

**File No: F-1854621
Registry: Prince George**

In the Provincial Court of British Columbia

**IN THE MATTER OF
THE FAMILY LAW ACT, S.B.C. 2011 c. 25**

T.H.

AND

K. H.

**REASONS FOR JUDGMENT
OF
THE HONOURABLE JUDGE S. MENGERING**

COPY

Appearing on his own behalf: T.H.

Counsel for K.H.: D. Byl

Place of Hearing: Prince George, B.C.

Date of Judgment: February 25, 2021

[1] THE COURT: This matter came on before me for hearing with respect to parenting time, parental responsibilities, child support retroactive to September 1, 2018 and ongoing, a conduct order, and spousal support.

[2] Mr. H seeks an order for equal parenting time with his two Children. He says Ms. H has wrongly deprived him of parenting time and the two Children want more time with him (Document 1, Application filed October 10, 2018). He says he should not pay child support. By consent, Mr. H's application for spousal support filed July 31, 2020, was added to the list of issues to be resolved at this hearing.

[3] Ms. H has filed a reply with counterclaim seeking sole parental responsibilities, child support and special expenses retroactive to September 9, 2018; an order that Mr. H have parenting time alternating weekends and Wednesday evenings; and a conduct order requiring contact by text only, and then only in relation to the Children.

[4] Once Ms. H retained counsel for the September 10, 2020, continuation, Mr. Byl filed an application on her behalf seeking, specifically, child support of \$788 per month and assessment of child support arrears from September 2018 to present (Document 40, filed July 30, 2020). With the consent of Mr. H, this application was formally added to the hearing, but it did not affect the trial proceeding, given that we were already dealing with her claim for child support set out in her counterclaim.

[5] Mr. H had also, between hearing dates, filed an application for spousal support (Document 35, filed July 30, 2020), retroactive to the date of separation. By consent, I heard evidence on that application as well.

[6] The trial took place on March 11 and 12 and September 10 of 2020, and January 5 and 21, 2021.

BACKGROUND

[7] The parties began dating in 2009, married in August 2015, separated in June 2018, and continued to live in separate areas of the family home until September 2018. Ms. H continues to live in the former family residence with her new partner, T.E. , whose Children visit on weekends.

[8] The parties have two biological Children together: T.H, born January xx, 2012; and H.H, born December xx, 2014 (the “Children”).

[9] The parties agree that they are both guardians of the Children, as they are the biological parents who were living together at the time the Children were born.

[10] The Children live primarily with Ms. H, and Mr. H has parenting time every Tuesday and Thursday night after school until 6:45 p.m., and alternating weekends from Fridays after school until Sunday night. Mr. H also has 30 minutes of FaceTime or telephone contact with each child every day that he does not have parenting time.

[11] Mr. H has been contributing \$323.05 towards monthly daycare costs of \$970 since a family case conference on January 29, 2019 (the “FCC”). He has not paid any child support to date.

[12] On October 31, 2019, following a contested hearing in Criminal Court, Judge Keyes found that Ms. H had a reasonable fear, based on incidents that

occurred between June and September 2018, that Mr. H would cause harm to her or her property. She ordered that Mr. H enter into a s. 810 recognizance after allegation for one year. The document has been entered as Exhibit 1 (the “Peace Bond”), and contains only three conditions: that he

- i. keep the peace and be of good behaviour;
- ii. have no contact with K.H. except in accordance with a family court order and that he file a copy of the Peace Bond in any family proceeding; and
- iii. that he not attend within 25 metres of the residence, school, or workplace of Ms. H, except to facilitate parenting time or for employment purposes.

[13] The Peace Bond expired without incident on October 31, 2020.

[14] On January 29, 2019, Judge Malfair made a final order by consent at the FCC appointing both K.H. and T.H. as guardians of the Children under s. 39(1) of the *FLA* and requiring each to advise the other of any matters of a significant nature affecting the Children.

[15] On an interim basis and by consent at the same time (the “Interim Order”), Judge Malfair ordered that:

- i. both guardians have parental responsibility to obtain information about the Children from the school, daycare, preschool, or medical professionals;
- ii. Mr. H should have parenting time every Tuesday and Thursday night from after school until 6:45 p.m., and on alternating weekends from Fridays after school until Sunday night, with Mr. H picking up and dropping off the Children;

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- iii. communication by text message only; and
 - iv. Mr. H shall pay \$323.05 per month for his one-third share of special expenses for daycare and preschool fees.

[16] Mr. H testified that he agreed to the parenting time schedule under duress and threat of not seeing the Children at all.

[17] On September 30, 2019, Judge Thomas amended the Interim Order to allow Mr. H to have 30 minutes of FaceTime with each child on each day he does not have parenting time.

AFFIDAVIT EVIDENCE

[18] Mr. H relies on the affidavit of S.C., a friend of many years, who attests to Mr. H's good character as a friend and his love for his Children, as well as the affidavits of M.L., E.B., and former neighbour R.F. (attached to Document 34, his affidavit filed July 30, 2020).

[19] Ms. H relies on her March 11, 2020, affidavit appending a letter from their nanny, K.L., who has worked for the family since about 2015. She wrote of an incident in which T.H. told her that his dad was mad at him and yelling and threw a butter knife at him, hitting the wall, causing the dent Ms. L observed. Ms. L also gave oral evidence by telephone about the same event.

PARENTING TIME

[20] Mr. H wants parenting time with the Children on alternating weeks with the exchange on Mondays.

[21] Ms. H proposes that the Children reside primarily with her and that Mr. H have parenting time on alternating weekends from Friday after school until Sunday evening, FaceTime contact one evening per week, and that they share major holidays.

Mr.

[22] Mr. H says that he was removed from the house by the police, thrown into a police cell, and taken away from his kids when Ms. H made a series of unfounded allegations against him that resulted in the 810 Peace Bond. He says that in the course of the relationship, Ms. H never expressed any concern for his parenting ability.

[23] Mr. H testified that he would like equal access to his Children restored in the form of alternating weeks. He says that but for the Children needing both parents, he would seek all of the parenting time and that the Children want to spend more time with him.

[24] He wants the right of first refusal to have parenting time with the Children if Mom is unable to take care of them. Indeed, in healthy relationships this is something parents often agree to and are anxious to rely upon.

[25] He was clear that he wants the "exact same amount of time" with the Children that they spend with their mother, because that is what is fair. He testified that he is open to alternating weeks, months, or years; whatever she has, he wants. That statement indicates to me that he is considering equality between the parents rather than the best interests of the Children.

[26] He said that Ms. H's lies resulted in him having no contact with the Children for 18 months - since September 2018 when police became involved. In cross-examination, however, he agreed that Ms. H's father brought the Children to see him on September 13, two days after he was released from custody; that he FaceTimed with the kids on September 23; her mom brought the Children for a visit on October 19th; her brother on October 27 and November 24th; and he saw them again on November 24, 2019, before their first appearance in court in December.

[27] He testified that the MCFD social worker told him that she could not prove any of Ms. H's allegations against him.

[28] He testified that Judge Keyes was reluctant to impose the Peace Bond, but stretched the facts to justify imposing it, telling him that while none of Ms. H's claims could be proven, she had to err on the side of caution and therefore imposed the weakest Peace Bond she could craft.

[29] He testified that he was replaced by Ms. H's new partner, T.E, and his three Children who moved in as soon as he was expelled from the family home, and that the Children are having a hard time getting used to sharing bedrooms, getting along with their step siblings. T.J. has told him that he gets woken up at night by his mom and Mr. E arguing or by Mr. E's loud music. I understand Mr. E moved in, in December 2019, some 15 months after Mr. H moved out.

[30] He testified that he has worked for various companies, including XYZ, doing security installation of alarms and he anticipates continuing in that field. He works

days and generally has fixed hours, although he sometimes has to work late to finish a job.

Ms. Hudson

[31] Ms. H works at XYZ. She has been working from home since March 2019 when the COVID-19 pandemic arose, and relies on a nanny or her mother to transport the Children to and from school.

[32] In considering parenting arrangements, I am governed by s. 37(2) of the *Family Law Act*. I will say I accept that both parents love the Children very much and that the Children want to spend time with both of their parents.

(a) The Children's health and emotional well-being

[33] Mr. H testified that the Children are generally healthy and have no special needs, although it is hard for him to be sure because he only has parenting time for four hours or less per week and every second weekend. That is not consistent with either the terms of the Interim Order, which provides for four and a quarter hours twice per week (after school at 2:30 until 6:45 p.m.), along with alternating weekends. He is responsible, regardless of his work schedule, if he is not exercising all of the weekday parenting time available to him under the terms of the Interim Order.

[34] Ms. H agrees that the Children are healthy and well adjusted.

(b) The Children's Views

[35] The Children are nine and six. Accordingly, their views cannot govern parenting arrangements.

