IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Quigley v. Willmore, 2008 NSSC 353

Date: 20081126
Docket: 1207-003129 (STD-056344) and
1201-061186 (SFHD-049599)

Registry: Halifax

Between:

Karen Agnes Quigley

Petitioner

v.

Gary Willmore

Respondent

Judge: The Honourable Justice R. James Williams

Heard: October 21, 2008, in Halifax, Nova Scotia

Counsel: Karen Quigley, Petitioner, self-represented
Gary Willmore, Respondent, self-represented

By the Court:

[1] This is an extraordinary legal proceeding. At issue is the divorce of Gary Willmore (b. October 1, 1952) and Karen Quigley (b. June 11, 1961). Broadly put, the divorce of this couple involves a series of issues - jurisdiction, the termination of the marriage, property division, child support and, most importantly, the custody and care of their son, Ryan Ross Quigley-Willmore (b. November 15, 1999). They have engaged in a plethora of legal proceedings.

[2] The matter has been repeatedly before Courts here in Nova Scotia (Canada) and in Texas (USA) since the fall of 2006. In June of 2008 an interim custody/access hearing was held in Nova Scotia - my Interim Decision of June 27, 2008 extensively reviewed the "history" of this matter and attempted to summarize it to that date as it concerned Ryan, the parties and John Edward Scanlan, Ms. Quigley's current partner.

BACKGROUND (FROM THE INTERIM HEARING)

[3] My Interim Decision summarized the matter as follows:

> Ms. Quigley and Mr. Willmore have since their separation in November 2006 both played a significant role in creating a legal and personal quagmire that has compromised Ryan's best interests. Some of what has happened includes:
>
> 1. Mr. Willmore travelled to Nova Scotia in August 2006 and helped choose Ryan's school.
>
> 2. He has asserted that in early November 2006 there was some talk of a joint divorce process in Texas. They and Ryan went to Texas for a visit. They had a fight - Ms. Quigley and Ryan returned to Nova Scotia. He at that time expressed concerns about not being replaced as a father, threatened Ms. Quigley with arrest for kidnapping.
>
> 3. Ms. Quigley immediately filed for divorce in Nova Scotia (knowing I would conclude there may be issues with jurisdiction). Mr. Willmore filed a divorce in Texas and he answered her in Nova Scotia Divorce Petition by contesting jurisdiction.
>
> 4. Mr. Willmore from near the outset of the separation appears to have suspected that Ms. Quigley was involved with Mr. Scanlan and this exacerbated whatever anger

he had over the separation. The evidence concerning the commencement of Ms. Quigley's relationship with Mr. Scanlan appears less than complete. Mr. Willmore, intimidated Ms. Quigley with threats, veiled threats, repeated phone calls and innuendo. At times he made inquiries of Ryan about "Ted" and Ms. Quigley. Most of this behaviour appears to have subsided since August 2007. His behaviour was wrong, inappropriate. He now says he was bitter. Clearly he was. At times Ms. Quigley "pushed back" with inappropriate e-mails. She repeatedly sought criminal charges against him.

5. There has been little if any constructive communication between the parties.

6. By December 22, 2006, Ms. Quigley had obtained three ex parte orders:

- one moving her divorce from Halifax to Antigonish;

- an Emergency Protection Order that restricted Mr. Willmore's contact with her and Ryan, and gave her possession of their home;

- an Order giving her custody, providing that Mr. Willmore have supervised access that would terminate if Ryan "got upset", providing for significant maintenance orders (totalling more than $166,000.00 per year) and giving her control of all the Nova Scotia property. In addition, Ms. Quigley had made complaints to police about Mr. Willmore's calls and e-mails - and had weapons, guns of Mr. Willmore's that were at their home picked up by police. Mr. Willmore was contacted by the RCMP in December 2006.

Ms. Quigley feels she was protecting herself and Ryan.

Mr. Willmore feels he was dealt with unfairly, that if he came to Nova Scotia to exercise access he faced restricted access and criminal charges that would impact on his ability to travel and his livelihood. At times, Ms. Quigley has expressed exactly the same concerns about her ability to go to Texas.

7. As the months went on, the parties continued to exchange communications that were problematic. Mr. Willmore repeatedly spoke of charges against, arrests of Ms. Quigley and Mr. Scanlan in Texas.

8. In January 2007 Ms. Quigley asked that an application of Mr. Willmore's be adjourned "so she could get legal counsel there". Mr. Willmore obtained an Order later that month in Texas that limited Mr. Scanlan's contact with Ryan.

9. In February Mr. Willmore was charged by the RCMP under our Criminal Code.

10. In January 2007 and on March 30, 2007 Ms. Quigley obtained Orders in Canada - Mr. Willmore did not appear - confirming the December ex parte order, allowing her to travel with Ryan,. and declaring the January Texas Order not in effect in Nova Scotia.

11. Ms. Quigley and Mr. Scanlan and Ryan travelled to Florida in early February of 2007, undoubtedly feeding into Mr. Willmore's resentment of Mr. Scanlan's growing involvement with Ryan.

12. Through this time period and after Mr. Willmore was securing information about Ms. Quigley, Mr. Scanlan and Ryan - and their day to day whereabouts through a detective. He would then "tease" them with the information - which they naturally found intimidating. Mr. Willmore again fed into and maintained Ms. Quigley's fears of him.

13. Also on March 30 Mr. Willmore obtained a Texas Order - it gave Ms. Quigley primary care, allowed her to designate Ryan's residence, provided for telephone access three times per week, monthly access and block access in the summer, at March Break and at Christmas. It had default summer access - i.e. access if no notice or dates were set.

14. Ms. Quigley "did not participate in the [Texas] proceeding because (she) was relying on the existing Canadian court orders" (her Affidavit of January 3, 2008 - clause 8).

15. Mr. Willmore took the position that the Nova Scotia divorce lacked jurisdiction.

16. In early October of 2007 Mr. Willmore appeared in Nova Scotia and pled guilty to a charge under s. 91(2) of the Criminal Code - possession of a prohibited weapon. The disposition included a six-month direction to keep the peace and limits his contact with Ms. Quigley. The gun had been at Ms. Quigley's office, then at her home.

17. After this date Ms. Quigley contacted the RCMP seeking to have Mr. Willmore charged.

18. Mr. Willmore made threats of having Ms. Quigley and Mr. Scanlan arrested - for taking a vehicle from Texas when Mr. Willmore was away (the record is unclear as to when this occurred) and from July 2007 forward issued motions alleging contempt (failure of Ms. Quigley to follow the March 30, 2007 Texas Order), and

ultimately seeking and getting orders to have Ms. Quigley and Ryan brought before the Texas court - orders that have since been withdrawn, rescinded.

19. On October 22, 2007 the Nova Scotia divorce was found to lack jurisdiction - and the Nova Scotia orders voided. Ms. Quigley appealed this order. The appeal was dismissed on April 10, 2008. The appeal left the 2006, 2007 orders under the *Divorce Act* (concerning custody, access and support) void, but revived the orders made concerning property.

20. Ms. Quigley filed a (second) Divorce Petition in Nova Scotia on December 14, 2007.

21. On December 20, 2007 Ms. Quigley personally appeared in the Texas Court and through counsel promised to allow Christmas access to go forward. As a result, the contempt hearing scheduled did not proceed. Ms. Quigley has effectively stated that she was bullied into this by the Texas Court. Whether this is accurate or not, it is clear that she was making virtually simultaneous efforts in this Court to restrict access in Nova Scotia. Ryan did not visit his father in December 2007. There were some communication issues between the parties' Texas counsel but nothing, in my view, that would have prevented a visit from occurring if there had been a genuine desire to have it occur.

22. From January through May of 2007 there were various steps taken or threatened in Texas by Mr. Willmore - in response essentially to his absence of access.

23. I was assigned the December 2007 Nova Scotia divorce file in late December.

24. Ms. Quigley's appeal of the dismissal of her first Divorce Petition here meant <u>if she was successful</u> that the Petition I was hearing would be in jurisdictional jeopardy. I accordingly focussed on Ryan - not property or support issues.

25. It appears that Courts in both countries have struggled with Ms. Quigley and Mr. Willmore. Issues as simple as service of documents have been problematic. Ms. Quigley may have e-mailed some of his friends inappropriately, he gave *Frank* magazine information about her, e-mailed her superiors and relatives. She complained about his lawyer to the Bar. Both have been aggressive in seeking criminal or quasi-criminal sanctions against the other, or in the case of Mr. Willmore, at least threatening same. Both (and Mr. Scanlan) have engaged in behaviours that the other would see as provocative. Ms. Quigley sees Mr. Willmore's seeking of legal remedies in Texas as harassment. She appeared through counsel in Texas in January of 2007, sought a continuance, got it and abandoned the Texas proceeding until December 2007 when she appeared in Texas, undertook to allow access in Texas, while virtually simultaneously seeking

contrary orders in Nova Scotia. He saw the ex parte processes and those that followed in Nova Scotia as unfair. She sees the gun possession charge against Mr. Willmore as protecting herself - he sees it as unfair since she had the guns, moved them and supervised the building of the storage box for them. She sees Mr. Willmore as "unstable", "volatile". He sees her as obstructionist and determined to stop his access and relationship with his son. Mr. Scanlan has been less than a source of calm. Ms. Quigley has, at times, suggested Mr. Willmore was seeking custody of Ryan. The record available to me indicates he has been clear since March of 2007 in indicating that Ryan should be in the primary care of his mother in Nova Scotia and adamant that he should have meaningful access with his son. Ms. Quigley's offers of access here "if it's safe", i.e. supervised, have not been seen by him as meaningful or genuine.

Ryan has been, for all intents, caught in the middle of this. He did not see his father from November 2006 to March 2008.

Mr. Willmore's "in person" contact with Ryan since November of 2006 has been incidental to the current court process here in Nova Scotia:

1. On March 6 and 7 the hearing on jurisdiction and interim custody took place. Arrangements were made, at the initiative of the Court, for Mr. Willmore to see Ryan at the Court at noon on Thursday, March 6. He also saw Ryan the evenings of March 6, 7 and on March 8, 2008.

2. On April 10, 2008 Mr. Willmore was in Halifax for the hearing of the appeal (of Justice Wilson's Order vitiating the jurisdiction of the "first" Nova Scotia divorce proceeding). Mr. Willmore had access (as ordered March 7) the afternoon and early evening of April 10 and overnights April 11 til noon April 13, 2008.

3. On June 1, 2 and 3, 2008, Mr. Willmore was here in Nova Scotia for this hearing on interim access. He had Ryan the evenings of June 1 and 2.

MY INTERIM DECISION

[4] Access (and whether it would occur in the U. S. or be restricted to Canada) was the principle issue in the Interim Decision of June 27, 2008.

[5] At the time of the Interim Hearing in June of 2008 there were orders dealing with Ryan's custody/access in both the Texas Court and here in Nova Scotia. The

fact that there were parallel, yet inconsistent custody orders was, I concluded, a significant issue for Ryan. I repeatedly stated that.

[6] On April 11, 2008 I indicated (at the pre-trial of that date):

> ...at some point if there is going to be access in the States...the Orders in the two countries are going to be lined up on that custody and access issue...
> ...the question becomes as simple as this. Am I, as a judge, going to subject Ryan to two separate court orders in two different countries so that, depending on who has him and where he is, there's an opportunity to extend the back and forth bickering that's gone on? Not a chance. So...and the reason is simple. The reason is Ryan.

[7] At the close of the Interim Hearing on June 4, 2008, I had some hope, expectation (from Mr. Willmore's comments at that hearing) that this issue would move towards resolution. I indicated (on June 4, 2008):

> ...with respect to the status of the Texas order, if there is going to be a change in that, I would expect that I would be notified of it with a copy of any such Order by the close of the work day Wednesday, June 11.

[8] My Interim Decision of June 27, 2008 outlines this subsequent filing made on behalf of Mr. Willmore in Texas and my conclusions concerning access (at pp. 186-188):

> On Monday, June 9, 2008 this Court received by fax a letter from Mr. Willmore indicating "I have agreed to defer to the Canadian Court's jurisdiction in regard to my son, Ryan Ross Quigley Willmore, on access and possession only."
>
> The fax attaches a "Notice of Withdrawal of Requested Relief" and letter asserting that is being filed with the Texas court. The "Notice" is signed by Ms. Zimmerman, Mr. Willmore's counsel in Texas, and reads:
>
>> NOTICE OF WITHDRAWAL OF REQUESTED RELIEF
>> To the Honourable Judge of this Court:
>> COMES NOW, Petitioner, GARY WILLMORE, and files this his Notice to the Court and opposing counsel that he withdraws his requested relief from this Court in regard to conservatorship, access and possession of the minor child. Petitioner agrees to defer to the Canadian Court's jurisdiction in regard to those issues only. Petitioner does not waive his requests to have this Court decide all issues of child support, property division,

grounds for divorce, or other issues not involving conservatorship, access and possession.
Respectfully submitted,
ZIMMERMAN LAW FIRM, L.L.P.
Marcia Zimmerman
Attorney for Gary Willmore

While I am not familiar with civil procedure in Texas, I know that this is not an order. The March 30, 2007 Texas Order appears to remain in effect.
While there is every indication that the competing custody/access orders issue will be resolved to my satisfaction, it is not as I write this.

I conclude from what is before me that an order for access as follows is consistent with Ryan's best interests:

(a) provided this Court is satisfied that the competing orders issue respecting Ryan's custody and access is either resolved or that Mr. Willmore has made his best effort to resolve it as directed:
   (I) up to ten (10) days access with Ryan between July 28 and August 30, 2008. Mr. Willmore will travel to Nova Scotia to commence the visit with Ryan. The first night together will be in Nova Scotia. The balance of the visit will be at a location chosen by Mr. Willmore. It may be in Texas. Mr. Willmore will, if the access is exercised outside Nova Scotia, personally return with Ryan at the conclusion of the access. Days 2 and 10 of the visit will be travel days giving Ryan potentially one week in Texas.
   (ii) up to one week of access from a Saturday (travel day) to a Sunday (travel day) between September 13, 2008 and November 30, 2008. Ryan may fly on an unaccompanied minor program provided he flies no more than one leg of his travel each way in this fashion.
   (iii) Mr. Willmore will designate the dates for his access in writing to this Court and Ms. Quigley by the close of the work day July 8, 2008. He shall provide Ms. Quigley with an itinerary for the access not less than one week before the access is exercised.

(b) Pre-trials/reviews will be scheduled July 28, 2008 at 12:00 noon Atlantic Time and on September 9, 2008 at 10:30 a.m. Atlantic Time.
Mr. Willmore, Ms. Zimmerman (his Texas counsel) and Mr. Gagnon (Ms. Quigley's Texas counsel) may appear by telephone.

The status of the Texas Order will be reviewed. At the September pre-trial we will address the trial dates scheduled in December.

It would be my expectation that a certified copy of an order from the Texas Court would be filed prior to that day confirming that:

- the primary residence of Ryan Ross Quigley-Willmore is with Ms. Quigley in Nova Scotia;
- the March 30, 2007 Order of the Texas Court is vacated as it relates to issues of custody, access, conservatorship and possession of the child;
- Mr. Willmore defers to the Canadian Court's jurisdiction (Supreme Court of Nova Scotia) with respect to issues of custody, access, conservatorship and possession of Ryan Ross Quigley-Willmore, except as provided herein;
- Mr. Willmore shall return Ryan Ross Quigley-Willmore to the care of Ms. Quigley at the conclusion of access periods ordered by the Supreme Court of Nova Scotia.

If such an order is not available by July 28, 2008, the summer 2008 access will occur in Canada. If such an order is not available by September 9, 2008, the fall block access may be ordered to be exercised in Canada.

(c) one weekend per month in which block access is <u>not</u> being exercised, access in Canada for up to three days, three overnights - provided no more than one of the overnights is a school night. Mr. Willmore is to give this Court, copied to Ms. Quigley, notice of his weekends to December 1, 2008 by August 29, 2008.

TELEPHONE ACCESS

There have been difficulties in the past with telephone access. The March 30, 2007 Texas Order provided for three nights per week. Ryan is eight years old - restricting calls to certain nights will inevitably lead to problems if he has activities that night. Mr. Willmore bought a cell phone for Ryan, it was lost during an outing with Mr. Scanlan. Mr. Willmore has paid for a cell plan. Ms. Quigley has now replaced the phone. Ryan should be encouraged to call his father. The cell phone bills would disclose outgoing long distance calls. They should be filed here with the Court on a monthly basis as received by Mr. Willmore, copied to Ms. Quigley. Mr. Willmore should be able to call his son - though not repeatedly, time after time. His calls, <u>to</u> Ryan, whether he connects or leaves a message for a call back, should be limited to once a day. That said, there is no need for Mr. Willmore to talk to Ryan <u>every</u> day and Ryan cannot be expected to carry the phone with him all the time. Ms. Quigley will ensure that Ryan has a cell phone - the plan has been paid for by Mr. Willmore. I am not at this point going to attempt to manage Ryan's telephone access with his siblings. The primary issue at this point is Ryan's relationship with his father.

[9] The Interim Decision also dealt with:

(a) Communication Between the Parties. It stated:

The parties will establish an account with www.OurFamilyWizard.com ensuring that:

(a) this Court or a representative of this Court has access to their accounts. The parties should conduct themselves with the expectation that the Court will have access to their communication through this account. The monthly outlines of Ryan's activities that Ms. Quigley has been previously asked to provide to Mr. Willmore will be posted to this account.

(b) documentation may be served, posted through the account.

The parties will each contact www.OurFamilyWizard.com to arrange for the opening of their account within two weeks of the date of this decision - and shall confirm with this Court when they have opened their account. Until the account is established by both of them, they will exchange the notices and documents contemplated by this decision through the offices of Ms. Zimmerman and Mr. Gagnon, their Texas counsel. If one or the other counsel are away, as Mr. Gagnon was in December 2007, then that person (Ms. Quigley or Mr. Willmore) will advise the other of an alternative arrangement in a timely fashion.

The Family Wizard account(s) were set up.

(b) Passports

Mr. Willmore has, when exercising access to this point, been asked to, and has voluntarily done so, turn his passports into the Court while exercising access. He will not be required to do so for future access, if the Texas Orders are resolved as I have indicated. If they are not, Mr. Willmore will file his passports with this Court prior to his visits with Ryan here in Nova Scotia. Ms. Quigley will ensure that Ryan has a birth certificate and picture ID (other than his passport) available should Mr. Willmore wish to travel by air in Canada during his summer access. She will provide Mr. Willmore with Ryan's passport if the U. S. access is approved. Mr. Willmore will return it to Ms. Quigley after the travel.

(c) Mr. Scanlan's Involvement

The relationship between Mr. Scanlan and Mr. Willmore has not been healthy. Ryan should not be exposed to interactions (whether direct or indirect) between them. Mr. Scanlan should not be involved in any way in the transfer of Ryan during access. Mr. Scanlan should make a concerted effort to remove himself from

being near or proximate to Ryan's interaction (including telephone) with Mr. Willmore.
There is no reason for Mr. Willmore to have any communication with Mr. Scanlan.

(d) IWK Assessment

The parties had consented to a Court ordered assessment - and were directed to independently make arrangements to participate in it.

(e) Ryan's Name

Ryan's name is Ryan Ross Quigley-Willmore. Ms. Quigley should ensure that his identification (passport, school ID, MSI, medical plan, whatever), school registration, registration for programs (whether sport, church, other), registration with doctors and dentists, etc. is with his full name.

(f) Future Course of the Proceeding(s)

I gave explicit directions with respect to the future course of the proceeding(s) before me (at p. 191):

[79] It is unclear to me at this time what will happen with the Texas divorce process. My focus since I was assigned the divorce proceeding filed here in Nova Scotia has been to address the custody/access issues, Ryan. Uncertainties arising from the Appeal of Justice Wilson's October 22 decision (resolved April 10) and the status of the Texas divorce proceeding have resulted in my being flexible in bringing issues such as the filing of an Answer (by Mr. Willmore) and an application to consolidate the Matrimonial Property Act proceeding that was heard by Justice MacLellan (and was kept "alive" by the decision of the Appeal Court) with this proceeding (by Ms. Quigley).
[80] Our trial dates in this proceeding are December 1, 2 and 3, 2008.
[81] Mr. Willmore, despite my direction in the Pre-Trial Conference Memorandum of April 11, 2008, has not filed an Answer to the Divorce. Ms. Quigley, in her affidavit of May 30, 2008, asks that I require Mr. Willmore to immediately file an Answer in the proper form and points out that he did so in the previous divorce proceeding. The Texas proceeding is currently

scheduled for dates in early August. If a divorce is granted, it may well impact on support and property jurisdiction here. I am satisfied that this Court's jurisdiction over Ryan will be continuing.

[82] The multiple affidavits, and their attachments and sharing of some, not all, e-mails and communications with the RCMP and Martin Whitzman create a jigsaw for the Court to piece together. The parties both have had difficulty in the proceedings before me identifying where in documents certain information is - confused by the mount of documents. It appears that they will both continue to be self-represented. My directions should be as clear as possible. Both parties should consult with legal counsel with respect to these directions.

[83] Mr. Willmore has indicated that he defers to the jurisdiction here on custody and access issues and contests the jurisdiction of this Court to deal with support and property.

[84] We need to attempt to move these issues forward with some clarity.

[85] I would order that Mr. Willmore file and serve an Answer to the Divorce Petition before this Court on or before September 2, 2008. The Answer shall be made in accordance with the Nova Scotia Civil Procedure Rule 57.12, using form 57.12A or 57.12B. The Rules and forms are available online at the Nova Scotia Courts website - the direct link to Rule 57 and its forms is http://www.courts.ns.ca/Rules/rule56_61.htm#rule57 If Mr. Willmore does not file an Answer as directed, he will be inviting Ms. Quigley to ask the Court to treat the divorce as undefended pursuant to Rule 57.18, 57.19.

[86] Both these individuals have expressed a desire to have this "end". Both have suggested they might be prepared to "walk away" from property claims in the respective jurisdictions. Ms. Quigley has suggested she would drop her spousal support claim. If this is what develops - we are left with the child support issue.

[87] I will at the September 9, 2008 pre-trial/review ask in specific terms: what property is in issue and whether spousal support is in issue. I will make orders for further filings accordingly.

[88] Ms. Quigley should consider providing Mr. Willmore with an Application (and Order)(pursuant to Civil Procedure rules 39.01 and 39.02 returnable before me on September 9, 2008) requesting that the Matrimonial Property Act claim (made with Ms. Quigley's first Divorce Petition here and left "alive" by the Appeal) be consolidated with the proceeding(s) before this Court. If she does not, I will assume she chooses to pursue that proceeding in another

forum. If she does, the material should be provided to Mr. Willmore by the close of the work day September 2, 2008.

[89] Mr. Willmore may, if he wishes, consent to the consolidation on the basis that it is not attornment to jurisdiction.

[90] Finally, both parties will file Financial Statements in Form 57.13A of the Civil Procedure Rules on or before September 2, 2008.

[91] The Statements will attach:

(a) copies of Income Tax Returns for 2006, 2007;

(b) if no income tax return was filed - an assertion confirming that AND a statement from their employer or employers confirming income and deductions. This shall be done for both 2006 and 2007;

(c) a statement detailing the name, address and contact information of the parties' current employer, pay rate and year to date income to June 30, 2008.

[92] I recognize that the parties may say we filed some, even all of this before, or that it is in Texas, or whatever. As this moves forward, I do not wish to conduct a "treasure hunt" through past filings, and the boxes of material filed looking for that material.

[93] Again, this information may be filed by Mr. Willmore on the basis that he does not attorn to the jurisdiction of the Court. The information is not dissimilar to that expected by the Texas Court in its March 30, 2007 Order.

[94] I have directed/requested that Mr. Willmore file material - an Answer, financial information, that is standard, routine. If it is not filed as directed, he will be inviting this Court to impose consequences.

[95] Whatever concerns or uncertainties Ryan has at this time in his relationship with Mr. Willmore is the product of the actions of both Mr. Willmore and Ms. Quigley. I am concluding that Ryan's interests lie, after all that has gone on, in attempting to put this conflict behind him, spending more time with his father, and being secure in his mother's home and day to day care. Ryan will remain in her custody.

[96] I have concluded that Mr. Willmore's primary interest is his relationship with Ryan. I have noted his acknowledgement that he was bitter. There is little that he has been accused of doing that he has not acknowledged. He conveys a message of wanting to move on. If this is so, I will hear little of the suggestion that "Ms. Quigley did this, or Mr. Scanlan did that" as the proceeding moves forward. This is not a game of "gotcha". The focus will instead be on building his relationship with Ryan - looking forward, not back.

