

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

<b>BETWEEN:</b>	)	
	)	
MATTHEW CHRISTOPHER PEREIRA	)	<i>Self-Represented, Absent</i>
	)	
Applicant	)	
	)	
<b>– and –</b>	)	
	)	
	)	
KRISTINA BEREZOVSKY	)	Jaclyn Mackenzie, for the Respondent
	)	
Respondent	)	
	)	
	)	
	)	
	)	<b>HEARD:</b> In Writing

**REASONS FOR JUDGMENT**

**M. KRAFT, J.**

[1] The parties were never married. The applicant, Matthew Christopher Pereira (“the father”), age 34, and the respondent, Kristina Berezovsky (“the mother”), age 35, are the parents of a girl, A., age 5, who resides primarily with the mother.

[2] Pursuant to the order of Akazaki, J., dated April 6, 2023, the father’s Application, dated May 21, 2021, and all of the claims contained within it, except for parenting, were struck. The mother was granted permission to proceed with her claims by way of an uncontested trial.

[3] When the father issued the within Application on May 21, 2021, he was represented by Hayley Dilazzaro. At that time, A. was 3 years of age. The mother had commenced an Application in the Ontario Court of Justice in October 2020. Her Application was stayed when the father commenced this Application. The father sought, among other things, shared decision-making responsibility for A.; equal parenting time with A., including holidays; a right of first refusal if the resident parent cannot look after A. overnight; an order that neither parent be permitted to relocate with A. outside of the City of Toronto without written consent; child support for A.; security for child support; an order requiring both parents to maintain A. as a beneficiary on any employer

provider medical and dental benefits; and an equity claim for a constructive trust interest in the mother's condominium in Toronto, based on the doctrine of unjust enrichment.

[4] According to the father, the parties began cohabiting in February 2017 and separated in February 2020. According to the mother, the parties never cohabited.

[5] The mother's uncontested trial has been heard by me in writing. These reasons set out my findings and disposition of the matters at issue.

### **Relief Sought**

[6] The mother seeks the following relief:

- a. An order that both parents have full access to records and information about A. from all third-party professionals and service providers and the father be permitted to obtain these records directly and not through the mother;
- b. An order permitting the mother to travel with A. outside of Canada without the father's consent;
- c. An order permitting the mother to obtain and renew all government issued documentation for A., without the father's consent or signature;
- d. An order that A. reside primarily in the mother's care;
- e. An order that the father have supervised parenting time with A. in the community on alternated Saturdays for up to six hours through a supervision service;
- f. In the alternative, the father to have regular parenting time with A. on alternate weekends from Friday, at 6:00 p.m. to Sunday, at 6:00 p.m., with parenting exchanges to take place at a police station;
- g. An order that the father be responsible for all fees and costs associated with supervision;
- h. An order that the mother have discretion to change the father's regularly scheduled parenting time if A. has another engagement at that time provided, she provides the father with make-up parenting time if his regularly scheduled time has to be changed;
- i. An order that A. be with the mother every year on Mother's Day, Christmas Eve, Christmas Day, New Year's Eve, New Year's Dad, Easter Weekend (Friday through Monday); and A.'s birthday;
- j. An order that neither parent speak negatively about the other parent to the child;

- k. An Order for police enforcement of the parenting order if necessary;
- l. An order that the father pay the mother child support for the month of December 2022 in the sum of \$502 based on his annual income of \$55,266.24;
- m. An order that the father pay the mother child support for the period January 1, 2022 to and including October 1, 2023, in the sum of \$530 a month based on his annual income of \$57,300;
- n. An order that the father pay the mother child support commencing November 1, 2023 and on the first day of each following month based on an imputed income of \$68,000 a year in the sum of \$634 a month;
- o. An order that the father pay his proportionate share of the child's day care and other s.7 expenses at the ratio of 47% from January 1, 2023 to and including October 31, 2023;
- p. An order that the father pay his proportionate share of the child's prospective s.7 expenses for the period starting November 1, 2023, at the ratio of 49%;
- q. An order that the father pay the mother table child support arrears of \$3,600, s.7 expense arrears of \$6,194.44, and costs of \$700, for a total of \$10,494.44; and,
- r. An order that the father pay the mother costs of her motion to strike the father's pleadings and this uncontested trial in the sum of \$9,000.

[7] The manner in which the father has participated in this litigation is a relevant consideration to be taken into account in considering the relief that is being sought by the mother, for reasons described below.

### **Background Information**

[8] The parties met online on May 25, 2017. The mother became pregnant within 2 months of the parties meeting. According to the mother, the parties never cohabited. The mother describes the father as being dishonest, aggressive, jealous, having an alcohol and substance abuse problem and stealing from her. She describes feeling unsafe around the father and the relationship as being fraught with abuse.

[9] Since the relationship ended, the mother deposes that the father's anger and control issues escalated, making co-parenting impossible.

[10] The mother started a proceeding in the Ontario Court of Justice on October 21, 2022. The father did not file an Answer but repeatedly threatened to start a proceeding in this court to pursue a constructive trust interest in her condominium by way of an unjust enrichment claim, even though according to the mother, he never lived in her condominium.

[11] There were several first appearances in the OCJ where the father was granted, on consent, multiple extensions of time to file his Answer. Despite this, the father failed to do so, repeating his intention to start a proceeding in this court. For seven months, he did not do so. He also did not file an Answer or any responding materials in the OCJ proceeding.

[12] On April 19, 2021, counsel for the mother wrote to the father's counsel stating as follows:

"It seems your client's only intention at this point is to control and delay. Despite asking for filing extensions and adjournments since October 2020, your client indicates that he will not file an Answer in the OCJ while simultaneously threatening that if Ms. Berezovsky requests that he be noted in default, he will seek costs. This is simply not fair. Your client has been given 6 months to file pleadings. Respectfully, if Ms. Berezovsky moves to note your client in default, it will be a result of his own conduct.

Your client has also been threatening to bring emergency Motions for increased parenting time since November 2020. Ms. Berezovsky offered in the last correspondence to set this matter down for the earliest possible Case Conference to address the parenting time that your client continues to complain about. However, he's not interested in doing that either." (Emphasis added)

[13] On May 31, 2021, the father commenced this Application. Since then, the mother submits that he has continued to delay, making it very difficult for her obtain court orders. He is in breach of multiple courts orders, including orders for child support, disclosure, and costs. He did not appear at two court dates, including the mother's motion to strike his pleadings. Further, he did not file materials for four case conferences.

### **Litigation History**

[14] The first case conference in this court was conducted on January 31, 2022 before Sharma, J. The Endorsement indicates that the parties had exchanged Draft Minutes of Settlement, settling all issues. The Minutes were to be signed and a consent order was to be sent to Sharma, J. for his signature. This never happened. The Minutes were not signed.

[15] On May 2, 2022, the father's solicitor, Dayna Shoot was removed as solicitor of record for the father by an order of Pinto, J.

[16] On May 30, 2022, the parties were scheduled to attend a Settlement Conference before Diamond, J. The father sought an adjournment to enable him to retain counsel. The Endorsement states that the parties were following an agreement where the father would pay monthly child support to the mother of \$520 a month and as of May 30, 2022, the father owed the mother arrears of child support for four months in the sum of \$2,008. Diamond, J. adjourned the conference to July 11, 2022, and required the father to serve and file a conference brief by July 6, 2022. Costs of the May 30, 2022 attendance were reserved to the judge hearing the July 11, 2022 conference.