[36] Mr. H testified that the Children have told him they want to spend more time with him and are often sad at the end of their parenting time with him. I accept both of those statements are true.

[37] Mr. H says that “only the wife's views” have been considered to date; not that of the Children. He is angry that his request for a s. 211 report canvassing the views of the Children was denied.

[38] Ms. H says that the Children often ask to spend more time with their dad.

(c) The Nature and Strength of the Relationship Between the Children and Significant Persons in their Lives.

[39] The Children are attached to both parents and both parents love the Children very much.

[40] Mr. H testified that he has always been very involved in parenting.

[41] Mr. H testified that he is “alone in this world;” , his parents have passed, and Ms. H has caused her extended family to spurn him. This is again a needless focus on himself at a time when the court was explicitly asking him about other significant persons in the lives of his Children. Having heard evidence from the maternal grandmother, Mrs. S., I find that Mr. H has alienated himself from his former in-laws through his belligerent and vindictive behaviour and attitude.

[42] Ms. H testified that the Children see their maternal grandparents, who live nearby, often. They are also very bonded with their nanny of five years, K.L., who they see as a grandmother as she sees them Monday through

Friday, and comes to birthday and holiday celebrations.

[43] I am satisfied that the Children should enjoy a robust relationship with both parents, even if that is not defined quantitatively as an even 50-50 split.

(d) The History of the Children's Care

[44] Mr. H testified that he was a stay-at-home dad at some point, perhaps when the kids were two and five. He took care of the Children full-time, including waking them up, preparing meals, entertaining them, giving them baths, and putting them to bed, while Ms. H worked full-time.

[45] Once he returned to work, he continued to split parental responsibilities evenly with Ms. H, but they also had a nanny, Ms. L, who helped out, 8:00 to 5:00, weekdays.

[46] He has testified that he is the only one that recreates with the Children and that Ms. H has only taken them out skating a couple of times. He does not dispute Ms. H's parenting ability or her love for the Children.

[47] The Interim Order grants him parenting time from 2:30, when school gets out, until 6:45 p.m. each Tuesday and Thursday. Because he works until 4:30 or 5:00 each day, the nanny, Ms. L, picks the Children up from school and takes them to Ms. H's, from where he picks them up after work. Accordingly, I do not understand how he can also argue that daycare or nanny services is unnecessary, given that he requires childcare from 2:30 until the end of his workday. As I understand it, Ms. L will not transport the Children to or care for the Children at Mr. H's residence, as their relationship has broken down.

[48] The amended Interim Order gave Mr. H 30 minutes of FaceTime with each child every day that he does not have parenting time. He has been trying to exercise that, but finds that the Children sometimes want to play with their friends or that Ms. H had planned to put on a video, for example. Ms. H says that one hour of contact each night significantly interferes with the Children's routine and her parenting time.

[49] She said that when the kids come home from weekend parenting time with their father, T.H Junior speaks in a baby voice and both Children are hyper and unable to slow down. She disagrees with Mr. H allowing the Children to play certain video games, including Call of Duty.

[50] Ms. H is on the Parent Advisory Committee for the Children's school and is in close contact with both teachers. When school shut down in March 2020 due to COVID-19, both Ms. H and Ms. L helped the Children with remote learning.

[51] I am satisfied that both parents are equally able to take care of the Children's daily needs.

(e) The Children's Need for Stability Given their Age and Stage of Development.

[52] Mr. H testified that he has lived at the same address on XYZ Court since September 2018, while Ms. H continues to live in the former matrimonial home on XYZ Avenue. They are 14 blocks apart. It does not appear that family assets, including the home, have been divided or that Mr. H has applied

for the sale of the home.

[53] He pointed out that had he kept the kids when they separated, it would be Ms. H who is now in the position of seeking expanded parenting time, but that he chose not to go that route because it would have been too hard on the kids. He never imagined that there would be a complete disregard for his role as a father.

[54] When I asked whether he thought Ms. H was able to provide stability for the Children, Mr. H initially testified that he thought so and that he had never had any concerns during the course of the marriage. He then qualified his response and said that from the outside she looks like a good mother, but that she has actually prioritized her needs over those of the Children and that she is a “violent, adulterous person.” He then returned to the events of September 2018 that led, in part, to the Peace Bond and testified that her complaint to the police on that day was a “pre-emptive strike to get [him] out of the house”, but that she has not been able to prove any of her allegations in court ever. This is, of course, not consistent with the imposition of the Peace Bond after the taking of evidence.

[55] Ms. H says that she, along with her mother and nanny, provide a high level of support and stability for the Children. While this appears to be the case, there is no suggestion that the children have a particularly high need for stability, or that the support system they enjoy at their mother's home should trump time with the father.

(f) Ability of Each Guardian to Exercise his or her Responsibilities.

[56] Mr. H testified that Ms. H has prioritized her new relationship over

the Children; that Mr. E's presence in the home is disruptive to the Children; that Mr. E's kids are mean to the H Children; and that she has been speaking badly of him, whereas he has told the kids that he and their mom are "working on things" and that he just cannot be there right now.

[57] He also testified, however, that Ms. H is a good mother and that he has no concerns about her ability to meet the needs of the Children or exercise parental responsibilities. He then testified that she obviously is not making the kids brush their teeth, because his Children have cavities and T.H. Junior had to have some teeth pulled. Mr. H has not discussed his concerns with the dentist, however, and does not know whether the teeth were pulled because they were rotten or to make room for incoming adult teeth, for example. He does not know whether the kids have cavities because of poor diet or dental hygiene, or if it is genetic.

[58] He states that he is able and willing to exercise parental responsibilities, and wants to be consulted about significant matters. He notes that Ms. H never told him their son needed dental surgery to remove some teeth, and he only found out afterward from his son. I did not hear from her on this point and accept his evidence that she did not inform him of this significant procedure.

[59] He testified that their parenting was never an issue until they separated, and that they were both loving parents, equally involved in the lives of the Children, even at the end of the marriage.

[60] Since separation, Mr. H complained that he has not had the opportunity to be part of the Children's schooling because he is not allowed to go where Ms. H is. While that is not true at all now, now that the Peace Bond has

expired, he was never precluded by the Peace Bond from attending the school when Ms. H was there. Further, schools routinely accommodate separated parents by having separate parent-teacher interviews with each guardian. Mr. H was not able to explain why that has not happened for him and seemed entrenched in his belief that Ms. H's spurious allegations leading to the Peace Bond have adversely impacted his ability to be involved with the Children's school.

[61] Since March 2020, much communication with schools has been in online format to address COVID concerns. He testified that he is very technologically capable, given the nature of his work, yet complained that he has limited access to the school app.

[62] The school has set him up with their school app in relation to T.H. Junior, and with that, he can see progress reports, dates of teacher interviews, etc. I am unclear then why he does not know the teacher's name. Further, it appears that he must then have access to parent-teacher interview dates, so I am unclear what he means when he testified that he has not been "invited" to parent-teacher interviews. The dates are on the app, whether he chooses to attend or not.

[63] He has not provided the school with a copy of the Interim Order setting out that he is a guardian, but Ms. H did so and asked the school to ensure that duplicate copies of report cards are sent to each parent and that both are notified of important dates and events.

[64] Mr. H has been passive in his involvement with the school and doctors, blaming Ms. H, and an apparent misunderstanding of the terms of his Peace Bond.

[65] Mr. H testified in cross-examination that he is unable to watch the Children on a workday unless he is given more than an hour's notice in the morning, as his work is inflexible. He testified that if he had notice, by which I infer that he needs to know by 7:30 a.m., he looks forward to being able to co-parent in future. He added that, "It's hard to be asked for help only when she needs it," referencing her February 3, 2020, request for help. I am not sure I understand that, given that he also testified that he wants to be the go-to caregiver if Ms. H is unable to care for the Children and that he would do "anything" to have more parenting time. It appears that he wants parenting time at his convenience, not when one of the Children unexpectedly gets sick on a school day.

[66] Ms. H testified that she makes and attends all appointments with the Children and did so for the majority of the marriage. She testified that Mr. H does a good job providing for the Children during his parenting time, even managing to tame H's curly hair.

[67] She testified that she cannot rely on Mr. H to care for the Children on short notice, because he is unable or unwilling to take time off work. She notes that Mr. H does not now use all of his allotted parenting time, or make his own arrangements for after-school care on Tuesdays and Thursdays.

Finding re: Parental Responsibilities

[68] There is nothing preventing either party from being able to exercise parental responsibilities, apart from Mr. H's apparent desire to martyr himself. Here, I refer to his reliance on Ms. H to notify the school that they are both guardians; that he has not addressed any of his concerns with the dentist himself; and that he

relies on non-existent terms of a former Peace Bond to explain his inertia.