> [97] Similarly, Ms. Quigley has expressed a desire to move on, expressed anguish at the circumstances that have enveloped her. She has filed more than a little material with the Court (ten affidavits, numerous attachments, hundreds of pages). I have attempted to view it thoroughly. Its focus has been on Mr. Willmore's behaviour in the winter and spring/summer of 2006/2007. She has been as fixed in her focus on those events as Mr. Willmore has been, or was, on the development of her relationship with Mr. Scanlan, his (Mr. Willmore's) perception of the fairness of the ex parte orders and her statements to the Court in Texas in December 2007.
> [98] There is little upside for Ryan that I can identify in either parent continuing a campaign of denigration, demonstrating the past mistakes, failings, inadequacies of the other, or sharing those views with friends, employers or others. That said, each of them, not the Court, will decide how they conduct their part of the proceeding from here.

EVENTS SINCE THE INTERIM DECISION

1. July 8, 2008

Mr. Willmore faxed this Court (Exhibit 18) stating:

Response to Decision issued by Justice R. James Williams June 27, 2008, p. 187 subsection (iii). By July 08, 2008, Mr. Willmore will designate the dates for his access in writing to the Court and Ms. Quigley,

August 17th in Halifax to Houstan [sic], Texas August 18th
Returning to Halifax, NS, August 23rd
November 10 to Houston, Texas to November 16 Back to Halifax NS

I request one weekend a month access with Ryan in Halifax as and when my work schedule allows, giving two weeks notes [sic] to Ms. Quigley by e-mail, my plan will be to stay in a downtown Hotel in Halifax for that weekend.

Regards
Gary Willmore 8-7-08
Note: Please be advised Ms. Zimmerman is no longer my attorney of record in Texas

2. July 22, 2008

Ms. Quigley filed the Affidavit of Service for and an Amended Petition for Divorce dated April 23, 2008. It was served on Mr. Willmore on April 25, 2008.

The pleading seeks, under the *Divorce Act*:
- Divorce
- Custody
- Access
- Child Support
- Spousal Support
- Costs

Under the *Matrimionial Property Act* (Court File 1201-061186, SFHDIV-49599):
- Division of Property
- Exclusive Possession of Matrimonial Home

Under the *Maintenance and Custody Act*:
- Custody
- Support

It pleads the *Matrimonial Property Act* action that was commenced in Nova Scotia in December 2006 and "resurrected" by the Nova Scotia Court of Appeal in their decision of April 10, 2008. That matter is before me.

3. July 28, 2008

A telephone Pre-Trial Conference occurred. Both parties appeared by telephone. Neither party was sworn. The transcript of that proceeding includes the following:

At page 1:

> **THE COURT:** Mr. Willmore, I do not have a copy of the Texas court order so I assume that the August access will take place in Canada. Is that correct?
>
> **MR. WILLMORE:** No, that is not correct. The court order should be issued August the 6th and you should have it by August the 8th.

THE COURT: By when?
MR. WILLMORE: Probably by August the 8th.
THE COURT: What is the reason for the delay?
MR. WILLMORE: The judge had to sign the order, sir. The document that Ms. Zimmerman put in wasn't registered with the court. He had not accepted that as a document of (?) the court so we had to get the judge to file an order and August the 6th is the divorce date effective in Texas so he will do the whole thing at the same time.

At page 6:

THE COURT: ...The ... I was very specific in this decision about what I wanted in a court order. Do you have any question about that, Mr. Willmore?
MR. WILLMORE: (Inaudible) I will pass it on to the judge in Texas and it will be up to the judge in Texas to say yes or no. If the judge does not agree with your requirements then he will say no and I have no ability to do anything about that.

At pages 7 to 11:

MS. QUIGLEY: ...Mr. Willmore has not taken those steps, Your Honour. He simply just hasn't. He's now saying well it's up to the judge to do it. Quite frankly, that's not accurate. It would be up to the judge to do it at the conclusion, I suppose, of the full hearing ... (inaudible) Mr. Willmore as we now stand but if Mr. Willmore intends to do what he told this Court he would be doing for the last five months, that is, if you would relinquish jurisdiction from Texas to Canada over the child issues of custody and access, that's done by way of an order ... an order to abandon certain aspects of his litigation. It's done by consent. I'm certainly going to consent to it, it just simply has to be an order in the proper form.
I've never seen any document nor, to the best of my understanding, has Mr. Gagnon seen any document that's proposed by Mr. Willmore to satisfy that step that he's said that he's going to take. He's now backing away from that, quite frankly ...
MR. WILLMORE: I object, Your Honour ...
THE COURT: Okay. Wait a second. Mr. Willmore, this is pretty ... what I've tried to do is I've tried to put this as much as possible in ... to simplify it and you've used the dates of August 6th as when you would be before the judge, Mr. Willmore, and August 8th.

Let me ... I would accept a fax from the Texas court of the order or fax given that you don't have counsel now down there, Mr. Willmore, a fax from Mr. Gagnon indicating that there is a proper order.

But the way this should work, Mr. Willmore, is that you provide Mr. Gagnon with a court order that has the items that I outlined at page 188 of my decision, the bulleted items, and you should provide that to him before August 6th. If it is, and you and Mr. Gagnon walk into that courtroom on August 6th and say the first item of business on this is this is what we agree on. We agree that these items, all of which I have taken your evidence as indicating you're willing to agree to. There's no reason why that order shouldn't be issued first thing on August 6th and done. But if you walk in there and you say, Well, this is what I want and Mr. Gagnon and hasn't seen it and there's no document typed up and there's no document for the judge to sign then there'll be a question of who does it and the rest of it.

I'm willing to have a ... to set this down for a further telephone conference on August 8th at approximately 4 o'clock Nova Scotia time but if we don't have that document, Mr. Willmore, I'll be taking ... it'll be a very brief telephone conference just indicating that the access will be taking place in Nova Scotia.

I've attempted to put this within your control, sir, and to meet obviously responding to concerns that Ms. Quigley has had about the existing ... existence of competing court orders and, very clearly, I've been quite consistent and I think I recite that in the decision I gave in saying that that's an issue for me. That I didn't want Ryan out there with competing court orders. I recognize that from your point of view you say, Well, I've written this letter or I've filed this notice that says that I don't do this or I ... you know, I don't contest this jurisdiction or that jurisdiction and that's ... I don't question your intentions in that but it's not the same as a court order. And a court order would have the effect of basically ensuring that the court orders as they concern Ryan in the two countries are as consistent as I can see them being and would allow that to occur whether Ms. Quigley appears on August 6th or not to deal with the other matters in Texas.

But I'm being told by her in this telephone conference that she'll consent to that order or give Mr. Gagnon instructions to consent to that order whether she is there or not. Is that correct, Ms. Quigley?

MS. QUIGLEY: Correct, Your Honour....

THE COURT: And Mr. Willmore, that ... you know, I don't think I can be any clearer. My suggestion, sir, is that if not

Ms. Zimmerman you retain a lawyer immediately for the sole purpose of filing that order. It only is four paragraphs and, you know, given the costs that have been incurred in this matter, frankly, it seems a drop in the proverbial bucket and enables us to move forward with this and to address what I was under the impression was the major issue for you in this proceeding which is to exercise access in your home ... or at your home.

MR. WILLMORE: And you'll have that document.

... **THE COURT:** No, I understand that, sir, but understand what I'm saying. I'm not interested in this kind of drifting with you thinking maybe the court is going to prepare a document or Mr. Gagnon, I'm saying get that prepared, send it over for him to consent to and once it's consented to file it with the court and if I ... once it's filed with the court on August 6th it should be the first thing addressed on that morning of August 6th, assuming it's the morning that it starts.

MR. WILLMORE: I will send it. I will have it.

At page 12:

MS. QUIGLEY: Your Honour, with respect to service, then, we'll follow directions that you recently provided and that was to serve Ms. Zimmerman by fax, is that correct?

THE COURT: As I understand ... I ... we received a fax from Mr. Willmore indicating that he has a family Wizard account now, account number 192 44 04 782.

At page 14:

MS. QUIGLEY: Yes, My Lord. But to clarify, Your Honour, with respect to service as of this point. How am I to serve Mr. Willmore?

THE COURT: At this point you're to serve him in care of ... or through the Wizard account. Is that agreed, Mr. Willmore?

MR. WILLMORE: Yes, sir. (Inaudible).

THE COURT: I'm assuming you do not want to be served through Ms. Zimmerman anymore.

MR. WILLMORE: That is correct.

At page 14-15:

THE COURT: Let's be clear. The Texas proceeding is separate from the directions I'm giving you.

MS. QUIGLEY: That's correct.

THE COURT: I have no authority to order that he serve you with the Texas proceeding documents ...

MS. QUIGLEY: I understand.

THE COURT: Through the Wizard account and, in fact, he probably has an obligation to serve Mr. Gagnon or I assume he does since he's your counsel.

At page 18:

THE COURT: ...I'll direct that both of you provide me with the dates of your appointments with the IWK at the September pre-trial.

At page 18-21:

THE COURT: Mr. Willmore, if ... what I'd also like at the September dates is what long weekends you intend to spend with Ryan in September and October and whether or not it's possible to get those appointment dates moved up from November to September/October if you're here exercising access on the long weekend ... the long weekends and the way to do that is, you know, is simply to add one day to it and do the appointment and I would fully expect that the IWK would bend over to try to accommodate that if you gave them a couple of dates in September or October that were possible.

MS. QUIGLEY: Your Honour ... with all due respect, Your Honour, I'm very concerned about the accountability that's going on ...

THE COURT: What would you like me to do, Ms. Quigley, to make the appointment date now?

MS. QUIGLEY: No, Your Honour. Mr. Willmore has just indicated to the Court that he knows his dates for the appointment in November ...

THE COURT: Yes, and I've told him to review it having regard to when he would be visiting with Ryan in September and October and obviously that would include August if he's ... since he's bringing Ryan back if the access goes ahead in August or if the order isn't obtained he'll be here for all of the access. I don't have the IWK on the phone, Ms. Quigley. It's Mr. Willmore's responsibility to do that. If Mr. Willmore, who requested the assessment, effectively is available to come and exercise access in August and September and October but can't be available to do a one-day session with the IWK, which is normally what they do, well then I'll ...

At pages 24-25:

> **MS. QUIGLEY:** Then the other issue is my request in my letter to the Court to call evidence from Mr. Scanlan ...
> **THE COURT:** I would expect that that would be at the trial dates.
> **MS. QUIGLEY:** Not in advance of the trial date?
> **THE COURT:** For what purpose?
> **MS. QUIGLEY:** To deal with the issues that were raised in evidence at the interim hearing by Mr. Willmore
> **THE COURT:** The interim hearing is completed. I don't have another application before me, I'm not looking for one. I would reserve my discretion as to whether or not I would ever entertain one. We have trial dates. You've said you're going to call Mr. Scanlan then. That's why he was excluded and go from there.
> **MS. QUIGLEY:** All right.
> **THE COURT:** It is what it is. I took your letter as giving notice that you were ... wished to call him at the trial to address some of those issues.
> **MS. QUIGLEY:** (Inaudible).
> **THE COURT:** I have a letter from you saying that you'd like to call him at some point, Ms. Quigley. The pre-trial today was scheduled. There was one in August now scheduled for the sole purpose of addressing whether or not the order is signed by the Texas court and we've got a more general pre-trial in September and if you want to call evidence before December then there should be a motion returnable in September indicating why it's something that can't wait until the trial dates. I've made my decision on the ... thank you.

At page 26:

> **MS. QUIGLEY:** I can state for the record that since my last time in court I am not issuing any claim for child support.
> **THE COURT:** If you are agreeing, Ms. Quigley, to less being disclosed by Mr. Willmore than is in my decision then you communicate that to Mr. Willmore on the family Wizard account and it's done in writing and if he complies with it that's fine. Unless you have something in writing from her, Mr. Willmore, the disclosure is exactly what's in my decision.

At pages 27-30:

> **THE COURT:** ...The undertakings or the orders that I've asked for in the Texas court are the ones that you say you agree with and ones that she says her lawyer will consent to. So the Texas court has no reason not to implement that and the Texas court, in fact, has indicated in its decision pf December of last year that it expected the Canadian court to take jurisdiction over it....
> ... **THE COURT:** ...Really what we're talking is what's going to happen in Texas and I have no control over that and I have no input to it apart from as it relates to Ryan and what I've done in the decision as it concerns the custody and access. I've been pretty specific about how I think that part of it should play out.
>
> The other parts of it, what the two of you do or choose to do is up to you. Ms. Quigley has counsel down there. I'm sure she'll take his advice and we will see where it is in September and go from there.
>
> Now August 8th when we're on the phone, it's going to be fairly quick. Either I've got an order from the court or from Mr. Gagnon or I don't and the access will be ... will follow in accordance with what I have.
>
> I've suggested, Mr. Willmore, that you retain counsel immediately to get that order filed and to Mr. Gagnon so that it gets issued as quickly as possible but I can't make you do that. And if you don't do it then, you know, whatever happens happens. I've said what the order will be if it's not filed. August 8th is as late as it can go. That's the date you used at the start of this. If it's not here on August 8th at ... then, you know, the access will be in Canada for August.

4. August 6, 2008

The Texas proceeding went forward on this date. Mr. Willmore filed (by fax) a copy of the transcript of the ruling of Judge Chap B. Cain (of the District Court of Liberty, Texas, 253rd Judicial District) (Exhibit 17) on August 7, 2008. Ms. Quigley later (September 5, 2008) filed a certified copy of the transcript (Exhibit 13) of the entire August 6, 2008 proceeding before Judge Cain - which included the ruling that Mr. Willmore had provided. Excerpts from that transcript of the August 6, 2008 proceeding in Texas are attached as Appendix A to this Decision.

It appears from this transcript that:

- Mr. Gagnon, Ms. Quigley's counsel, appeared but had instructions to withdraw. His motion to do so was denied.

- the Texas Court felt Ms. Quigley was "not dealing honestly or fairly with this [Texas] Court and hasn't since day one".

- Mr. Gagnon stated Mr. Willmore's property and income disclosure/filings in the Texas Court were inadequate.

- the Court asked and Mr. Willmore answered:

> **THE COURT:** Are you not attempting to seek any orders regarding your child here.....?
> **MR. WILLMORE**: No, sir. I would like the Court here as per I put in - I believe I put with the Court, through Ms. Zimmerman at the time, a document that the court of Texas does not have jurisdiction over Ryan Ross Quigley Willmore and that I fought in the Court in Canada over that issue.

- Mr. Willmore acknowledged this Court's jurisdiction over Ryan.

- Later Mr. Willmore testified:

> The Judge had stated due to the fact of documentation from the court of Texas where the - yourself, sir, you said you didn't have jurisdiction over my son, he took that to assume that he would be allowed to take jurisdiction over Ryan Ross Quigley Willmore and his welfare. I agreed to that. I have no issue with that.

- And again:

> So I ask this Court if they would grant my divorce, grant the agreement that I have set out with the Supreme Court of Canada where Ryan has - Ms. Quigley has custody of Ryan, full custody of Ryan, and that the Canadian Court will honor their agreement where I can get Ryan every - one weekend a month and the weeks promised...

(Mr. Willmore refers to the Canadian Courts, presumably this Court and the Court of Appeal as the Supreme Court of Canada.)

- Mr. Willmore makes statements that appear to mis-state and/or exaggerate events in Canada; for example:

> - that he was charged with attempted murder of a Supreme Court Judge in Canada;
>
> - that during his last visit to Canada he was arrested while having breakfast at his hotel by an anti-terrorist team.

- Inexplicably Mr. Willmore states, at one point:

> **MR. WILLMORE**: ...the Court has ordered that I buy myself - buy my son a cell phone, which I have, and maintain that cell phone. And I talk to my son freely and he is allowed to talk to me freely. I believe it's going to be one of these cases where he will be 14 or 15 before I see him again, - and I have to live with that.

I say "inexplicably" because block access for later that very month (August 2008) was in place and ordered - and would take place in Texas if the Texas order deferred jurisdiction over Ryan to this Court (which the Texas Court had earlier suggested it would do <u>and</u> Mr. Willmore appeared to request) in an Order that eliminated the existence of competing custody orders.

- When asked if he is requesting Nova Scotia property, Mr. Willmore said he would "like to see at least $100,000.00 back". This exchange later took place between Mr. Willmore and Judge Cain:

> **THE COURT:** Are you wanting me to order - I don't know whether I really have jurisdiction over the property in - in Nova Scotia.
>
> **MR. WILLMORE:** You have jurisdiction over the property in Texas
>
> ...

> **THE COURT:** I think what I will most likely do is not make any ruling regarding the property in Nova Scotia.
>
> **MR. WILLMORE:** Yes, sir.

Judge Cain concluded, at the end of the Texas proceeding of August 6, 2008:

> **THE COURT:** All right. That's fine.
>
> All right. I find that the requirements for divorce have been met, and the divorce is granted.
>
> The Canadian orders regarding visitation will continue in full force and effect. And also, regarding custody, you know, whether you're a joint managing conservator or a possessory conservator, whatever those orders are in Canada, those will continue and be made part of this Court's order.
>
> You're to continue the child support ordered by this Court, and it'll be continued and made a part of this order.
>
> Mr. Willmore, you are awarded the real property – all real property in your name and subject to your control in Liberty County, and any other real property in your name or subject to your control in the State of Texas, including but not limited to the property that you've described in open court.
>
> You're further awarded the truck and trailer that you still owe money on; your father's swords; letters from your mother; photographs; all of your family photographs and letters; a Springfield rifle and bayonet; the two guitars that were given to you by your father; your clothing. You are further awarded a judgment totalling $100,000 representing the value of the horses heretofore sold; and two saddles, and English and Western saddle.
>
> The Court defers any division of property in Nova Scotia. I don't believe I have jurisdiction over that, and that will be up to a Canadian court to decide how that should be divided.
>
> ...
>
> I'm going to order that you present the Court with a decree within two weeks.

It is unclear when this decree was filed with the Texas Court. The Order did not issue until September 3, 2008.

5. <u>August 8, 2008</u>

A further telephone pre-trial conference took place. Mr. Willmore indicated the Texas proceeding had gone forward, that an order from the Texas Court

would be forthcoming. The matter was adjourned (over Ms. Quigley's strenuous objections) to a further telephone pre-trial conference on August 15, 2008 "to determine whether the Order as contemplated by the Interim Decision has been filed." August 15th was a Friday - Mr. Willmore had indicated his access would commence Sunday, August 17th, 2008. The August 15th date extended the date for his filing an Order from Texas that eliminated or resolved the interjurisdictional inconsistencies in Orders (as they concerned Ryan's custody and access) to the last possible day before the commencement of Mr. Willmore's scheduled access.

6. August 15, 2008

The pre-trial conference was scheduled. Mr. Willmore was called at the number he had provided, but did not respond. He has since offered no excuse, nor reason for not being available. Ms. Quigley and her Texas lawyer, Mr. Gagnon, appeared by telephone. This Court issued the following order after this appearance:

> **INTERIM ORDER (August 15, 2006)[sic] AMENDING ORDER OF JULY 8, 2008**
> BEFORE THE HONOURABLE JUSTICE R. JAMES WILLIAMS:
> **UPON** this Court having rendered an Interim Decision in this proceeding on June 27, 2008 and issuing an Order July 8, 2008, which Order is attached as Appendix A to this Order;
> **AND UPON** there having been reviews by way of telephone conferences on July 28, 2008, August 8, 2008 and August 15, 2008;
> **AND IT APPEARING** that a parallel proceeding regarding similar matters is ongoing or has been conducted in the Liberty 253rd District Court, Texas, U.S.A.;
> **AND UPON** this Court not having received information that satisfies it that the issue of competing Orders in the Texas Court has been resolved or that Mr. Gary Willmore has made his best effort to resolve it and not having received any submission from Mr. Willmore subsequent to August 8, 2008;
> **AND UPON HEARING** Karen A. Quigley, the Petitioner, on her own behalf;
> **AND UPON** Gary Willmore the Respondent, not being available at the phone number (he) provided and not appearing by telephone;
> **NOW UPON MOTION:**

IT IS ORDERED pursuant to the **Divorce Act, 1985** and/or the **Parens Patriae** jurisdiction of this Court.

1. That clause 6(a)(i) of the Order of July 8, 2008 be deleted.
2. That as provided in clauses 3 and 4 of the July 8, 2008 Order Ms. Quigley continues to have interim sole custody and primary care of Ryan Ross Quigley-Willmore (b. November 15, 1999).
3. That Mr. Willmore, having given notice that he will exercise access August 17, 2008 to and including August 23, 2008, shall have the right to exercise access with Ryan Ross Quigley-Willmore during this time period provided that:
    a. he provide his passports and a copy of this Order to a representative of the Nova Scotia Supreme Court Trial Division, an officer of the Court (including a member of the Nova Scotia Barristers Society), or a member of the Royal Canadian Mounted Police or other person approved by this Court - which person shall hold Mr. Willmore's passports until Ryan Ross Quigley-Willmore is returned to Ms. Quigley's care.
    b. Ms. Quigley will make Ryan Ross Quigley-Willmore available for the access upon her receiving confirmation from the third party of receipt of Mr. Willmore's American and British passports.
    c. Mr. Willmore shall exercise this access within Canada. He may not under any circumstances remove Ryan Ross Quigley-Willmore from Canada.
4. Mr. Willmore shall advise Ms. Quigley of the general itinerary of his access through the Family Wizard account prior to his picking up Ryan Ross Quigley-Willmore and shall encourage Ryan Ross Quigley-Willmore to call Ms. Quigley collect once per day, after 5:30p.m.
5. This Order will be subject to review and change at the September 9, 2008 pre-trial/review. Until otherwise ordered Mr. Willmore's access will be exercised within Canada, and subject to the filing of his passports as directed.
6. The other provisions of the July 8, 2008 Order of this Court remain in effect including Clause 8 of that Order which provides explicit directions with respect to future filings by the parties.

DATED at Halifax, Nova Scotia, on the 15th day of August, 2008.

ISSUED at Halifax, Nova Scotia on the 15th day of August, 2008.
(Signed)
Deputy Prothonotary

7. August 17, 2008

The evidence available to me indicates and I conclude:

- that Mr. Willmore did not come to Nova Scotia to visit Ryan on August 17th;

- that Mr. Willmore told Ryan he would not be coming in a telephone call on or within a day or two of that date;

- that Ryan was and remains upset, disappointed and confused by the failure of this visit with his father to occur. Any child wanting a relationship with a parent would be hurt by such a course of events.

8. August 25, 2008

Linda MacEachern, of the IWK Health Centre, Court Assessment Services, wrote Heather MacDonald-Chisholm, a Court staff person who coordinates assessments ordered by the Court. Ms. MacEachern wrote:

> Dear Ms. MacDonald-Chisholm:
> I am writing as a follow-up on the Quigley-Willmore matter. When I last contacted you in July, I advised that I was waiting to hear from Mr. Willmore regarding his availability to participate in the assessment. I have not heard from Mr. Willmore since July 30th, and it is my understanding that he has not responded to messages left by the court regarding this matter.
> As previously state, the assessment process cannot be held up indefinitely. If I do not hear from Mr. Willmore before September 12, 2008, the assessment of this family may be terminated. Ms. Quigley has been willing and available to participate, but to date, I have advised her that the assessment is on hold until there is an indication that all parties are agreeable to participate.

9. September 2, 2008

Mr. Willmore did not file an Answer or other disclosure as ordered in my decision of June 27, 2008. He filed nothing in reply to Ms. Quigley's claims under the *Matrimonial Property Act* relating to property in Nova Scotia. He filed no Answer to the (Amended) Divorce Petition and the relief sought under that Act and the *Maintenance and Custody Act* save for the assertion that there is a divorce in Texas that this Court should recognize. He effectively has walked away from the proceedings before this Court.

10. September 3, 2008

Judge Chap B. Cain, III of the District Court, 253rd Judicial District, Liberty County, Texas, issued a "Final Decree of Divorce". The Order appears to have been filed with the Texas Court by Mr. Willmore. It is dated September 3, 2008. The substantive part of this Order is attached as Appendix B of this decision.