[17] On July 11, 2022, the case conference came back before Sharma, J. The father remained unrepresented and did not file a case conference brief. He asked for a further adjournment because he claimed he could not find counsel to represent him. Sharma, J. was not satisfied that the father was taking his obligations under the *Family Law Rules* seriously. He refused to grant the adjournment and noted that there was a wasted appearance on May 30, 2022 and no progress since that date. Sharma, J. made the following order:

- a. The parties are to communicate by email only and respond to each other's communications within 48 hours, in a civil and polite manner. If a party does not respond, then the other party was to exercise decision-making unilaterally;
- b. The father's parenting time of alternating weekends and one mid-week video conference call was to continue, with the father being responsible for pick-ups and drop offs, until further court order;
- c. The mother was to provide another weeknight video-conference call for the father to call the child;
- d. Neither party was to speak negatively about the other party;
- e. The father was ordered to pay costs for this conference and the May 30 2022 attendance in the sum of \$700, payable forthwith;
- f. The mother was to serve a Form 20-Request for Information on the father by July 29, 2022 and the father was to respond by August 26, 2022;
- g. On a temporary, without prejudice basis, the father was to pay the mother \$502 a month in table child support starting August 1, 2022 for A., to be enforced by the FRO; and
- h. The issue of arrears of child support and/or s.7 expenses to be addressed at a later Settlement Conference.

[18] On October 21, 2022, the parties attended a Settlement Conference ("SC") before Pinto, J. The Endorsement states that the father was earned \$57,300 at that time, and the issues discussed included parenting time, disclosure, child support, s.7 expenses and decision-making. The father indicated that he was prepared to drop his property related claim. Costs of the conference were reserved to the motion to trial judge.

[19] On December 23, 2022, the parties had a further SC before Kristjanson, J. The Endorsement states, among other things, that

- a. this was the fourth successive conference where the father had failed to file any materials;

- b. the father did not appear at the virtual conference despite the fact that the court called him and he was advised of the date and zoom link prior to the conference;
- c. the father is in breach of court orders and has an outstanding unpaid costs order;
- d. the father was given one last chance to comply with the outstanding orders by January 16, 2023, failing which the mother had leave to bring a motion pursuant to Rule 1(8) to proceed with an uncontested trial where the father would have no right to participate;
- e. the father was to file an updated form 13.1 Financial Statement by January 16, 2023;
- f. costs of the October 21, 2022 conference of \$1,500 were ordered to be paid by the father by January 16, 2023; and
- g. costs were to be enforced through the FRO.

[20] The father did not meet the January 16, 2023 deadline. He never paid the costs. He never filed an updated sworn financial statement. Accordingly, on April 6, 2023, Akazaki, J. struck the father's pleadings and all claims, other than parenting, and granted the mother permission to proceed with her claims by way of an uncontested trial.

### **Issues to be Decided**

[21] The issues to be decided on this uncontested trial are as follows:

#### Parenting Orders

- a. Is it in A.'s best interests for the mother to have sole decision-making responsibility over the major decisions that impact her?
- b. Is it in A.'s best interest to reside primarily with the mother and to have supervised parenting time with the father, or to have parenting time with the father on alternate weekends, from Fridays at 6:00 p.m. to Sundays, at 6:00 p.m.?
- c. Is it in A.'s best interests for the mother to have permission to travel with her and obtained all of her government issues documentation without the need for the father's consent?

#### Child Support Orders

- d. Does the father owe the mother child support arrears and if so, in what amount?
- e. Does the father owe the mother retroactive child support starting on November 1, 2022?

- f. What is the father's child support obligation on a prospective basis?

Restraining Order

- g. Should a permanent restraining order against the father be granted?

Costs

- h. What amount of costs should the mother be awarded for this uncontested trial and for her motion to strike the father's pleadings?

**Parenting Orders:**

[22] In terms of A.'s parenting, the issues that need to be resolved include:

- a. Is it in A.'s best interests for the mother to have sole decision-making responsibility over the major decisions that impact her?
- b. Is it in A.'s best interest to reside primarily with the mother and to have supervised parenting time with the father, or is in her best interests to maintain her regular parenting time with her father on alternate weekends from Friday, at 6:00 p.m. to Sunday, at 6:00 p.m.?
- c. Is it in A.'s best interests for the mother to have permission to travel with her and obtained all of her government issues documentation without the need for the father's consent?

[23] Since the parents are not married, the *Children's Law Reform Act*, R.S.O. 1990, c. C.12 ("CLRA") is the applicable statute that governs this matter.

[24] In making a parenting order with respect to A., the court shall only consider her best interests: s. 24(1).

[25] In determining what is in A.'s best interests, I am required to consider all factors related to A.'s circumstances and, in doing so, I am required to give primary consideration to her physical, emotional, and psychological safety, security and well-being; s. 24(2).

[26] The best interests factors are set out in s.24(3) of the CLRA and reproduced below:

- (a) the child's needs, given the child's age and stage of development, such as the child's need for stability;
- (b) the nature and strength of the child's relationship with each parent, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;

- (c) each parent's willingness to support the development and maintenance of the child's relationship with the other parent;
- (d) the history of care of the child;
- (e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
- (f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;
- (g) any plans for the child's care;
- (h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
- (i) the ability and willingness of each person in respect of whom the order would apply to communicate and co-operate, in particular with one another, on matters affecting the child;
- (j) any family violence and its impact on, among other things,
  - (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
  - (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to co-operate on issues affecting the child; and
- (k) any civil or criminal proceeding, order, condition or measure that is relevant to the safety, security and well-being of the child. 2020, c. 25, Sched. 1, s. 6.

#### Factors relating to family violence

- (4) In considering the impact of any family violence under clause (3) (j), the court shall take into account,
  - i. the nature, seriousness and frequency of the family violence and when it occurred;
  - ii. whether there is a pattern of coercive and controlling behaviour in relation to a family member;
  - iii. whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;



- iv. the physical, emotional and psychological harm or risk of harm to the child;
- v. any compromise to the safety of the child or other family member;
- vi. whether the family violence causes the child or other family member to fear for their own safety or for that of another person;
- vii. any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve the person's ability to care for and meet the needs of the child; and
- viii. any other relevant factor. 2020, c. 25, Sched. 1, s. 6.

[27] I am able to consider the father's past conduct only if it is relevant to the exercise of his decision-making responsibility, parenting time or contact with respect to A.: s. 24(5).

**Is it in A.'s bests interest to reside primarily with the mother and to have supervised parenting time with the father, or is in her best interests to maintain her regular parenting time with her father on alternate weekends from Friday, at 6:00 p.m. to Sunday, at 6:00 p.m.?**

[28] In making an order for parenting time, I am required to give effect to the principle that a child should have as much time with each parent as is consistent with the best interests of A.: s. 24(6).

[29] The best interests of the child have been found to be met by having a loving relationship with both parents and that such a relationship should be interfered with only in demonstrated circumstances of danger to the child's physical or mental well-being. Moreover, the child has a right to have contact with both parents. See: *Klymenko v. Klymenko*, 2020 ONSC 5451.

[30] The party who seeks to reduce normal access will usually be required to provide a justification for taking such a position. The greater the restriction sought, the more important it becomes to justify that restriction. *M.A. v. J.D.*, 2003 CanLII 52807 (ON CJ), [2003] O.J. No. 2946 (OCJ).