[69] Mr. H would prefer to sit back and do nothing, then complain about not being involved with the Children, rather than initiate such involvement.

(g) The Impact of Family Violence, if any

Evidence of Mr. H

[70] Mr. H testified that he is concerned for the safety of the Children in the home Ms. H shares with T.E. He testified that Mr. E's Children mistreat the H Children, citing an example of T.H. Junior being pushed down a snowbank and landing on his head. He said that the Children are often awoken or kept up late by Mr. E's loud music or by Mr. E and Ms. H arguing. Ms. H was not cross-examined on any of those assertions and I give them no weight.

[71] Mr. H denies any family violence between himself and Ms. H. He notes that the Peace Bond does not contain a term that he take counselling; and it is silent with respect to contact with his Children. He testified that all of the issues are between himself and Ms. H, and the Children have never been in any danger. He denies any conduct that may result in psychological or emotional harm.

[72] The transcript of the 810 proceeding, however, indicates that although the Crown sought a term that Mr. H attend counselling for anger management, Mr. H said he thought it would be of no benefit. Noting that the purpose of the s. 810 Peace Bond was not rehabilitative but rather simply to keep the parties apart and control their interaction, Judge Keyes declined to impose a counselling

condition.

[73] I do not find that Judge Keyes believed that counselling was unnecessary. Rather, it was not necessary to achieve the essential purpose of the Peace Bond, which was to minimize Mr. H's contact with Ms. H.

[74] He points to a November 26, 2018, letter from MCFD indicating that there are no child protection concerns (Exhibit 3), but mischaracterized the content as indicating that none of Ms. H's allegations could be proven. The letter does recognize, as does Mr. H, that the Children have witnessed verbal conflict between the parties and concludes that there are no concerns with either parent seeing the Children.

[75] He repeated his evidence from the Peace Bond hearing that if anyone was violent, it was her; and that if anyone was accosted or assaulted, it was him. I reject that outright.

[76] I have listened to and read Judge Keyes's decision from October 31, 2019, and note some of her comments as follows:

- 1) Judge Keyes was unable to determine, on a balance of probabilities, which opposing version of events to accept with respect to incidents in 2013 and 2015, and found that either version could be true.
- 2) She accepted Ms. H's version of events with respect to incidents in August and September 2018, leading up to Ms. H's statement to police, over that provided by Mr. H.
- 3) By August 2018, the parties were quarrelling constantly and several

incidents arose in August and September 2018 that gave rise to Ms. H's reasonable fear that Mr. H would cause harm to her. Those incidents include:

- a) The Key Incident in which Ms. H asked Mr. H to return her Jeep key, but found it, broken, in a vice in the garage.

Mr. H told Judge Keyes that a friend of his drove over it accidentally and bent it, then he accidentally broke it when he was trying to straighten it out. Judge Keyes found that either he put it in the vice and broke it in anger, or that his version of events was true but that he withheld that information from Ms. H.

- b) While Ms. H was camping with friends in August 2018, Mr. Hudson hacked her Facebook account and, posing as her, posted a number of extremely denigrating and nasty comments about Ms. H. He also texted her to "feel free to have a hunting accident" and "if there is an emergency, call someone else". At the hearing in front of both Judge Keyes and myself, Mr. H said that he regrets his remarks and that he was simply expressing concern for her safety. Needless to say, his actions are inconsistent with that explanation.

- c) Thereafter, Mr. H spoke to Ms. H in the laundry room of the home and asked her for sex. When she declined, he said, "What do I have to do? Hold you down and fuck you?" He asked her if he would have to "roofie" her in order to have sex and told her

that he "hadn't had a piece of [her] ass," that "[her] ass was his" and that he wanted it. At the time, the couple had not had a sexual relationship for two years. In her oral reasons, Judge Keyes found that Mr. H was clearly whitewashing or sanitizing what he actually said, and she accepted Ms. H's version of events.

d) A few days later, Ms. H came out of her en-suite shower and found Mr. H lying naked on their bed. At the hearing, Mr. H did not deny doing so. That is when Ms. H called the police.

4) I note that in relation to the Bedroom Incident, Mr. H testified in cross-examination in this proceeding that he was just in his former bedroom getting clean underpants after having had a shower. He denied any sexual intent, despite having been naked, and suggested Ms. H over-reacted and should have known better, given that his underpants were still being stored in their former bedroom. That is inconsistent with her uncontroverted evidence that he had removed all of his personal effects to a basement bedroom he secured with a padlock.

5) In this proceeding, he also testified that Judge Keyes found that nothing was provable, everything was hearsay; and that he does not know how Judge Keyes made the findings she did. As I have indicated, Judge Keyes accepted Ms. H's version of events from August and September 2018 over that of Mr. H.

[77] Mr. H submits that all of the incidents of alleged violence are "a pile of stories fabricated by an unfaithful wife trying to rid herself of her husband." With respect, in a world of no-fault divorce, nobody needs to make up stories to get a divorce.

[78] I heard evidence from D.M. and M.L. and reviewed affidavit evidence of friend S.C. as to Mr. H's commitment to youth and volunteer work, his military experience, and his love for his Children. I accept that Mr. H is not violent outside the family home. The issue, however, is whether he was violent to Ms. H in their relationship and the effect, if any, on the Children.

Evidence of Ms. H

[79] Ms. H testified to a number of incidents of prior violence and poor behaviour exhibited by Mr. H.

The Kitten Incident

[80] She testified that in September 2018, after the kitten clawed one of the Children, Mr. H threw the cat over the fence while the Children watched, and that the kitten never returned. She did not witness it, but the Children reported it to her.

[81] In cross-examination, Mr. H testified that while the kids think he threw it over the fence, it actually climbed the fence and jumped over, while he tried to grab it and save it, and that it was later eaten by a predator. He testified that at the Peace Bond hearing Ms. H acknowledged that she did not see it happen, but the kids

had told her about it. Ms. H vigorously denied ever having said that, and Mr. H then recanted and said, "I think that's what you said", which was surprising, given the vigour and detail with which he asserted her prior evidence.

[82] I therefore listened to the DARS recording from June 4, 2019, and later reviewed the transcript of the 810 hearing, and find that the "kitten" issue was not raised at all.

[83] Mr. H further submits that he could not have thrown the cat that far, given the distance involved. In closing submissions, he provided a photograph of the backyard showing the distance.

[84] I am not satisfied that he did throw the cat over the fence. The Children might think he did.

The First Laundry Room Incident

[85] In December 2015, Ms. H went into the laundry room after an argument with Mr. H and closed the inward-opening door behind her. He banged on the hollow-core door until it came off its hinges and fell on top of her, knocking her to the ground with him on top of the door. He got off and told her to call the police. She went to the hospital the next day at the direction of her boss because of a bleeding injury to her face, but told the doctor that she hit her head on the door of an upper cupboard. She said she was ashamed to admit the truth and felt pressured to lie because Mr. H was there, but the evidence is that she called him to be with her at hospital, and he arrived part way through her treatment, after she had already provided an explanation of her injury to medical staff.

[86] Mr. H denies her version of the events and says that she wrecked the door by angrily slamming it and pulling on it from the inside, and that she has changed her story now because it advances her case for majority parenting time.

[87] I am not satisfied that this incident occurred.

The CD Incident

[88] Ms. H testified that during another argument, she stepped on a DVD-type case belonging to Mr. H, who jumped out of his armchair and knocked her down, causing her head to hit the floor. The basement tenant later asked her if she was okay because he had heard something.

[89] Mr. H says that she threw the CD case at him, knocking him out of his chair, which he characterized as being an office chair; but that he did not respond physically to her.

[90] I do not understand how a CD case could knock a person out of an armchair or an office chair. I accept this occurred as set out by Ms. H.

The Butter Knife Incident

[91] She testified that about four years ago, Mr. H became upset while in the kitchen, and threw a butter knife against the wall that separates the living room and kitchen, making a loud noise and leaving a divot in the wall. Ms. L testified to noticing a new dent in the kitchen wall around that time.

[92] Mr. H denied that it happened and said that Ms. H could not have seen the knife hit the wall, but that is being legalistic because Ms. H was careful in her evidence that she saw him with a butter knife in her hand, then heard

something hit the wall and saw that he was no longer holding the knife.

[93] I accept this incident occurred as Ms. H explained.

The Upstairs Washroom Incident

[94] During an argument in May 2018, Mr. H advanced on Ms. H in the washroom, causing her to back up to the far wall where he pinned her with his forearm across her throat, gesturing as though he were going to hit her in the face, while yelling at her in front of the Children.

[95] Mr. H denies the incident and says that she charged at him, knocking him to the ground, as witnessed by T.H. Junior. This is the subject matter of the report to MCFD.