This Order:

- grants a divorce;

- orders that Gary Willmore and Karen Quigley are "parent joint managing conservators" of Ryan and makes detailed provisions concerning their parental rights, including:

  - giving Ms. Quigley the:

    - exclusive right to designate the child's primary residence within Nova Scotia;

    - designating Nova Scotia as Ryan's place of residence until "modified by further order of the court of continuing jurisdiction";

    - adopts my interim order regarding access;

    - states it is acknowledged and ordered that Gary Willmore "defers to the Canadian Court's jurisdiction

> (Supreme Court of Nova Scotia) with respect to the issues of custody, access, conservatorship and possession of Ryan Ross Quigley Willmore except as provided herein";
>
> - ordering that Ms. Quigley shall surrender Ryan to Mr. Willmore for access and Mr. Willmore shall return him at the conclusion of access.

I used the phrase "except as provided herein" in my Interim Order of June 27, 2008. There, however, I provided a brief succinct statement of what I felt needed to be in the Texas Order to clarify the jurisdiction issue. I suggested it should read; confirm that:

> - the primary residence of Ryan Ross Quigley-Willmore is with Ms. Quigley in Nova Scotia;
>
> - the March 30, 2007 Order of the Texas Court is vacated as it relates to issues of custody, access, conservatorship and possession of the child;
>
> - Mr. Willmore defers to the Canadian Court's jurisdiction (Supreme Court of Nova Scotia) with respect to issues of custody, access, conservatorship and possession of Ryan Ross Quigley-Willmore, except as provided herein;
>
> - Mr. Willmore shall return Ryan Ross Quigley-Willmore to the care of Ms. Quigley at the conclusion of access periods ordered by the Supreme Court of Nova Scotia.

The Order issued in Texas on September 3, 2008 goes beyond this, and does not in my view resolve the "competing orders" issue in a clear fashion.

The Order goes on to make provision for child support ($1,050.00 per month), manner of modification of the Order and division of property.

The property division deals with some personal effects of Mr. Willmore, gives him all personal and real property in his possession, orders that he have the 2003 Ford F-350 vehicle information number 1FTWW33PX3EB40308, and orders that Ms. Quigley pay Mr. Willmore a civil judgment of $100,000.00. The judgment gives personal effects, investments, pensions,

etc. in the name of Ms. Quigley to her, makes no reference to real property in Nova Scotia.

11. <u>September 5, 2008</u>

In "response" to Mr. Willmore's failure to file an Answer or response in this proceeding (beyond the assertion that there is a Texas divorce), Ms. Quigley filed an Application for Judgment - that application recited:

1. The Petitioner hereby requests that this action be set down for determination as an uncontested proceeding to be heard under rule 57.18 on the basis of affidavit evidence.
2. The Petitioner claims the following relief:
   - Divorce
   - sole custody to the Petitioner, of the child of the marriage Ryan Ross Quigley-Willmore. Access as directed by existing court order dated August 15, 2008 or as determined by a future court hearing.
   - child maintenance to be determined at a future court hearing.
   - an order under the Matrimonial Property Act directing that any matrimonial property or assets registered in the name of or in the possession of the Petitioner shall be owned by the Petitioner.
3. The following pleadings, proceedings and documents are on file:
   - Petition for divorce and affidavit of service.
   - Application for judgment and affidavit.
   - Marriage certificate.
   - Financial statement for the Petitioner.
4. Service of the Petition upon the Respondent was effected by personal service as noted in the affidavit as attached to the petition and the amended petition for divorce is on file herein.
5. Under the Nova Scotia Civil Procedure rules the respondent should have filed an Answer many months ago but this Honourable Court extended that filing date repeatedly, giving a most recent extension which required an answer be filed no later than September 2, 2008. No Answer has been field or served on the Petitioner.
6. The Petitioner's Affidavit as required by Rule 57.18 and 57.19 accompany this application. Previous court orders in this proceeding are on file. The most recent consolidated interim order issued August 15, 2008 is attached hereto.
7. The following documents also accompany this application:
   - Draft Divorce Judgment
   - Draft Corollary Relief Judgment
   - Addressed envelopes to the Petitioner and Respondent.

12. <u>September 9, 2008</u>

A pre-trial conference took place by telephone. Mr. Gagnon, Ms. Quigley's counsel in Texas, appeared by phone also. The transcript of that appearance includes:

> **THE COURT**: You've made a motion for the Court to proceed ...
>
> **MS. QUIGLEY:** Yes, My Lord, I have.
>
> **THE COURT:** And Mr. Willmore, you've filed nothing save the record from the Texas proceeding on August 6th and faxed a copy of an Order entitled "Final Decree of Divorce" from the Texas Court, is that correct?
>
> **MR. WILLMORE:** I've faxed it to you, My Lord, and I've also Federal Express'd it up to you.
>
> **THE COURT:** All right. And the directions I gave with respect to filings were fairly straightforward. What I would suggest we do in terms of process at this point, Ms. Quigley, is that I give you a date for a hearing on your motions, likely within the next ... certainly within the next month. And you can appear, file whatever documentation in addition to what you've filed if you wish. And then I would make a decision based on the material I had.
>
> Mr. Willmore would be free to appear and to file whatever material he wished prior to that hearing, as he's done nothing in terms of filings other than file the Texas process. I'm uncertain as to what his wish would be in that regard but obviously ...
>
> **MR. WILLMORE**: Excuse me, My Lord, I have a legal document from the United States to say that I have divorced from Ms. Quigley. If the Canadian Court ... (inaudible) to follow what the Texas Court has to say, then I have a serious issue and I will be filing an injunction to ... (inaudible).
>
> That document that I filed up to you and the one that was sent express to you is a legal document stating that I am divorced in the United States from Ms. Quigley. If Canada does not wish to recognize that, then I have no other issue than to ignore the Canadian Court.
>
> **THE COURT**: Well, if following the hearing date that I set and the decision I make, following that, Mr. Willmore, that is the course I took or for that matter any other course that you didn't agree with ... obviously you would have a right to appeal that.
>
> **MR. WILLMORE**: Yeah. Well, ... (inaudible) ...
>
> **THE COURT**: But at this point what I ... Mr. ...

MR. WILLMORE: ... (inaudible) I have a legal document signed by the United States saying that I am divorced from Ms. Quigley. Again, if Canada does not wish to recognize that, then I have no other option than to ignore the Canadian Court. Because in the United States, I am legally divorced now.

MR. GAGNON: That's not correct, Judge, and that is not a final Order. ... (inaudible) ...

THE COURT: Well, just a ... whoa, whoa, whoa, whoa.

MR. GAGNON: That was signed ...

THE COURT: Now Mr. ... just ...

MR. WILLMORE: That was signed by Justice Cain on the 3rd of September. And Justice Cain ... as I left that, Justice Cain said that is the final Order, and that is a legal document.

THE COURT: Well, Mr. Willmore, let me be clear with this. At this point, I don't have the certified copy of that Order that you've said you've sent by Federal Express. I'm ...

MR. WILLMORE: You have a fax copy, My Lord, and you have ... on that fax copy on the letter, it says that ... there is a document number, and the document was FedEx'd to you, and it takes three to five days to get to you, just like the documents when you sent to me takes three to five days.

THE COURT: Well, Mr. Willmore, that's fine. I'm setting a date when this will occur. And I'm assuming that that document will be here when that date arrives. Now Mr. Gagnon, there's something you wish to say?

MR. GAGNON: Yes, sir. That Order does not become final until 30 days after the Court signs that Decree, so it is not a final Order. And secondly, it does not become final if there is a motion for a new trial or an appeal filed within that 30 days.

MR. WILLMORE: That is incorrect. It's final, and it has to be final before you can file an appeal in the state of Texas.

THE COURT: All right, I'm going to ask you ...

MR. WILLMORE: ... (inaudible).

THE COURT: I'm going to ask you all to stay on the line momentarily. I'm going to come back and I'm going to give you a date at which time Ms. Quigley's motions will be entertained by this Court. And if there is a certified copy of an Order from Texas that is going to be filed, then presumably I'll have it by then.

If there is a position by Ms. Quigley that indicates that the Order is not final there until it is either 30 days or resolved if there is an appeal, then she can submit the Texas rules or whatever that support that position. And Mr. Willmore can submit the contrary.

But I'm going to stop this dialogue at this point. I will be back to you within moments with a date on which Ms. Quigley's motion will be heard, and we will proceed from there. I'll be just a moment.

[SHORT PAUSE]

THE COURT: All right, this matter will be scheduled on my docket to consider Ms. Quigley's motion on Thursday, September 25th at 10 a.m.

MR. WILLMORE: And of course, I'm not available at that time. I will not be available until (late ?) October. I will be going offshore for 30 days, and I think I have the legal right to be involved in this when it comes back. So my availability will be after about the 14th of October.

THE COURT: Well, Mr. Willmore, the motion is to deal with the fact that you have not replied at all to the process.

MR. WILLMORE: I have replied, Your Honour, and it's in a ... I sent you an e-mail and I've also followed up with an express mail. Just the same way as the Court has done the same for me. I've followed your same rules, and it includes ... the same documentation that you asked me to put in was put into that document. As you've already got the fax, you already seen that.

[VOICES IN BACKGROUND]

MR. GAGNON: Hello?

THE COURT: All right, Mr. Willmore, what is it that you would want to put before the Court, then?

MR. WILLMORE: The final document of divorce is a legal standing document in the United States. Again, that shows that I am divorced from Ms. Quigley. If Canada does not wish to receive that or identify that as a legal document from the United States, then I have no other alternative but to go back to my original issue, and I will go that way.

THE COURT: And what is your ...

MR. WILLMORE: ... (inaudible) ...

THE COURT: What is your ...

MR. WILLMORE: Ms. Quigley has no legal standing now left in the United States regardless of Mr. Gagnon's interference with the Court. In fact, Mr. Gagnon was chucked out of the Court last week for ... (inaudible) in Texas. Mr. Gagnon failed to tell you that, I guess.

MR. GAGNON: That's just totally incorrect.

THE COURT: All right, Mr. Gagnon ...

MR. WILLMORE: ... (inaudible) ...

THE COURT: Whoa, whoa, whoa. Stop, please.

MR. WILLMORE: I will send up the Court report from last week to you, Your Honour, and it will show that Mr. Gagnon has been playing games with the Texas Court. In fact, the judge in Texas told ... (inaudible) ...

THE COURT: Mr. Willmore, I don't want you to comment on Mr. Gagnon. Nobody's under oath right now so all it is talking about somebody.

MR. WILLMORE: By the 14th, I will be back from offshore. I'm in and out. In fact, I'm on my way to Louisiana now. I just pulled over. I was on the freeway. I will be back from my assignment.

You will have a legal document finalized by the State of Texas that shows I am divorced from Ms. Quigley. And it will also show in that document, as you've already got the fax copy, that it applied to the rules that you required for Ryan Ross Quigley Willmore. And that is a legal standing document.

And I need to know if the Canadian Court is not going to accept that document, then I will have another issue, and I will have to file an appeal. And this time, I'm going to file an appeal with the Court in Ottawa, due to the fact of all of the issues I've received through Canada. I have not had a fair shake in Canada. You stated that in your own documentation. There's some underhanded ... (inaudible) ...

THE COURT: All right, Mr. Willmore, stop, please. Ms. Quigley, the matter will be set for a hearing on Tuesday, October 21st at 2 p.m. I'm sorry, at 10 a.m.

MS. QUIGLEY: My Lord ...

THE COURT: And I'll entertain what motions you have at that point.

MS. QUIGLEY: My Lord, Tuesday, October 21st?

THE COURT: Yes.

MS. QUIGLEY: At 10 a.m.?

THE COURT: Yes.

MS. QUIGLEY: Do I have that correct, My Lord?

THE COURT: Yes. Tuesday, October 21st, 10 a.m. Mr. Willmore, you have that date?

MR. WILLMORE: Yes, but I'm getting a lot of interference. It's October 21st at 10 a.m. Nova Scotia time?

THE COURT: Nova Scotia time.

MS. QUIGLEY: My Lord, this is an in-Court appearance?

THE COURT: This is an in-Court appearance. It is to entertain your motions, Ms. Quigley, that you've made arising from Mr. Willmore's failure to file documentation as directed in my

interim decision, and to deal with presumably the matters you raise in that. There are four matters that I recall in your motion.

MS. QUIGLEY: Yes, My Lord.

THE COURT: Number one, the divorce; number two, the issue of custody and access; number three, the issue of property in Nova Scotia; and number four, the issue of child support. With respect to the matter of property, Ms. Quigley, in my view there are two parts ... two things that I had hoped would happen arising from my interim decision. Well, really three.

One, obviously the access, which I have little information on at this point; number two, the filings by Mr. Willmore; and number three, the motion from you dealing with the joinder of your initial property proceeding here with the divorce proceeding that is before me, subject to Mr. Willmore's objections.

Any material that is going to be filed by Ms. Quigley will be filed and served on Mr. Willmore through posting on the Family Wizard site on or before Monday, October 13th. Any material that Mr. Willmore is going to be filing will be filed and served on Ms. Quigley through posting on the Family Wizard site on Friday, October 17, which is after your return, Mr. Willmore.

MR. WILLMORE: That's right.

THE COURT: If certified copies of Texas documentation is filed and I have from Ms. Quigley a certified copy of the transcript of the appearance before the Court on August 6th, and Mr. Willmore says that there's a certified copy of the Divorce Decree that is on its way to me - I have a faxed copy of that at this point - if certified copies are received, my view would be that there would be no need for further proof of that documentation.

That does not mean that there cannot be submissions or arguments made about the effect of that documentation in affidavits or pleadings at that time. Are both of you clear on that direction?

MS. QUIGLEY: My Lord, I just want to check the dates again for filing for Mr. Willmore because, I'm sorry, I ... (inaudible).

THE COURT: Friday, October 17th, and that is effectively 4 p.m. Atlantic Standard Time, Mr. Willmore, so 4 p.m. Nova Scotia time.

MR. WILLMORE: Yes, My Lord.

THE COURT: Mr. Willmore, any questions?

MS. QUIGLEY: The requirement for filing would be via Wizard for both of us?

THE COURT: Via Wizard to each other, directly with the Court for the Courts.

MR. WILLMORE: Three questions, Your Honour. I have not received anything from Ms. Quigley that's filed with the Court; that is one. And the second is, I have not talked to Ryan in over ... nearly 30 days.

THE COURT: Okay. Dealing with the first one, any materials she wishes to put before the Court will be filed on Family Wizard. And Ms. Quigley, I'm going to ask that you give me one package of material on this.

And obviously, you should have Mr. Willmore effectively served with any material including your motion by Monday, October 13th. The motion, I would suggest, should be posted to the site before the end of this week.

With respect to the access, Mr. Willmore, I have nothing filed from you with respect to this, so I have really no information or no new information since ...

MR. WILLMORE: That is incorrect, My Lord. You have told Ms. Quigley that I have access with Ryan by telephone or the cell phone. I have called that cell phone every other day for the last 20-some-odd days, and there has been no answer. The first week of that 20-some-odd days, the telephone told me that he was out of the Halifax cellular range. That means that Ryan was not even in Halifax.

THE COURT: Well, Mr. Willmore, I don't have any ... I don't have the ability to take sworn testimony today. I don't have an affidavit from you. I've seen the correspondence on Family Wizard between the two of you. And at this point, there's not very much I can do about that.

I don't know what happened in August, although every indication is that you did not have your access in August. I don't know any of the details about that. And I'm making no inquiries about it at this point because nobody's sworn and that isn't before me.

If either of you have affidavits to file in this matter, they should be filed by those filing dates I've given. And I'll make my decision based on the information I've got. That decision may or may not cancel the trial dates.

It may or may not terminate the Order for the home study which is, it appears, not going forward at this point. And it may or may not resolve the matter from a Canadian point of view. I don't know because I don't know what's going to be filed at this point.

MR. WILLMORE: Well, ... (inaudible) ...

THE COURT: Those are the dates that are going to be set in place. And I don't have the authority to do anything else, so I'm not going to pretend that I do.

MR. WILLMORE: Okay. Well, I will be filing this week, Your Honour. I will file a motion with the Supreme Court of Canada to have your verdict appealed due to the fact that you've made statements that they've not followed through ... (inaudible). And I've also asked that this be taken out of the Nova Scotia Courts for prejudice and put into the Supreme Court of Canada. That will be filed this week ... (inaudible).

THE COURT: You have my assurance that I'll respect any decision the Supreme Court of Canada would make in this matter.

MR. WILLMORE: Yes, sir, because you've asked me to do lots of things. I've done them. And Ms. Quigley has not applied to them. And the Canadian Court is not holding her to the requirements.

THE COURT: All right, Ms. Quigley, you've got the dates?

MS. QUIGLEY: Yes, My Lord, I do.

THE COURT: Mr. Willmore has confirmed he has the dates. I have another matter that's docketed for 11 o'clock. The dates and the directions are clear. They're on the record. Both of you have confirmed that you've got them.

...

MS. QUIGLEY: Just one question. I understand that Mr. Willmore will have access to a fax number. In terms of sending the documents to him, that's a very useful way because some of the documents I'm not able to put onto Wizard, ... (inaudible) ...

THE COURT: Mr. Willmore, is there a fax number at which ... that she can send documents to?

MR. WILLMORE: Your Honour, I'm not receiving any faxes from Ms. Quigley over my company fax or ...

THE COURT: I didn't ask you to, sir. I asked you whether there is a fax number that could be used.

MR. WILLMORE: No, sir, there is not. I have a fax at my office which is open to the public. And it's in ... (inaudible) there. There will be a fax number there that I will send to you, Your Honour. And that is for extreme ... when the Court wants to send me something, and that's all it's there for.

THE COURT: Well ...

MR. WILLMORE: I will not receive the fax. It will go through the office there, and it will be through a third-party company. So I don't feel comfortable receiving faxes from there, other than if there's something from the Court that they have to fax me.

THE COURT: And what about as an attachment to e-mail?

MR. WILLMORE: I have e-mail, Your Honour. I have ... Ms. Quigley has my e-mail address, and she's had it ... (inaudible) years.

THE COURT: Ms. Quigley?

MS. QUIGLEY: Thank you, My Lord. I certainly can send it to the Wizard account as best as I can. And what I will do is continue to courier it by Canada Post on ... it's like a three- or four-day service. And I can send it by post so that he has to sign for it so I can ensure that he does pick it up at the mailbox.

THE COURT: Well, if he doesn't pick it up, then it'll show not picked up.

MS. QUIGLEY: Yes.

THE COURT: I'm going to suggest, Ms. Quigley, that you also send it as an attachment in an e-mail.

MS. QUIGLEY: To an e-mail to Mr. Willmore's personal e-mail address and not Wizard?

THE COURT: Send it ... put it on the Wizard and ...

MS. QUIGLEY: That's the difficulty, My Lord, is that I ...

THE COURT: And what ... and e-mail it to him as an attachment.

MS. QUIGLEY: I can try to, My Lord. I'm not sure that I'm able to attach it. I can't scan it. That's the problem, you see. I'm not physically able to scan it to Wizard. I can do my best, but that's all I can do. The difficulty is the scanning part of it.

THE COURT: Why is that a difficulty?

MS. QUIGLEY: Because I don't know how to do it, and I don't think Wizard will take ... I don't have any ability to scan, number one. And if I go to, like, a third-party service, I don't think Wizard will take a scanned document from, like, another source. I have no scanner.

MR. WILLMORE: If you have a file, Ms. Quigley, and you typed it up in your computer, you can attach the file to Wizard.

MS. QUIGLEY: My Lord ...

MR. WILLMORE: Because I'm sure ... because ... (inaudible) type ...

THE COURT: All right. Whoa, whoa, whoa. All right. Mr. Willmore, is there anything wrong with faxing to Ms. Zimmerman?

MR. WILLMORE: Yes, My Lord. Ms. Zimmerman is no longer my lawyer, and she actually is asking that people don't, including Gagnon, get in contact with her.

THE COURT: All right. Just a moment. All right, Ms. Quigley, the service part of this is important. If need be, take the document to a UPS service and have them scan it in and e-mail it to Mr. Willmore. And if the service on Family Wizard is sufficient, if there's material you cannot get on Family Wizard, then e-mail it to him. Any questions?

MS. QUIGLEY: Maybe the Court could scan it for me. Maybe I can bring it to the Court and the Court would be able to scan it.

THE COURT: We don't have a scanner here, Ms. Quigley, either.

MS. QUIGLEY: ... (inaudible). Well, the difficulty, My Lord, is that Mr. Willmore ... he works in a very high-tech industry. He has access to a fax should he like to have access to a fax. He's making this extremely difficult. He has a fax machine at his residence, My Lord. He has ... he's just making this ...

THE COURT: Ms. Quigley ...

MS. QUIGLEY: ... (inaudible) ...

THE COURT: ... he's saying he can't receive it at work.

MS. QUIGLEY: He's saying he refuses to receive it at work, My Lord, not that he can't. He refuses to.

THE COURT: That's right. So we need to find a different way of doing it and we're going to do it ...

MS. QUIGLEY: Then, My Lord, what I would suggest is that I will courier it to his home address. I will send it the way in which I know he ...

THE COURT: Ms. Quigley, you've appeared before this Court ...

MS. QUIGLEY: ... (inaudible).

THE COURT: ... and said that that's not satisfactory ...

MS. QUIGLEY: ... (inaudible).

THE COURT: ... because what he does is not pick it up or he's not there for ...

MS. QUIGLEY: No, and ... (inaudible) ...

THE COURT: Ms. Quigley, don't argue with me.

MS. QUIGLEY: I'm not.

THE COURT: The direction is that you either post it on Family Wizard ... you either put it on Family Wizard, or that you e-mail it to him.

MS. QUIGLEY: A point of clarification, My Lord, if I may speak.

THE COURT: What?

MS. QUIGLEY: Before when Mr. Willmore didn't pick it up, it was because the courier service was taking to his residence. That was before we had learned that it can be sent under ... to the post office and held there and a card goes to him and he's required to pick it up by way of attending at the post office. And that has worked since the earlier times when it wasn't working. So we now have found a way by Canada Post that it can ...

THE COURT: We also know that he's going to be overseas when your filing date is, Ms. Quigley. I'm giving the direction that you either post it to the Family Wizard account or e-mail him.

Now if you don't have the computer skills to take a typed document that you prepare and attach it to your own e-mail, then I'm sure a quick lesson from somebody or having a friend who has those skills come in and attach them will look after that. But that's the direction I'm giving. Understood?

MS. QUIGLEY: Yes, My Lord, I understand.

THE COURT: And Mr. Willmore, I'm bending over backwards to accommodate you when you say things like I can't be here at this date or I don't have a fax number or whatever. And I'm making sure that you've got notice of this hearing.

MR. WILLMORE: I ...

THE COURT: I don't have very much ...

MR. WILLMORE: I have no issue with that, Your Honour. I mean, I can put it on Family Wizard. I have no issue with doing that. It's an attachment to a file. I work on the computer. But I also work in a fabrication facility, a fab yard in the middle of nowhere. Ms. Quigley is aware of that.

THE COURT: Well, ... (inaudible).

MR. WILLMORE: So for me to ... (inaudible) Court and doing this and that is hard. But I've been trying to maintain that. But I will attach to Family Wizard, and I will also copy the Court with it.

THE COURT: All right. Ms. Quigley, are you clear now? Ms. Quigley, are you clear with my direction?

MS. QUIGLEY: Yes, My Lord.

THE COURT: All right. Thank you. The matter is adjourned as I've indicated. We will be hanging up here.

I set Ms. Quigley's application(s) down for a hearing on October 21, 2008.

13. <u>September 12, 2008</u>

Linda MacEachern of the IWK Assessment Services wrote Ms. MacDonald-Chisholm (a staff person here at the Court) indicating:

> Further to my letter of August 25th, I am writing to advise that I have not heard further from Mr. Willmore [sic]. As a result, unfortunately, it will not be possible to complete the assessment in relation to this child, Ryan Ross Quigley-Willmore [sic]. Please feel free to refer this family at a later time should all parties be agreeable to participating. Should you wish to discuss this further, do not hesitate to contact me at 491-7505.
> Respectfully,
> Linda MacEachern, MSW, RSW
> Social Worker
> cc Karen Quigley (via fax)
> Gary Willmore [sic] (via mail)

14. <u>October 16, 2008</u>

Mr. Willmore faxed a letter to the Court. The letter reads as follows:

> October 15, 2008
> Justice R. James Williams
> Supreme Court of Nova Scotia
> Family Division
> Halifax
> N.S.
> FAX 902 424 2999
>
> Justice Williams.
>
> Sir. I must inform you due to my work schedule I will not becoming (sic) to Nova Scotia for the court appointment, (sic)
>
> I did receive the report from Mr. Whitzmen stating on page 2, 3, and 4 that he had talked to "Ryan Quigley" (Not Ryan Quigley Willmore) and that he had talked to his Mother and Father (is this Ted Scanlan) as he has not talk (sic) to me other that (sic) a text he sent to my cell phone last week asking if I had talked to Ryan,

which I had responded, not in 3 months and please call me which he has not. Then sent me a bill for $1500 saying you have ordered me to pay. For all of Ms. Quigley's and Ryan's time with him. You had ordered Mr. Whitzman to do an INDEPEND STUDY (sic) only to find he had Ms. Quigley help him, You sat back and let this go on and still let it go today.