[31] The person seeking supervised access bears the burden of establishing that supervision is necessary. See: *Klymenko v. Klymenko*, *supra*.

[32] Currently, the father has parenting time with A. on alternating weekends from Fridays, at 6:00 p.m. to Sunday evenings, at 6:00 p.m., with the parenting exchanges taking place at the mother's home.

[33] The mother believes it is in A.'s best interests to continue to have a relationship with the father, however, she submits that A.'s parenting time ought to be supervised on an ongoing basis, for the following reasons:

- a. Prior to the court proceedings being commenced, the mother deposes that the father had a psychologist who had referred him to have a formal psychiatric assessment. The father's psychologist advised the mother that the father had repeatedly stated that he would stop at nothing to destroy the mother's quality of life and seek revenge. The psychologist passed away and was not able to write a letter in support of the mother. The mother was doing individual therapy sessions with the psychologist from September 2019 until she died in December 2021.
- b. The father's conduct during parenting exchanges demonstrates that he is regularly combative, uncooperative and abusive toward the mother. This conduct takes place in front of A. without any regard for the impact this may have on her.
- c. The father has sent paranoid, strange and threatening emails to the mother on a regular basis. He has been unpredictable in terms of his caring for A. He has regularly called the police during parenting exchanges. Some examples of these incidents include the following:
  - i. On March 28, 2022, a police officer from 52 Division called the mother to advise that the father was potentially missing and inquired as to whether the mother knew of his whereabouts because he had not shown up at work for 3 weeks;
  - ii. On May 19, 2023, the mother wanted to take A. to her cousin's birthday party during his weekend. The father responded that A would not be going to her cousin's birthday party. He threatened to call the police if the mother did not bring her to McDonalds for parenting exchange.
  - iii. On October 6, 2023, when the father arrived at parenting exchange at her mother's home, the mother asked him to confirm that he would be dropping A. off on Sunday at 6:00 p.m. as per the court order. The father became aggressive and insisted that he would not return A. until Monday because it was a long weekend. However, the court order did not give the father additional parenting time on long weekends. Once the father admitted his intention to withhold A. the mother brought A. back into her home. The father called the police and waited for them in a parking lot for 2 hours. When the mother tried to leave her home with A. to take her to McDonalds to eat, the father drove back to the mother's house and blocked her driveway with his car, so she could not leave. The police arrived and the father confirmed to the police that he would return A. on the Sunday.

[34] The Court does not find that it is in A.'s best interests to supervise the father's parenting time. That would adversely affect the amount and quality of A.'s parenting time with the father. However, the court makes this finding with some reservation. The court is concerned about the father's ability to separate his own emotional needs from those of A. If he undermines the security of A.'s relationship with the mother or he exposes A. to conflict, a future court may have to revisit this issue.

[35] The father has never had supervised parenting time with A. There was never a motion brought by the mother that his parenting time needed supervision either in the OCJ proceeding or this proceeding. Given the father's refusal to participate in this proceeding, if a supervision order is made, a review of that decision will be necessary and it is not likely that the father will participate in that hearing.

[36] I note that the mother asked for alternative relief namely, that the father's regular parenting schedule with A. take place on alternate weekends from Friday at 6:00 p.m. to Sunday at 6:00 p.m. with parenting exchanges to take place at the Durham Regional Police Station. I find that it is in A.'s best interests that the father's regular parenting schedule continue on alternate weekends with the exchanges taking place at the Durham Police Station.

### **Holiday Schedule**

[37] The mother seeks to have A. in her care for every Mother's Day. That order is granted.

[38] The mother seeks to have A. in care every Christmas Eve and Christmas Day, New Year's Eve and New year's Day. I decline to grant this order. The father shall have some time with A. on Christmas Day or New Year's day. To facilitate this, the father shall advise the mother in writing by October 30<sup>th</sup> in each year, starting with October 30, 2024, what time he wishes to spend with A. during Christmas Day and New Year's Day for a maximum of 4 hours. The mother shall respond to the father within 48 hours of receiving his requested time as to whether the times proposed are agreeable. In even-numbered years, starting with 2024, the mother shall have the first choice of the time the father has with A. on either Christmas Day or New Year's Dad and in odd-numbered years, the father shall have the first choice of the time he has with A. on either Christmas Day or New Year's Day.

### **Parenting Exchanges**

[39] Generally, ordering parenting time exchanges to take place at a police station is not supporting. As set out in *K.M. v. J.R.*, 2022 ONSC 111, the court articulated the following problems with doing so:

- a. It sends messaging to children that their world is not safe and the exchanges are dangerous;
- b. That someone love is dangerous or unsafe.

- c. Transitions become anxiety-provoking;
- d. The police are not equipped for this.
- e. It is adult-focused, not child focused.

[40] Despite these problems, the court has considered that a starting point to assess a child's best interests when making a parenting order is to ensure that a child will be physically and emotionally safe: *K.K.H. v. A.A.B.*, 2024 ONCH 113 (CanLII). It is also in a child's best interests when making a parenting time order that his or her caregiver be physically and emotionally safe. See *I.A. v. M.Z.*, 2016 ONCJ 615; *Armstrong v. Coupland*, 2023 ONSC 54511; *J.N. v. A.S.*, 2020 ONSC 5292; *A.L.M. v. V.L.A.*, 2020 ONCH 502; *M.R.-J. v. K.J.*, 2020 ONCH 305; *Abbas v. Downey*, 2020 ONCH 283; *N.D. v. R.K.* 2020 ONCJ 266.

[41] Given the conflict that has taken place at parenting exchanges, I am persuaded that it is in A.'s best interests for the exchanges to take place at the Durham Police Station, as requested by the mother.

**Is it in A.'s best interests for the mother to have sole decision-making responsibility over the major decisions that impact her?**

[42] The mother seeks sole decision-making responsibility for the major decisions that impact A. In determining whether this is in A.'s best interests, I have considered the best interests factors set out in s.24(3) of the *CLRA*, and make the following findings:

- a. The mother has consistently tried to communicate with the father and encourage him to take an interest and be involved in decision-making regarding A. The father has declined to take part or give any opinion about these important decisions. Examples of these attempts on the mother's part include the following:
  - i. The mother asked the father to communicate with her through the co-parenting application Our Family Wizard and he never responded;
  - ii. The mother asked the father to attend co-parenting therapy with her and he advised he would only do so if she agreed to no longer have child support enforced through the Family Responsibility Office;
  - iii. For A.'s dance recital on February 26, 2022, which fell during the father's weekend parenting time, the mother emailed the father the details. The father ignored her. On the weekend of the recital, the father decided to forfeit his weekend with A. The father did not show up at A.'s dance recital which caused her to be sad and disappointed;
  - iv. On March 3, 2022, the mother emailed the father's about A.'s new daycare placement. The father did not respond.

