SUPREME COURT OF YUKON

Citation: *ENAG v JSP*, 2024 YKSC 32

Date: 20240620
S.C. No. 22-B0065
Registry: Whitehorse

BETWEEN:

E.N.A.G.

PLAINTIFF

AND

J.S.P.

DEFENDANT

Before Chief Justice S.M. Duncan

Counsel for the Plaintiff — Shaunagh Stikeman

Counsel for the Defendant — Joselynn Fember

Children's Lawyer — Norah Mooney

REASONS FOR DECISION

OVERVIEW

[1] This is a high conflict separation between the parents of two children, R., age 10 years and 11 months, and L., age seven years. This Court made an order on January 16, 2024, among other things, granting the plaintiff mother sole custody and allowing her and the two children to relocate from Whitehorse to New Brunswick, the birthplace of the two children and the mother's former home. Since November 2023, R. has declined to see his father. Visits between the father and L. have continued on a regular basis, as ordered, except on two recent occasions. The January 16, 2024 order allows the relocation to occur after July 8.

[2] The defendant father brings an application that the Court recommend the preparation of a custody and access report; for a stay of part of the order made on January 16, 2024, allowing the plaintiff mother and the children to relocate and granting her sole custody, among other things; for an order for interim joint custody; and an order that the mother not remove the children from the Yukon or Canada without the father's consent.

[3] The plaintiff mother brings an application to change the date of the relocation from after July 8 to June 14, on compassionate grounds based on the failure of R. and his father to reconnect over the last six months and the benefit to the children of an earlier move.

[4] The father's position can be summarized as a response to his concern that the mother is inappropriately influencing the children to the point of alienation. He says a custody and access report prepared by an expert is necessary to confirm this and to ensure the court's orders are in the best interests of the children. He describes this alienation concern as a change in circumstance, along with other changes related to the mother's failure to respect the parenting schedule, R.'s proposed new school in New Brunswick, and the father's inability to access to the children's medical records. He says these changes are sufficiently material to support a variation of the order for relocation and sole custody, by delaying it until after receipt of the custody and access report and by substituting an order for interim joint custody.

[5] The mother opposes, saying this is a disguised appeal of the January 16, 2024 order that is out of time, that there is no basis to order a custody and access report, and

that there are no material changes in circumstances and consequently no basis to vary the January 16, 2024 order or impose a stay.

[6] For the following reasons, I decline to grant the father's application. There are insufficient grounds to recommend the ordering of a custody and access report at this time, and there are no material changes in circumstances sufficient to justify a variation and stay of the January court order.

[7] The mother's application is also dismissed. The relocation date will remain after July 8, 2024.

DISCUSSION

Father's Application

i) Custody and Access Report

[8] Section 43 of the *Children's Law Act*, RSY 2002, c 31, provides:

> **43 Request for investigation**
>
> (1) In an application under this Part in respect of a child, the court may request the director of family and children's services appointed under the Child and Family Services Act to cause an investigation to be made and to report to the court on all matters relating to the custody, support and education of the child.

[9] The Part of the statute referenced is related to custody and access of a child. The onus to establish a basis for a request by the court under this section is on the party seeking the request, on a balance of probabilities.

[10] In practice in the Yukon, the investigation and report are referred to as the preparation of a custody and access report. Once requested by a court, the Yukon government decides whether to grant the request. If granted, the Yukon government chooses and retains a professional, usually a psychologist, who will meet with and

extensively interview the parents and the children, observe them interacting in their home settings and daily routines, and possibly interview other interested parties. The investigator may also initiate forms of psychological testing. Their report to the court sets out the results of their in-depth interviews, observations and testing and makes recommendations about custody and access, and other relevant issues related to the children. The process and report are child-focussed.

[11] Custody and access reports are costly – generally in the range of tens of thousands of dollars – and currently take approximately six months to prepare. Costs are borne by the Yukon government. The reports provide an aid to decision-making; they are not a substitute for the court's decision.