To date you have ordered that I have access with Ryan by cell phone, Ms. Quigley stopped that from accruing (sic) and you again sat back and let this happen. Now I find the cell phone was changed from my name to Ms. Quigley's name and I have no access to the records.

You had ordered that I would see Ryan in Texas, again you changed you (sic) order at the last minute, and Ms. Quigley went on Holiday with Ted and Ryan to his camp the week I was to see him, again you set (sic) back and let this happen after knowing it takes me two weeks to arrange time off from my work. You healed (sic) a phone conference the day before.

You have the "final divorce papers" from the court of Texas, I have talked to the Judge Cain in Texas and by US law I am divorced from Ms. Quigley. As for Mr. Gagnon's report I have filed with the Texas Bar, you have the transcript from the Texas Court showing he was there and was ordered by Judge Cain to represent Ms. Quigley he chose not to do so but she had repartition, he stated she did not. He Mr. Gagnon was asked if had any objection, he did not and the divorcee (sic) went on, the court transcript shows this (you have a copy), he will have to explain this to the Texas Bar why he lied in his statement to you. You have stated you have NO interest in what happens in the Texas court and I asked you three times are you going to enforce the Texas Divorce you stated you may not and it has no standing in Nova Scotia. So if this is the case I must ask you to stand down and find someone who will follow the law as it seem (sic) like the Nova Scotia court is making the law up as it go's (sic),

The court has let Ms. Quigley and Scanlan run there Owen thing over the last two years including having two divorces proceeding at the same time in the same court, I do believe this is due to Scanlan being a justice in your court system and Ms. Quigley being a crown attorney in your system with "Friends in High Places", You have seen the changes in Ms. Quigley's statements from Rev 1 to Rev 14?? When she loses she changes the storey with the help of

> Scanlan, Ryan is the only one that will suffer due to not seeing his real father thanks to the help Supreme Court of Nova Scotia and that you change your orders after the fact, (See Court reports)
>
> We all know Scanlan lied on the stand you had the RCMP report, you sat back and did nothing, When Ms. Quigley reported she made $55,000 per year you know this is not true as her wage is reported in the news paper as $100,000 and you ignored the information that she worked from home as Quigley's Law office making money on the side. Again you did nothing both lied as officers of the court, again you did nothing. I will ask the Supreme Court of appeals to over see all the orders you have applied and changed over the last year and have copied this letter to the Council. I would like to thank you for letting me see my son when I was in Halifax as Ms. Quigley would not have done that.
>
> Regards
> Gary Willmore

I do not agree with most of Mr. Willmore's assertions in this letter. The evidence available to me suggests the telephone access went reasonably well until the August access did not occur. Mr. Whitzman should have referred to "Ryan Quigley Willmore", not "Ryan Quigley". Mr. Whitzman was not asked to do an "independent study".

15. <u>October 16, 2008</u>

Mr. Willmore faxed this Court a copy of the ruling of Judge Cain (of Texas) on August 6, 2008. This is part of the certified copy of the transcript of that date filed, and was referred to earlier in this decision

16. <u>October 16, 2008</u>

Mr. Willmore faxed this Court the "Finding of Facts and Conclusions of Law" arising from the August 6, 2008 Texas divorce. This document was apparently requested by Mr. Gagnon, Ms. Quigley's lawyer in Texas.

The document reads as follows:

Finding of Facts and Conclusion of Law

In response to the request of the Respondent, KAREN A. QUIGLEY, the Court makes and files the following as original Finding of Facts and Conclusions of Law in accordance with rules 296 and 297 of the Texas Rules of Civil Procedure and section 6.711 of the Texas Family Code.

Finding of Fact - Divorce

1. KAREN A. QUIGLEY, Petitioner, and GARY WILLMORE, Respondent, were married on September 25, 1999.
2. At the time of filing of this suit, GARY WILLMORE has been a domiciliary of Texas for six months and a resident of Liberty County for ninety days.
3. The marriage of the Petitioner and Respondent has become insupportable because of discord or conflict of personalities that destroys the legitimate ends of the marital relationship and prevents any reasonable expectation of reconciliation.

Finding of Facts - Division of the Marital Estate - Family Code S 6.711

4. No disputed evidence was presented regarding the characterization of each parties assets, liabilities, claims and offsets.
5. No disputed evidence was presented regarding the value or amount of the community estate's assets, liabilities, claims and offsets.
6. The parties had obtained and possessed community property and debts. The community property and debts were divided in a just and right manner in accordance with Texas Constitution, Article 16, Section 15, and the Texas Family Code, Section 3.
7. The parties possessed separate property. Separate property was awarded to that party so entitled pursuant to the Texas Family Code.
8. Any finding of fact that is a conclusion of law shall be deemed a conclusion of law.

Conclusion of Law - Divorce

1. The Original Petition for Divorce and amendments thereto filed by Gary Willmore are in due form and contain all the allegations required by law.
2. This Court has jurisdiction of the parties and of the subject matter of this case.
3. All legal prerequisites to granting a divorce have been met.
4. The divorce is granted on the ground of insupportability.

SIGNED on October 13, 2008.

Chap B. Cain III
JUDGE PRESIDING

17. October 21, 2008

Ms. Quigley's motions were heard as scheduled. Mr. Willmore did not appear. He had notice of the application and date of the hearing. The date had been set to accommodate Mr. Willmore's work schedule. He advised by the faxed letter to this Court (October 16), that he would not be attending October 21, 2008 "due to his work schedule". He did not ask that the matter be adjourned. He did indicate, in a message to Ms. Quigley posted on Family Wizard that he would no longer participate in the Nova Scotia proceeding. The following message was posted to Ms. Quigley on the Family Wizard account on September 9, 2008, it appears in reply to her applications of September 5, 2008:

> Date: 04:39 PM on 09/09/08
> From: gary willmore [sic]
> Subject: RE: NSSC Divorce Documents Sept 5, 2008
> To: karen quigley [sic](first view 09/09/08 09:04 PM)
> Message: Karen, your Texas lawyer has a copy of the Texas Divorce which is on file, I will nolonger [sic] participate in a Nova scotia [sic] Divorce, as per the order from Judge cain [sic], canada [sic] has the right to order on Ryan and the property in Canada only I have filed anappeal [sic] to the NS court with information on your activities and Scanlans, showing you both lied under oath.
>
> Regards Gary ps [sic] child support was sent today)

Mr. Willmore had notice of Ms. Quigley's applications.

The evidence before the Court on October 21, 2008 included the transcript, orders and documents from the Texas divorce proceeding, written communications between the parties, and the parties and this Court, an affidavit and *viva voce* evidence. I have considered all of this in considering the issues before this Court.

The evidence put forward by Ms. Quigley included:

(a) Martin Whitzman:

Ms. Quigley filed a report from Mr. Whitzman dated October 2, 2008. In it Mr. Whitzman indicated (at pp. 2-4):

> **September 11th, 2008**
> Ryan was brought to the session by his Mother and interviewed alone as well as in her company. He indicated that his last visit with his Father had been in June when his Father had visited for three days. This visit went well with some further phone contact over the first part of the summer. Ryan had been informed that his Father was going to have an extended visit with him on August 17th that could occur in Texas or in Canada. Ryan stated that he had been looking forward to the August visit and was excited about the things that they were planning to do during the extended meeting. As the date approached, Ryan's Mother told him that the visit would be in Canada, not in Texas.
>
> Ryan informed me that he called his Father to make sure when he was arriving but the phone calls were not good. Arguments developed during the calls and Ryan apparently called his Father a liar.
> Mr. Willmore did not come to Halifax and the planned visit did not occur. Ryan was clearly upset by what appears to be another example where his Father has not kept his promise. Ryan discussed how he was feeling mad and sad and did not want to talk with his Father on the phone. He stated, 'I am really mad inside!' This was followed by, 'I don't think Dad likes me', and 'I don't trust Dad!'
>
> Ryan and I had a long talk about how he was feeling which clearly was upsetting and painful for this young lad. In particular, he was picking up the message that his Father truly did not like him and this was the reason why his Father was not coming for visits and being annoyed on the phone. Using an analogy, it was as if his Father was hugging him on one occasion and following this with a slap. Using the concepts of closeness and distance, Ryan felt as though his Father did things that were pleasant and brought him close but then did hurtful things that pushed him away. This was leaving this bright child

with a very confusing message. he concluded this segment by stating, 'if he says he loves me why would he be doing things to hurt me at the same time. Either be a good Father or leave me alone.'

I do believe that most of Ryan's comments are spontaneous and his won words and feelings. I do realize that he is a very mature young man who has a vocabulary and an understanding of concepts that is well above his years. The fact that he could accurately estimate things from the past is just one example of his superior intellect and development. Having said that, there are also times when I am not as confident that his words have not been influenced by family. For example, he did state the following: 'We are not getting along well. I think he is trying to convince the Judge that he can take me to Texas. He wants to hurt both of us.'

September 24, 2008

Ryan appeared in better spirits during this follow-up meeting. He informed me that he had not spoken to his Father this month. When it was pointed out that he appeared to be happier he stated that he was not happy on the inside. It must be made clear that Ryan would not be happy with the termination of phone contact or access with his Father. Instead, he wants the phone contact to be positive and the promises regarding access to actually occur. He again described the previous phone contact as either being positive or 'weirdish'. A phone call might start off being good but turn annoying during the call. he concluded that this dynamic was so upsetting that not talking to his Father was actually easier, but still upsetting. He remains confused and annoyed, offering the following comments, 'He says he wants to see me and then does not come, that is completely alien to me.'

Conclusion

I felt that Ryan's situation was difficult because he was feeling a great deal of confusion regarding his Father. Ms. Quigley had been strongly suggesting that Ryan call or speak to his Father, even when

> Ryan did not want the contact (given previous negative contact). While I do recommend that the custodial parent plan a strong role in ensuring that access occurs, I do believe that the present situation may be an exception to the rule. I suggested that Ryan not be 'forced' to speak with his Father but that he be given the option or control to decide. I made this suggestion recognizing that this matter will soon be in Court and a judicial decision will be made after listening to the complete evidence.
>
> A recent update from Mr. Willmore suggests that he had not had contact with his son in two months and he believes that Ms. Quigley has taken Ryan's cell phone away. I recognize that Mr. Willmore is viewing this as deliberate attempt by Ms. Quigley to interfere with his relationship with his son. Ms. Quigley, on the other hand, believes that Mr. Willmore's actions with his son (and lack of follow-through) are destroying an already weak bond. Ryan is stating that his Father's weird and annoying behaviour is causing him upset.
>
> I continue to believe that this is a very complicated case that should be assessed by the IWK in order to make an accurate diagnosis and treatment recommendations. Ryan is not doing well with the confusion and upset and his welfare must take precedence over the other issues before the Court.

Mr. Whitzman's oral evidence was consistent with this report.

Mr. Whitzman indicated his account to October 14, 2008 with respect to consultations with Ryan (that had <u>not</u> been covered by Ms. Quigley's employment benefits) was $1,584.00 x 2 = $3,168.00.

(b) John Scanlan:

I indicated in my decision of June 27, 2008 that Mr. Scanlan was enmeshed in the conflict between Ms. Quigley and Mr. Willmore. Ms. Quigley filed an additional Affidavit from Mr. Scanlan (dated October 7, 2008) and called evidence from Mr. Scanlan. In the affidavit, Mr. Scanlan:

1. describes, at paragraphs 1 and 2, observations of Ryan and his cell phone:

> 1. That I have not been privy to any conversations Ryan had with his father since the last court appearance except for the last few words of one conversation when Ryan walked into a room where I was, as he finished a conversation on his cell phone. I heard him say, in a raised voice, something to the effect "...Dad, this is not true, we both know you are lying." and Ryan hung up. I believe that to be an exact quote. I did not know Ryan was even talking to his father at any time prior to hearing these comments so I do not know the context of the comments made by Ryan. Ryan was extremely upset following that conversation. I believe this conversation occurred a day or two before Ryan expected his father to come to Canada to visit him in August 2008.
>
> 2. That I was present and heard the Petitioner on a number of occasions since that date in August 2008, urging Ryan to call his father or to answer the phone when his father calls. Ryan simply refuses. On one occasion he put his hands over his ears and walked away humming to himself or saying something like blaa, blaa, blaa, blaa. This was totally out of character for Ryan as he is normally polite in the extreme to everyone and would communicate a desire not to do something in a very mature conversation so as to give reasons. On another occasion he simply cried when his phone rang saying he would not answer the call from his father. Ms. Quigley and me were both present at this time and he said his father was the only other person who had his number so he said he knew it was his father calling. Ryan then asked if we could change the number on the cell phone so he would not have to hear it ring and his father could not call him. This occurred sometime early in September.

2. indicates at paragraph 3 that he did not read the Decision of June 27, 2008 made by this Court until September of 2008. The Decision

gave directions with respect to Mr. Scanlan's interaction with Ryan, presence during phone calls with his father. Presumably Ms. Quigley brought these directions to Mr. Scanlan's attention. Ms. Quigley asked the Court to hear evidence from Mr. Scanlan (to address, correct some of the matters in the Interim Decision) in July, 2008. She raised this again in the July 28, 2008 pre-trial.

3. addresses in detail his account of an access exchange described by Mr. Willmore in his June evidence (and referred to in my June 27, 2008 decision). Mr. Scanlan's account differs from that given by Mr. Willmore, and states Mr. Willmore "lied" about: the time, Mr. Scanlan having approached his (Mr. Willmore's) car; and Mr. Scanlan having referred to Ryan as "son" (saying he referred to him as "buddy") (paragraphs 4, 5 and 6).

4. indicates he (Mr. Scanlan) differs with accounts Mr. Willmore gave in Texas (September 6, 2008), referring to the transcript of the Texas proceeding (and Mr. Willmore's evidence of that date).

5. outlines his account of he and Ms. Quigley having travelled to Texas, taking a truck and horse or horses and driving back to Nova Scotia. The horse or horses presumably came back in a horse trailer. Mr. Scanlan's Affidavit states:

> 7. ...(a) When I went to the Quigley-Willmore residence in Milford to look at a horse in early November I saw the blue Chev truck the two horse trailer the Respondent suggests in his sworn testimony in Texas Ms. Quigley returned to Texas to take back to Nova Scotia. I had been to the farm sporadically in December, January and February. That same blue Chev truck and the two horse trailer were always present in the yard until it was towed out of the yard by the "Repo man". I was generally aware of Ms. Quigley's daily comings and goings after mid to late December and I know, contrary to what the Respondent said under oath in Texas, she did not return to Texas in that period to take any truck or two horse trailer back to Nova Scotia in that period up to and including today. The blue Chev

> truck and two horse trailer were at the farm since November 2006 and **the Respondent lied under oath to the court in Texas in that issue.**
> (b) That I did agree to travel with Ms Quigley to Texas to assist her in trucking a horse back to Canada. I believe that was very late in November or in the first week of December 2006. When Ms Quigley arrived I was present when she was met at the farm by a female person who I understood to be an employee at the Texas farm. That employee told Ms Quigley in my presence when we arrived that the horse, truck and trailer were all ready to go. She also told Ms Quigley in my presence that the Respondent had left her personal belonging just inside the door of their mobile home. I witnessed that employee hand Ms Quigley the keys to the truck which she then gave to me and I proceeded to get the truck and hook it to the trailer as Ms Quigley talked to that employee. I then went with Ms Quigley to the mobile home. As Ms Quigley entered, I could see plain view, just inside the door there were two garbage bags, which bags I observed contained womens clothing. Ms. Quiley [sic] handed those bags to me on the doorstep and I put them in the truck. she remained in the trailer for perhaps 5 more minutes and came out carrying a few more items of womens clothing on hangers and a few child type items. We then loaded some items from the barn into the trailer along with the horse and departed. It took approximately three nights/four days to drive the horse back to Nova Scotia.

Mr. Willmore, in his Texas evidence, seems to assert that there were two occasions when separate trucks and horse(s) were taken from Texas. Mr. Willmore did say in his Texas evidence of September 6, 2008 that Mr. Scanlan travelled to Texas with Ms. Quigley and that it occurred in January, 2007. Mr. Scanlan denies this occurred in January 2007. All agree that Mr. Willmore was not present on at least one occasion when Mr. Scanlan and Ms. Quigley travelled to Texas, and drove a truck and horse or horses back to Nova Scotia. All seem to agree at least one truck, horse(s) and trailer were taken.
Mr. Scanlan's indication that he and Ms. Quigley went to Texas in late

November/early December 2006 differs somewhat from earlier testimony concerning the commencement of his relationship with Ms. Quigley.

6. The evidence indicates all or a portion of the RCMP files before this Court in the Interim Proceeding were made available to *FRANK* magazine recently. Mr. Scanlan indicates at paragraph 8 of his Affidavit:

> 8. That I have read the most recent decision of the court in these proceedings. It is apparent that the court has read and considered police notes in relation to the two occasions where I had talked to the RCMP. One occasion I talker [sic] to officer Miller and the second time I was present when Ms Quigley talked to Constable Clarke. It is not clear to me what rules of evidence or authority would allow the court to review that evidence in these proceedings as it did, without either the author or myself present to speak to those notes. I make this comment not to be critical of the court process but to explain my reluctance to comment further on the police file in this affidavit. I would say to the court that I never did see the notes or know what the notes contained prior to my being recently contacted by "Frank" magazine as concerns the notes. I can only assume that either the court or Mr Willmore provided "Frank" magazine with copies of either the notes or the courts decision. Having said that I expect it was note the court which provided the notes or police file to Frank Magazine. I therefore assume the notes or decision were provided by Mr Willmore as part of the ongoing efforts of Mr Willmore to embarrass and harass both Ms Quigley and me. I am reluctant to now give evidence as to what transpired in those conversations or meetings as I am concerned that my evidence would be equally egregious in terms of rules of evidence and procedure. If however the court feels the evidence is of any importance or relevant, and that I may give that evidence without offending proper rules of evidence and procedure then I would ask that I be permitted to speak to both conversations in *viva voce* evidence. I do repeat and

> confirm the evidence which I gave at the last hearing: **I could not and would not do anything to interfere with the Mr Willmore coming to Canada and I did nothing to have him arrested at the boarder as he entered Canada or anywhere else in Canada**. I would also add that I did not ever contact the Minister of Foreign Affairs nor anyone else in an effort to prevent Mr Willmore from entering Canada or in an effort to have him detained at the boarder.

The *FRANK* magazine in question was filed as an exhibit. It appears that Mr. Willmore (either directly or indirectly) gave this information to *FRANK* magazine - something he indicated at the Interim Hearing he would "not do again". The only reason to do so would be to embarrass or cause discomfort to Ms. Quigley and Mr. Scanlan. If he did so, it would suggest that Mr. Willmore was more interested in being provocative (with Ms. Quigley and Mr. Scanlan) than protective (of Ryan).

(c) Stewart Gagnon:

Ms. Quigley filed an affidavit from her Texas lawyer, Stewart Gagnon, dated October 1, 2008. It provides:

> I, Stewart W. Gagnon, of Houston, Harris County, State of Texas, United States of America, make oath and say as follows:
>
> THAT I am an attorney licensed to practice law in the State of Texas having been continuously licensed since October 1974 and a Certified Specialist in the area of Family Law by the Texas Board of Legal Specialists and am Texas legal counsel to the Petitioner (Ms. Karen Quigley) in the ongoing Texas divorce proceedings and as such have personal knowledge of all things herein deposed to except where stated to be by way of information and belief in which case I do verily believe them to be true.
>
> 1. THAT on August 6, 2008 Judge Chap Cain rendered a Texas Divorce judgment granting a divorce of the parties based on the sole testimony of

Mr. Gary Willmore, (Pro Se) who is the respondent in these Canadian proceedings. Judge Cain after rendering a divorce judgment directed Mr. Willmore to have a Decree of Divorce prepared by a lawyer. He did not.

2. THAT on August 12, 2008 I filed with Judge Cain at the Liberty County District Court on behalf of Ms. Quigley a REQUEST FOR FINDINGS IN THE CHILD SUPPORT ORDER.
(See Exhibit A attached) Pursuant to the Texas Family Code the Court's findings were to be included in the Decree of Divorce. The Court's response to Ms. Quigley's REQUEST FOR FINDINGS IN CHILD SUPPORT has never been provided. The basis of this request for findings is that Mr. Willmore has not provided any financial information to the Texas court that would allow the court to determine the appropriate amount of child support due in this case and that the amount of child support rendered by Judge Cain is not in compliance with the Texas Child Support Guidelines. When child support rendered is not in compliance with these guidelines, the Judge is required to make such finding and include them in the Decree. Judge Cain did not do this.

3. THAT on September 3, 2008 a FINAL DIVORCE DECREE submitted by Mr. Willmore was signed by Judge Cain. I was not present when this occurred. Although I received a copy of this document before it was signed by judge Cain, (See Exhibit B) there were numerous inconsistencies, contradictions and incorrect provisions in it. Mr. Willmore ignored my request to have the Decree corrected. Judge Cain made no effort to correct the Decree.

4. THAT on September 4, 2008 I filed with Judge Cain at the Liberty District Court on behalf of Ms. Quigley a REQUEST FOR FINDING OF FACT AND CONCLUSIONS OF LAW regarding the September 3, 2008 Decree of Divorce granted by Judge Cain (See Exhibit C attached). Pursuant to our Texas Rules of Civil Procedure the Court's response to this request was due to be filed on September 24, 2008 with a copy being mailed to

> each party. The Courts FINDING OF FACT AND CONCLUSION OF LAW were not filed on September 24, 2008.
>
> 5. THAT on September 25, 2008 I filed with Judge Cain at the Liberty District Court two requests namely:
> - KAREN QUIGLEY'S NOTICE OF PAST DUE FINDINGS OF FACT AND CONCLUSIONS OF LAW
> and
> - RESPONDENTS'S [sic] MOTION TO MODIFY, CORRECT OR REFORM JUDGMENT
> (See Exhibit D and E attached)
>
> 6. THAT by operation of Texas law the filing of the Motion to Modify, Correct or Reform Judgment suspends the FINAL DIVORCE DECREE dated September 3, 2008 making such judgment not final in law. I confirm that this request is required in law as part of the Appeal process that we have commenced per the instructions of Ms. Quigley. I anticipate the total appeal process of the Texas Divorce Judgment to take 18-24 months to complete. During this Appeal period the current Texas Judgment of Divorce granted September 3, 2008 is not a final Divorce Judgment.
>
> STEWART W. GAGNON (signed)

The status of a Texas Divorce under appeal does not appear significantly different than a Divorce that is appealed here in Canada (see s. 12 of the Divorce Act referred to below).

(d) Karen Quigley:

Ms. Quigley filed affidavits of October 8, 2008, September 5, 2008 and a series of letters and communications between her and Mr. Willmore (from the Family Wizard website). I have considered these and her oral evidence, and refer to portions of it (them).

THE PARALLEL PROCEEDINGS:

[10] There are parallel divorce proceedings in two countries.

[11] Principles that appear appropriate to my consideration of the parallel proceedings that exist here include:

1. In *Cheema* v. *Cheema* (2001) BCCA 84 the British Columbia Court of Appeal said the following with respect to parallel proceedings:

> In *472900 B.C. Ltd. V. Thrifty Canada Ltd.* (1998), 57 B.C.L.R. (3d) 332, 168 D.L.R. (4th) 602 (B.C. C.A.) this Court considered the general principle explained in *Avenue Properties Ltd. V. First City Development Corp*. (1986), 32 D.L.R. (4th) 40 (B.C. C.A.) In the context of parallel proceedings. That five-member panel concluded the principle of comity as explained in *Amchem Products Inc. V. British Columbia (Workers' Compensation Board)*, [1993] 1 S.C.R. 897 (S.C.C.) was taken into account in deciding whether a stay should be granted on the basis of forum non conveniens, and conclusively so where the competing jurisdiction was a sister province and a court of that province had declined to stay the parallel proceeding.