- v. On May 9, 2022, the mother emailed the father to discuss A.'s kindergarten program for the 2022/2023 school year. The father did not respond;
  - vi. On July 29, 2022, the mother emailed the father with details regarding registration and costs for A.'s dance school. On September 1, 2022, the mother forwarded the father an email she had received from the dance school, regarding dance attire and associated costs. The father did not respond to either email;
  - vii. On September 2, 2022, the mother forwarded an email to the father regarding the parenting schedule and a meet and greet date at A.'s school. The father never responded,
  - viii. On October 31, 2022, the mother asked the father to sign A.'s passport application, explaining that she hoped to travel with A. sometime in 2023, but that she did not have any actual travel plans. The father accused the mother of having travel plans and lying. The father did not respond further.
  - ix. On November 10, 2022, the mother emailed the father advising him to attend the parent-teacher interview for A. The father never responded and did not attend the Zoom parent-teacher interview.
- b. It is clear based on the above incidents that the father is not willing to support the development and maintenance of A.'s relationship with the mother. It is abundantly clear that the mother has demonstrated a consistent willingness to support the development and maintenance of A.'s relationship with her father.
- c. It is also clear from the above that the mother has demonstrated an ability and willingness to communicate and cooperate with the father on all matters affecting A. To the contrary, the father appears disinterested, disengaged and/or unwilling to cooperate with the mother to co-parent A.
- d. The father appears to have a past history of fabricating allegations about A. in an effort to show the mother in a bad light. These attempts on his part are detailed below:
- i. On December 27, 2021, the father called the mother accusing the daycare of inappropriately disciplining A. When the program manager asked the father for details about this allegation, the father ignored her and did not respond;
  - ii. On May 6, 2022, the father claimed that A. was limping due to a fight in daycare. When the mother asked for the details, the father did not respond. The mother reached out to A.'s daycare provider who told the mother that A. was not in a fight or limping.

- iii. On May 11, 2022, a supervisor from Weewatch Agency contacted the mother regarding an email the father had sent her about a report. The mother inquired with the father about what report he was seeking. The father never responded.
- iv. On August 2, 2022, the mother emailed the father about a new allegation he had made to the daycare that another child had assaulted A. The daycare told the mother that this allegation was false.
- v. The father regularly emails the mother 1-3 times each week stating “access denied” on days when he does not have regularly scheduled parenting time.
- vi. On September 5, 2022, the father asked the mother to have an important phone call. The mother requested that he email her. The father emailed her that evening stating that A. had told the pediatrician that the maternal grandmother’s husband hit her, yelled at her and pushed her. The father also stated in the email that A. told him that maternal grandmother’s husband has been making A. touch him. The father went on to explain that the pediatrician has informed CAS in accordance with his statutory obligation to do so and that until the matter is investigated, he did not give consent to A. to be at the maternal grandmother’s home. Shortly after that, the father posted a picture sitting on a hospital bed with A.
- vii. On September 6, 2022, the mother picked up A. from the father’s home and requested information about the hospital visit, the date, physician’s name etc. The father never responded.
- viii. The mother also contacted the CAS and advised that the allegations made by the father were unequivocally false.
- ix. On September 12, 2022, the caseworker from CAS visiting the mother and A. at the mother’s residence. She showed the mother the doctor’s office report, confirming that the father pulled the doctor aside and told the doctor about A.’s allegations. A. never made the allegations or disclosure to the doctor herself.
- x. On September 21, 2022, the Family Service Worker from CAS advised the mother they had no further concerns and no reason to investigate further.
- xi. In March 2023, an “anonymous” call was made to the CAS to report another allegation about A.’s maternal grandfather. The CAS worker came to do another home visit at the mother’s home and then closed the case. The CAS worker suggested to the mother that she and A. receive counselling to help cope with the father’s abusive behaviour.

- e. Based on the above, I find that the father's conduct of fabricated allegations amounts to concerning behavior that is abusive and controlling. As a result, it constitutes family violence. In accordance with s.24(3)(j), it is questionable as to whether the father has the ability to meet the needs of A. when he has demonstrated a willingness to make false allegations causing A. and the mother to be investigated by the CAS.
- f. The Supreme Court of Canada in *Barendregt v. Grebliunis*, 2022 SCC 22 made the following observations about family violence:

The recent amendments to the *Divorce Act* recognize that findings of family violence are a critical consideration in the best interests analysis (par. 146).

The suggestion that domestic abuse or family violence has no impact on the children and has nothing to do with the perpetrator's parenting ability is untenable. Research indicates that children who are exposed to family violence are at risk of emotional and behavioural problems throughout their lives: Department of Justice, Risk Factors for Children in Situations of Family Violence in the Context of Separation and Divorce (February 2014), at p. 12. Harm can result from direct or indirect exposure to domestic conflicts, for example, by observing the incident, experiencing its aftermath, or hearing about it: S. Artz et al., "*A Comprehensive Review of the Literature on the Impact of Exposure to Intimate Partner Violence for Children and Youth*" (2014), 5 I.J.C.Y.F.S. 493, at p. 497. (par. 145).

Domestic violence allegations are notoriously difficult to prove. Family violence often takes place behind closed doors and may lack corroborating evidence. Thus, proof of even one incident may raise safety concerns for the victim or may overlap with and enhance the significance of other factors, such as the need for limited contact or support (par. 145).

- g. In cases of family violence, particularly spousal violence, it is crucial that the court consider whether a co-operative parenting arrangement is appropriate. A victim of family violence might be unable to co-parent due to the trauma they have experienced or ongoing fear of the perpetrator. In addition, co-operative arrangements may lead to opportunities for further family violence. See: *Bell v. Reinhardt*, 2021 ONSC 3353. Accordingly, I find it would be inappropriate in these circumstances to make an order that would require these parents to attempt to cooperated on issues affecting A.
- h. The history of A.'s care is that she has been in the mother's primary care and the mother has provided a stable, consistent home and routine for her. In contrast, the

father has demonstrated an inability to follow the parenting schedule and shows complete disregard for A.'s needs and best interests by his inability to be a stable and predictable caregiver to her. I make this finding based on the following examples:

- i. On December 3, 2021, the father did not pick up A. at daycare as he was scheduled to do. He did not notify the mother. The mother was called by the daycare staff indicating that the father did not show up. The mother left work early to retrieve A.
- ii. On December 17, 2021, the daycare staff called the mother to advise that the father never showed up to pick A. up. Again, the mother left work early to retrieve A.
- iii. On December 26, 2021, the mother asked the father in-person at a parenting exchanged to confirm that he would be picking up A from day care for his parenting time the following weekend. The father did not answer;
- iv. On January 2, 2022, the parents agreed that A. would return to her home that event. The father never showed up at 6:00 p.m. the scheduled exchange time. The mother emailed, texted, and called the father as she was worried. He texted the mother back at 6:53 p.m. and said he decided he would drop off A. on either January 3 or 4. On January 3, 2022, the father dropped A. off late at 6:30 p.m. without any prior communication.
- v. On March 13, 2022, the father was 45 minutes later for drop off without notice to the mother;
- vi. On April 9, 2022, A.'s birthday fell on the father's weekend. The father would not confirm dates or times when the mother was asking him. In the end, the father forfeited his parenting time with A.
- vii. On April 19, 2022, the mother emailed the father to confirm a pickup and drop off time and location for his weekend falling on April 22-24, 2022. The father initially ignored the mother's correspondence. When he did respond, he was difficult agreeing to concrete times.
- viii. On August 28, 2022, A. was scheduled to return to the mothers care at 6:00 p.m. The father refused, claiming he did not have a vehicle. The mother emailed him to ask when he would have a vehicle and whether he would drop off A at daycare the following morning. The father never responded.
- ix. On September 4, 2022, the mother emailed the father asking to confirm whether A. would be dropped off at 6:00 p.m. The father replied that it was a long weekend and accused the mother of not sending him the school



schedule, asking if A. was registered in school. The mother had sent the father the school schedule and sent it to the father again. The father refused to drop off A. and, instead demanded that the mother pick up A. from his home on September 6, 2022.