[96] Judge Keyes accepted the May 2018 incident occurred as set out by Ms. H. I concur.

The Car Key Incident

[97] Ms. H testified that after their in-house separation in about June 2018, she asked him to return the key to her vehicle. He ran outside and threw something over the back fence. She went into the garage and found the vice open with the end of the key broken off in the vice and the fob on the other side of the fence. She yelled at him until he retrieved the fob.

[98] Mr. H, in this proceeding, laughed in court and said nobody could find the fob in the wilderness behind their fence, and that the key broke when he tried to straighten it after running over it.

[99] I do not understand how a car key could be bent by a rubber truck tire, no

matter how rugged the tire.

The Facebook Posts

[100] I have already referenced the August 2018 Facebook post Mr. H made after hacking Ms. H's account which were mean-spirited and suggested she have a hunting accident.

[101] Mr. H testified that he was expressing concern for her safety.

[102] I reject that explanation. He hacked her account and, in essence, told her he wished she were dead.

The Roofie / Second Laundry Incident

[103] In August 2018, after they had been separated for a number of months, Mr. H approached her in the laundry room and asked her for a "farewell fuck." She declined his repeated requests. He then asked her, "Am I going to have to roofie you?"

[104] Mr. H denies the "roofie" comment and says that he was asking for sex as a last effort to reconcile which, when rebuffed, he respected. In his closing submissions, he suggested that it occurred while they were still sharing a bed, which is not a proposition with which she was confronted or to which he testified under affirmation. I do not accept that to be true.

[105] He also said that he doesn't even know what a roofie is, although he is informed as to the dangers of unwanted drugging. I reject this outright. Mr. H DJs at raves, among other events. He is now 44 years old. One of his witnesses, D.M, also a DJ, is well aware of what a roofie is.

[106] I find that anyone who attend raves, knows about raves, or is in the DJ or nightclub scene would know what a roofie is.

[107] Judge Keyes accepted the event occurred as outlined by Ms. H, as do I.

The Bedroom Incident

[108] By September 2018, Mr. H had removed all of his items from the master bedroom and had been sleeping alone in the basement for a number of months when Ms. H got out of the shower to find Mr. H naked, standing over her bed. She told him to leave and, in light of the roofie incident from the previous month, called the police.

[109] Mr. H does not deny the incident occurred, but said that he was there to retrieve some underpants. He did not confront Ms. H with the proposition that he still had clothes in her bedroom and that does not accord with the rest of the evidence.

[110] I find the incident occurred as set out by Ms. H.

The January 2021 Incident

[111] Ms. H testified that during his parenting time on Friday, January 1, 2021, days before the continuation of trial, Mr. H came to her house to retrieve a ski pass for the Children. He banged loudly on the glass of the door and shouted, "Look, this is your mother. She is the one that won't let you go skiing. She won't let you do this," to T.H. Junior who was waiting in the car.

[112] Mr. H did not cross-examine her about the incident or testify about it.

[113] I accept that it happened and am troubled that it occurred within three months of the Peace Bond lapsing, and some two and a half years after separation. I do not understand why he did not send the child into the house to retrieve the ski pass and thereby avoid all contact with Ms. H.

Finding re: Family Violence

[114] Mr. H complied with conditions of release and of the Peace Bond, such that there was peace between the parties from September 2018 through October 31, 2020.

[115] I am troubled by the January 2021 incident. The parties are now two and a half years post-separation; and Mr. H “lost it” over a trivial matter in front of the Children. His anger continues to simmer, unabated, and perhaps even fed by the men's groups with whom he is in contact that have caused him to believe that men are, in his word, "second class citizens". It appears that any perceived shortcoming by Ms. H is likely to result in Mr. H yelling and screaming, which poses a risk of psychological and emotional harm to the Children of which he is completely unaware.

[116] I find that Mr. H is unable or unwilling to communicate appropriately with Ms. H or to put the needs and interests of the Children over his desire to punish her for the breakdown of the marriage and his belief that she cheated on him.

[117] I accept, in particular, that there have been incidents of violence during the course of the relationship, including the May 2018 incident in the upstairs washroom, the June 2018 Car Key incident, the Roofie Incident in August 2018, the August

2018 Facebook Posts, the September 2018 Bedroom Incident, and most recently in January 2021.

(h) Whether the Actions of the Person Responsible for Family Violence Indicates They are Impaired in their Ability to Care for the Children or Meet their Needs.

[118] Mr. H testified that this is not applicable and points to the November 26, 2018, letter from MCFD in support.

[119] I find that Mr. H is unable to control his anger when he interacts with Ms. H and that his priority, if both the Children and Ms. H are present, is to harass Ms. H rather than meet the needs of the Children.

(i) The Appropriateness of any Arrangement that Requires the Guardians to Cooperate on Issues Affecting the Children.

[120] While acknowledging that there have been some difficulties in their communication, Mr. H testified that he looks forward to the day he can have open, honest communication with Ms. H.

[121] In his view, they have communicated well thus far.

[122] With respect, that is not my observation in court. Mr. H was obstructionist in court, wilfully misunderstanding her questions, answering her questions with questions, and giving evidence that tends to show he has been obstructionist in the past.

[123] For example, Ms. H made the point in her cross-examination of him that she initiates contact by telephone or FaceTime between the Children and their dad

each day, but that Mr. H only has the Children call her during his parenting time if she asks for it. Mr. H took the position that the amended Interim Order puts the onus on Ms. H to initiate his contact with the Children, and that there is no requirement that he do the same for her. While true, that does indicate a legalistic approach to parenting that puts his interests over those of the Children. When asked by Ms. H whether he thought it might be good modelling for the Children if he were to reciprocate contact with her during his parenting time, Mr. H said, "What? I don't understand", required her to rephrase an already clear question, then said that he has "limits", by which I infer that he means he has limits on his ability and willingness to cooperate in co-parenting with Ms. H.

[124] The January 2021 incident indicates that, without legal restriction on his communication with Ms. H, his behaviour is unconstrained by the presence of his Children.

(j) Any Civil or Criminal Proceeding Relevant to Safety, Security or Well-Being of the Children

[125] There are no relevant proceedings.

Decision re: Parenting Time

[126] I am going to cancel the parenting time order set out in the Interim Order and instead make an order that Mr. H have weekend parenting time from Friday after school until Monday morning when school is in session in the school, or Tuesday morning when school is not in session (or when remote learning is in effect because of COVID), three out of four weekends per month. If there are five

weekends in a month, you will get that one as well. So you will have Weekends 1, 2, 3, and 5 if there is a fifth, and Ms. H will have the fourth weekend so that she gets some weekend time with the Children as well.

[127] On any weekend that does not end in weekend parenting time (for example the fourth weekend of each month), you are going to have parenting time one evening that week from after school until 7:00 p.m. You will have to figure out what to do between the time school ends and when your employment ends. Maybe you will need to mend some fences with Ms. L or Ms. S. During the summer that is going to be for the full day, from 8:00 a.m. to 7:00 p.m.

[128] That gives you a minimum of 203 hours per month. You currently have 140 hours.

[129] I am also going to make orders around summer parenting time and holidays, including Christmas.

[130] There will also be a provision for further parenting time as agreed between the parties.

[131] I am going to have this set down before me for a review of parenting time in six months. There is going to be an order, Mr. H, that you take counselling for anger management with a qualified counsellor. If you do so satisfactorily and if there are no more problems between you and Ms. H, I will seriously consider expanding your parenting time at that time.

[132] T.H: In six months?

[133] THE COURT: Expanding it beyond the order that I am making right now.

[134] T.H,: Does that --

[135] THE COURT: Right now it is going to expand.

[136] T.H.: Does that mean in six months I start the application process again and take years again to see you?

[137] THE COURT: No, in six months. We will leave here and you can set a court date in six months to come back for a review before me. At that point, I would love to hear that you have taken anger management counselling with a qualified counsellor, and I want to hear there have been no further issues between you and Ms. H.

[138] T.H: I would like to ask then that every single interaction is videotaped so that no more of these lies can be brought before you. I will agree.

[139] THE COURT: Stop, I am going to --

[140] THOMAS HUDSON: -- all the --

[141] THE COURT: -- continue on with my decision, okay, and I will speak to the formal terms of the order at the end of all this.

SPOUSAL SUPPORT

[142] I will consider spousal support now because, if awarded, it has implications for child support.

[143] On the third day of trial, September 10, 2020, Mr. H applied for spousal support and Mr. Byl, on behalf of Ms. H, agreed to the matter being heard.

[144] Mr. H's claim for spousal support is based on what he characterizes as

his unlawful and malicious eviction by the RCMP from the family home resulting in near homelessness for two years and ongoing financial difficulty. The circumstances underpinning the alleged eviction resulted in the Peace Bond after hearing, now expired. Mr. H continues to deny all of the events leading to the Peace Bond. He has never been homeless.