> In *Westec Aerospace Inc. V. Raytheon Aircraft Co.* (1999), 67 B.C.L.R. (3d) 278, 173 D.L.R. (4th) 498 (B.C. C.A.), this Court developed guidelines for an analysis "invited" by Thrifty Canada for cases where parallel proceedings are alleged. There the competing jurisdiction was Kansas. Rowles J.A. set out the three questions to be asked at para. 25 of her reasons:
> (1) Are there parallel proceedings underway in another jurisdiction?
> (2) If so, is the other jurisdiction an appropriate forum for resolution of the dispute?
> (3) Assuming there are parallel proceedings in another appropriate forum, has the plaintiff established objectively by cogent evidence that there is some personal or juridical advantage that would be available to him only in the British Columbia action that is of such importance that it would cause injustice to him to deprive him of it?

2. Comity, as explained by Mr. Justice La Forest in *Morguard Investments Ltd.* v. *De Savoye*, [1990] 3 S.C.R. (S.C.C.) at 1096, and affirmed by Mr. Justice Sopinka in *Amchem*, supra, at para. 23, permits a court to recognize judicial acts in another nation or another province.

MacPherson, J.A., described comity in *De Silva* v. *Pitts* 2008 O.N.C.A. 9, (at paragraph 35) as follows:

> Among the most important factors guiding courts' decisions to decline jurisdiction is **comity** – the deference owed to the legitimate judicial acts of other countries: see *Amchem Products Inc. v. British Columbia (Workers' Compensation Board)*, [1993] 1 S.C.R. 897 (S.C.C.), at pp. 912-15; *Antares Shipping Corp. v. "Capricorn" (The)* (1976), [1977] 2 S.C.R. 422 (S.C.C.) at p. 448; *Beals v. Saldanha*, [2003] 3 S.C.R. 416 (S.C.C.). **Comity** is at the core of this case.

3. Which is the more convenient forum to hear the Divorce?

In *Eastern Power Ltd.* V. *Azienda Comunale Emergia and Ambiente* [1999] Carswell, 2807 (Ont. C.A.) MacPherson, J.A. stated:

> In determining which forum, domestic or foreign, is the more appropriate forum the courts will look at a wide variety of factors. The general approach was enunciated by Arbour J.A. in *Frymer* v. *Brettschneider* [1994] 19 D.R. (E.D.) 60 (Ont. C.A.) at p. 79:
>
> > The choice of the appropriate forum is designed to ensure that the action is tried in the jurisdiction that has the closest connection with the action and the parties. All factors pertaining to making this determination must be considered.

In November of 2006 when the Texas Divorce proceeding commenced, there was no Divorce jurisdiction in Nova Scotia. The Texas court has deferred, to Nova Scotia, jurisdiction over Ryan, who resides here and property in Nova Scotia. Mr. Willmore has consented, acceded to, not opposed this.

RECOGNITION OF THE TEXAS DIVORCE

[12] Mr. Willmore asserts that this Court should recognize the Texas Divorce.

[13] Section 22 of the *Divorce Act* addresses the issue of recognition of a foreign divorce.

[14] Section 22 provides:

> *Recognition of foreign divorce*
>
> 22. (1) A divorce granted, on or after the coming into force of this Act, pursuant to a law of a country or subdivision of a country other than Canada by a tribunal or other authority having jurisdiction to do so shall be recognized for all purposes of determining the marital status in Canada of any person, if either former spouse was ordinarily resident in that country or subdivision for at least one year immediately preceding the commencement of proceedings for the divorce.
>
> ...
> (3) Nothing in this section abrogates or derogates from any other rule of law respecting the recognition of divorces granted otherwise than under this Act.

[15] A Divorce Order was "granted" between these parties in Texas on September 3, 2008. It is under appeal.

[16] The *Divorce Act* provides that such an Order should be recognized "for all purposes of determining the marital status..."

1. If either former spouse was ordinarily resident in that country or subdivision for at least one year immediately proceeding the commencement of the proceedings of divorce (s. 22(1));

   - Here the Texas divorce was commenced November 8, 2006. Ms. Quigley has asserted in her submissions and more recent Affidavits that Mr. Willmore did not live in Texas from November of 2005 to November of 2006 - that he resided where he worked.

   - The Nova Scotia Court of Appeal commented (in Quigley v. Willmore, C. A. 287370) on the meaning of "ordinary residence" (at para. 21):

> [21] From this review of the law, several themes emerge:
> - the determination of ordinary residence is highly fact specific and a matter of degree;
> - ordinary residence is in contrast to casual, intermittent, special, temporary, occasional or exceptional residence;
> - residence is distinguished from a stay or visit;

> - a person's ordinary residence is where she is settled-in and maintains her ordinary mode of living with its accessories, relationships and conveniences, or where she lives as one of the inhabitants as opposed to a visitor;
> - an ordinary residence may be limited in time from the outset or it may be indefinite or unlimited; and
> - ordinary residence is established when a person goes to a new locality with the intention of making a home there for an indefinite period.

- At page 12, the NSCA refers to **Arnold v. Arnold** (1998) S. J. No. 63 where MacIntyre, J. noted (at para. 22):

> ...As noted in **Thomson v. MNR**...it is not the length of the visit or stay that determines the question, but rather the nature of the time spent. The sojourners presence is unusual, casual or intermittent...

- The evidence before me - which in terms of sheer volume is mostly that of Ms. Quigley - suggests that Mr. Willmore, during this time "sojourned" away from Texas (see *Quigley* v. *Willmore*, C. A. 287370 at p. 12, referring to *Arnold* v. *Arnold* (1998) S. J. No. 63 (S. C. C.).

- Mr. Willmore's overseas work would not seem to alter his residence from Texas.

- Ms. Quigley has asserted that there was a bank document signed by Mr. Willmore in August 2006 here in Nova Scotia which indicated he was a Nova Scotia resident. The document was <u>not</u> filed. Ms. Quigley's own evidence includes statements that he <u>visited</u> Nova Scotia during this time (her Affidavit of January 30, 2008 at paragraphs 39 and 40).

- Further, Ms. Quigley, in the proceeding 1201-061186 (the *Matrimonial Property Act* proceeding before this Court), filed an Affidavit dated December 5, 2006, asserting at paragraph 2, 4, 5 and 18:

> 2. THAT the Respondent and I were married on September 26, 1999 and separated on November 3, 2006...
> 5. THAT since our separation the Respondent has continued to live at our farm in Texas (where he has resided principally since 2003) and Ryan and I continue to live at our farm in Milford, N.S....

> 18. THAT the Respondent's Petition for Divorce was issued by the Court in Liberty, Texas on November 9, 2006 and was served on me in Nova Scotia on November 21, 2006.

- A divorce decree has been granted in Texas. Section 22(1) states it may be recognized for all purposes of determining marital status in Canada - if either former spouse was ordinarily resident in that country for at least one year immediately preceding the commencement of the divorce. Mr. Willmore appears to have been ordinarily resident in Texas in the applicable time frame.

2. Section 22(3) also provides that rules regarding recognition of divorces other than under the *Divorce Act* are preserved.

- In *El Qaoud* v. *Orabi* (2005) N. S. C. A. 28 the Nova Scotia Court of Appeal stated at pp. 5, 6, 7 and 8:

> [14] Section 22(3) recognizes common law principles governing the recognition of foreign divorce decrees. Domicile was the traditional common law test. Following the decision of the House of Lords in *Indyka v. Indyka*, [1967] 2 All E.R. 689, Canadian courts added "real and substantial connection" as a basis for recognition: *Powell v. Cockburn* (1976), 68 D.L.R. (3d) 700 (S.C.C.) at 707-708; *Holub v. Holub* (1976), 71 D.L.R. (3d) 698 (M.C.A.)at 699-700. Later cases have stated subcategories to these two basic tests for recognition of a foreign divorce. These subcategories are summarized by Julien Payne, *Payne on Divorce*, 4th ed., p. 111:
> . . . Section 22(3) of the *Divorce Act* expressly preserves pre-existing judge made rules of law pertaining to the recognition of foreign divorces. It may be appropriate to summarize these rules. Canadian courts will recognize a foreign divorce: (i) where jurisdiction was assumed on the basis of the domicile of the spouses; (ii) where the foreign divorce, though granted on a non-domiciliary jurisdictional basis, is recognized by the law of the domicile of the parties; (iii) where the foreign jurisdictional rule corresponds to the Canadian jurisdictional rule in divorce proceedings; (iv) where the circumstances in the foreign jurisdiction would have conferred jurisdiction on a Canadian court had they occurred in Canada; (v) where either the petitioner or respondent had a real and substantial connection with the foreign jurisdiction wherein the divorce was granted; and (vi) where the foreign divorce

> is recognized in another foreign jurisdiction with which the petitioner or respondent has a real and substantial connection.
>
> Although the aforementioned rules were established by decisions of the English courts, they have generally been followed by Canadian courts, at least in those provinces that adhere to the common law tradition.
>
> To the same effect: Castel and Walker, *Canadian Conflict of Laws*, 5th ed., p. 17-6.
>
> ...
>
> Castel and Walker, *Canadian Conflict of Laws*, 5th Edition, p. 17-7 states:
>
> In recent years, Canadian courts have been committed to the view that they will recognize foreign decrees of divorce where there existed some real and substantial connection between the petitioner or the respondent and the granting jurisdiction at the time of the commencement of the proceeding. The purpose of the rule is to avoid limping marriages. Whether there exists a real and substantial connection between the granting jurisdiction and either the petitioner or the respondent must be determined by the court upon an analysis of all the relevant facts.
>
> An occasional trip, or a passage with temporary residence merely for the purpose of satisfying a foreign divorce competence requirement, is not a "real and substantial" connection. In *Indyka* (p. 731), the House of Lords worded the test to exclude artificial bases of jurisdiction.

[17] I conclude here that Mr. Willmore has and had a real and substantial connection to Texas.

[18] There are circumstances when a foreign divorce will not be recognized by a Canadian Court. These were commented upon in *El Qaoud* v. *Orabi* (supra) at p. 7 and 8:

> *Castel*, p. 17-8 states:
>
> ***Grounds for Refusing to Recognize Foreign Divorces***
>
> Although the foreign court that granted the decree may be jurisdictionally competent in the eyes of Canadian law, recognition will be refused if the respondent did not receive notice of the proceeding, especially if fraud was present. The jurisdiction of the foreign court must not be established "through any flimsy residential means" and the petitioner must not have resorted to the foreign court for any fraudulent and improper reasons such as solely "for the purpose of obtaining a divorce". The foreign decree must

> not be contrary to Canadian public policy. Denial of natural justice may also be a reason for refusing recognition.

Payne, p. 112 states:

> A foreign divorce may also be denied recognition where principles of natural justice have been contravened.

[19] In *Power* v. *Cockburn* (1976) 22 R.F.L. 155, (at paragraph 32) the Supreme Court of Canada stated:

> The grounds upon which a divorce granted by a state can be impeached in another state are, properly, few in number. The weight of authority seems to recognize, however, that if the granting state takes jurisdiction on the basis of facts which, if the truth were known, would not give it jurisdiction, the decree may be set aside. Fraud going to the merits may be just as distasteful as fraud going to jurisdiction, but for reasons of comity and practical difficulties, in the past we have refused to inquire into the former. Even within the limited area of what might be termed jurisdictional fraud there should be great reluctance to make a finding of fraud for obvious reasons...

[20] I do not conclude from the evidence before me that there has been any fraud on the Texas court "which if the truth were known, would not give it jurisdiction". Difficulties with the "merits" of substantive issues are properly left to the Texas appeal to deal with.

[21] I note, in addition to the foregoing, that Ms. Quigley did bring an application, a "Plea to Jurisdiction" in Texas.

[22] In her affidavit of February 11, 2008, Ms. Quigley stated:

> 6. On January 30, 2008, Mr. Gagnon filed, on my behalf, a *Plea To The Jurisdiction And In The Alternative Motion to Relinquish Jurisdiction Based On Inconvenient Forum*. Attached hereto as **Exhibit "D"** is a true copy of the documentation filed in this regard.
>
> ...
>
> 8. The Respondent's *Request For A Writ of Attachment* in relation to Ryan and *Motion For Amended Temporary Orders* from Texas as well as all motions filed on my behalf were set to proceed on February 7, 2008.

[23] The Motion to Relinquish Jurisdiction filed by Ms. Quigley in Texas was filed as Exhibit "D" to this (February 11, 2008) Affidavit. It stated she:

> ...files this Plea to the Jurisdiction And in the Alternative, Motion to release Jurisdiction Based on Inconvenient Forum in which she (1) objects to the court's exercise of subject matter over any conservatorship and possession issues regarding the child the subject matter of this suit because Texas is not the home state of the child, and (2) requests, in the alternative that if the Court does have subject matter jurisdiction...the Court decline jurisdiction in favor of Nova Scotia, Canada where the child resides because Texas is not a convenient forum...

[24] This plea to jurisdiction was denied February 7, 2008 in the Texas Court. Ms. Quigley did not personally appear at that time (she has indicated that this was due to a back injury). This occurred in the shadow of her having appeared in Texas December 20, 2007, agreed to December 26, 2007 access, all the while taking virtually simultaneous steps in the Nova Scotia Court to try to prevent such access. She had appeared in the Texas Court December 20, 2007.

[25] In my June 27, 2008 Interim Decision I related some of what occurred at the February 7, 2008 Texas hearing:

> The matter returned to the Texas Court on the 7th day of February 2008. The Transcript from the Texas proceeding includes the following:
>
> THE COURT: Cause No. 72197; Willmore vs. Quigley.
> MR. GAGNON: Here on behalf of Karen Quigley.
> MS. ZIMMERMAN: Present. Marcia Zimmerman on behalf of Mr. Willmore.
> MR. GAGNON: We have a Plea to the Jurisdiction today, which is the initial thing the Court should hear, and we also have a Motion for Continuance as it relates to Ms. Zimmerman's three motions, and we'll present that to the Court when appropriate.
> ...

Ms. Zimmerman was seeking an Attachment Order on Ryan (that he be brought to the Court) and <u>temporary</u> custody - in order, it appears, to facilitate the access that was not occurring.

> THE COURT: Was your client ordered to be here today?
> MR. GAGNON: She was ordered to be here today, Judge, and that's part of our Motion for Continuance.
> THE COURT: Is she here?
> MR. GAGNON: She is not here.
> ...

> THE COURT: All right. Texas has the dominant jurisdiction in this case. There's no question about that. Your motion is denied. Also, I think if you come in here and you request that this Court relinquish jurisdiction based on inconvenient form, I think you need to come in here with clean hands; and I think based on the actions of your client, your hands are far from clean. Not as an attorney, but I think your client's hands are far from clean in this instance; and therefore, that motion is denied.
> ...this divorce was filed on November 9th, 2006, and it appears that at the - that Mr. Willmore continued to maintain his residence here, that the child may - may have been moved in May, but Texas retained jurisdiction. And then on that first divorce hearing, Canada didn't have jurisdiction because she hadn't been a residence for 12 months pursuant to Canadian law. If that's not the Canadian law, then certainly this Court is - is bound to presume that the - that the law of Canada would be the same as the law of Texas, and obviously she hadn't been a resident of - or in Canada for six months. So, either way you want to look at it, whether it's a 12 month requirement or six month, Texas retained jurisdiction.
> Now, I respected the Canadian courts, and I allowed - I allowed her to appear by phone in my courtroom, I stopped my proceedings so that Canada could make a decision. And obviously the Canadian judges did the right thing, they followed their law. Now, obviously Texas has jurisdiction and just the fact that she waited until she had been there 12 months and files a subsequent divorce does not strip Texas of jurisdiction.
> Now, I think there are temporary orders in place that make her the primary joint managing conservator and give her husband standard visitation for parents more than 100 miles away. I'm respecting her rights as a mother. Just - just based on what I've seen so far, it looks like the child probably needs to live with her, but that child ought to be able to visit with his father, bottom line. Now, if she doesn't respect this Court, that's fine, and she doesn't respect this jurisdiction, then we'll go through the motions and we'll just see how it shakes out. But what she's doing is counterproductive to the well-being of that young man, bottom line.
> Now, what motion do we have to go forward on today?
> ...All right. What are you requesting on the amended temporary orders?

[26] In *Quigley* v. *Willmore* 2007 N. S. C. A. 122, the Nova Scotia Court of Appeal dealt with an application by Ms. Quigley to stay Justice Wilson's order. It was heard December 6, 2007. The Nova Scotia Court of Appeal cautioned:

> (p. 3) It is acknowledged by counsel that a stay of the order under appeal would not operate to stay the on-going proceedings in Texas.
>
> (p. 4) Counsel for the appellant submits that the effect of a stay would be to allow the appellant's divorce action in Nova Scotia to remain active, allow her to continue enforcement proceedings of the Nova Scotia courts' interim orders, and

> most importantly, to use these orders as justification for not complying with any conflicting orders from the Texas courts.
>
> (p. 7-8) The appellant argues that she and her son will suffer irreparable harm if a stay is not granted. Her position is that if the stay is refused and all the Nova Scotia interim orders are voided, the Texas court will be the only court with jurisdiction over all matters of custody, access and child support. It would then be necessary for her to travel to Texas to take part in the proceeding there, leaving her practice of law for an extended period and uprooting her son who is settled in school here now. Then if the order of Justice Wilson is reversed on appeal it will be too late to revive the Nova Scotia action at that point. Since she has, to date, not completely complied with the access orders of the Texas court, she fears that she will be found in contempt and imprisoned. A hearing on that issue and to determine whether custody should be changed is scheduled to be heard in Texas on December 20, 2007.
>
> The problem with the appellant's argument in this respect is that the Texas court is free to continue its proceeding whether the stay is granted or not. Until such time as there is a resolution of the conflicts of law issue, it seems that it would be risky not to participate in the process there. Her decision whether to take part in the proceedings there is not logically entirely dependant on whether there is a stay of Justice Wilson's order. Ignoring the Texas hearings and orders invites contempt proceedings even if the appeal of the Justice Wilson's order were allowed and whether or not a stay of that order is granted.

[27] Lastly, Ms. Quigley argues that the Texas divorce "is not final". She refers to the Affidavit of Mr. Gagnon, her Texas lawyer, which indicates Ms. Quigley has appealed the Texas proceeding and that the effect of this is to suspend the Final Divorce Decree of Divorce granted by the Texas Court September 3, 2008 making it "not final in law".

[28] I note that s. 12 of the *Divorce Act* includes:

> 12. (1) Subject to this section, a divorce takes effect on the thirty-first day after the day on which the judgment granting the divorce is rendered.
> ...(3) A divorce in respect of which an appeal is pending at the end of the period referred to in subsection (1), unless voided on appeal, takes effect on the expiration of the time fixed by law for instituting an appeal from the decision on that appeal or any subsequent appeal, if no appeal has been instituted within that time. ...
> (7) Where a divorce takes effect in accordance with this section, a judge or officer of the court that rendered the judgment granting the divorce or, where that judgment has been appealed, of the appellate court that rendered the judgment on the final appeal, shall, on request, issue to any person a certificate that a divorce

> granted under this Act dissolved the marriage of the specified persons effective as of a specified date.

Like Texas, a divorce appeal here, delays the date the divorce "takes effect".

[29] Ms. Quigley asserts in her Affidavit of September 5, 2008, at paragraph 21:

> There are a number of considerations that make it important for me that the court issue a divorce judgment in this matter. Perhaps one most important issue relates to the financial security for me and my son through my partner's workplace, which security I cannot obtain so long as I am still married to the Respondent.

It is not clear to me what this refers to - presumably not the designation of a life insurance beneficiary. Further, a divorce judgment here would not "be final" if appealed. Ms. Quigley's income is in excess of $100,000.00 per year. I do not conclude that this is an objective advantage to this Court taking jurisdiction over termination of the marriage. There may be an advantage Ms. Quigley sees as arising from the termination of the marriage - but there is no advantage to that occurring here. Some of the problems she perceives with the Texas proceeding are at least partly due to her decision(s) to not actively participate in the Texas process.

[30] I have considered the law as I have outlined it and the unique fact situation before me. I have concluded that the Texas divorce was granted, that it should be recognized by this Court. At the time the Texas proceeding was commenced the Nova Scotia Court has been found to have lacked jurisdiction to hear a divorce.

[31] I conclude (to return to the questions posed in *Cheema v. Cheema* that:

1. There are parallel proceedings in Texas and Nova Scotia.

2. Texas is an appropriate forum for resolution of the dispute they have assumed jurisdiction over.

3. There is no cogent evidence that establishes that there are objective advantages available to Ms. Quigley by this Court taking jurisdiction over the issues of termination of the marriage, child support, or the property in Texas.

[32] I also conclude that Texas has assumed jurisdiction over these issues, and that the principle of comity suggests that this Court give defence to that Court's process.

[33] Were I to grant a divorce in the proceeding before me, it would undoubtedly complicate proceedings that require more, not less, certainty. I conclude that it would unduly complicate the proceedings. Those complications could possibly include:

- an appeal of this divorce by Mr. Willmore;

- the abandonment of the Texas appeal process by Ms. Quigley.

[34] I acknowledge that there is little that can be said to be predictable in this proceeding.

[35] In my view, it is in the interests of Ryan and the parties to narrow the fields of battle, not expand them.

[36] The multiple proceedings, dual jurisdictions and legal context here is in a word, confusing. This confusion is seen in Ms. Quigley's multiple positions on child support and matrimonial property set out below. I make this comment not to be critical of her - but to illustrate the difficulty she - and I would conclude, Mr. Willmore have had in dealing with these circumstances.

[37] I would recognize the Texas divorce, decline to grant the divorce here. As the Texas proceeding is under appeal, and its outcome uncertain, I would stay, not dismiss, the request for a divorce, a termination of the marriage, here. (But for s. 22, the principle of comity and the Texas divorce proceeding, the grounds and jurisdiction to grant a divorce here have been proven.) I will deal with the other issues below.

MATRIMONIAL PROPERTY ACT

[38] Ms. Quigley, in her Application for Judgment, dated September 5, 2008, claims relief, including:

> ...an order under the Matrimonial Property Act directing that any matrimonial property or assets registered in the name of or in the possession of the Petitioner shall be owned by the Petitioner.

[39] Justice Douglas L. MacLellan of the Nova Scotia Supreme Court made the following Orders under the *Matrimonial Property Act* (from Exhibit 1 of the June 2008 proceeding - the Affidavit of Karen A. Quigley):

- in the Order of December 22, 2006:

> 9. Karen Quigley shall have interim exclusive possession of the land, buildings and dwellings situated on the property known as Linden Lane Farm, and located at 1822 Highway #2, Milford, Nova Scotia, and shall make all payments associated with that property including the mortgage payments, utilities and municipal taxes.
> 10. Gary Willmore shall not remove or dispose of any property, real or personal, situate in Nova Scotia without Karen Quigley's written consent.

- in the "Interim Order" of February 1, 2007 (arising from a January 30, 2007 review):

> 2. Under Section 11(1)(e) of the *Matrimonial Property act* any and all interest, including matrimonial interest Gary Willmore has in the real property located at 1822 Highway #2, Milford, Nova Scotia shall for all purposes be immediately released and conveyed from Gary Willmore to Karen Agnes Quigley, subject however to Gary Willmore's right to claim against Karen Agnes Quigley for the value of the said interest or as a credit in the final settlement of the property matters between the parties.
> 3. This order shall be subject to and capable of registration pursuant to the *Land Registration Act* of Nova Scotia and/or any other applicable legislation required to give the conveyance from Willmore to Quigley full force and effect.

[40] The Order contained the following recital (amongst others) at its outset:

> ...AND WHEREAS Quigley is the sole title holder to the real property located at 1822 Highway #2, Milford, Nova Scotia, and whereas she intends to make an assignment in bankruptcy or attempt to make arrangements with her creditors through a trustee in bankruptcy...

[41] The Order from the Nova Scotia Court of Appeal (arising from the April 10 decision) was dated April 22, 2008 and provided, in part:

> IT IS ORDERED THAT the appeal is allowed to the extent of reinstating clauses 2 and 3 of the order of Justice MacLellan dated February 1, 2007.

[42] My decision of June 27, 2008 suggested at paragraph 88:

> [88] Ms. Quigley should consider providing Mr. Willmore with an Application (and Order)(pursuant to Civil Procedure rules 39.01 and 39.02 returnable before me on September 9, 2008) requesting that the *Matrimonial Property Act* claim (made with Ms. Quigley's first Divorce Petition here and left "alive" by the Appeal) be consolidated with the proceeding(s) before this Court. If she does not, I will assume she chooses to pursue that proceeding in another forum. If she does, the material should be provided to Mr. Willmore by the close of the work day September 2, 2008.