[12] Often after a custody and access report is prepared, the parties settle their outstanding issues, so the matter does not return to court. This may be because the kind of information in the report provides new insights and understandings to the parties that assist in breaking impasses.

[13] However, in order to obtain a useful custody and access report, the investigator must conduct a process that can be intrusive for the family, especially for children.

[14] There are no published guidelines for counsel's reference or for courts to apply in deciding whether to request a custody and access report. Generally, due to their high cost, intrusiveness, and extensive preparation time, they are requested infrequently, and reserved for circumstances where the Court is unable on the evidence and arguments provided by the parties and counsel to determine what custody and/or access provisions, or other orders related to the children, are in the best interests of the children.

[15] Here, the father relies primarily on two Ontario decisions in support of his application. Both cases are distinguishable from the case at bar because of the evidence submitted to the court and the stage of the proceedings.

[16] In Ontario, the court has the ability to appoint an assessor directly, rather than request or recommend one. Section 30 of the Ontario C*hildren's Law Reform Act,* RSO 1990, c C12, contains specific criteria for the ordering of an assessment:

> *Assessment of needs of child*
>
> 30(1) The court before which an application is brought for a parenting order or contact order with respect to a child, by order, may appoint a person who has technical or professional skill to assess and report to the court on the needs of the child and the ability and willingness of the parties or any of them to satisfy the needs of the child.

[17] In *Stewart v Stewart,* [2006] OJ No 5135 (SC), there were significant accusations of misconduct by the mother against the father. The two children, ages 12 and 15, were living with the mother. There was no court order governing their custody or access. The children had no interest in spending time with the father, especially since he had refused to attend counselling. The father argued he was a victim of "[p]arental [a]lienation [s]yndrome orchestrated by Ms. Stewart as part of her strategy to succeed in the outstanding matrimonial litigation over the family property" (at para. 6). There was no children's lawyer.

[18] The motion was for the appointment of an assessor for a report, in the context of a motion for Christmas access. Custody was not at issue. The father filed 23 affidavits; the mother 14 affidavits, setting out many disputes, including whether Mr. Stewart had a healthy relationship with his children.

[19] The court found an assessment was in the best interests of the children to help find the appropriate manner to address the emotional and psychological aftermath of the estrangement between the children and their father and to address future access issues. The court also said "whether or not this is a case of [p]arental [a]lienation [s]yndrome, it is a case where the court would be much assisted by an assessment under s. 30 …" (at para. 10).

[20] Due to the mother's allegations in that case about the father's harmful conduct and the inability of the court to determine the reliability of the mother's statements, the court was concerned about the children's safety during access visits with the father, in addition to his ability to meet the children's needs. The court had no evidence except the highly adversarial and conflicting affidavits of the mother and the father, most of which contained bias, hearsay and oath-helping. It was the first appearance of the parties before the deciding judge.

[21] In the case at bar, the parties have appeared 12 times in court before me. I have received in evidence affidavits and exhibits from the parties which have been adversarial and highly conflicting, as noted in my reasons of January 16, 2024. But I have also had the benefit of the reports of an experienced children's lawyer, Ms. Norah Mooney, who has met with the children 24 times since her appointment. Further, I have received affidavits from friends and family of both parties, reports from a psychological assessor of R., and emails and letters from various staff at the children's school. All of this evidence was used to formulate the difficult decision I made on January 16, 2024. It is more extensive than the evidence available to the judge in *Stewart*. There is no safety issue in this case, as there was in *Stewart.* The allegations of alienating behaviour are

less extreme than those in *Stewart,* and not objectively substantiated as they were in *Stewart.*

