Procedures (Family Law) Regulation*, Alta. Reg. 149/2005, as well as the Alberta *Rules of Court* grant jurisdiction to this Court to award costs in family matters.

[138] I have decided to exercise my discretion and award costs to the Mother based on Column 2 of Schedule C to the *Rules of Court*.

[139] Counsel may see me in open Court if they cannot agree on a Bill of Costs.

[140] The Father shall have until April 30th, 2017, to pay the costs. Thereafter, these costs may be collected through the Maintenance Enforcement Program.

[141] The Father is prohibited from filing any variation of parenting applications in this Court until the costs are paid in full. This prohibition does not apply to any enforcement applications he may need to file if the Mother does not comply with the terms of my Court Order.

[142] Pursuant to section 100 of the *FLA*, a publication ban is issued in order to protect the well-being of WK.

Heard on the 25th day of January, 2017, the 26th day of January, 2017, the 30th day of January, 2017, and the 17th day of February, 2017.

Dated at the City of Calgary, Alberta this 17th day of February, 2017.

S.E. Lipton
A Judge of the Provincial Court of Alberta

Appearances:

D. Castle, Ms.
for the Applicant Mother

L. Stephen, Ms.
for the Respondent Father