[43] On April 23, 2008 Ms. Quigley signed, and on April 25, 2008 filed and served, an amended Petition for Divorce (Exhibit 11). The Affidavit of Service - indicating service was effected on Mr. Willmore April 25, 2008 - was filed July 22, 2008 (Exhibit 11). The Amended Petition claimed relief under file ST 1207-003129 - the file I have dealt with since December 2007 (i.e. the "2nd" Nova Scotia Divorce Petition) and file 1201-061186 SFH DIV49599 - the file Justice MacLellan's *Matrimonial Property* order was made under. The Texas Court, as I have indicated earlier, has acknowledged that it does not have jurisdiction over the property in Nova Scotia. I conclude the matrimonial property claim is before me.

[44] Ms. Quigley's Affidavit of September 5, 2008 (Exhibit 7) states at paragraphs 8, 9, 10, 11, 12, 13, 14, 15:

> 8. At the time the parties separated I was not employed full time and the Respondent has abandoned the payment of all matrimonial debts. I was forced to institute bankruptcy proceedings to deal with matrimonial debt. As a result of those proceedings I lost all savings including approximately $175,000 in RRSPs which I had mostly accumulated prior to our marriage. The banks and unsecured creditors through the Trustee required me to liquidate all Canadian assets which appeared to have equity in order to pay debts.
> 9. With the assistance of my present partner and the benefit of an interim order as confirmed by the Nova Scotia Court of Appeal concerning matrimonial property I was able to negotiate with the Royal Bank of Canada to retain ownership of the matrimonial home so that I could continue to reside in that home.

That home has been our primary residence since I purchased it in 1997 except when our son Ryan resided in our Texas home for a few months during the 2005-2006 school year.

10. Since the date of the initial bankruptcy proceeding I have incurred approximately $150,000 in debt for legal fees but none of those proceedings have done anything to assist in obtaining any information or documents from the Respondent in relation to his financial circumstances. Most recently I have obtained a copy of a Texas Court transcript in which the Respondent advises that his financial information is filed here in Canada and that the Canadian Courts have supposedly asked that the Texas Court deal with the issue of child support in Texas. The Texas Court has set child support for Ryan at the rate of $1050 USD per month. There is no financial information in Texas upon which that amount is based.

11. In addition to the issue of child support the Texas court was advised by the Respondent that the property in Texas was acquired by him some 24 years ago. This is a flagrant lie as that property was acquired by us in June 2004 during the marriage. The Respondent advised the court that property was worth about $280,000 The Respondent presented additional untruthful evidence without any documentation in support and in the end was able to get an order retaining the Texas matrimonial property. In spite of the fact he said that property was only worth, he listed the front 15 acres for sale for $400,000 within days of the Texas Court proceeding and the balance of the property is also listed for sale and the real estate agent advises me and I do verily believe the balance of the property, approximately 30 acres, has a value of approximately $400,000. The total value of the Texas property is therefore approximately $800,00 [sic]. Attached hereto as exhibit "A" is a copy of the Texas deed showing the property was acquired in June 2005. Also attached hereto as exhibit "B" is a copy of the Respondents real estate listing for the 15 acres for $400,000. I make these points not to ask this court to deal with the Texas property but rather to show the lies and deceit of the Respondent in his sworn testimony.

12. In addition to the order, turning all Texas property over to the Respondent, the Texas Court ordered that I pay the sum of $100,000 to the Respondent. Coincidentally that is approximately the same amount of money that the Texas court ordered child maintenance would total between now and the time our son would turn 18.

[45] On October 21, 2008 Ms. Quigley indicated:

Ms. Quigley: I wish to make it clear that I am not going to be pursuing any remedy under the Matrimonial Property Act at this time. The circumstances of that are that all remaining real and personal property in Canada is in my name and/or my possession. And given that Mr. Willmore has not made any claim I will not be pursuing any remedy.

> The Court: All right. I want to be clear on this, Ms. Quigley. There's an outstanding Application under the *Matrimonial Property Act*.
>
> Ms. Quigley: That would be correct.
>
> The Court: In the event that this Court's jurisdiction is dealt with by whatever decision I make arising out of this appearance today, I need to deal with that outstanding Application. Now not pursuing a remedy leaves me not knowing whether you're withdrawing the matter under the *Matrimonial Property Act*, asking that it simply be dismissed...
>
> Ms. Quigley: I'm withdrawing.
>
> The Court: ... or what.
>
> Ms. Quigley: I am withdrawing my request for relief under the *Matrimonial Property Act*. ...
>
> The Court: ... I want to deal with what your position is under the *Matrimonial Property Act*. Let me be clear about what I'm saying. If you're withdrawing your Application under the *Matrimonial Property Act*, I want it clear that you're doing so understanding that it may be that you can never make an Application under that Act again.
>
> Ms. Quigley: I understand that, My Lord.
>
> ...

[46] Later in the proceeding Ms. Quigley stated:

> MS. QUIGLEY: ...With respect to the question of the *Matrimonial Property Act*, I have turned my mind again to that. And I would ask the Court to make an Order under the *Matrimonial Property Act* confirming the factual situation as it now stands. And that is that any property that's physically in my possession or registered in my name located here in Nova Scotia belongs to myself without further claim by Mr. Willmore.
>
> ...

[47] I conclude that Ms. Quigley has pled for an order under the *Matrimonial Property Act*. Mr. Willmore has filed no answer, made no claim to property in Nova Scotia <u>in this proceeding</u> (he did refer to the truck, trailer, horses and some personal effects <u>in the Texas proceeding</u>). He and the Texas Court have acknowledged there is no jurisdiction in Texas to deal with property in Nova Scotia.

[48] I conclude that the order shall provide that Ms. Quigley be the sole owner of all real and personal property in her name and possession here in Nova Scotia, except such personal property referred to in the Texas order as being that of Mr. Willmore's. I note that the Texas Order does (despite the comments of the Court and Mr. Willmore in the hearing tot he effect that there will be no order concerning Nova Scotia property) <u>does</u> order that Ms. Quigley have the property in her

possession. The order I am making is consistent with the Texas provisions that seem to refer to "Nova Scotia" property.

[49] I have considered the provisions of the *Matrimonial Property Act*, the limited evidence before me, and the absence of any claim to the property in Nova Scotia by Mr. Willmore.

[50] I specifically do not deal with property dealt with by the Texas Court

> - Mr. Willmore's father's swords, his family photographs and letters, Springfield rifle and bayonet, two guitars given by his father, an English saddle, a Western saddle;
>
> - 2003 Ford F-350 motor vehicle, vehicle identification number 1FTWW33PX3EB40308.

[51] I make no order with respect to these items of property. The Texas Court has done so.

CHILD SUPPORT

[52] On July 28, 2008 Ms. Quigley stated in the pre-trial conference (and I replied):

> At page 26:
>
> **MS. QUIGLEY:** I can state for the record that since my last time in court I am not issuing any claim for child support.
> **THE COURT:** If you are agreeing, Ms. Quigley, to less being disclosed by Mr. Willmore than is in my decision then you communicate that to Mr. Willmore on the family Wizard account and it's done in writing and if he complies with it that's fine. Unless you have something in writing from her, Mr. Willmore, the disclosure is exactly what's in my decision.

[53] Her application for Judgment (dated September 5, 2008) sought "child maintenance to be determined at a future court hearing".

[54] Her draft Corollary Relief Judgment (also filed September 5, 2008) provides "child maintenance shall be fixed by Order of the Court at a future hearing date to be set by this Court".

[55] Ms. Quigley states at paragraphs 15 and 20 of her September 5, 2008 Affidavit (Exhibit 7):

> 15. I am able to support our son Ryan without the financial support of the Respondent although I am asking this court to continue to maintain jurisdiction over the issue of child support and to deal with that issue at adjourned trial dates. In addition the Respondent has not field any answer to the applicationn under the matrimonial property act. I would also ask this court to simply order that all matrimonial assets or property in the name of, or in the possession of the respective parties, remain in their possession.
> ...
> 20. I am asking the court to deal with the issues of custody, access and maintenance on an adjourned basis. These are issues that may take some time to resolve and in fact may never be fully resolved due to the complexity and ongoing fluidity of the matter. That in the meantime I can continue to provide a nurturing environment for our son and meet all his day to day needs with or without the assistance of the Respondent.

[56] The matter was scheduled for October 21, 2008.

[57] Texas, as has been noted, has made orders of child support that are under appeal by Ms. Quigley.

[58] Ms. Quigley's Affidavit of October 8, 2008 includes sections asserting:

1. a lengthy list of claims for special child support expenses for Ryan (beyond the Table Amount of Child Support):

    - tutoring - $324.75 / month
    - after school care - $108.25 / month
    - babysitting - $35.00 / month
    - riding camp - $41.66 / month
    - Ryan's horse - $485.00 / month
    - Summer child care - $83.33 / month
    - Family medical insurance - $53.99 / month
    - hockey - $67.00 / month
    - basketball - $20.00 / month
    - Boy Scouts / Cubs - $30.83 / month

- Swimming - $29.16 / month
- Counselling - $80.00 / month

2. Details of Ms. Quigley's income and financial circumstances from 2006 forward, including details related to the collapsing of Registered Retirement Savings to her trustee in bankruptcy and payment of "matrimonial debt", incurring of more than $100,000.00 in legal fees since the fall of 2006, and the child support paid and not paid by Mr. Willmore, and her extensive legal costs. She asserted:

> C(vi) That I have wasted substantial resources in this proceeding in an attempt to have the Respondent file guideline information and to take appropriate steps to participate in the IWK assessment process and to arrange suitable acesss [sic]with Ryan. The Respondent has misled both me and the court in terms of his failure to file guideline information and in terms of his intent to participate in the IWK assessment process and in terms of what his efforts there were to be for access with Ryan in the summer of 2008. Because of the Respondent's ongoing efforts to frustrate this court's processes I am no longer able to afford counsel in any further fruitless efforts to have this court assist me. On this petition alone, I have wasted in excess of $23,500 in legal fees before it became apparent to me that no matter how much money I expended on this courts processes it would not result in any further cooperation from the Respondent even with the court urging the Respondent to cooperate and giving him repeated extensions and opportunities to do a number of things. I urge this court to award me substantial costs in these proceedings, not just based on what I have expended in legal fees but the repeated wasted effort to obtain relief and information using this courts various processes.

3. Reference to a variety of documents, notes of Mr. Willmore's (written notes, an accountant's letter) relating to his income, as far back as 2003, and the following:

> **D. Information as to the Respondents income**
>
> i) The Respondent filed a document with the court in reference to some income earned but has refused to file guideline information or detailed information as to his income. As to the one document he did file I do verily believe it is reflective of but a single contract, which would have been one of many in a given year. The court should not be misled into thinking it is reflective of his annual income for that or any other year.

c) Exhibit G A two year contract dated January 14, 2006 offering employment in Baku Azerbaijan. It provides for USD $1,100 per day worked plus $2,000 per month housing allowance plus a living allowance. The rotation was for 60 days on and 20 days off. The contract would net $301,092 USD per annum. Note this was a remote but not high risk work area. He quit this contract in early 2007 and he told me he went to Nigeria which is a high risk area, to earn even more money. He worked there for almost the entire year of 2007. The respondent informed me in 2006 and at other times through out the marriage and I do verily believe him, that his income in that region would be $2000 USD per day or more plus expenses.

d) The Respondent has refused to provide me or the Court with the information as to his income for any tax year. In fact I note that in sworn evidence in the Texas proceedings he says he gave that information in the Canadian proceedings. (I have previously filed the certified transcript of the Texas court proceedings in this action. The Respondent represented to Justice Williams that he had provided the information in the Texas proceeding. The truth of the matter is he did not provide the information in either forum. I do verily believe the Respondent worked approximately 10 months or more in those high risk areas, working 7 days per week at $2000 per day in the year 2007.

g) [sic] That to the best of my knowledge the Respondent is currently employed in the US in the oil industry and in fact in the most recent pre-trial he did make a representation to this court about his ongoing work and having to be away for work during September trial dates that were offered up by the court. I do verily believe that while working stateside the Respondent will make approximately $300,000 US per year on an ongoing basis. I also recall he stated that he is now working offshore in the Gulf of Mexico. If he is working offshore he will be making a minimum of $350,000 US per annum. That was his traditional income throughout the marriage without adjusting for inflation.

I also submit as part of Exhibit I a number of other invoices showing how the Respondent works as a consultant for a number of companies each year. That has been a normal pattern and it is important that when the court looks at a year to date statement from any one company, in all likelihood it is not reflective of total income for the year. I note for example the Respondent submitted on year to date statement in the approximate amount of $160,000 to this court suggesting this was his total income for 2007.

The court queried of me and the Respondent as to why I would question that if it was resulting in a Texas child maintenance amount about $100 different than the Canadian table amount. The reason I am concerned with

> that comment by the court is that the Respondent was misrepresenting to the court his actual total income by referencing a single invoice from a single company and somehow suggesting it was it his total income for 2007. This was another misrepresentation by the Respondent to this court concerning his actual income. The court would inf act be wrong if it were to deem the Respondents income to be represented by the single document he has filed with the court to date.
>
> j) That the Respondent has never paid the Texas child maintenance consistently. The Texas Child support amount was set by the Texas court without a shred of evidence as to the Respondent's income and the Respondent's perjured evidence as to his assets and my assets. That order is currently under appeal. As part of an appeal of the entire divorce judgments made to date are not final. I would anticipate that it will take many months, perhaps years, to finalize the Texas proceedings. In the meantime I have been informed by my Texas Counsel, Stewart Gagnon, and do verily believe, that there are no Final Divorce Orders in Texas.
>
> k) I do verily believe that I may never be able to collect child maintenance from the Respondent as he moves around the world and evades garnishment by moving from employer to employer. In fact I do verily believe the Respondent, while residing in Texas, may be immune from garnishment as I do not believe Texas is a reciprocating jurisdiction with the province of Nova Scotia. I am however concerned that the Respondent has been able to obtain repeated Court orders in Texas based on perjured evidence and that I eventually may have to give up my legal battles in Texas because of lack of financial resources. In this proceeding I simply ask the court to make a child maintenance order, including section 7 expenses, dating back to the date of separation which is consistent with Canadian divorce laws. Such an order is consistent with Ryan's best interests.

[59] The Texas divorce process (including it's appeal) is ongoing. The Texas Trial decision is under Appeal. Ms. Quigley asserts that Mr. Willmore's income is substantially more than the $160,000.00 per year he suggested to this Court through the filing of a single document in June, 2008. Mr. Willmore has <u>not</u> filed appropriate child support disclosure in this Court. There is little to suggest that he did so in Texas. Both parties remain before the Texas Court on this issue. The Texas Court has exercised jurisdiction on this issue. The Texas Trial Court does not appear to have been rigorous in requiring Mr. Willmore to provide appropriate financial disclosure. The Appeal in Texas seeks to deal with this issue.
Mr. Willmore lives, at least at this point, in Texas. Mr. Willmore has property in

Texas. I note that Ms. Quigley's evidence suggests it is now for sale. He has children there from a previous relationship. The Texas Court is the Court that has Mr. Willmore before it, and, at least for now, the ability to enforce disclosure and an order. It would say much about Mr. Willmore's character and commitment to Ryan were he to sell his property in Texas, move from there, to avoid any future attempt by Texas Courts to require detailed and appropriate financial disclosure when it deals with child support. Failure to file adequate income disclosure in child support proceedings is, simply put, wrong.

[60] Ms. Quigley's position at the time she filed her application for judgment was to request that the matter of child support be adjourned.

[61] Section 11(1)(b) of the *Divorce Act* provides:

> 11.(1) In a divorce proceeding, it is the duty of the court
> ...
> (b) to satisfy itself that reasonable arrangements have been made for the support of any children of the marriage, having regard to the applicable guidelines, and, if such arrangements have not been made, to stay the granting of the divorce until such arrangements are made;

[62] I would stay the granting of the divorce. I am not satisfied reasonable arrangements have been made for Ryan's support. Insofar as it is necessary to do so, I would also stay Ms. Quigley's application for support made pursuant to the *Maintenance and Custody Act* and what, if any jurisdiction there may be to deal with child support under *Parens Patriae* jurisdiction. The appropriate time, if any, to apply to lift this stay would be on completion of the Texas proceedings, including any appeal period. It may be that comity would result in this Court respecting a Texas order concerning child support. That said, these are not and have not been proceedings that are predictable. A stay is in my view consistent with Ryan's interests.

CUSTODY JURISDICTION

[63] I have previously taken jurisdiction of custody and access in this proceeding invoking the Court's *Parens Patriae* jurisdiction. I found in my decision of March 7, 2008 that Nova Scotia was the *forum conveniens* with respect to Ryan's custody and access. The parties have <u>both</u> acknowledged that Nova Scotia has jurisdiction over Ryan.

[64] There are three possible heads of jurisdiction over Ryan's custody before me:

1. Under the *Divorce Act*:

[65] While I am staying the application for a divorce judgment, I conclude that I retain jurisdiction to make an Interim Order of custody. If the "granted divorce" in Texas becomes final, the only jurisdiction to make an order under our *Divorce Act* would be pursuant to s. 4. Section 4 provides:

> s. 4(1) A court in a province has jurisdiction to hear and determine a corollary relief proceeding if
> (a) either former spouse is ordinarily resident in the province at the commencement of the proceeding; or
> (b) both former spouses accept the jurisdiction of the court.

[66] The parties have accepted this Court's jurisdiction to deal with Ryan's custody. Ms. Quigley was ordinarily resident in Nova Scotia for one year prior to the commencement of this divorce (in December 2007). Ms. Quigley had returned to Nova Scotia in June of 2006.

[67] Are the parties "former spouses"? Not until a divorce is final. If the "Texas divorce" becomes final it may impact upon this Court's divorce jurisdiction.

[68] Appellate Courts in Ontario (*Rothgiesser* v. *Rothgiesser*, (2000) O. J. No. 33 (C. A .)) and *Okmyansky* v. *Okmyansky* , (2007) 86 O. R. (3d) 587 (C. A.)), British Columbia (*V. (L. R.)* v. *V. (A. A.)*, (2006) B. C. C. A., 63) and New Brunswick (*Leonard* v. *Booker*, 2007 N. B. C. A. 71) have been consistent in adopting the view that there is no jurisdiction in a Canadian Court to grant or vary a Corollary Relief Judgment following a foreign divorce order.

[69] In *Rothgiesser*, the Court observed concerning s. 4 (as it was amended in 1993)(at pp. 57-59):

> ...In his textbook...Professor Payne wrote that the amendment 'appears sufficiently broad to enable a foreign divorcee to institute proceedings for support and custody under section 15 and 16 of the Act, if he has established ordinary residence in a Canadian province.' The implication of this view is great and thus merits correction.

> In my view, the amendment did no such thing. Whereas Parliament had previously limited jurisdiction to the court that had granted the divorce, the amendment extended the jurisdiction by authorizing a Canadian Court to hear a corollary relief proceeding if either spouse was ordinarily residence in the province or if both former spouses accepted the jurisdiction of the court. Parliament did not intend to give Canadian courts jurisdiction over foreign divorces. As Professor Hovius correctly noted, Parliament's jurisdiction over support is ancillary to its jurisdiction over divorce pursuant to s. 91 of the *Constitution Act, 1867*. Any jurisdiction over divorce pursuant to s. 91 of the *Constitution Act, 1867*. Any attempt to deal with support obligations in the absence of a Canadian divorce would encroach on provincial jurisdiction (s. 92 "Property and Civil Rights").

[70] This situation differs significantly from that in *Rothgiesser*. It is a custody case where the foreign court <u>and</u> the parties have encouraged <u>this court</u> to take jurisdiction over the custody and access issues relating to Ryan. Ryan resides here. *Rothgiesser* involved an application to vary spousal support where a foreign divorce order provided that both parties waived their right to vary spousal support "in any jurisdiction in the world".

[71] In contrast to the *Rothgeisser* approach the Quebec Court of Appeal in *M.(G.)* (*M. (G.) c. F* (M. A.) 2003, [2003] R. D. F. 794, [2003] R. J. Q. 2516 (C. A.) (eC)), determined that a Canadian court had jurisdiction to provide corollary relief under s. 4 of the *Divorce Act* (based on a foreign divorce order from Louisiana) because s. 22(1) operates to make the divorce for all purposes a Canadian divorce.

[72] One might argue that this latter approach addresses the constitutional requirement that the corollary relief proceeding be ancillary to a divorce, that is, the corollary relief application must be joined with an application for divorce or a divorce must already exist. Parliament has jurisdiction over "marriage and divorce" under s. 91(27) of the *Constitution Act*. The Quebec approach takes the view that the constitutionally required element is that they be divorced, not that they be divorced by a Canadian court.

[73] In my view, where a recognized foreign divorce order is silent or defers jurisdiction on a matter of corollary relief, a former spouse who is ordinarily resident in the province should be able to apply to a superior court for, or to vary, a corollary relief judgment.

[74] Once a foreign divorce is final then the Canadian Court may, or may not have jurisdiction to make a Corollary Relief Order via ss. 4 and 22(1) of our *Divorce Act*. (There are contradictory Court of Appeal cases.) Until there is a final Divorce Order in Texas, I have jurisdiction to make an Interim Order under the *Divorce Act*; after that there is some uncertainty with respect to jurisdiction arising through s. 4(1) of our *Divorce Act*.

2. *Maintenance and Custody Act*

[75] Section 18 of the *Maintenance and Custody Act* deals with applications for custody and access. Section 18 (3) provides:

> s.18 (3) This Section does not apply where there is an order respecting custody of or access to the child made pursuant to the *Divorce Act* (Canada) or by the Supreme Court...

[76] This Court, a Division of the Supreme Court of Nova Scotia, has made orders dealing with Ryan's custody and access. It would <u>not</u> appear that there continues to be jurisdiction to deal with the custody issue under the *Maintenance and Custody Act*.

3. *Judicature Act*

[77] Section 32A(1)(t) of the *Judicature Act*, R. S. N. S ., 1989, c. 240, expressly provides that the Supreme Court (Family Division) has *Parens Patriae* jurisdiction:

> 32A (1) The Supreme Court (Family Division) ... has and may exercise jurisdiction in relation to, proceedings in the following matters:
> ...
> (t) *Parens Patriae* jurisdiction

[78] In my Decision in this matter of March 20, 2008, I stated:

> [9] The Ontario Court of Appeal in its decision of *A.A. v. B.B. and C.C.*, 2007 Ont.CA 2, a decision of Justice Rosenberg released January 2, 2007, states at paragraph 27:
>
> > The court's inherent *Parens Patriae* jurisdiction may be applied to rescue a child in danger or to bridge a legislative gap.
>
> [10] This is a situation where, in one context, Ryan is healthy and achieving. His school has high regard for him, to them, he is socially well-adjusted. In the context of his placement in the conflict between his parents, however, he is

> unquestionably in danger. Mr. Whitzman's evidence is that Ryan indicates that the conflict between his parents is so severe as to cause somatic symptoms such as headaches. Mr. Whitzman described Ryan as "experiencing emotional pain" and indicated that Ryan clearly wants contact with his father. Mr. Whitzman made it clear that the conflict between his parents was and is harmful to Ryan. I conclude that Ryan is in danger. I conclude that the *Parens Patriae* jurisdiction should be invoked. I conclude that there is a gap, if not a legislative gap, certainly a jurisdictional gap, in terms of remedies available for a Court to deal with the conflict between Ryan's parents. If my apprehension that the jurisdiction under the second Divorce Petition was in question as a result of the appeal (of the jurisdictional issue regarding the first Divorce Petition), the effect of the appeal being successful would also be to void any jurisdiction under the *Maintenance and Custody Act* because there would be existing divorce orders in place and we would have a situation where really no Court could act in accordance with the circumstances as they now are, today.
>
> [11] My jurisdictional findings are, to summarize, based on the following:
>
> 1. Ryan lives here, goes to school here and has done so for a time frame approaching two years. This is where the hearing should be. There are significant issues with respect to access. If access needs to be enforced, this is where it can be effectively enforced.
> 2. I currently have jurisdiction under the second Divorce Petition that has been issued - though this may, if the appeal of the October 20, 2007 Order "voiding" the first (Canadian) Divorce Petition succeeds and restores that Petition.
> 3. There is *Parens Patriae* jurisdiction.

Ryan remains entangled in the conflict between his parents, he is endangered emotionally by any jurisdictional uncertainty. This remains a rationale for invoking the Parens Patriae jurisdiction.