[22] The other Ontario case, *Glick v Cale,* 2013 ONSC 893 ("*Glick*"), relied on by the father is also distinguishable on the facts and evidence before the court. In *Glick,* the court provided a comprehensive review of the case law about ordering assessments. After setting out a non-exhaustive list of criteria that might assist a judge in deciding whether to order an assessment (at para. 48) the court found that an assessment was in the best interests of the child to promote settlement or to provide evidence for the trial judge because of: the inability of a professional mediator to assist the parties, the four years of high conflict, the absence of a child lawyer due to the child's age of four, and the court's expectation that an assessment may lead to consensus between the parties, or the alteration of approach. These are all distinguishing features from the case at bar, where the high conflict has continued for the last 2.5 years, not four; there is evidence from the child lawyer and other third parties to assist the Court; and the effect of the ordering of an assessment would be a delay of the mother's move to New Brunswick ordered by the Court, and unlikely to be conducive to promoting settlement. Further, in *Glick*, there was no previous court order sought to be varied.

[23] The Supreme Court of Canada in *Young v Young*, [1993] 4 SCR 3, stated:

> … [E]xpert evidence should not be routinely required to establish the best interests of the child. In my view, it is a modern day myth that experts are always better placed than parents to assess the needs of the child. Common sense required us to acknowledge that the person involved in day to day care may observe changes in the behaviour, mood, attitude and development of a child that could go unnoticed by anyone else. The custodial parent normally has the best vantage point from which to assess the interests of the child, and thus will often provide the most reliable and complete

> source of information to the judge on the needs and interests of that child. (at 86)
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> …
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> … In the absence of clear legal presumptions about the best interests of children, judges have increasingly come to rely on the recommendations of experts to determine custody and access issues, believing that such experts possess objective, scientific knowledge and can in fact "know" what is in the best interests of the child. However, expert testimony, while helpful in some and perhaps many circumstances, is often inconclusive and contradictory (Gélinas and Knoppers, *supra* at p. 17). That this should be so is not surprising, since such assessments are both speculative and may be affected by the professional values and biases of the assessors themselves. (at 87)
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> Even where such expertise is valuable, there are impediments in such reliance. Assessments may occasion delays in resolving proceedings and may at time constitute a significant disruption in the lives of both parents and children. The cost involved in routinely hiring experts to establish the best interests of the child only increases the expense of custody litigation and is far beyond the resources of most divorcing couples. Furthermore, as Professor Bala, *supra*, points out, at p. 224, "much of what assessors ultimately recommend may simply be a matter of 'common experience and common sense'". (at 87)

[24] There is no doubt an assessment can be helpful to the court in cases where the parents have an unhealthy, dysfunctional, blaming, disrespectful relationship, where there is a clinical diagnosis of the parents or children that may make parenting challenging, and/or where the court has little to no reliable evidence or highly contradictory evidence that makes determining the children's best interests difficult (*Glick* at para. 48). Some elements of these factors exist in this case, specifically the high conflict nature of the parents' relationship and the special needs of R. However, "a court should not delegate its duty to determine what parenting arrangement is in a

child's best interests to an assessor: … courts typically will give substantial weight to the recommendations of an assessor, but these must be only one factor to consider in the determination." (citations omitted) (*PRH v MEL*, 2009 NBCA 18 at para. 16).

[25] In this case, the father alleged coaching of R. by the mother during the hearing held September 28, 2023, as referenced and considered in my decision after that hearing at paras. 46 and 47. He alleged the same thing again during the hearing in November 2023, when his counsel at the time first requested a custody and access report under s. 43. This Court suggested to the father and his counsel the process of an application under s. 43. The father repeated the request on December 19, 2023, by way of a proposed consent order provided to and rejected by the mother. No application under s. 43 was brought until April 30, 2024, four and half months after the decision on relocation and custody was released.

[26] After meeting once again with the children on May 29, 2024, the child lawyer confirmed both verbally and in writing her views that neither child was being influenced by the mother, but instead each was independently expressing their preferences. R. has consistently said to the child lawyer since November 2023 that he does not want to spend time with his father. L. told the child lawyer, consistent with her earlier statements, that she enjoys and wants to spend time with her father, especially camping, but that she wanted to spend less time with him than every weekend as she has been doing since January 2024. The child lawyer concluded L.'s statements are voluntary and without influence. If anything, L. feels pressure from her father not to speak about reducing her time spent with him.