[145] He seeks an order that Ms. H pay spousal support to him from the date of separation until February 2022 when he will be back up on his feet.

[146] He testified that he has only recently begun to recover financially, whereas she is still living comfortably in the family home with his “replacement,” who earns \$160,000 a year. I do not have any evidence as to Mr. E's income.

[147] Mr. H testified that he wants help from the person he gave 10 years of his life to and wants money from her so he can help his Children have more of the “happy life they had before,” so he can take them out to do more activities.

[148] He testified that he has had to spend most of his savings to keep his security licence, a prerequisite for his work, because of her “incredible untruths.”

[149] Both parties work for XYZ. She is a customer loyalty representative and he, in home security installation.

[150] He testified that in 2018, he made \$36,000 while she made \$56,000. The Financial Statements do not support that, showing instead that he earned almost \$57,000 and she earned \$58,000 the year they separated.

[151] When they were married, they equally shared expenses. She paid the mortgage and vehicle costs while he paid for groceries, incidentals, school, and

extracurricular activities.

[152] He testified that he alone did the housework and maintenance of the home and vehicle, and they shared parenting time with the Children, except for in the year before their separation when he was on EI and solely cared for the Children.

Ms. H did not agree that he did all of the housework and maintenance. It is unclear when or for how long he cared for the Children, but it was not a deliberate decision to exit the workforce in order to do so.

[153] Mr. H feels aggrieved that, in his words, he “spent two years trying to piece together something when she had already moved on to someone else....and that he was trying to bandage a hemorrhage she started.” That, more than anything, is his reason for seeking spousal support. I am required, however, to consider the merits of the claim, even where the applicant is improperly motivated by revenge.

[154] Ms. H is opposed to paying spousal support and says that while her 2019 income was significantly lower than his due to medical leave, their incomes are approximately equal.

Entitlement

[155] Entitlement to spousal support is determined by reference to ss. 161 and 162 of the *FLA* which states that the court must consider the following objectives:

- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
- (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;

(c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship . . . [and]

(d) . . . to promote the economic self-sufficiency of each spouse within a reasonable period of time.

[156] The first two objectives are compensatory. There is no evidence that Mr. H removed himself from the workforce to care for the Children or compromised his career in order to support or enhance Ms. H's career. Accordingly, there is no basis for compensatory support.

[157] The financial information on file indicates the parties' income as follow:

Year	Mr. H	Ms. H
2018	\$56,979	\$58,255
2019	\$53,553	\$19,631
2020	\$56,248	approx.. \$50,000
2021	\$56,248 (anticipated)	\$50,000 (anticipated)

[158] Non-compensatory spousal support derives primarily from the last two objectives of s. 161. I find that Mr. H and Ms. H earn approximately equal incomes and at times his has been higher than hers. Ms. H was off work due to illness in 2019, leading to a lower income that year.

[159] Accordingly, I dismiss Mr. H's application for spousal support filed July 30, 2020 (Document 35).

Amount

[160] Once a spouse is found to be entitled to receive support, the amount and

duration of a support order are determined by the factors set out in s. 162.

[161] In making an order for spousal support, the court must not consider the misconduct of a spouse, except for misconduct that arbitrarily or unreasonably:

(a) causes, prolongs, or aggravates the need for support; or

(b) affects an ability to pay support.

[162] The cause of or events leading to the failure of the relationship are not factors to be considered under s. 166.

[163] If I am wrong in finding that Mr. H is not entitled to spousal support, however, I find that in fact there is no support payable. When the parties' income and other information is calculated through DivorceMate, no spousal support is payable under the *Spousal Support Advisory Guidelines*.

CHILD SUPPORT

The Law

[164] Child support is clearly the right of the Children and every parent and guardian has a joint financial duty to provide support for their Children, regardless of how much parenting time they have.

[165] Ms. H seeks child support payable pursuant to the *Child Support Guidelines* amounts, retroactive to the date Mr. H moved out of the matrimonial home in September 2018. Specifically, she seeks \$788 a month from September 2018 to present, some 30 months, or \$23,640 to date.

[166] Mr. H has not paid any child support to date.

[167] With respect to child support and special expenses, Mr. H says that he should not have to pay child support if he does not get as much parenting time as he would like, and that each party should pay for whatever extraordinary expenses they incur. He agrees he has not paid any child support since September 2018. He notes that an award for retroactive child support is discretionary and asks this court to decline to order it, noting that Ms. H has an income-earning spouse and apparently is making luxury purchases, such as a boat and an exotic dog. He did not cross-examine her about that and brought it up only in closing submissions, despite repeated warnings from the court about what is known as the “confrontation rule.”

[168] In closing submissions, he said that he has never said he would not pay child support. That is simply not true.

[169] He submits that child support was not sought until July 2020, but that is not true. In her reply and counterclaim filed November 6, 2018, Ms. H sought child support retroactive to September 9, 2018.

[170] Mr. H testified that he would like to support the Children based on their needs and how much parenting time he has. There is no order for child support to date, but he thinks it should be based on the time that he gets with the Children. That is not the law in Canada.

[171] He testified that he works as a residential security system installer.

[172] He earlier anticipated that his 2020 income would be approximately \$49,000. In reality, it was \$56,000. He anticipates his 2021 income will be the same.

[173] Mr. H testified that any order that he pay child support should be balanced against his claim for spousal support.

[174] Mr. H's income and resulting Guideline amount of child support according to his financial statements is as follows:

Year	Income	CSG / (Yearly amount)
2018	\$56,979	\$884 x 3 months (\$2,652)
2019	\$53,553	\$832 x 12 (\$9,984)
2020	\$56,248 (per FS)	\$873 x 12 (\$10,476)
2021	\$56,248	\$873 x 2 (\$1,746)
TOTAL ARREARS from Oct 1, 2018 to Feb 28, 2021:		\$24,858

[175] The total arrears from October 1, 2018, to February 28, 2021, is \$24,858, but Ms. H seeks only \$23,640, so that is the amount that I will work off of.

[176] Thus, it is clear that there are child support in arrears in the amount of \$23,640. That may be offset by any overpayment of special expenses by him.

[177] There will be an order for ongoing child support of \$873 per month commencing March 1, 2021.

SPECIAL EXPENSES

[178] Ms. H seeks an order that special expenses be defined as daycare /after-school care / nanny costs, and that they be split proportionately based on income. That would, in effect, be a 50-50 split.

[179] She testified that she pays \$750 per month for childcare expenses to K.L., the nanny. That is payable regardless of how many days or hours Ms. L. works. I do not know when that started, however, so I have had to try to reconcile the Interim Order made at the Family Case Conference; Ms. H's evidence at trial; the affidavit of February 7, 2020 (Document 25) indicating she paid a total of \$3900 for the period April 1, 2019 through February 2020; and her July 18, 2019 affidavit (Document 17), which sets out Ms. L's fee structure. It is a daunting task.

[180] I find, however, that she has paid a total of \$12,300 of daycare or after-school care fees to date as follows:

- a) \$3900 for the period of April 2019 through February 2020, as per the receipts;
- b) \$2400 for March through June 2020 at \$600 / month for four months per Ms. L's letter;
- c) \$1500 for July and August 2020 at \$750 / month for the two months, as per Ms. L's letter; and
- d) \$4500 for September 2020 through February 2021, at \$750 / month for six months, pursuant to Ms. H's evidence. Of that amount, Mr. H should have paid one-third pursuant to the Interim Order, or \$4,059.

[181] Of that amount, Mr. H should have paid one-third pursuant to the Interim Order, or \$4,059.

[182] Ms. H testified that Mr. H voluntarily complied with the order for only five months from January through May 2019, despite the January 2019 Interim Order requiring him to pay \$323.05 until further order of the court. The order was then registered with FMEP and, I understand, he is not in arrears. By my calculation he has, therefore, paid \$8,399.30 (\$323.05 times 26 months), an overpayment of \$4,340.30. That amount will be deducted from the child support arrears.

[183] Mr. H thinks that each parent should bear the cost of whatever extracurricular activities they enrol the Children in. He is also willing to pay his proportionate share and thought they could talk about the proposed expenses and come to a consensus before incurring the expense.

[184] He is currently paying one-third of the daycare cost, which he thinks is fair based on their relative incomes, but notes that he has likely overpaid each month. He waffled, in fact, as to whether he is willing to pay any amount of the daycare costs, and questioned the need for it, given that the Children are only at daycare for about an hour before Mr. E picks them up. I do not know where he gets that information from.

[185] Mr. H also testified that it would be a "dream" if Ms. H were to call him to take care of the kids when she was not able to, so they did not have to go to daycare or a babysitter. In cross-examination, he agreed that he refused to take the Children the morning of February 3, 2020, when she called, because he was scheduled to work.