[79] *Rothgiesser* suggests that a former spouse with a valid foreign divorce order cannot apply under s. 4 of the *Divorce Act* for corollary relief. If this is correct, I conclude that a circumstance such as this,

- a foreign divorce

- a child in Canada

- custody/access issues

- the parties acknowledge Canada has jurisdiction

- the foreign Court encourages Canada to take jurisdiction

would result in there being no order being possible under the *Divorce Act*. Jurisdiction would not, as I have indicated, be available under the *Maintenance and Custody Act*. In my view this would constitute a legislative gap - again a rationale for invoking *Parens Patriae* jurisdiction.

[80] This Court then has jurisdiction to deal with custody and access issues under either the *Divorce Act* or *Parens Patriae* jurisdiction.

CUSTODY/ACCESS

[81] This Court and the parties spent considerable time in hearing Mr. Willmore's application(s) for access to Ryan. The best interests of the child principle guides this Court under the *Divorce Act* and *Parens Patriae* jurisdiction.

[82] Mr. Willmore, Ms. Quigley and Mr. Scanlan all have devoted considerable time, effort and comment to point out what they view as inconsistencies, mis-statements and lies in the statements, assertions and evidence of others. I have found parts of each of their evidence problematic.

[83] Ms. Quigley did not fully participate in the Texas trial court proceeding, despite having a lawyer there. Mr. Willmore has now effectively withdrawn from this proceeding. The October date for the hearing of Ms. Quigley's application was set to convenience his work schedule. Accommodation after accommodation was given him with respect to required filings.

[84] Mr. Willmore has not filed an Answer, Reply or pleadings. He has indicated that he has no intention of further participating in the Nova Scotia Court process. He indicated Nova Scotia should have jurisdiction over Ryan, the custody, access issues, but has abandoned the proceeding. He appears to have released information from the proceeding to *FRANK* magazine, having indicated to this Court he would not. He has chosen not to participate in an Assessment process he agreed to. The summer block access this Court ordered (in the June 27, 2008 Interim Order) was not exercised. He said it was important to him. His actions are not consistent with his words.

[85] By the end of June of this year considerable progress had been made in "repairing" Mr. Willmore's relationship with Ryan - regular phone contact was taking place, access, including overnight access had taken place after a hiatus of over a year, summer block access was ordered.

[86] That has broken down, been lost.

[87] Ryan is hurt and confused.

[88] Mr. Willmore says he is not participating in this proceeding, and blames Ms. Quigley and this Court for the deterioration of what access relationship had been established. He indicated to Judge Cain on August 6, 2008 in the Texas Court that perhaps this was "one of those situations where he would not see his child until the boy was 14 or 15". It is a curious statement for someone who genuinely intended to exercise access (on August 17) to make. Mr. Willmore has given no indication as to when he would seek access again.

[89] Mr. Willmore has acknowledged that Ryan should be in Ms. Quigley's custody. He has submitted to the jurisdiction of this Court on custody/access issues in statements on the Court record in both countries. Having done so, he has then withdrawn his participation in this proceeding.

[90] The Court has no ability to manage a custody/access arrangement between parents if one of the parents refuses to take part in, be accountable within the process. I stated this in my March 20, 2008 decision in this matter. At the close of my June 27, 2008 decision I commented (at paragraph 98):

> Mr. Willmore and Ms. Quigley are both intelligent people. The legal proceedings they have engaged in are now mirror images - he has declined to participate in this process - by not appearing, just as she did not appear or respond to portions of the Texas proceeding. Ms. Quigley would say the Texas Court bullied her, expense prevented participation; Mr. Willmore has intimated not very subtly that this Court has dealt with him unfairly and also said that expenses impact his participation. These views, positions, and decisions significantly impact upon and limit the ability of Courts (both here and in Texas) to deal with their disputes. It is hard to referee a game if one team declines to take the field.

[91] I concluded through the appearances and hearings in this Court from March through June of 2008 that Ryan's best interests lie in having a meaningful ongoing

relationship with his father. Whether my conclusions were right or wrong means little as the matter now stands before me. Mr. Willmore has acknowledged that Nova Scotia is the Court that has jurisdiction over Ryan. Having participated in this proceeding and had a measure of success (if success is measured through having contact with Ryan), he has chosen to walk away. This Court has no position from Mr. Willmore save the dissatisfaction expressed in his faxed letter of October 15, 2008 (faxed October 16, 2008) and the assertion that the Texas Divorce should be recognized. Mr. Willmore has given no indication as to when he would seek access again (save for the reference to seeing Ryan when he was 14 or 15 made to the Texas Court). Mr. Willmore has, in choosing to abandon this proceeding, given this Court no position with respect to his future access to Ryan. He has chosen to not seek access to Ryan, having chosen in August to not exercise access to Ryan. Mr. Willmore's inaction disregards Ryan's emotional well-being. This Court cannot manage a custody/access relationship between parents if the access parent walks away.

[92] Mr. Willmore has effectively decided the custody/access portion of this proceeding through his decisions to not exercise access or his rights within this process to deal with this issue.

[93] Uncertainty is unhealthy for Ryan. It is in his best interests that this legal proceeding, at least for now, end as it concerns custody and access issues.

[94] I conclude that it is, in the imperfect and unfortunate circumstances before me, in Ryan's best interests that an order with respect to (Ryan's) custody/access be made as follows:

1. Ryan will be in the sole care and custody of Ms. Quigley.

2. Ms. Quigley will maintain possession of and control of Ryan's passport unless otherwise ordered by this Court or agreed in writing by Ms. Quigley.

3. Mr. Willmore will have "in person" access as determined by this Court on application by Mr. Willmore, or as agreed to in writing by Ms. Quigley.

4. There will be no order for telephone access, the evidence indicating Ryan is refusing to speak to his father. Hopefully this will change. Whether Mr. Willmore maintains Ryan's cell phone and plan will be Mr. Willmore's decision.

5. Ms. Quigley shall maintain her OurFamilyWizard account for so long as Mr. Willmore maintains his. Ms. Quigley shall post monthly, by the last day of each month, a summary of Ryan's recent activities, interests, medical and dental attention, if any.

6. Ms. Quigley will ensure that when/where Ryan is registered with professionals, school, activities, he is registered using his full name: Ryan Ross Quigley-Willmore.

7. Should Mr. Willmore make application for access, it will be up to the Court to address then the question of whether an assessment should be ordered.

CLOSING

[95] This proceeding is completed. The divorce application is stayed. An Order has been made under the *Matrimonial Property Act* dealing with the property in Nova Scotia. The matter of child support will either be determined by or await the outcome of the Texas process. The custody/access order is interim in name only under the *Divorce Act* jurisdiction, but a "final" order under the *Parens Patriae* jurisdiction. Custody/access orders are always subject to variation.

[96] The December trial dates are cancelled. There is nothing contested before this Court. Mr. Willmore has stated he will no longer participate in this proceeding.

[97] Any further application in this Court - to lift the stay(s), vary custody/access will be commenced afresh with a new application and pleading.

COSTS

[98] Ms. Quigley seeks substantial costs - tens of thousands of dollars.

[99] Mr. Willmore should pay one-half of Martin Whitzman's account to October 21, 2008. Based on Mr. Whitzman's evidence I would fix that at $1,584.00 (Mr. Whitzman's involvement benefited Ryan, it facilitated the "repair" of Mr. Willmore's relationship with Ryan within this proceeding. Mr. Willmore agreed earlier in this proceeding to be responsible for a portion of Mr. Whitzman's account. This is that amount.

[100] Mr. Willmore did not follow through with the court ordered assessment. He said he would. He did not. I would order that he pay Ms. Quigley $500.00 costs - representing the time she spent arranging appointments for herself and Ryan.

[101] Mr. Willmore effectively walked away from this proceeding in mid-September or earlier. He made service of documents difficult. He disregarded one pre-trial. He disregarded filing directions and dates. I would award Ms. Quigley $3,500.00 in costs in the proceeding for the period and appearances subsequent to June 30, 2008..

[102] The $1,584.00 in costs for Mr. Whitzman's account will be payable to Ms. Quigley - who shall be responsible for paying the complete account of Mr. Whitzman. This $1,584.00 and the other $4,000.00 in costs awarded is payable to Ms. Quigley by Mr. Willmore on or before December 31, 2008.

[103] As to costs arising from the January through June of 2008 appearances in this Court, I would award no costs. The parties each, in different ways, before and after the commencement of these proceedings, complicated the process(es). It is not, in my view, appropriate to award costs beyond that which I have outlined.

J. S. C. (F. D.)

Halifax, NS

APPENDIX A

Excerpts From the Reporter's Record of the Divorce Hearing in the District Court of Liberty County, Texas, Dated August 6, 2008

MR. GAGNON: Judge, I'm here on behalf of Ms. Quigley, and we're announcing not ready, and he's not complied.

MR. WILLMORE: That's not correct, and you ordered Ms. Quigley here and she had not turned up.

THE COURT: Are you represented by counsel?

MR. WILLMORE: No, sir.

MR. GAGNON: Judge, you ordered Mr. Quigley to provide me with an inventory by June 1st. I do not have an inventory. You ordered him to supplement and fully answer his discovery and –

THE COURT: I ordered your client to produce the child, and several things, and she hasn't done squat. So, it's disingenuous for you to complain that he hasn't done a thing he was supposed to when your client hasn't done a dadgum thing she was supposed to. So, I'm not sympathetic –

...

THE COURT: All right. What is the effective relief that you're requesting?

MR. WILLMORE: I would like my divorce, sir, first. Secondly, Ms. Quigley has all of my possessions and, in fact, she's been selling my possessions I had before we were married in Nova Scotia, and it is documented.

THE COURT: Yeah.

MR. WILLMORE: And thirdly, sir, I own part of the horses and Ms. Quigley has been selling in the last two years that she has taken back up in Canada.

THE COURT: Hold on one second. Stewart, do you disagree that we're ready for trial?

MR. GAGNON: Judge, we have no property information from Mr. Willmore. The only issue – the only issue is property division.

THE COURT: Right.

MR. GAGNON: And Mr. Willmore has given us absolutely no property –

MR. WILLMORE: That is incorrect. Ms. Zimmerman sent it to him and I've got the document to show that it was sent to him.

THE COURT: If your client would have done anything, I would be sympathetic to you, but she has not. She's thumbed her nose at this Court in its orders, and so I'm not sympathetic.

MR. GAGNON: I understand. There's a proceeding going on in Canada right now, and Mr. Willmore has been participating in that proceeding. And he's withdrawn all issues from this Court, although he wants an order relinquishing jurisdiction regarding the custody and visitation issues –

MR. WILLMORE: That is not correct.

MR. GAGNON: And he has a right under the Canada order to visit with his child, extensive times, including in the State of Texas if he follows their dictate. He's submitted to their jurisdiction and he refuses to do what they ask him to do and won't provide us with any incoming information and won't provide us with any information regarding his bank accounts or any property that he owns or any property that he's acquired. He refuses to provide that. In the discovery responses we were given by ms. Zimmerman indicates that he will not produce to us one piece of information other than e-mails. That's what we have.

MR. WILLMORE: Your Honor –

THE COURT: Wait until he finishes.

MR. WILLMORE: Yes, sir.

MR. GAGNON: That's what we have, Judge. After that happened in January – in January, Ms. Zimmerman prepared and I agreed to a docketing control order that had Mr. Willmore providing us with a sworn inventory by June 1st. We have nothing from him. We've attempted to schedule depositions by writing Ms. Zimmerman and Mr. Willmore directly in trying to set up the depositions pursuant to the docket control order. They won't respond.

THE COURT: Again, if your client – if your client won't comply with this Court's orders and she wouldn't show up and wouldn't produce the child and she didn't do what she was supposed to do, I'm not sympathetic at all to you.

MR. GAGNON: I understand the Court's position.

THE COURT: If your client is going to thumb her nose at this Court and this jurisdiction, why should I expect him to do any different?...

...

THE COURT: I'll tell you what I'm going to do. We're going to proceed and finish this divorce today. If y'all want to talk and see if you can reach an agreement, that's fine.

MR. GAGNON: Judge, Ms. Quigley has instructed me to withdraw and provided me with –

THE COURT: Too late now.

MR. GAGNON: I have this to file. Whether or not the Court grants it –

THE COURT: You can file it but I'm – I'm ordering y'all to talk and see if you can work something out on the property division and get this divorce.

MR. GAGNON: I understand, Judge.

THE COURT: Okay.

(Off the record, brief recess)

THE COURT: All right, Willmore vs. Quigley. I assume y'all have reached an impasse.

MR. WILLMORE: Yes, sir.

MR. GAGNON: We didn't get very far, Judge. You're right.

THE COURT: Do y'all have a list of property?

MR. GAGNON: No, they don't.

MR. WILLMORE: Yes, sir, we do.

THE COURT: Why don't you get a copy of it and make it for counsel, please.

Chad, if you will make a copy, please, sir.

MR. GAGNON: Yes, sir.

THE BAILIFF: Yes, sir.

THE COURT: We'll see if we can get you –

MR. WILLMORE: They sent this to me, sir, so it's his copy.

MR. GAGNON: I do not have a copy and have not received a copy.

...

THE COURT: All I can tell you is that if you want to represent yourself, you're going to be under-represented today.

MR. WILLMORE: I understand that, sir.

THE COURT: If I were you, I wouldn't mind resetting this for two or three days and let you get an attorney.

MR. WILLMORE: I cannot afford any anymore, sir. I do not have the time. I would like to go forward today with this, if you don't mind.

THE COURT: We can sure do it.

MR. GAGNON: Judge, just for the purposes of the record, and I advised the Court before, I filed a Motion to Withdraw. Ms. Quigley has instructed me to withdraw as her attorney, and ethically, according to the Rules of Disciplinary Procedures, I have to withdraw, and I filed that motion.

THE COURT: Yeah. I'm going to deny your motion. She is – she is not dealing honestly or fairly with this Court and hasn't since day one. And, you know, when you saw she was – she was not acting properly in following the Court's orders, you probably should have withdrawn way back when. So, now you're in a position where you're stuck.

MR. GAGNON: Well – and I agree, Judge. You have the discretion to deny my motion.

THE COURT: I do.

MR. GAGNON: I have the obligation to not go forward and represent her while you go forward with this trial because the Rules of Disciplinary Procedure require that I immediately stop working for her.

THE COURT: It's up to you whether you speak or don't speak. Your representation of her is up to you.

MR. GAGNON: I understand.

THE COURT: You know, you chose to represent her and she chose to do what she's done throughout this litigation, so that's where we are.

MR. GAGNON: I understand.
THE COURT: All right. Are you ready to present your case?
MR. WILLMORE: Yes, sir, I am.
...
THE COURT: All right. This is Cause No. 21 – excuse me – 72197; Gary Willmore vs. Karen A. Quigley.
Mr. Willmore, you represent yourself; is that correct?
MR. WILLMORE: That's correct, sir, I do.
THE COURT: And you understand you're going to be bound by all of the rules and requirements?
MR. WILLMORE: I understand that, sir.
THE COURT: Do you have an opening statement you would like to make?
MR. WILLMORE: Sir, I have been trying to get a divorce for two years. I've been in and out of Canada. I've worked with Canadian courts. I have been to the Supreme Court of Canada. And under the rules in Canada, which I don't know if you are aware of or they were filed with this Court, the Canadian court, Supreme Court of Canada, has denied Ms. Quigley all of the applications to date and has put them back in the Texas court, other than the issue of Ryan Ross Quigley Willmore.
Ms. Quigley has now filed another divorce in Canada, and as of two weeks ago, in the Supreme Court of Canada with Judge Williams, Judge Williams has stated that they will go forward with the divorce in Canada December the 2nd if the court of Texas does not proceed. He has stated that at this time Texas has all of the responsibilities of this divorce, other than the welfare and visitation of Ryan Ross Quigley Willmore.
I have come today, sir, to ask that I be divorced. It's cost me in the region of over $200,000. I've nearly lost my job over this several times because I have to leave and go to Canada.
Ms. Quigley is living with Supreme Court Justice Scanlan. I have been arrested multiple times, every time I go up to Canada to see my son, due to Mr. Scanlan. The Supreme Court of Canada is very aware of that and I have documentation to prove that.
All I ask is that this Court grant me a divorce and that I be able to have my personal effects back from Canada and retribution for the cost of the things that she has sold that I had before I was married to Ms. Quigley, and a percent of the monetary value that I have put into the facilities and the housing and so forth in Canada. That's all.
...
THE COURT: I don't mind you proceeding here, but you may have a hard time enforcing whatever this Court orders.
MR. WILLMORE: I – I am very well aware, sir, that Ms. Quigley will not abide by this Court in any way, shape, or form, so the best I can get out of this, sir, is to get a divorce.

THE COURT: Are you not attempting to seek any orders regarding your child here or are you –

MR. WILLMORE: No, sir. I would like the Court here as per I put in – I believe I put with the Court, through Ms. Zimmerman at the time, a document that – that the court of Texas does not have jurisdiction over Ryan Ross Quigley Willmore and that I fought in the court in Canada over that issue.

THE COURT: And has that court entered orders regarding visitation with your child?

MR. WILLMORE: It's been temporary visitations until December 2nd.

THE COURT: And are you asking this Court to adopt whatever the Canadian visitation orders?

MR. WILLMORE: I am, sir. ...

...

GARY WILLMORE,

having been first duly sworn, testified as follows:

THE COURT: Just – just one other aside – go ahead and have a seat right up here. You need to give a verbal response to each question. When this Court rules, you're going to have to prepare a proper decree and you're mostly likely to – you can have a seat – you will most likely have to have an attorney prepare that.

MR. WILLMORE: I will, sir. I will have an attorney prepare a documentation that you require from the Court today.

THE COURT: Okay. And you have to present the proper requirements for divorce.

MR. WILLMORE: I understand.

THE COURT: Go ahead.

DIRECT EXAMINATION

BY MR. WILLMORE:

My name is Gary Willmore. I live at 814 County Road 2268 in Cleveland, Texas 77327. I'm a resident in the State of Texas. I have resided here originally since 1975. I was married to Ms. Quigley for several years. I – I found – working overseas I was on a 30/30 in the July/August period of '06 – that Ms. Quigley was having an affair. She denied this, but my son Ryan Ross Quigley Willmore asked me why I was not coming home since Mr. Ted gets to stay the weekends while I'm away. Looking into this, I found that Mr. Ted is Supreme Court Justice Ted Scanlan. He was married. He was living with his wife and my wife at the same time through November of '06.

...

For the next two years, or the next year, I was denied access to Canada and I was charged with attempted murder of a Supreme Court judge and illegal weapons in Canada. What had happened was Ms. Quigley had taken a shotgun that I had had in Canada – and I hadn't seen it for the last three years – to the police department. And the RCMP informed them that I attempted to use this against them. I waited one year. And I had counsel in

Canada. I went up to Canada to face the charges. I was arrested by the Interpol, the RCMP, and the special branch of the Canadian Anti-terrorist Team.

My background, Special Forces, was brought up. I went to the court and I was cleared of these charges. I – I was given a six month suspended sentence for having a shotgun that was not registered in Nova Scotia, and I paid voluntarily $300 to the Boys and Girls Club of Canada.

After the fact, it was found that I did have registration for the shotgun, and it had come to the house while I was away, while I was overseas. And Ms. Quigley hadn't signed the documents to send it back. So, after six months, the document was null and void. So, after today all charges have been cleared in Canada. I now don't have any record of this whatsoever.

Mr. Scanlan got irate about this and informed the RCMP that they put a state or country-wide alert out for me and I was to be arrested any time I come through any of the airports in Canada. I have been up there four times and I've been arrested four times. Within a matter of two hours, I'm released and I go about my business, usually to the courts in Canada.

During the last period I was in the court in Canada, I was at my hotel having breakfast and the Anti-terrorist Team came in with weapons, if you like. Ms. Quigley said I was at the farm and was attempting to break into the farm. It was later stated that there was a police officer sitting outside the hotel. My breakfast had been served to me 20 minutes before the incident happened. The individual that brought the breakfast to me in the hotel said I was in the hotel. The manager of the hotel said I was in the hotel. And this has been the constant harassment I've had every time I go into Canada.

I have been denied my son's – to see my son over the last year-and-a-half, and finally I went to the Supreme – I took it to the Supreme Court of Canada, Appeals Division, which is the top court in Nova Scotia. I went to a panel of three Supreme Court Justices. And their decision came back, which I have a copy and I can give to the Court, that Ms. Quigley was totally out of line, she was totally incorrect, and all her appeals for the last year-and-a-half were denied and cancelled. And they squarely put it back, other than the property which Ms. Quigley said that she would like to keep. So the – the decision was that she kept all of the properties in Canada and she would make financial restitution – restitution to myself for my percentages of that property. And that was then ordered by the Supreme Court of Canada.

Since then, I went back to the Supreme Court of Canada to the – Ms. Quigley had filed a new divorce in Canada, and the Supreme Court took over the jurisdiction of Ryan Ross Quigley Willmore, my son. They have interjected to the fact that I have not seen my son in 18 months, so the Justice ordered Ms. Quigley to bring my son to the courtroom, which she did. I had lunch with my son. That evening I spent a couple of hours with my son under the guise of a psychologist that was ordered by the Court to be there to watch us. The next day in court the psychologist informed the Judge that there was no danger, there was no issues, there was nothing, that my son really missed me. And he got a report to that fact,

which I have a copy of, and the Justice ordered that I have my son for that weekend unassisted. So, we spent the weekend in a hotel in Nova Scotia and I came back to Houston.

I was ordered up again three weeks ago to Nova Scotia. I went up and I sat before the Justice. The Judge had stated due to the fact of documentation from the court of Texas where the – yourself, sir, you said you didn't feel you had jurisdiction over my son, that Canada has jurisdiction over my son, he took that to assume that he would be allowed to take jurisdiction over Ryan Ross Quigley Willmore and his welfare. I agreed to that. I said I have no issue with that.

Ms. Quigley has – Ryan has lived in Canada for the last year now and he doesn't know anything about Canada, so I would agree that Ryan stays in Canada and that I have certain rights in respect as a parent that I can come up at certain times. And it was agreed that I would come up for one long weekend a month and Ryan of would come stay with me, even though he has a school one night, that he would be allowed to stay over that night and stay for the weekend with me once a month. And then in the summers I would get a couple of weeks and at Christmas I would get a couple of weeks. I agreed to that term, based on the Justice said if I didn't agree to that term then I would not have visitation outside of Canada with Ryan.

Since then, Ms. Quigley and Mr. Scanlan have taken Ryan to Scotland and different parts of the country and different parts of the world. I understand and I accept that. There's nothing I can do about that.

I have asked Ms. Quigley and she has denied multiple times to have discussion. In fact, the Canadian court ordered me to get OurFamilyWizard, which is a program for this type of concept. I have got OurFamilyWizard and, in fact, it has Ms. Quigley's e-mail address and the Court's e-mail address in Canada. I have communicated using this so the Court can actually see any documentation that goes back and forth between the two of us. Ms. Quigley has not responded.

As of three months ago, the Court had ordered back in '06 that I pay the child support of $1,050 through the Texas Child Support. The Texas Child Support has not been set up on Ms. Quigley's side. So, I can pay into it, but it doesn't go anywhere. So, I have an account that the Justice knew about that we were paying through. This was working up to three months ago where every month I had put the child support in and she would take it out.

In June, Ms. Quigley cancelled the account and said that I had to pay through a Canadian bank, where she gave me a bank number, account number. I have no bank address, no routing number. I have nothing. So, I sent the last two checks registered to Ms. Quigley and they sit not today in the Milford Post Office.

THE COURT: Was the child support pursuant to an order of this Court or –

MR. WILLMORE: This Court, sir. It was $1,050. I have all of the child support sitting in my briefcase right now.

THE COURT: Have you received your visitation as ordered by the Canadian court? And in other words, have you shown up for the weekend visitation?

MR. WILLMORE: Yes, I have.

THE COURT: Have you been given visitation when you have –

MR. WILLMORE: Yes, sir, I have, other than I'm not allowed to bring him out of Canada.

THE COURT: Okay.

MR. WILLMORE: And the ruling from the Canadian court is that when this court is finished today and I have an order prepared that your Justice signs that states that I have given jurisdiction to Canada, they will then adopt the order from Canada that states that I can bring Ryan out of Canada to Texas. If I do not get this today, as Ms. Quigley knows, they will band me from ever bringing Ryan out of Canada.

THE COURT: Are you requesting that I continue the child support order, or do you want Canada to deal with the child support?

MR. WILLMORE: Under the – the ruling from the Canadian court, sir, the child support, property settlement, and divorce are squarely in Texas.