[27] In considering this application under s. 43, I have weighed the negative factors of the delay of approximately six months, the cost to the taxpayer, and the intrusiveness of the investigation on the family and especially the children, against the benefits the father says will be obtained by an objective assessment of whether the children have been unduly influenced or alienated by the mother. Based on all the evidence, and particularly the evidence of the child lawyer, the disruption and stress caused by an investigation at this time outweigh the benefits. Even if it were ordered, it is only one factor among many for consideration. This family has been mired in high conflict for almost two years. It is affecting all of them detrimentally. They need to move forward from this place of conflict and learn how to navigate their relationships from a new perspective. It is imperative that the parents' conflict be minimized for the sake of the children's well-being. An assessment at this time is not necessary given the evidence already provided, will not help to reduce the conflict, and will prevent the family from moving forward.

ii) Material change in circumstances

[28] The party alleging change in circumstances for the purpose of varying an order has the onus of demonstrating on a balance of probabilities that: a) there has been a change in the conditions, means, needs or circumstances of the child and/or the ability of the parents to meet the needs of the child; b) the change materially affects the child; and c) the change was not foreseen or could not have been reasonably contemplated by the judge who made the initial order (*Gordon v Goertz*, [1996] 2 SCR 27 at para. 13). In other words, a material change places the original order into question; all factors relevant to that order fall to be considered in light of the new circumstances (at

para. 18). The original order is assumed to be correct; it is only because of the new circumstances that it can no longer stand.

[29] The father requests a variation of the order of January 16, 2024, based on the following changes in circumstances:

- mother's disregard of parenting schedule;
- R.'s rejection of the father;
- change of R.'s school in New Brunswick;
- mother not supportive of father's relationship with children;
- mother obstructed access by father to medical records; and
- conflict has escalated since the order of January 16, 2024.

[30] In essence, the father says the following changes have occurred since the order of January 16, 2024: a) the mother has not followed court orders related to the father's access and decision-making, contributing to higher conflict; b) R. will attend a school that was not discussed during the application of September 2023; c) the mother is influencing, coaching or alienating the children against their father.

a) Mother not following court orders

i) access

[31] I do not agree that the mother has disregarded the parenting schedule. Conflict over scheduling of parenting time and requested adjustments is not an unusual occurrence, especially in high conflict cases. While the mother has exhibited rigidity at times with the implementation of the schedule, for the most part, I have accepted her explanations as rooted in the best interests of the children and not an attempt to restrict access or not follow court orders. There is no evidence that scheduling issues amount

to a material change in circumstances affecting the children that could not have been foreseen or reasonably contemplated by the Court.

[32] The father provided examples of the mother's failure to accept the parenting schedule as ordered. First, he says she refused to facilitate his mandatory supervised visit with R. at the Canada Games Centre ("CGC"), because he did not leave L. at her home while he visited with R. [M.F.], the agreed-upon supervisor for the visit, explained her attempts along with the mother's attempts to encourage R. to go to the CGC. R. refused by locking himself in the bathroom. The unfulfilled access visit was not related to the father's failure to leave L. with the mother, but because of R.'s resistance.

[33] Second, the father wanted to extend one of the visits by 15 minutes to allow L. to attend a soccer session but the mother refused by ultimately not responding to his request. The mother explained that she understood from L. that she was not interested in soccer, so she did not think L. would enjoy a session that would also have broken up her routine. While the mother's response showed some inflexibility, it was an adherence to the existing ordered schedule, and did not constitute a change in circumstances.