[186] The Interim Order grants him parenting time from 2:30 when school gets out until 6:45 p.m. each Tuesday and Thursday. Because he works until 4:30 or five o'clock each day, the nanny, Ms. L, picks the Children up from school and takes them to Ms. H's and then he picks them up from there. Accordingly, as I indicated earlier, I do not understand how he can also argue that nanny services are unnecessary because he also requires childcare from 2:30 until the end of his work day.

[187] Mr. H testified that Ms. H is untruthful as to her daycare expenses, and refuses to pay his one-third so long as the receipts are written out by her. Ms. H testified that the receipts attached as Exhibit C to her July 8, 2019, affidavit are indeed written out by her as to date and amount, but properly signed by the daycare provider and accurately reflect the amount paid.

[188] I find Mr. H's legalistic approach to the form of expense receipt to be capricious and unhelpful.

[189] I am not clear why he thinks they would be able to agree on expenses, given that they cannot agree on things thus far. Mr. H testified that but for her pursuit of a Peace Bond, he would have been the "best co-parent ever." When asked if that is entirely off the table now, he said that the relationship is very strained but he looks forward to better communication in future.

[190] Mr. H testified that he is the only one that recreates with the Children and the only one to buy sports equipment. He tendered receipts for skis he purchased for the kids in December 2018 and March 2019 for the upcoming winter, for a total of \$814. He does not seek compensation for those expenses.

[191] He testified that he bought bikes for the Children, but acknowledged that they also have bikes at their mom's house. He did not provide a receipt, but also is not asking for reimbursement. In cross-examination, he agreed that in fact T.H. Junior's bike, now at his house, came from Ms. H's house - that he did not return it after she lent it to him.

[192] Mr. H initially stated that his daughter is now in first year dance at XYZ, but is being forced to go there because Mr. E's daughter goes. He testified that she would rather be in swimming lessons. He then testified that she is having fun at dance and it is a good environment for her.

Finding re: Special Expenses

[193] I find that s. 7 expenses should be shared equally by the parties who enjoy a similar income level. Those will include childcare costs, uninsured medical or dental costs, and agreed-upon costs relating to extracurricular activities such as dance, swimming, skiing, or other sports or musical endeavours.

CONDUCT ORDER

[194] I am satisfied that, except for emergencies, communication between the parties should be in writing and then only in relation to the Children, and that an order governing the conduct of the parties in speech to the Children should be made.

CREDIBILITY

[195] Mr. H is entrenched in a mindset that Ms. H has ruined his life. He prioritizes what is "fair" for him over the Children's best interests.

[196] He is legalistic and capricious in his dealings with her, as when he insisted that her daycare receipts be in a particular form that is more pleasing to him.

[197] In cross-examination, he agreed that he has not enrolled the Children on his extended health benefits to which he has been entitled since October 2018, because he wants to be cautious that he does not breach the Peace Bond. I note that the Peace Bond expressly contemplated contact between the parties pursuant to a family court order which has been in place since January 29, 2019. I find that he has failed to enrol the Children because he was irritated that Ms. H removed him from her benefits package after their separation, and that Ms. H has borne that cost alone as a result.

[198] He agreed in cross-examination that he has not contributed at all to the mortgage, property taxes, or related family debt because the Peace Bond bars him from direct or indirect contact in relation to housing and financing. Despite having been told on March 12, 2019, that he can apply to vary the terms of his Peace Bond, he did not do so at any time.

[199] Mr. H was obstructionist in his responses and demonstrated that he is obstructionist with Ms. H. He testified, for example, that he tries to limit his contact with Ms. H because "every situation is met with violence by [her]" and that she has not demonstrated any willingness to talk with him. He then made the surprising statement that Ms. H was showing anger and contempt at that very moment in court and that she was slamming pages and crying. I was carefully observing Ms. H's demeanour and tone, and while I noted that she became tearful at times, I did not find her to be showing anger, contempt, or to be slamming

pages. When I pointed that out to Mr. H, he backtracked and said, "I think I feel that way."

[200] I find he was obstructionist and wilfully misunderstood Ms. H's questions in cross-examination (before she retained counsel), and challenged her in a demeaning way that suggested she was not making sense. For example, Ms. H asked how, if he had alternating-weeks parenting time, he would deal with childcare from the time school ended until he arrived home from work by 5:30, and how he would get a hold of the kids to tell them he would be late. Mr. H reiterated that his work schedule is inflexible because his customers are inflexible, and that he would text her as he always does. When she pointed out that she was asking him about his week of parenting time if he got what he was looking for, and queried what he would do if she was not available, Mr. H demanded that she explain what she meant, then abruptly responded, "I would hope you'd let me know you're unavailable", which seems to overlook the fact of her employment and that she herself relies on after-school care and nanny assistance during her parenting time. His answer was not responsive at all.

[201] I must treat Mr. H's evidence with some caution because he made up an entire conversation that did not happen, which causes me to question his reliability. This is in relation to evidence that he says Ms. H gave in cross-examination at the Peace Bond hearing when cross-examined by Mr. LeBlond about the family cat. He testified at this hearing with great conviction as to the questions asked and answers given in cross-examination and alleged that she acknowledged at the Peace Bond hearing that she did not see the incident, but rather that it was

reported to her and that the kitten may have, in fact, climbed the fence itself. He cited the exact questions he said Mr. LeBlond asked her and her response.

[202] Ms. H, clearly outraged by what she sees as an inaccurate characterization of her evidence, angrily declared, "I did not. If you choose to continue to lie, nothing will change." Mr. H again backtracked and said he thought that was what she had said at the Peace Bond hearing.

[203] As I have already indicated, the kitten incident did not come up at all at the June 18, 2019, hearing before Judge Keyes.

[204] T H: Nor did the butter knife.

[205] THE COURT: I can only conclude that Mr. H is either lying or has made up a conversation that is stuck in his head.

[206] Mr. H made sweeping statements that crumbled under questioning, as when he claimed that he did not see the Children for 18 months after his arrest because of Ms. H's lies, but agreed in cross-examination that in fact he saw them five times and had FaceTime contact with them once between September 13 and December 2019.

[207] He testified that with a bit of help, he can easily drop the kids off at school and that he would not need morning care for them because his work can be flexible. In cross-examination, however, he changed his evidence and testified that he has no flexibility in his work schedule. In particular, he agreed he could not watch their son in February 2020 when he was vomiting because he had insufficient notice. Specifically, he testified in cross-examination that, "I said 'no, not a chance,'

because you messaged me at 7:55 and I am expected to show up at work." He said that he would have to give his employer one hour's notice or it would be a "punishable offence". I do not understand then how he could expect to exercise parenting time any morning, given that Children sometimes get sick or have appointments they must attend.

[208] He then testified in cross-examination that he can take a sick day off, but that February 3rd did not work. I find that he simply chose not to make it work.

[209] Mr. H blames Ms. H for things over which he ought to have exercised responsibility. For example, he did not file a copy of his Peace Bond on this family file, despite being aware of his obligation to do so, because he thought Ms. H would.

[210] He has not provided a copy of *FLA* orders to the Children's school because he thought Ms. H would.

[211] He has not attended any parent-teacher interviews since 2018, because in his mind the Peace Bond prohibits contact. Even after being advised by the court in March 2020 that he is wrong in his interpretation of the Peace Bond, he did not apply to vary it and did not speak to a probation officer as to how to interpret it.

[212] He has not followed up with the school about having access to the app that would allow him to stay abreast of H's kindergarten process.

[213] He testified that she has caused her extended family, with whom he was previously close, to reject him.

[214] He blames Ms. H for the Children having fillings, but has not spoke to

the dentist to establish whether it is due to poor dental hygiene or genetics.

[215] After initially stating that he has not seen the Children for 18 months, since September 2018, Mr. H then unreasonably characterized his parenting time as "less than four hours per week" on weekdays, as well as alternating weekends. As indicated, the Interim Order provides for parenting time for approximately 4.25 hours each Tuesday and Thursday, given that his parenting time commences when school lets out at 2:30 and ends at 6:45 p.m. He angrily told the court that, in reality, he does not get the kids until after work, although it does not appear that he has taken any steps to adjust his work schedule on the day he is to exercise parenting time. Instead, the Children go home to their mom's and she cares for them until he picks them up anywhere from 5:00 to 5:30 p.m.

[216] He then testified that Judge Malfair told him to "accept what he was offered or he would get nothing" at the family case conference. It would appear that this is the second judge that has steamrolled him.

[217] Mr. H testified in direct that he wants to have parenting time with the Children any time Ms. H is not able to exercise her parenting time. In cross-examination, however, he agreed that he has failed to exercise parenting time in those circumstances if he does not have adequate notice of more than one hour. I find that he prioritizes notice to his employer over parenting time with his Children, a liberty not always afforded by a parent with parenting time.