- x. On September 9, 2022, the father forfeited his weekend with A. without explanation.
  - xi. On October 24, 2022, the father was 30 minutes late for drop off without notice.
  - xii. On November 6, 2022, the father kept A. overnight without agreement and contrary to the order;
  - xiii. On November 20, 2022, the father refused to drop off A. without prior notice and ignored the mother's question as to why A. had not been returned. The mother called the police to do a wellness check. The father asked the police to bring A. home to the mother, which they told him was not possible. The mother immediately went to the father's home with the police present for safety reasons;
  - xiv. On A.'s birthday weekend April 9, 2023, the father told the mother he would not allow A. to speak with the mother on A.'s birthday. The mother was distressed and panicked and brought A. back into her home. The father started to videotape the mother and called the police. The mother released A. into the father's care in good faith and with police assistance, under the agreement that she be allowed to call A. on her birthday and that the father would return A. to the mother's residence on time. The father did allow the mother to have a three-minute call with A. on her birthday.
- i. In terms of A.'s needs, given her young age and stage of development, the court has concerns about the father's ability to meet these needs, including her need for stability. I make these findings based on the following facts:
- i. A. tells the mother that when she is with the father she sleeps on the couch. The mother has asked the father for pictures of his residence to be sure that A. has a bed there but the father refuses to provide one.
  - ii. A.'s daycare reports that when A. comes to daycare after having a weekend with her father, her behaviour is different, including lying.
  - iii. The father has difficulty caring for A.'s hair. On October 11, 2021, A. returned to the mother with shampoo and conditioner still in her hair, not washed out.

- iv. On December 18, 2022, A. had an accident on the drive back from the father's home to the mother's homes. A. told the mother that the father had taken photographs of her body and she asked him to stop because it made her uncomfortable. The mother emailed the father about this incident. He denied doing this.

[43] For all of the above reasons, I find that it is in A.'s best interests that she remains in the primary care of the mother. I also find that it is in A.'s best interests for the mother to have sole decision-making responsibility for A. These parties do not have a history of being able to communicate effectively and co-parenting and/or joint decision-making is not possible.

[44] The mother seeks the discretion to change the father's parenting time if A. has another engagement at that time and to provide the father with make-up notice. I decline to grant this order. If A. has a special event to attend, the mother shall give notice of that event to the father. The father shall make best efforts to be flexible to ensure that A. does not miss important events for extended family and close friends. If the father is not willing to take A. to the event, the mother shall be permitted to take A. during the father's time and then return A. to his care for the remainder of the parenting time.

**Is it in A.'s best interests for the mother to have permission to travel with her and obtained all of her government issues documentation without the need for the father's consent?**

[45] I find it is in A.'s best interests for the mother to be permitted to travel with her outside of Canada without the need for the father's permission and for her to be permitted to obtain and renew all government-issued documentation, such as passports, health cards, etc. without the need for the father's consent.

**Child Support**

[46] The child support issues I need to determine are as follows:

- a. Does the father owe the mother child support arrears and if so, in what amount?
- b. Does the father owe the mother retroactive child support starting on November 1, 2022?
- c. What is the father's child support obligation on a prospective basis?

[47] Pursuant to s.31 of the *Family Law Act*, R.S.O., c.F.3 ("*FLA*"), every parent has an obligation to pay child support.

[48] An order for the support of a child should recognize that each parent has an obligation to provide support for the child, and apportion the obligation according to the child support guidelines: s. 33(7) of the *FLA*.

[49] The Ontario *Child Support Guidelines*, O. Reg. 391/97 (“CSG”) state that the amount of an order for the support of a child under the age of majority is the amount set out in the applicable table, according to the number of children and the income of the parent against whom the order is sought: s.3(1).

**Does the father owe the mother child support arrears and if so, in what amount?**

[50] In terms of child support arrears, the mother seeks an order that the father pay her arrears of child support in the sum of \$3,600 and arrears of s.7 expenses in the amount to \$6,194.44. She specially asks for the total amount of these arrears, plus \$700 in costs, for a lump sum of \$10,474.44, payable by December 1, 2023. These costs of \$700 are those that the father was ordered to pay the mother on July 11, 2022 and did not pay. She asks that these costs be enforceable as child support through the Family Responsibility Office.

[51] Attached as Exhibit “JJ” to the mother’s Form 23C is the FRO case balance summary as of November 15, 2023. This case balance shows that the father is in support arrears of \$4,642.29, made up of arrears of child support pursuant to a court order of \$4,242.29, plus fees of \$400.

[52] The mother did not put forward any other evidence on the record to demonstrate that the father owes arrears of table child support of \$3,600 or arrears of s.7 expenses of \$6,194.44, as claimed. There was no chart detailing the time frame of these arrears. Further, there was no list of s.7 expenses or details outlining the amounts paid by the father toward s.7 expenses or the balance of what is owing.

[53] Based on the record before me, I order the father to pay child support arrears to the mother of \$4,642.29 as per the FRO case balance summary, plus the prior order of costs of \$700, for a total sum of child support arrears and costs of \$5,342.29, payable forthwith.

**Does the father owe the mother retroactive child support starting on December 1, 2021?**

[54] The mother seeks retroactive child support as follows:

- a. The sum of \$502 a month for December 1, 2021, based on the father’s income of \$55,266.24 for 1 child;
- b. The sum of \$530 a month for the period of January 1, 2022 to and including October 31, 2023, based on the father’s income of \$57,300. This amounts to \$11,660 for this 22-month period;

[55] The total amount of retroactive child support being sought by the mother, therefore amounts to \$12,162.

[56] The mother’s Form 23C, however, does not outline what the father paid during this same period. It appears from the order of Sharma, J., dtd July 11, 2022, that the father was ordered to pay \$502 a month as child support to the mother, starting August 1, 2022. However, the

Endorsement of Diamond, J., dated May 30, 2022 references an earlier agreement of the parties that the father was paying voluntary child support of \$502 a month.

[57] Accordingly, there is an overage of child support owing for period January 1, 2022 to and including October 31, 2023, according to the mother of \$28 a month because it appears the father was paying \$502 a month in child support based on his income of \$55,266.24, instead of \$530 a month a month in child support, based on the income he earned in 2022 of \$57,300. If I am correct, this would mean that the father would owe retroactive child support of \$616, calculated as \$28 a month x 22 months for the period January 1, 2022 to and including October 31, 2022.

[58] In terms of retroactive s.7 expenses, the mother seeks an order that the father pay 47% of the child's s.7 expenses being childcare and camp fees, dance classes, skating classes, swimming classes, and the after-insurance costs of the child's medical and dental expenses for the period starting January 1, 2023 to and including October 31, 2023. The mother's Form 23C does not set out the total cost of these s.7 expenses. Nor does her affidavit set out what the father contributed toward A.'s section 7 expenses, if anything.

[59] As a result, I am not able to make a retroactive child support order without further evidence from the mother.

**What is the father's child support obligation on a prospective basis, starting November 1, 2023?**

[60] The mother seeks prospective child support for A. under the CSG based on an imputed income for the father of \$68,000 a year, starting November 1, 2023, in the sum of \$634 a month for the parties' one child. As well, she seeks an order that the father pay 49% of the child's ongoing childcare and camp fees, dance classes, skating classes, swimming classes and the after-insurance cost of the child's medical and dental expenses.