[34] Third, the father said the mother unreasonably withheld consent for L. to go to Skagway with her extended family after L.'s return from an unplanned trip to New Brunswick because of the death of her grandmother. L. had expressed concern about going to her father's for a whole weekend, both to her mother and the child lawyer. However, after discussion and encouragement, L. agreed to go to Skagway with the father and his family for the weekend. This does not constitute a material change in circumstances.

[35] Fourth, after her return from New Brunswick, L. had expressed wanting to see her father for a shorter time than the whole weekend. The father insisted on seeing L. for a full six hours on Saturday. L. did not appear when he came to pick her up, because the mother was of the view that the visit was too much for L. at that time. This reduced time happened on two occasions. While the father's disappointment was understandable, the limited and recent occasions on which this occurred does not constitute a material change in circumstances.

[36] None of these examples demonstrates the mother's failure to follow the schedule as ordered, but instead a respect for R.'s views and preferences, and an understanding of the feelings of L. at a sensitive time in her life, after the death of her grandmother.

ii) medical records

[37] The conflict about medical records appears to have been caused in part by a communication breakdown, which unfortunately was not helped by the lawyers' involvement. On February 27, 2024, the father requested by email access to certain medical records of L. after an episode where the mother was concerned L. had been drugged due to her behaviours after returning home from her weekend visit with the father. L. was tested and found not to have any substances in her system. Upon learning of the concern from the mother, the father requested access to specific medical records of L. The mother did not respond. The conflict began to escalate after the father attended the doctor's office and was told he could not have access to any records for R. or L. without the mother's consent. Before giving consent, the mother asked the father to specify the records he was seeking and the purpose. The father did not reference the

February 27 email in the ensuing email dialogue and instead requested access to all medical records for both children. The positions hardened into a stalemate.

[38] The January 16, 2024 order provides that the mother has final decision-making authority for the children but is required to provide all information related to a significant decision to the father and obtain his input before making the decision. The mother's insistence on the father's specification of which medical records he was seeking and for what purpose before providing consent to the physician's office, while technically not a breach of the order, resulted in an escalation of the conflict. Section 31(5) of the *Children's Law Act* provides that the entitlement to access to a child includes the same right as a parent to make inquiries and to be given information as to the health, education, and welfare of the child. It may have been helpful for the lawyers to discuss (assuming they did not) their understanding of the court order and the statute, and attempt to reach an agreement on process. There is no evidence that the mother told the doctor's office not to disclose the medical records, although the father believes that is what she did.

[39] While the mother's position served to escalate the conflict, it did not amount to a change in circumstances, as it did in the decision of *Hsiung v Tsioutsioulas*, 2011 ONCJ 517 ("*Hsiung*"). There the court found the mother abused her custodial role by "exercise[ing] her custodial powers with a fiercely arrogant sense of exclusivity and entitlement and with a total lack of sensitivity and appreciation for Louis' [the father] role in the child's life and for his right to be kept informed of all medical decisions and appointments so that he could be present for his son, who was critically ill for a prolonged period of time" (at para. 8). The mother had sole custody of the eight-year-old

child with 50/50 shared parenting time. The order required the mother to consult in writing with the father before making any major decisions about the child, and the father had the right to receive the same information about the child as the mother received, from the child's school, doctors, and any other service providers. Hospital personnel testified in court that while the child was in the hospital with a life-threatening brain inflammatory disease, the mother instructed them not to give the father any information about the child, and said she deserved more time with her son than the father. The court concluded that the mother "wilfully and defiantly did all within her power to exclude him – even going so far as to reschedule [the child's] medical appointments so that they would fall on "her days" and not the father's" (at para.11). In that case, the court found this exclusive behaviour – isolating the father from access to medical staff and depriving him of access to medical information – constituted a material change in circumstances that affected the child's best interests. The remedy was to award joint custody to the parents.

[40] The mother's behaviour in *Hsiung* was extreme; it continued over a prolonged period; and was substantiated by objective evidence from neutral hospital personnel. It is more serious than the incident described here of the mother requesting the father to identify specific medical records before providing consent to their release to him. I do not consider this one incident to constitute a material change in circumstances.