FINAL ORDER

[218] There will be a final order after hearing as follows. Referring to the picklist,

Madam Clerk, we will start with the recital.

[219] Upon the court being advised that the name and birthdate of each child is as follows: T.H. Junior, January xx, 2012, and H.H, December xx, 2014.

[220] B1: The court is satisfied that T.H. and K.H. are the guardians of the Children under s. 39(1) of the *Family Law Act*.

[221] B6: Each guardian will consult the other guardian about any important decisions that must be made and will try to reach agreement concerning these important issues.

[222] C2: Under s. 40(2) of the *FLA*, the guardians will share equally all parental responsibilities for the Children.

[223] D6, but we are going to modify it: T.H. will have parenting time on the first, second, third and, if applicable, the fifth weekend of every month from Friday after school until the start of school on Monday.

[224] D8: If the day preceding or following the weekend parenting time is a non-instructional day, including summer, or the Children are doing online learning because of COVID or other reasons, the parenting time will include that extra day.

[225] D4, and we will modify it, as well, to address some electronic contact for Dad on non-parenting-time weeks: On any week that does not end with T. H. having parenting time, he shall have contact with the Children by telephone, FaceTime, or other electronic means on the Tuesday and Thursday of that week. I am not going to say how long that electronic parenting time will last. The kids are of

an age where they can talk to their dad for the period of time that they want.

[226] M8: Under s. 224(1)(b) of the *FLA*, T. H. will enroll in counselling with a qualified counsellor or therapist to address anger management and conflict resolution in relation to K. H., and provide confirmation of completion to the court by August 31, 2021. Mr. H's October 10, 2018, application for further parenting time may be brought back before Judge Mengerling for consideration upon filing proof of his successful completion of said counselling.

[227] D13 with respect to spring break: T. H. and K. H. will each have one week of uninterrupted parenting time during the Children's spring break holidays.

[228] D14 for summer: T.H. will have at least two weeks of parenting time with the Children during the Children's summer holidays.

[229] D11, this is modified: Despite the usual schedule of parenting time, parenting time during the Christmas school holidays will alternate yearly. In odd-numbered years commencing in 2021, T. H. shall have parenting time with the Children from 3:00 p.m. on December 24 until 3:00 p.m. on December 25, and K. H. shall have parenting time with the Children from 3:00 p.m. on December 25 until 3:00 p.m. on December 26. In even-numbered years commencing in 2022, K. H. shall have parenting time with the Children from 3:00 p.m. on December 24 until 3:00 p.m. on December 25, and T. H. shall have parenting time with the Children from 3:00 p.m. on December 25 until 3:00 p.m. on December 26.

[230] D2, and this will be modified: T. H. may have other parenting time at dates and times agreed between the parties.

[231] T. H's application for spousal support filed July 30, 2020, is dismissed.

[232] G1, and this is somewhat modified, with respect to Mr. H's income finding:

T. H. is found to be a resident of British Columbia and is found to have a gross annual income as follows: 2018, \$56,979; 2019, \$53,553; 2020, \$56,248; and 2021, \$56,248.

[233] Then we will do G1 again for an income finding with respect to Ms. H:

K.H. is found to be a resident of British Columbia and is found to have a gross annual income as follows: 2018, \$58,255; 2019, \$19,631; 2020, \$50,000; and 2021, \$50,000.

[234] G3 with respect to prospective child support: T. H. will pay to K. H. the sum of \$873 per month for the support of the Children, commencing on March 1, 2021, and continuing on the first day of each and every month thereafter for as long as the Children are eligible for support under the *Family Law Act* or until further court order.

[235] T. H: Your Honour, is this a full amount on that day or is there a way to work out splitting it up, so that by one of each month the payment has been made?

[236] THE COURT: Mr. Byl, any problems dividing it into two-week payments?

[237] CNSL D. BYL: Your Honour, we would prefer one payment at the beginning

of every month.

[238] THE COURT: What would be better for you, sir?

[239] T.H.: It's literally like one whole paycheque per month is gone to there and over half of that is my rent.

[240] THE COURT: Are you paid every two weeks?

[241] T. H.: Pardon me?

[242] THE COURT: Are you paid every two weeks?

[243] T. H: Yes, Your Honour. You're literally -- I'm -- I'm left with --

[244] THE COURT: So the 1st and the 15th?

[245] T. H: -- under a thousand dollars to live in a month, with over half of that to my rent.

[246] THE COURT: The 1st and the 15th?

[247] T. H: The 1st and 15th is acceptable or every sec -- we are paid at the same time, so it can be on our paydays of in and around that time.

Our paydays are the same day, so whichever payday is closest to that, we pay it.

[248] THE COURT: The difficulty with that is that you will end up actually paying more if it is every payday, because it is sort of like paying down your mortgage. You end up with an extra pay period in there, so --

[249] T. H.: Thank you for helping with that. I still don't even know how I'm going to come up with it, but I'll try.

[250] THE COURT: Okay, so we will make the payments payable in two equal payments of \$436.50 payable on the 1st and 15th of each month commencing March 1st.

[251] K2: For as long as the Children are eligible to receive child support, the parties will exchange copies of their respective income tax returns for the previous year, including all attachments, not later than July 1st, commencing July 1, 2021, and copies of any notice of assessment or reassessment provided to them by Canada Revenue Agency immediately upon receipt.

[252] J2, and this will be modified a bit: The arrears of child support owing from T.H. to K.H. from September 2018 through February 28, 2021, is \$19,300.

[253] G4, and this is modified: The parties will equally share the cost of pre- and after-school care or nanny services, and shall do their best to use a universal childcare service in doing so, and shall equally share any other expenses for uninsured medical or dental care or agreed-upon extracurricular activities.

[254] So what I mean by doing their best to use the universal childcare services, that Ms. H is already paying \$750 a month for Ms. L. You are going to be splitting that cost anyway, \$375 each. If you use a different service provider, then you are going to be paying for that and Ms. H will be paying for half of that. I appreciate that your relationship with Ms. L has broken down. I would hope that you folks can get a plan together and somehow come up with something that will allow you to have one person that is consistently there for the kids that you share the cost of. If you cannot, that is your choice, but you will likely

end up paying more.

[255] M2, and it will be modified: Other than in emergency situations, under s. 225 of the *Family Law Act*, the parties will communicate with each other only in writing, which will include electronic communication, and only in relation to the Children.

[256] T. H: Your Honour, how do I deal with my divorce? How do I deal with getting my stuff from the house? How do I deal with getting myself off the mortgage?

[257] THE COURT: Right.

[258] T. H: How do I communicate --

[259] THE COURT: Just a moment.

[260] T. H: -- about any of that?

[261] THE COURT: Yes, you have made your point. Okay, other than in emergency situations and, Mr. Byl, the standard wording for ongoing court processes and those kinds of things.

[262] CNSL D. BYL: Yes.

[263] THE COURT: They have not settled the assets, I gather?

[264] CNSL D. BYL: No.

[265] THE COURT: Right.

[266] CNSL D. BYL: And I can say to Mr. H, there will be a Supreme Court process because there needs to be a divorce and a splitting of assets. And I am certainly prepared to work with Mr. H to try and accomplish that.

[267] THE COURT: But he needs to be able to serve her and those kinds of things, serve her with documents and --

[268] T. H: You mean communicating about it.

[269] THE COURT: -- and also communicate with her, either directly or, if you remain on the record, with you, which is indirect contact with her, about those matters. So emergency situations, of course, you know, the kids -- somebody has a broken arm, of course there is going to be a phone call between you guys.

[270] CNSL D. BYL: Yes.

[271] THE COURT: But also -- and with respect to financial matters and ongoing family court proceedings.

[272] T. H: Like talk about getting my stuff from the house.

[273] THE COURT: That would count as ongoing family court proceedings.

Mr. Byl, are you staying on the record for --

[274] CNSL D. BYL: I'm going to stay on the record for --

[275] THE COURT: So for now you can contact Mr. Byl about getting your stuff.

[276] T. H: So I make appointments with him or how does that work?

[277] THE COURT: Just I would suggest you fire off an email but --

[278] CNSL D. BYL: I would --

[279] THE COURT: -- that is up to you as to how you have contact with him to --
Mr. Byl, how --

[280] CNSL D. BYL: Mr. H has my email.

[281] THE COURT: Mr. Byl is an officer of the court and he has obligations to the court and to the Law Society. He is not going to ignore requests from you to reasonably access anything of yours that has been left behind, and he will be diligent in responding to your requests with respect to division of assets and those kind of things.

[282] T. H: So all of that goes to him.