**Should income be imputed to the father of \$68,000 a year?**

[61] Pursuant to s.16 of the CSG, the starting point in determining income for child support purposes is the "Total Income", also known as Line 15000 in the T1 General Form used for income tax purposes, adjusted in accordance with Schedule III of the CSG.

[62] The father swore one financial statement in this proceeding, dated May 18, 2021, which set out that his income was \$54,396.48 a year. He consented to pay child support for A. on that level of income as provided for in the order of Sharma, J., dated July 11, 2022.

[63] According to the mother, the father orally disclosed to her that his income had increased to \$57,300. In fact, this income figure was referred to in the Endorsement of Pinto, J., dated October 22, 2022. However, the father's child support never increased in accordance with that increased income figure.

[64] Pursuant to the order of Sharma, J., dated July 11, 2022, the FRO garnishes the father's income pursuant to the Support Deduction order. The husband works for the Government of Canada. As of November 3, 2023, FRO is deducting \$1,010.73 from the father's bi-weekly income, which represents 50% of his income. Given that this is the father's net income, the mother submits he earns \$2,021.46 bi-weekly in net income or \$52,558 a year, net which is the equivalent to approximately \$68,000 a year gross. It is on this basis that she asks that income be imputed to the father in this amount.

[65] Section 19 of the *CSG*, sets out the authority for a court to impute income to a payor for child support. It states as follows:

19. (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:

(a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;

(b) the spouse is exempt from paying federal or provincial income tax;

(c) the spouse lives in a country that has effective rates of income tax that are significantly lower than those in Canada;

(d) it appears that income has been diverted which would affect the level of child support to be determined under these Guidelines;

(e) the spouse's property is not reasonably utilized to generate income;

(f) the spouse has failed to provide income information when under a legal obligation to do so;

(g) the spouse unreasonably deducts expenses from income;

(h) the spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax; and

(i) the spouse is a beneficiary under a trust and is or will be in receipt of income or other benefits from the trust.

[66] Pursuant to s.19(1)(f), the father has failed to provide income information when he is under a legal obligation to do so. Based on the information provided by the mother regarding the amounts being garnished by FRO, I find that the father's income for prospective child support purposes is \$68,000 a year.

[67] The CSG dictate that for one child, the Table child support obligation for the father is \$634 a month, based on an annual income of \$68,000.

[68] In terms of prospective s.7 expenses for A., the mother seeks an order that the father pay 49% of A.'s section 7 expenses. The mother's sworn financial statement, dated July 29, 2022, indicates that she is employed by the Royal Bank of Canada and her annual income is listed at \$70,688. The combined incomes of the parties are \$138,688, which corresponds to the father's proportionate responsibility for A.'s s.7 expenses to be 49% and the mother's proportionate responsibility to be 51%.

[69] The mother's Form 23C does not list the cost of each s.7 expense she is claiming, nor does she set out which of these expenses are full-year or partial year. In order for the Court to determine whether a specific expense for a child qualifies as a legitimate s.7 expense, the court must consider the "necessity" of the expense in relation to the child's best interests; and the "reasonableness" of the expense in relation to the means of the parents and those of the child and to the family's spending pattern prior to separation: *Titova v. Titov*, 2012 ONCA 864.

[70] In addition, Ontario courts have generally held that a parent must provide the other with reasonable notice of a s.7 expense before claiming a contribution. In other words, one parent cannot unilaterally incur an expense for a s.7 expense and then claim a contribution from the other parent: *Luftspring v. Luftspring*, 2004 CarswellOnt 1481 (ONCA).

[71] Daycare is considered a legitimate s.7 expense if it is required to allow the primary parent to attend employment. Similarly, the uninsured portion of medical and dental expenses for a child in excess of \$100 is a legitimate s.7 expense.

[72] Whether or not A.'s summer camp fees, dance classes, skating classes and swimming classes qualify as s.7 expenses will depend on the cost of these expenses, the necessity of the expense and the reasonableness of these expenses. Again, the court has no information on the record about these expenses with which to make such a determination.

[73] Accordingly, while the mother has correctly calculated the father's proportionate share he would have to pay toward A.'s s.7 expenses at 49%, I cannot determine what that amount would be without further evidence from the mother.

### **Restraining Order**

[74] The mother is also seeking a restraining order against the father, pursuant to s.46 of the *FLA*. Section 46(1) states that the court may make a final restraining order against a person described in subsection (2) if the applicant has reasonable grounds to fear for her own safety or for the safety of any child in her lawful custody.

[75] In *G.P. v. R.P.*, 2023 ONCJ 388, this court set out the legal principles to apply in determining whether to grant a restraining order as follows:

- a. Restraining orders are serious and should not be ordered unless a clear case has been made out. See: *Ciffolillo v. Niewelglowski*, 2007 ONCJ 469.
- b. Courts should not order restraining orders in borderline cases just to be cautious. That ignores the test and the onus of proof. See: *A.H. v. M.T.*, 2023 ONSC 2365.
- c. A restraining order is serious, with criminal consequences if there is a breach. It will also likely appear if prospective employers conduct a criminal record (CPIC) search. This could adversely affect a person's ability to work. It may affect a person's immigration status. See: *F.K. v. M.C.*, 2017 ONCJ 181.
- d. It is not sufficient to argue that there would be no harm in granting the order. See: *Edwards v. Tronick-Wehring* 2004 ONCJ 195.
- e. Courts should be hesitant to make the order simply because there was a similar order in place before that has now expired. Orders expire. See: *A.H. v. M.T.*, *supra*.
- f. Before the court can grant a restraining order, it must be satisfied that there are "reasonable grounds for the person to fear for his or her own safety or for the safety of their child". See: *McCall v. Res*, 2013 ONCJ 254.
- g. The test for a restraining order is both objective and subjective. The legislation itself makes that clear, as an entirely subjective test would have no use for the words "reasonable grounds" as a qualifier to the fear(s) expressed by the requesting party. See: *A.H. v. M.T.*, *supra*; *McGowan v. McGowan*, 2018 ONSC 5950, at paragraph 38.
- h. The relief is discretionary. While there are subjective and objective elements in the test, more is required than an expression of concern. There must be evidence as to specific events and a connection to the present situation. See: *Noriega v. Litke*, 2020 ONSC 2970; *S.S.L. v. M.A.B.*, 2022 ONSC 6326.
- i. It is not necessary for a respondent to have actually committed an act, gesture or words of harassment to justify a restraining order. It is enough if an applicant has a legitimate fear of such acts being committed. An applicant does not have to have an overwhelming fear that could be understood by almost everyone; the standard for granting an order is not that elevated. See: *Fuda v. Fuda*, *supra*.
- j. A restraining order cannot be issued to forestall every perceived fear of insult or possible harm without compelling facts. There can be fears of a personal or subjective nature, but they must be related to a respondent's actions or words. A court must be able to connect or associate a respondent's actions or words with an applicant's fears. See: *Fuda v. Fuda*, *supra*.