[41] However, the *Hsiung* case should be a warning to the mother that failure to follow the legislation, or to respect the spirit and intent of the order, which in this case is to allow the father to receive information about his children and be consulted before major decisions are made, could result in a finding of change of circumstances and a possible

remedy of change of custodial arrangement. The father will always be the father to R. and L., and she cannot attempt to remove him from their lives.

[42] While the conflict between the parties appears to have worsened since the order of January 2024, this is not a material change in circumstances. Although conflict between separating parents is never in the best interests of the children, in this case the high conflict existed before January 2024. Its continuation, unfortunately, was not unforeseen.

b) R.'s new school

[43] R. has graduated from Grade 6. Westfield Primary School ("Westfield") does not go beyond Grade 6. In September R. will go to River Valley Middle School ("River Valley"), the school that most students from Westfield attend once they graduate. At the hearing on September 28, 2023, the mother provided much information about Westfield and its ability to meet R.'s needs. The father expressed scepticism that Westfield could meet R.'s needs. The issue is whether the failure of the Court to consider R.'s attendance at River Valley is a material change of circumstance that could justify a variation of the order.

[44] The January 16, 2024 order provided that the relocation occur after July 8, 2024. The mother was seeking relocation immediately.

[45] The information about R.'s school was one factor among many that this Court considered in its January decision. R. is a child with special needs, although recent reports from his current school in Whitehorse show marked improvement in his behaviour. His needs appear to have decreased since the hearing in September. River Valley is the natural progression for R. from Westfield. The mother did not anticipate in

September 2023 that evidence about the children's school attendance in September 2024 would be relevant. Given the evidence about the mother's persistent and successful advocacy with the Whitehorse school on R.'s behalf, and the time and energy she invested to ensure appropriate supports were in place for him, I have no doubt she will do her best to ensure R. gets the appropriate supports at the River Valley school. I also note the mother's evidence from the respective school websites that River Valley has fewer students than the Whitehorse school he currently attends.

[46] While R.'s attending of a different school than what was discussed at the September 2023 hearing is a change of circumstances, it is not one that materially affects the best interests of R. given the improvement in his behaviour, the natural progression of his attendance at that school in any event, and the mother's advocacy skills and commitment to ensuring he has supports in place.

c) Mother is alienating, coaching, influencing the children

[47] The father's allegations of the mother's coaching, influencing, or alienating the children against him are not new. There was evidence at the hearing in September 2023 of the growing estrangement between R. and his father. The father raised concerns at that time that R.'s increasing reluctance to spend time with him was a result of the mother's influence. The "inexplicable rift" between R. and the father and the erosion of their relationship, he attributes to the mother's coaching of R. He now adds that L.'s recent stated preferences to spend shorter periods of time with him on the weekends mirrors the mother's statements that it was difficult for L. to be apart from her brother and is a result of the mother's influence.

[48] While the father has conceded to his counsellor that he wishes he had been more patient with R., and in court during the November hearing he admitted to placing R. against the wall to calm him after an altercation, beyond this there is no evidence of any acceptance by him of responsibility for their estrangement.

[49] The child lawyer has been consistent in her reports after every meeting with R. that he is an independent thinker, with strong opinions and views, and shows no evidence he has been coached. As noted above she has had 15 meetings with him and nine with L. The child lawyer's assessment accords with the evidence from the agreed-upon supervisor at the time of the attempted supervised visit with the father in February 2024 when despite encouragement and cajoling from her and the mother, R. refused to leave the bathroom to visit with his father.