[283] THE COURT: M3: The parties will:

- a) put the best interests of the Children before their own interests;
- b) encourage the Children to have a good relationship with the other parent and speak to the Children about the other parent and that parent's partner, if any, in a positive and respectful manner; and
- c) make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication, or argument in front of the Children.

[284] M4: The parties will not:

- a) question the Children about the other parent or time spent with the other parent beyond simple conversational questions;
- b) discuss with the Children any inappropriate adult, court, or legal matters; or
- c) blame, criticize, or disparage the other parent to the Children.

[285] M5: The parties will encourage their respective families to refrain from any negative comments about the other parent and his or her extended family and from discussions in front of the Children concerning family issues and litigation.

[286] And U1, I will dispense with the need to get Mr. H's signature on this matter.

[287] All right. So to reiterate, Mr. H, if you complete that counselling and there is no inappropriate incidents, you can be back for a review of your parenting time in six months and we can look to expand your parenting time.

[288] T. H: I want to add, Your Honour, specifically that every interaction with Mrs. H is recorded so that there's no more questions about these interactions.

[289] THE COURT: Okay, so I am not making that order.

[290] T. H: But how -- your --

[291] THE COURT: I can tell you that in my experience, I have kids that show up in Youth Court, in criminal matters, that say, "My parents split up when I was little and I remember the police coming and hauling me out of one house and shoving me into the back of a cop car and being dragged off to the other parent's because they didn't return me within the hour. And I remember my parents standing there with their cellphone out and recording things and then yelling at me and I hated that, and I hated going to see my parents because of that."

[292] If you feel the need to have an extra party there and it is natural, I would encourage you to do so, but do not make this such a big deal that that is what your

kids take away from the exchange, okay. Try to keep it as low key as possible.

[293] T. H: Yes, Your Honour.

[294] THE COURT: And they are of an age where you can say, "Here we are, we are at the driveway, nice to see you kids. I will see you on Friday."

[295] T. H: But Your Honour, in -- in defence of that, you're basing my punitive, based upon a lie, and nothing like that happened. It was totally an untruth and --

[296] THE COURT: And that is why we have trials, sir.

[297] T. H: -- how do I prove it without any sort of --

[298] THE COURT: She gave evidence. You did not cross-examine her about it. It stands unrefuted.

[299] T. H: Mm-hmm, I just want to be able to protect myself in the future from that, and it doesn't sound like I have any way to do that, other than what one person says is apparently the truth. I have no way to protect myself against that, of saying in the future that even though I have been polite and courteous for the last three years in every single interaction with her, there has never been any of this in the entire time since and up to and before and after this, and I'm being punished for, again, an opinion with no proof. How do I protect myself against that in the future, Your Honour. I just say that it didn't happen and --

[300] THE COURT: I think I missed one period of parenting time that I intended for you to have. So I have spoken to the weekend parenting time, first, second, third, and if there is a fifth weekend, the fifth weekend, Friday after school until the start of

school on Monday. You have got your electronic contact. Right, and I also intended that on the week that you do not have parenting time, okay, so we are going to add in an extra here.

[301] We can use D4 and just modify it, saying that: On any week that does not end with T.H. having parenting time, he shall have parenting time one evening that week from after school until 7:00 p.m. when school is in session. When school is not in session, such as in summer, Mr. H will have parenting time that week from 8:00 a.m. to 7:00 p.m.

[302] All right. That is the order.

[303] T. H: Your Honour, how do I pay this back payment?

[304] THE COURT: How would you like to pay it?

[305] T. H: I get \$2,000 per month of which now half of that is --

[306] THE COURT: Yes, you have already explained that. Give me a solution.

[307] T. H: I -- I don't even know --

[308] THE COURT: What are you proposing?

[309] T. H: -- how I'm going to pay rent with this, Your Honour, so I can't foresee how I'm going to pay that. My bills now will not be paid. I'm glad that my Children are well cared for and I accept it is my responsibility to do so. I submit that you've crippled me financially now with this decision. I have no way to support myself.

[310] THE COURT: Have you applied for sale of the house yet? You have got

other avenues, Mr. H, explore them. For now, I can make an order with respect to repayment of the arrears.

[311] T. H: To come out of the assets?

[312] THE COURT: I accept that for now you have got some financial difficulties. That should change once you conclude your asset division. What would you propose?

[313] T. H: Can it come out of the asset division?

[314] THE COURT: How long will that take, Mr. Byl? I am unfamiliar with Supreme Court proceedings.

[315] CNSL D. BYL: It -- within three or four months we should be able to put all of that together, and it is certainly something that I think my client would be amenable to. It is an area where I think there could be fruitful negotiation. I think we could work this out.

[316] THE COURT: Okay. Do I need to make an order suspending the repayment of the child support arrears for a period of time to allow that process to go or --

[317] CNSL D. BYL: If Your Honour would put a three-month suspension on it, and in that three months, Supreme Court proceedings will be started. There will be a --

[318] THE COURT: Does Supreme Court move that much faster than Provincial Court then?

[319] CNSL D. BYL: Not anymore. With the COVID thing, no, but in terms of filing and if Mr. H is prepared to negotiate, I am prepared to do that, and I think some kind of an accommodation can be created here. If this court would put a

three-month suspension on that, that gives us until July 1st, say, and in that period of time, I think that the other issues can be resolved, if Mr. H is prepared to work towards that.

[320] THE COURT: Okay, so I do not need him to be railroaded by really a tight timeframe and to feel like he needs to agree to anything in the Supreme Court matter just because of this repayment of child support arrears looming over his head. There is, I believe, Supreme Court family counsel that is available on Thursdays, now; they are available by phone, I think, keep that in mind.

[321] Madam Clerk, I am going to suspend the repayment of child support arrears for six months, so to August 25, 2021, you do not need to start repaying.

[322] T. H: And at that point the whole amount is payable or --

[323] THE COURT: No.

[324] T. H: -- we just have a plan towards repaying by that point?

'Cause it doesn't sound like -- I don't -- I've not heard of any Supreme Courts going that fast. I don't think it's possible.

[325] THE COURT: And after August 25th, the parties will make best efforts to come up with a repayment plan. So that is to signal that I do not expect that full amount to be repayable on that date. That is simply not doable.

[326] T. H: Just that we are working on a plan, Your Honour.

[327] THE COURT: Pardon me?

[328] T. H: Just to show that we have some sort of a plan in process.

[329] THE COURT: Yes.

[330] CNSL D. BYL: There is going to be a plan. There is going to be dialogue. I would want that to be by email.

[331] THE COURT: Okay. That concludes the matter.

[332] T. H: Your Honour, just to summarize, so you had said that these orders start the 1st of March, so does that mean, for example, Thursday is my current -- is that today am I not allowed to see my Children or like how does that, for the next couple days, or do I see my kids today? Do I start next weekend? And then am I taking them to school on Monday and that's when it turns over or --

[333] THE COURT: Well, the child support and the like starts March 1st, but the parenting time regime starts forthwith. So ordinarily you would have your regular Thursday night parenting time tonight, right?

[334] T. H: From after school today until --

[335] THE COURT: Until seven.

[336] T. H: -- 6:45.

[337] THE COURT: Right. Mr. Byl, would you -- so that is what the kids are expecting, they are expecting to see you tonight. Mr. Byl --

[338] T. H: And this weekend, Your Honour.

[339] THE COURT: -- would you agree that the kids should see their dad, rather than just all of a sudden have them come home from school and say, "Oh, things have changed, you are not seeing him tonight."

[340] CNSL D. BYL: Yes, I agree.

[341] THE COURT: Okay, so you are going to see them tonight, even though the new order is in effect, just so it does not get them too upset, and then --

[342] T.H: Is this my weekend?

[343] THE COURT: -- starting -- this is your weekend, this is Week -- well, hang on, let us see, what are we at? Let me just check, this is the fourth weekend, so this weekend would be Ms. H's and then you will have the following weekends, one, two, three.

[344] T.H: So not this weekend?

[345] THE COURT: Not this weekend. So not tomorrow, but then starting in March, you will have one, two, three, and if there is five, you will have that as well. This calendar is too small, I cannot tell from this, sorry.

[346] T.H: I just -- I'm just curious, Your Honour, in -- with your order, so you say until Monday school?

[347] THE COURT: Yes.

[348] T.H: So I take them to school on Monday and --

[349] THE COURT: That is right.

[350] T. H: -- that is the end of my responsibility for that weekend period?

[351] THE COURT: That is right. So if, for example, the kids are sick on the Monday morning, then Ms. H's parenting time starts when school starts, so

then it would be their time. Ideally the two of you would then have some discussions, but technically it is her parenting time, so you take them to school and then your responsibilities end.

[352] All right, thank you, Madam Clerk, we will take a 15-minute break.

[353] CNSL D. BYL: Thank you, Your Honour.

(REASONS CONCLUDED)