- k. A restraining order will be made where a person has demonstrated a lengthy period of harassment or irresponsible, impulsive behaviour with the objective of harassing or distressing a party. There should be some persistence to the conduct complained of and a reasonable expectation that it will continue without court involvement. See: *Purewal v. Purewal*, 2004 ONCJ 195.
- l. Courts should have regard for the passage of time. Events that once triggered a temporary restraining order may not be so compelling on the issue of a permanent order. See: *D.C. v. M.T.C.*, 2015 ONCJ 242; *Jumale v. Mahamed*, 2022 ONSC 566.
- m. In borderline cases, the court must consider what other protections may be available if a restraining order is not granted. See: *D.C. v. M.T.C.*, *supra*; *M.H.S. v. M.R.*, 2021 ONCJ 665.
- n. It is appropriate, in borderline cases, to consider the balancing prejudice to the respondent if the restraining order is granted. See: *D.C. v. M.T.C.*, *supra*; *M.H.S. v. M.R.*, *supra*.
- o. A court is not precluded from making a final restraining order if a party has complied with a temporary order under section 28 of the Act. On a temporary motion, the court does not have the benefit of the fulsome record it has at trial. Cross-examination at trial can provide valuable information in the court's risk assessment. Further, the court should be alert to the fact that parties may improve their behaviour when the eyes of the court are on them. This might not continue once the case ends. See: *F.K. v. M.C.*, *supra*.

[76] Specifically, the mother wants an order restraining the father from coming within 500 meters of her resident, her place of employment or anywhere where she is reasonably known to be at any time or for any purpose. The restraining order would have to include an exception that the father could attend at a specific location for parenting exchange purposes.

#### Application of the Law to the Facts

[77] The mother's evidence is that she is frightened of the father and that he has been emotionally, psychologically, financially and physically abusive toward her. She fears the father because he is unpredictable, angry, and aggressive. I accept that she fears the father and for her safety. However, the analysis does not stop there. The test is a subjective-objective test as set out in s.46 of the *FLA*.

[78] The mother maintains that in February 2020 she called the police when the father became physically violent with her. However, no police report was filed by the mother or is on the record before the Court.

[79] On June 6, 2021, during a parenting exchange, the mother alleges that the father falsely accused her of scratching the hood of his vehicle and was very aggressive. He came up to her face



and threatened her in front of A. The mother contacted the police again at that time. Again, the mother did not file a copy of the police report with her Form 23C.

[80] I am not persuaded that the evidence on record supports the court making a restraining order against the father for these reasons:

- a. There is no evidence of any police reports made by the mother against the father for violence;
- b. Granting a restraining order could adversely affect the father's future employment or his ability to travel internationally;
- c. The parenting exchanges will be taking place at a police station which minimizes the chance of family violence taking place at the mother's home; and
- d. The mother can be protected by making contact and communication orders pursuant to section 28 of the *CLRA*. It is a more proportionate order in these circumstances.

[81] Section 28 of the *CLRA* provides that the court can grant an order with respect to contact between parents, determine any aspect of the incidents of the right for parenting time; and make additional orders as the court considers necessary and proper in the circumstances, including an order:

- a. limiting the duration, frequency, manner or location of contact or communication between any of the parties, or between a party and the child,
- b. prohibiting a party or other person from engaging in specified conduct in the presence of the child or at any time when the person is responsible for the care of the child,
- c. prohibiting a party from changing the child's residence, school or day care facility without the consent of another party or an order of the court,
- d. prohibiting a party from removing the child from Ontario without the consent of another party or an order of the court,
- e. requiring the delivery, to the court or to a person or body specified by the court, of the child's passport, the child's health card within the meaning of the *Health Insurance Act* or any other document relating to the child that the court may specify,
- f. requiring a party to give information or to consent to the release of information respecting the child's well-being, including in relation to the child's health and education, to another party or other person specified by the court, or

- g. requiring a party to facilitate communication by the child with another party or other person specified by the court in a manner that is appropriate for the child. 2020, c. 25, Sched. 1, s. 6.

[82] Accordingly, this court orders that the parties shall not communicate about A. directly and that such communication take place only through Our Family Wizard, except in the case of an emergency. I further order that neither party shall denigrate the other in front of A. or discuss their litigation in front of A. Finally, I order that neither party shall attend at each other's residence for parenting exchanges, unless there is a prior written consent or court order. There shall also be a non-harassment order.

### **Costs**

[83] The mother seeks costs of the uncontested trial in the sum of \$9,000 which sum includes the costs associated with her motion to strike his pleadings.

[84] On April 6, 2023, the mother brought a motion to strike the father's pleadings. The father is the applicant in this proceeding. He commenced the proceeding almost 2 ½ years ago. Despite being the applicant, the father took no steps to advance the case.

[85] The father was given multiple opportunities over the course of almost a year to bring himself into compliance with multiple court orders and fulfil the most basic financial disclosure obligations. He did not file materials for four successive conferences in this court. He failed to file any materials in response to the mother's motion to strike.

[86] The mother served the father with an Offer to Settle on March 31, 2023. The father never responded. The father never served an Offer to Settle. The father did not attend the mother's motion to strike.

[87] In terms of the uncontested trial, the mother filed an extensive Form 23C. On October 18, 2022, the mother served the father with a global offer to settle all of the issues.

[88] The offer was never withdrawn by the mother.

[89] The terms of the offer to settle were more favourable than what the mother seeks in this uncontested trial.

[90] There are three costs orders that have been made against the father, totaling \$3,700. He has not paid these costs orders.

[91] The father's conduct amounts to willful non-compliance with court orders and amounts to bad faith.

[92] The mother also seeks an order that the costs be enforced as child support through the FRO.

[93] If the court determines that it would be appropriate to make an order for costs, then the factors to consider in setting the amount of costs are listed in r. 24(12). The court must consider the reasonableness and proportionality of the factors enumerated in the subrules as they relate to the importance and complexity of the issues. These factors include each party's behavior; the time spent by each party; any written offers to settle, including those that do not meet the requirements of r. 18; any legal fees; any other expenses; and any other relevant matter.

[94] Modern family costs rules are designed to foster four fundamental purposes: to indemnify successful litigants for the cost of litigation, to encourage settlements, to discourage and sanction inappropriate behavior by litigants; and to ensure that cases are dealt with justly: *Mattina v. Mattina*, 2018 ONCA 867, 299 A.C.W.S. (3d) 770, at para. 10. The touchstone considerations of costs awards are proportionality and reasonableness: *Beaver v. Hill*, 2018 ONCA 840, 17 R.F.L. (8<sup>th</sup>) 147, at para. 12.

[95] In *Sims-Howarth v Bilcliffe*, 2000 CanLII 22584 (ON SC), [2000] O.J. No. 330 (S.C.J.), Aston J. held that the two traditional scales of costs are no longer an appropriate way to quantify costs under the *FLRs*. He stated that, having determined that one party is liable to pay costs, the court must fix the amount at some figure between a nominal sum and full recovery, having regard to the factors set out in Rule 24, without any assumptions about categories of costs. This characterization of costs under the *FLRs* was approved of by the Ontario Court of Appeal in *C.A.M. v D.M.*, 2003 CanLII 18880 (ON CA), [2003] O.J. No. 3707 (C.A.), at para. 42.

[96] The *FLRs* do not explicitly provide for costs on either a partial or substantial indemnity scale. There is no general approach in family law of "close to full recovery costs": *Beaver*, at para. 11. Rather, full recovery is only warranted in certain circumstances, such as bad faith under r. 24(8), or beating an offer to settle under r. 18(14): *Beaver*, at para. 13.