[50] The child lawyer further wrote in her most recent report after meeting twice with L. in the week after her return from New Brunswick that she saw no evidence of coaching or influence by the mother. Instead, the child lawyer reported L.'s hesitancy and concern about consequences of disclosing to the child lawyer her preference not to spend as much time with her father. The mother had stated in case conferences in February and April 2024 her concern that spending every weekend at her father's without her brother was becoming too much for L. Both the mother and the father reported L.'s unexplained crying spells over the spring. The father has interpreted L.'s stated preferences as coming directly from the mother, rather than accepting that the mother may be reflecting concerns coming from L. In any event, L. agreed to go camping in Skagway with the father and his family the entire weekend of June 7-9. If

these concerns continued and there was no relocation, this matter would have to be brought to court for some kind of resolution.

[51] The points raised by the father are not material changes in circumstance justifying a variation of the order. I accept the child lawyer's assessment that both children are speaking voluntarily without coaching. The beginning of R.'s estrangement from his father was known in September 2023. L.'s reluctance on two recent occasions to spend a full weekend with her father is not evidence of coaching or influence by the mother.

[52] There is no legal basis for a stay in the absence of an appeal of the January 16, 2024 order. It forms part of the application to vary, which has been dismissed for failure to meet the test of material change in circumstances.

Mother's application

i) change date of move to June 14

[53] June 14 was the day after this matter was heard. I reserved my decision and am releasing it on June 20. The mother seeks to move immediately so that she can have the children attend school in New Brunswick that does not end until June 25, in the hopes that they can meet new friends for September, and start to develop a plan for support for R.

[54] This matter has been prolonged, in the hope that a relationship could be re-established with R. and his father and solidified between L. and her father, and to allow the children to finish their school year in Whitehorse. There is insufficient evidence before the Court of a concern that a move after July 8 will prejudice the ability of the children to enrol in the schools of the mother's choice, despite the residency

requirement. July 8 has been the consistent date of the move since January. There may be activities or events the father has planned before his children depart. July 8 is just over two weeks away. The children already have friends and family in New Brunswick; indeed, that is one of the factors that favoured relocation. They will have the opportunity to make friends over the summer and the mother will correspond with the school over the summer to ensure R.'s supports are in place. The possibility of making new friends during the last week of the school year by attending school for that week is not a sufficiently compelling argument to change the date of relocation at this time.

General

a) Weight of Evidence – child lawyer and counsellor to father

[55] The father argued that the Court should place no weight on the reports of the child lawyer because of concerns about influence on the children by the mother and the inability of the child lawyer to make clinical findings about coaching or influence and serving the limited purpose of summarizing the children's views and preferences.

[56] The child lawyer is not a psychologist, but they take a child centred approach in speaking with the child and communicating their views. They are often asked by courts for their views on the clarity, strength and voluntariness of the statements of the children or whether they believe they have been influenced. They are required to follow specifically developed guidelines (referenced in the reasons for the January order). Courts rely on the experience and obligations of the child lawyer in communicating not only the children's views but also their nature and quality. For these general reasons, in addition to the specific reasons stated above and in my January reasons, I have given weight to the child lawyer's reports in this case.

[57] The father provided a letter from his counsellor in support of his application under s. 43. I have placed no weight on this letter. While there is no doubt that his counsellor is well-qualified, all of the information on which her letter is based comes from the father. She has never met or spoken with the mother or children, has not reviewed any court materials, has no information from the child lawyer, and did not review the Court's reasons for the January 16, 2024 order. As counsellor and advocate for the father, her views are not objective and the information on which she based them is incomplete.

b) Conflict

[58] The ongoing high conflict nature of this case is troubling. Unfortunately, its effects are evident in the behaviour of the children. The estrangement between R. and the father needs to be addressed. The preservation of the good relationship to date between L. and her father needs to be prioritized and encouraged. This family needs to find a new way of relating, to move on from the emotionally debilitating and harmful mistrust and blaming that has characterized their relationship over the past few years. For the sake of the children's well-being, learning to respect each other, to communicate with maturity, and to focus on the children's positive growth and development is essential.

CONCLUSION

[59] Both applications are dismissed for the above-noted reasons.

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DUNCAN C.J.