[97] Costs must always be proportional to what is at stake in the case, and to the unsuccessful party's reasonable expectation as to what costs he/she may face, if he/she is unsuccessful. In appropriate circumstances, unreasonable behavior will result in a higher award of costs.

[98] I have reviewed the mother's Bill of Costs. The Bill of Costs demonstrates that the expenses related to the Motion to Strike and Uncontested Trial for the period March 7, 2023 to November 15, 2023 amounted to 24.3 hours at a rate of \$350 an hour. I find these costs to be reasonable and proportionate to the issues.

[99] She has been wholly successful and is presumptively entitled to costs. The father's refusal to participate in these proceedings, his willful breach of court orders, particularly when he is the applicant in this case, amounts to unreasonable and bad faith conduct.

[100] Accordingly, I order the costs requested by the mother.

[101] The mother has asked that these costs be enforced by the FRO, since they relate to legal fees incurred in relation to support, as is permitted under the Family Responsibility and Support Arrears Enforcement Act, 1996, S.C. 1996, c.31. I so order.

**Disposition**

[102] A final parenting order shall go as follows:

- a. The child shall have her primary residence with the mother.
- b. The mother shall have sole decision-making responsibility over all decisions that impact the child.
- c. The mother shall inform the father of any contemplated significant decision regarding A. in writing. Within 7 days of receiving this information, the father may provide the mother with a written response containing his view. If the parties do not agree, or if the father does not respond within 7 days, the mother shall make the final decision and advise the father about it.
- d. The mother shall advise the father in writing of all appointments with any doctors, teachers, or other service providers with the child. She shall keep him updated with their names and contact numbers;
- e. The mother shall be permitted to travel with the child outside of Canada without the father's consent.
- f. Unless there is a medical emergency while the child is in the father's care, only the mother shall take the child to medical appointments. Specifically, the father shall not take the child to a doctor or any health care provider for a second opinion.
- g. The parties shall immediately notify the other by phone, text, and email if the child has a medical emergency while in their care. They shall advise the other parent of the nature of the emergency, where the child has been taken for treatment and the name of any doctor treating the child.
- h. The father may obtain information directly from the child's teachers, doctors, or other service providers. The mother shall execute any authorizations or consents to permit the father to do this.
- i. Only the mother may obtain or renew government documentation for the child, including passports and renewals of passports. She may obtain this documentation without the father's consent.
- j. The father shall have parenting time with the child on the following terms and conditions:
  - i. Alternate weekends from Friday, at 6:00 p.m. to Sunday, at 6:00 p.m.;
  - ii. Parenting exchanges shall take place at the Durham Police Station;

- iii. The child shall spend Father's Day with the father if it would otherwise be the mother's weekend with the child. He shall have the child starting at 10:00 a.m. on Father's Day until 6:00 p.m.
- iv. The child shall spend up to four hours with the Father on either Christmas Day or New Year's Day, if she is not travelling with the mother. Starting with 2020, in even-numbered years, the mother shall have the first choice of the four-hour period and in odd-numbered years, the father shall have the first choice of the four-hour period. The parties shall advise each other of his/her choice of the four-hour period by November 15<sup>th</sup> of each year, starting with November 15, 2024.
- v. The child shall reside with the mother at all other times.
- k. Regardless of the father's parenting schedule, the child shall always be with the mother on Mother's Day, starting at 10:00 a.m. if A. is otherwise scheduled to be with the Father.
- l. If there is a special event in which the child wishes to participate during the father's scheduled parenting time, the mother shall advise the father of the event in writing. If the father is not willing to take the child to the event, the mother shall be given the first right of refusal and take the child to the special event and return to the child to the father's care after the event.
- m. The child shall reside with the mother every Christmas Eve, New Year's Eve, Easter Weekend (Friday to Monday) and the child's birthday. The father shall be permitted to have telephone and video communication with the child on each of these holidays. The mother shall facilitate the child having a private space within which she can speak with the father.
- n. The child shall be permitted to contact the father whenever she wishes by telephone, or video conference
- o. The father, or his agents, shall not remove the child from the province of Ontario without the prior written consent or notarized consent of the mother or a prior court order;
- p. If the father is exercising his parenting time at a location other than his own residence, he shall provide the mother with the address at least 48 hours in advance.
- q. The parties shall notify each other of at least 30 days in advance of any change in address. The notice shall include the date of the move and the new address.
- r. The parties shall keep the other updated, in writing, of any change in email address. This shall be done immediately when there is a change.

- s. Unless there is an emergency regarding the child, the parties shall communicate in writing only, and only on matters related to the child. The communication shall only be through a co-parenting web application such as Our Family Wizard, App Close or 2Homes.
- t. All communication between the parties shall be respectful and child focused.
- u. Neither party shall video tape or audio tape the parenting exchanges, nor video tape or audio tape the child for court purposes;
- v. The parents shall not demean or criticize the other in the presence of the child. They are expected to support the other's relationship with the child.
- w. If requested by the mother, if the father contravenes the parenting time or non-removal terms of this order, any peace officer, wherever the child is located, is requested to locate, apprehend and deliver the child to the mother. This includes any municipal, provincial or federal police force. It also includes the Canada Border Services Agency. This order is being made pursuant to s.36 of the *CLRA* and shall remain in force for up to two years from this date.

[103] The following child support shall go:

- a. Commencing November 1, 2023, and on the first day of each following month, the father shall pay the mother table child support in the sum of \$643 a month, based on an imputed annual income of \$68,000.
- b. The mother shall provide the court with further evidence with which the court can assess and determine the father's retroactive child support obligations both table and s.7 expenses and his prospective obligations toward the child's s.7 expenses, by setting out what the father has paid, what is owing and the breakdown of the child's s.7 expenses, including receipts.
- c. The father shall pay the mother child support arrears as set out in the FRO case balance summary as of November 15, 2023, in the sum of \$4,542.29, payable forthwith.
- d. For as long as child support is to be paid, the father and mother shall provide each other with updated income disclosure each year, within 30 days of the anniversary date of this order, in accordance with s.24.1 of the Child Support Guidelines.
- e. Unless this order is withdrawn from the Family Responsibility Office, it shall be enforced by the Director and the amounts owing under this order shall be paid to the Director, who shall pay them to the mother to whom they are owed.

- f. This order bears post judgment interest of 6% from the date of this order. Where there is default in payment, the payment in default shall bear interest only from the date of default.

[104] The following costs orders shall go:

- a. The costs order of Sharma, J., dated July 11, 2022 of \$700 shall be enforceable as child support by the FRO, through the Family responsibility and Support Arrears Enforcement Act, 1996, S.C. 1996, c.31.
- b. The father shall pay the mother costs of her motion to strike his pleadings and this uncontested trial in the sum of \$9,000, to be enforced as child support by the Director, Family Responsibility Office, pursuant to the Family responsibility and Support Arrears Enforcement Act, 1996, S.C. 1996, c.31.
- c. All other claims of the father in this Application are hereby dismissed.

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M. Kraft, J.

**Released:** April 2, 2024

**CITATION:** Pereira v. Berezovsky, 2024 ONSC 1862  
**COURT FILE NO.:** FS-21-23575  
**DATE:**20240402

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

MATTHEW CHRISTOPHER PEREIRA

– and –

KRISTINA BEREZOVSKY

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**REASONS FOR JUDGMENT**

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M. Kraft J.

**Released:** 2024-04-02