THE COURT: Okay. All right.

MR. WILLMORE: And the Justice has stated that and it is on the record and it is in the order from Canada.

So, I ask this Court if they would grant my divorce, grant the agreement that I have set out with the Supreme Court of Canada where Ryan has – Ms. Quigley has custody of Ryan, full custody of Ryan, and that the Canadian court will honor their agreement where I can get Ryan every – one weekend a month and the weeks promised by the Canadian court. The child support is set per this Court in Texas. The property settlement is set in this Court in Texas. My understanding is – and I well expect that whatever this Court does on property settlement, Ms. Quigley will not agree to, and it – it will be null and void basically, and I'm very well aware that that's going to happen.

THE COURT: What property do you want?

MR. WILLMORE: I – I own a property on 1822 – I'm sorry 814 County Road 2268 in Cleveland. I bought that property 24 years ago and it's in my name.

THE COURT: Describe it.

MR. WILLMORE: It's 45 acres and –

THE COURT: It's in Liberty County?

MR. WILLMORE: Liberty County, sir. The tax – or the value on this property, as of July this year, was $280,000. Ms. Quigley stated it was 400-and-some-odd thousand dollars. But the tax value was 240 and the evaluation and appraisal was 280

THE COURT: Do you have any other real property?

MR. WILLMORE: No, sir, I don't. I have a property in Nova Scotia, 1822 Highway No. 2 that Ms. Quigley and I own jointly. The property was valued

at $450,000. Ms. Quigley has already stated that the owed amount on it is $220,000. We also have 50 –

THE COURT: Who are you requesting receive that Nova Scotia property?

MR. WILLMORE: I – I would like – I have put in over $200,000 in equity in the property and I would like to see at least 100,000 back. And I don't think I will get that.

We had another property next to that property of 30 acres that Ms. Quigley has sold for $55,000 last year. And the package was she sold – she sold it for $55,000 and five acres that was attached to our property.

I had a rental house across the road from there, which was 1825. We had renters in the house and she foreclosed the house last year. She evicted the renters that were paying the rent and foreclosed on the house.

We have a house at 214 – on Highway 214 that I own – I have equity in. Again, I don't know the – I don't know the value. I believe it's 180- or 190,000. We owe 120 on it.

All of my Canadian back accounts, Ms. Quigley has taken my Power of Attorney and closed them and transferred the monies to – I have no idea.

My truck and trailer, Ms. Quigley came down with Mr. Scanlan in January of '07 and drove them back to Canada and she sold them both. I still owe $15,000 on the trailer, and the truck was paid for.

She came down again and took my new – my other new truck, took it back to Canada. And due to the fact that I was not able to get there, it was repossessed after I put 25 percent down, which is the requirement for Canada.

All of my personal properties that I believe that I – the list was given out to everybody – are in the process of being sold or have been sold.

THE COURT: You need to get a list of your personal property that you're requesting. I don't have the list.

MR. WILLMORE: Yes, sir.

THE COURT: And tell me the things that you want so I can make a just and right division.

MR. WILLMORE: Well, my father was a naval officer and he went into the navy in 1926, and he was a naval cadet and had a naval sword, and when he graduated in 1928 he had a full military sword. My father died a few years ago and left me these swords before I was married to Ms. Quigley. Ms. Quigley has informed me that she has sold them.

I have letters from my mother that go back – my mother was a prisoner of war in the second World War. She was in the Cannel Islands. She was French. She had documents and photographs and so forth that she left me that were in Milford. And Ms. Quigley has – she used this terminology, she has no knowledge or reference of these documents. In other words, they've vanished.

Any documentation that I had or weapons I had – I had civil war Springfield weapons, 1862 confederate military issued rifle, bayonet, ammunition – have been sold. And that's on the police record from the RCMP in Canada.

I had some guitars that were – my father had given me back in 1962.

THE COURT: How many?

MR. WILLMORE: Two. They have vanished.

All of my clothing – if the Court wouldn't mind – I was on rotation overseas, living in Texas and spending most of my time in Nova Scotia when I was back from the force. Everything that I owned at the time was in Nova Scotia, everything, my clothing, my military records. Ms. Quigley stated that she didn't have my U.S. immigration paperwork when I became a U.S. citizen.

THE COURT: What service were you in?

MR. WILLMORE: The Special Forces.

THE COURT: United States?

MR. WILLMORE: British.

THE COURT: British.

MR. WILLMORE: Last week the document turned up in the mail after she stated to the Court in Nova Scotia she had no recollection of this document and she had never seen it, and it turned up in the mail.

So, these are the things that I've been going through, and all I ask this Court is that they grant me a divorce. I do not want to be married to this woman.

The Court in Nova Scotia has stated that they will allow me to see my son. They understand what's going on. It's politically an embarrassment to Nova Scotia due to the fact that Justice Scanlan has now been ordered to stay away from me by 100 meters and he's not allowed to make any phone calls to me. And, in fact, he was ordered out of the court and escorted out of court in Nova Scotia by the RCMP the last time we were there. It's a no win situation for anybody.

Since then, the Court has ordered that I buy myself – buy my son a cell phone, which I have, and maintain that cell phone. And I talk to my son freely and he is allowed to talk to me freely. I believe it's going to be one of these cases were he will be 14 or 15 before I see him again, and – and I have to live with that.

So, all I ask is that this Court look at this family and give me a divorce.

THE COURT: Are you wanting me to order – I don't know whether I really have jurisdiction over the property in – in Nova Scotia.

MR. WILLMORE: You have jurisdiction over the property in Texas.

THE COURT: I do in Texas.

MR. WILLMORE: And I ask the Court –

THE COURT: I think what I will most likely do is not make any ruling regarding the property in Nova Scotia.

MR. WILLMORE: Yes, sir.

THE COURT: And your attorney needs to state that, that the Court will leave that division up to the –

MR. WILLMORE: Nova Scotia court.

THE COURT: Yeah, up to that court.

MR. WILLMORE: May I get my pen?

THE COURT: Sure. If you have any other specific things – the only property you've listed is your father's swords and letters from your mother

and a Springfield rifle, which you say is sold, and two guitars, and clothing. And if there's anything else that you are wanting me to award you, then I need to know what it is.

MR. WILLMORE: We have 250- to 300,000 dollars worth of horses that we raised and brought down from Nova Scotia to Texas.

THE COURT: Where are they now?

MR. WILLMORE: They're in Canada. Ms. Quigley has stated that she sold them for $10,000. Ms. Quigley has been selling the horses. And, again, I have documentation that she's been selling them for 30-, 40-, 50,000 dollars apiece. She still owns 18 of them.

I would ask that – there is two saddles that were mine. One is a Western and one is an English saddle, and I ask the Court that I would be awarded half of the cost of the horses that I paid. To date, I believe it's closer to 250- to 300,000. So, I ask that the Court award me half of the horses, plus my saddles. And I don't expect to see that money, but I would like to get my saddles back.

...

THE COURT: Do you have any questions?

MR. GAGNON: Judge, because of Ms. Quigley's instructions to me, I will not ask any questions.

THE COURT: All right. Any other witnesses you would like to call?

MR. WILLMORE: No, sir. No, sir.

THE COURT: Now, you said you've been in Texas since '75. Do you consider Texas to be your domicile and your residence?

MR. WILLMORE: Yes, sir, I do.

THE COURT: And have you since that time?

MR. WILLMORE: I've travelled with oil companies around the world –

THE COURT: You – you do you consider it to be your residence and domicile. And how long has it been your residence and domicile?

MR. WILLMORE: A total of 30 – 32 years, I believe, sir, other than a two-year period where I did live in Nova Scotia.

THE COURT: And based on the testimony – and I want to make sure this is correct – is your marriage – has it become insupportable due to discord and conflict, such that you don't think further living together could possibly continue?

MR. WILLMORE: That's correct, sir.

THE COURT: All right. Anything else?

MR. GAGNON: No, sir. Based on Ms. Quigley's instructions, I'm not asking any questions.

THE COURT: All right. That's fine.

All right. I find that the requirements for divorce have been met, and the divorce is granted.

The Canadian orders regarding visitation will continue in full force and effect. And also, regarding custody, you know, whether you're a joint managing

conservator or a possessory conservator, whatever those orders are in Canada, those will continue and be made part of this Court's order.

You're to continue the child support ordered by this Court, and it'll be continued and made a part of this order.

Mr. Willmore, you are awarded the real property – all real property in your name and subject to your control in Liberty County, and any other real property in your name or subject to your control in the State of Texas, including but not limited to the property that you've described in open court.

You're further awarded the truck and trailer that you still owe money on; your father's swords; letters from your mother; photographs; all of your family photographs and letters; a Springfield rifle and bayonet; the two guitars that were given to you by your father; your clothing. You are further awarded a judgment totalling $100,000 representing the value of the horses heretofore sold; and two saddles, and English and Western saddle.

The Court defers any division of property in Nova Scotia. I don't believe I have jurisdiction over that, and that will be up to a Canadian court to decide how that should be divided.

...

MR. GAGNON: Okay. Are you setting an entry date for the decree?

THE COURT: You've got to get me a decree.

MR. WILLMORE: When would you like it, sir?

THE COURT: As quick as you can get an attorney to prepare one.

MR. WILLMORE: I'll get it next week, sir.

THE COURT: That'll be great. I'm going to order that you present the Court with a decree within two weeks.

...

APPENDIX B

Excerpts from the Final Decree of Divorce from the District Court, 253rd Judicial District, Liberty County, Texas, dated September 3, 2008

On August 6, 2008 the Court heard this case.

Appearances
Petitioner, GARY WILLMORE, appeared in person and announced ready for trial. Respondent, KAREN QUIGLEY, appeared through attorney of record, Stewart Gagnon, and announced ready for trial.
...
Jurisdiction and Domicile
The Court finds that the pleadings of Petitioner are in due form and contain all the allegations, information, and prerequisites required by law. The Court, after receiving evidence, finds that it has jurisdiction of this case and of all the parties and that at least sixty days have elapsed since the date the suit was filed. The Court finds that, at the time this suit was filed, Petitioner had been a domiciliary of Texas for the preceding six-month period and a resident of the county in which this suit was filed for the preceding ninety-day period. All persons entitled to citation were properly cited.
...
Divorce
IT IS ORDERED AND DECREED that GARY WILLMORE, Petitioner, and KAREN QUIGLEY, Respondent, are divorced and that the marriage between them is dissolved.
Child of the Marriage
The Court finds that Petitioner and Respondent are the parents of the following child:
Name: RYAN ROSS QUIGLEY WILLMORE
Sex: Male
Birth date: November 5, 1999
Home State: Texas
Social Security number: xxx-xx-xxxx
Driver's license number and issuing state: N/A
The Court finds no other children of the marriage are expected.
Parenting Plan
The Court finds that the provisions in this decree relating to conservatorship, possession of and access to the child, child support, and a dispute resolution process to minimize future disputes constitute the parenting plan established by the Court.
Conservatorship and Support
The Court, having considered the circumstances of the parents and of the child, finds that the following orders are in the best interest of the child.

IT IS ORDERED that GARY WILLMORE and KAREN QUIGLEY are appointed parent joint managing conservators of the following child: Ryan Ross Quigley Willmore.

IT IS ORDERED that, at all times, GARY WILLMORE and KAREN QUIGLEY, as parent joint managing conservators, shall each have the following rights:

1. the right to receive information from any other conservator of the child concerning the health, education, and welfare of the child;
2. the right to confer with the other parent to the extent possible before making a decision concerning the health, education and welfare of the child;
3. the right of access to medical, dental, psychological, educational records of the child;
4. the right to consult with a physician, dentist or psychologist of the child;
5. the right to consult with school officials concerning the child's welfare and educational status, including school activities;
6. the right to attend school activities;
7. the right to be designated on the child's records as a person to be notified in case of an emergency;
8. the right to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the child; and
9. the right to manage the estate of the child to the extent the estate has been created by the parent or the parent's family.

IT IS ORDERED that, at all times, GARY WILLMORE and KAREN QUIGLEY, as parent joint managing conservators, shall each have the following duties:

1. the duty to inform the other conservator of the child in a timely manner of significant information concerning the health, education and welfare of the child; and
2. the duty to inform the other conservator of the child if the conservator resides with for at least thirty days, marries, or intends to marry a person who the conservator knows is registered as a sex offender under chapter 62 of the Code of Criminal Procedure or is currently charged with an offense for which on conviction the person would be required to register under that chapter. IT IS ORDERED that this information shall be tendered in the form of a notice made as soon as practicable, but not later than the fortieth day after the date the conservator of the child begins to reside with the person or on the tenth day after the date the marriage occurs, as appropriate. IT IS ORDERED that the notice must include a description of the offense that is the basis of the person's requirement to register as a sex offender or of the offense with which the person is charged. WARNING: A CONSERVATOR COMMITS AN OFFENSE PUNISHABLE AS A CLASS C MISDEMEANOR IF THE CONSERVATOR FAILS TO PROVIDE THIS NOTICE.

IT IS ORDERED that, during their respective periods of possession, GARY WILLMORE and KAREN QUIGLEY, as parent joint managing conservators, shall each have the following rights and duties:

1. the duty of care, control, protection and reasonable discipline of the child;
2. the duty to support the child, including providing the child with clothing, food, shelter, and medical and dental care not involving an invasive procedure;
3. the right to consent for the child to medical and dental care not involving an invasive procedure; and
4. the right to direct the moral and religious training of the child.

IT IS ORDERED that GARY WILLMORE, as a parent joint managing conservator, shall have the following rights and duty:

1. the independent right to consent to medical, dental, and surgical treatment involving invasive procedures;
2. the independent right to consent to psychiatric and psychological treatment of the child;
3. the independent right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;
4. the independent right to consent to marriage and to enlistment in the armed forces of the United States;
5. the independent right to make decisions concerning the child's education;
6. except as provided by section 264.0111 of the Texas Family Code, the independent right to the services and earnings of the child;
7. except when a guardian of the child's estate or a guardian or attorney ad litem has been appointed for the child, the independent right to act as an agent of the child in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government; and
8. the independent duty to manage the estate of the child to the extent the estate has been created by community property or the joint property of the parents.

IT IS ORDERED that KAREN QUIGLEY, as a parent joint managing conservator, shall have the following rights and duty:

1. the exclusive right to designate the primary residence of the child within Nova Scotia;
2. the independent right to consent to medical, dental, and surgical treatment involving invasive procedures;
3. the independent right to consent to psychiatric and psychological treatment of the child;
4. the independent right to receive and give receipt for periodic payments for the support of the child and to hold or disburse these funds for the benefit of the child;
5. the independent right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;
6. the independent right to consent to marriage and to enlistment in the armed forces of the United States;
7. the independent right to make decisions concerning the child's education;

8. except as provided by section 264.0111 of the Texas Family Code, the independent right to the services and earnings of the child;
9. except when a guardian of the child's estate or a guardian or attorney ad litem has been appointed for the child, the independent right to act as an agent of the child in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government; and
10. the independent duty to manage the estate of the child to the extent the estate has been created by community property or the joint property of the parents.

The Court finds that, in accordance with section 153.001 of the Texas Family Code, it is the public policy of Texas to assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child, to provide a safe, stable, and nonviolent environment for the child, and to encourage parents to share in the rights and duties of raising their child after the parents have separated or dissolved their marriage. IT IS ORDERED that the primary residence of the child shall be in Nova Scotia, Canada, and the parties shall not remove the child from Nova Scotia, Canada for the purpose of changing the primary residence of the child until modified by further order of the court of continuing jurisdiction or by written agreement signed by the parties and filed with the court. IT IS FURTHER ORDERED that KAREN QUIGLEY shall have the exclusive right to designate the child's primary residence within Nova Scotia, Canada.

The Court further finds that the following orders from the Canadian Court regarding possession of and access to the child remain in full force and effect, are in the best interest of the child as follows:

It is Ordered and Decreed that Gary Willmore shall have possession of and access to Ryan Ross Quigley Willmore for periods as follows:

(1) No more than ten (10) days between July 28 and August 30, 2008. Mr. Willmore will travel to Nova Scotia to commence the visit with Ryan. The first night together will be in Nova Scotia. The balance of the visit will be at a location chosen by Mr. Willmore. It may be in Texas. Mr. Willmore will, if the access is exercised outside Nova Scotia, personally return with Ryan at the conclusion of the access. Days 2 and 10 of the visit will be travel days giving Ryan potentially one week in Texas.

(2) No more than 8 days beginning on any Saturday (travel day) and ending the Sunday of the following week (travel day) between September 13, 2008 and November 30, 2008. Ryan may fly on a an unaccompanied minor program provided he flies no more than one leg of his travel each way in this fashion.

It is Ordered that Gary Willmore designate the dates for his access in writing to the Canadian and to Karen Quigley by the close of the work day July 8, 2008. Gary Willmore is further ORDERED to provide Karen Quigley with an itinerary for the access not later than one week before the access is exercised.

Pre-trials/reviews are be scheduled by the Canadian Court on July 28, 2008 at 12:00 noon Atlantic Time and on September 9, 2008 at 10:30 a.m. Atlantic Time. Mr. Willmore, Ms. Zimmerman (his Texas counsel) and Mr. Gagnon (Ms.

Quigley's Texas counsel) may appear by telephone. At that time the status of this Courts' orders will be reviewed by the Canadian Court. At the September pre-trial, the Canadian Court will address the trial dates scheduled in December.

It is further Ordered that the March 30, 2007 Order of this Court is vacated as it relates to issues of custody, access, conservatorship and possession of the child.

It is stipulated, agreed and so Ordered that Gary Willmore defers to the Canadian Court's jurisdiction (Supreme Court of Nova Scotia) with respect to issues of custody, access, conservatorship and possession of Ryan Ross Quigley-Willmore except as provided herein.

It is additionally ORDERED that Karen Quigley surrender Ryan Ross Quigley-Willmore to Gary Willmore or his designated competent adult at the beginning of each period of possession by Gary Willmore, and that Gary Willmore return Ryan Ross Quigley-Willmore to Karen Quigley or her designated competent adult at the conclusion of access periods ordered by the Supreme Court of Nova Scotia.

TELEPHONE ACCESS

The Court finds that the Canadian Court has ruled as follows and adopts such ruling as the Order of this Court in regard to telephone access:

> There have been difficulties in the past with telephone access. The March 30, 2007 Texas Order provided for three nights per week. Ryan is eight years old - restricting call [sic] to certain nights will inevitable [sic] lead to problems if he has activities that night. Mr. Willmore bought a cell phone for Ryan, it was lost during an outing with Mr. Scanlan. Mr. Willmore has paid for a cell plan. Ms. Quigley has now replaced the phone. Ryan should be encouraged to call his father. The cell phone bills would disclose outgoing ling [sic] distance calls. Gary Willmore should file those cell phone records on a monthly [sic] with the Canadian Court and copied to Ms. Quigley. Mr. Willmore should be able to call his son - though not repeatedly, time after time. His calls, <u>to</u> Ryan, whether he connects or leaves a message for a call back, should be limited to once a day. That said, there is no need for Mr. Willmore to talk to Ryan <u>every</u> day and Ryan cannot be expected to carry the phone with him all the time. Ms. Quigley will ensure that Ryan has a cell phone - the plan has been paid for by Mr. Willmore. I am not at this point going to attempt to manage Ryan's telephone access with his siblings. The primary issue at this point is Ryan's relationship with his father.

Child Support

IT IS ORDERED that GARY WILLMORE pay to KAREN A. QUIGLEY for the support of RYAN ROSS QUIGLEY WILLMORE $1,050.00 per month, with the first payment being due and payable on September 1, 2008 and a like payment being due and payable on the 1st day of each month thereafter until

thereafter until [sic] the first month following the date of the earliest occurrence of one of the events specified below:

1. the child reaches the age of eighteen years or graduates from high school, whichever occurs later, subject to the provisions for support beyond the age of eighteen years set out below;
2. the child marries;
3. the child dies; or
4. the child's disabilities are otherwise removed for general purposes.

If the child is eighteen years of age and has not graduated from high school, IT IS ORDERED that GARY WILLMORE's obligation to pay child support to KAREN QUIGLEY shall not terminate but shall continue for as long as the child is enrolled –

1. under chapter 25 of the Texas Education Code in an accredited secondary school in a program leading toward a high school diploma or under section 130.008 of the Education Code in courses for joint high school and junior college credit and is complying with the minimum attendance requirements of subchapter C of chapter 25 of the Education Code or
2. on a full-time basis in a private secondary school in a program leading toward a high school diploma and is complying with the minimum attendance requirements imposed by that school.

IT IS FURTHER ORDERED that GARY WILLMORE shall receive a $400.00 credit on his child support obligation for each airline ticket GARY WILLMORE purchases for the child for the exercise of his periods of possession. In the event KAREN A. QUIGLEY fails or refuses to surrender the child at the properly designated airport two times, GARY WILLMORE's child support obligation is reduced to $750.00 per month, beginning on the 1st day of the first month following the second refusal, until further order of this Court.

IT IS ORDERED that all payments shall be made through the state disbursement unit at Texas Child Support Disbursement unit, P. O. Box 659791, San Antonio, Texas 78265-9791, and thereafter promptly remitted to KAREN A. QUIGLEY for the support of the child.

IT IS FURTHER ORDERED that GARY WILLMORE shall notify this Court and KAREN A. QUIGLEY by U. S . certified mail, return receipt requested, of any change of address and of any termination of employment. This notice shall be given no later than seven days after the change of address or the termination of employment. This notice or a subsequent notice shall also provide the current address of GARY WILLMORE and the name and address of his current employer, whenever that information becomes available.

IT IS ORDERED that each party shall pay, when due, all fees charged to that party by the state disbursement unit and any other agency statutorily authorized to charge a fee.

...

Changing Needs of Child

As the child's needs change and as the child grows and matures, the parties are ORDERED to communicate with one another at either party's request to discuss these changing needs and how to address them in a manner that minimizes the need for further modification to the parenting plan.

Notice shall be given to the other party by delivering a copy of the notice to the party by registered or certified mail, return receipt requested. Notice shall be given to the Court by delivering a copy of the notice either in person to the clerk of this Court or by registered or certified mail addressed to the clerk at 1923 Sam Houston, Rm 303, Liberty, TX 77575. Notice shall be given to the state case registry by mailing a copy of the notice to State Case Registry, Contract Services Section, MC046S, P.O. Box 12017, Austin, Texas 78711-2017.

NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE TERMS OF CHILD CUSTODY SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CLAIM, CIVIL OR OTHERWISE, REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THE ORDER THAT RELATE TO CHILD CUSTODY. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS $10,000.

WARNINGS TO PARTIES: FAILURE TO OBEY A COURT ORDER FOR CHILD SUPPORT OR FOR POSSESSION OR OF ACCESS TO A CHILD MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO $500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

FAILURE OF A PARTY TO MAKE A CHILD SUPPORT PAYMENT TO THE PLACE AND IN THE MANNER REQUIRED BY A COURT ORDER MAY RESULT IN THE PARTY'S NOT RECEIVING CREDIT FOR MAKING THE PAYMENT.

FAILURE OF A PARTY TO PAY CHILD SUPPORT DOES NOT JUSTIFY DENYING THAT PARTY COURT-ORDERED POSSESSION OF OR ACCESS TO A CHILD. REFUSAL BY A PARTY TO ALLOW POSSESSION OF OR ACCESS TO A CHILD DOES NOT JUSTIFY FAILURE TO PAY COURT-ORDERED CHILD SUPPORT TO THAT PARTY.

Division of Marital Estate

The Court finds that the following is a just and right division of the parties' marital estate, having due regard for the rights of each party and the child of the marriage.

Property to Husband

IT IS ORDERED AND DECREED that the husband, GARY WILLMORE, is awarded the following as his sole and separate property, and the wife is divested of all right, title, interest, and claim in and to that property.

H-1. All real property, including but not limited to any escrow funds, prepaid insurance, utility deposits, keys, house plans, home security access and code, garage door opener, warranties and service contracts, and title and closing documents

000354 B Tarkington, Tract 55, Acres 45.45, and more commonly known as 814 County Road 2268, Cleveland, Taxes 77327.

H-2. All household furniture, furnishings, fixtures, goods, art objects, collectibles, appliances, and equipment in the possession of the husband or subject to his sole control, including but not limited to: Father's swords, letters from mother, photographs, all family photographs and letters, Springfield rifle and bayonet, two guitars given by father, and two saddles (English and Western).

H-3. All clothing, jewelry, and other personal effects in the possession of the husband or subject to his sole control.

H-4. All sums of cash in the possession of the husband or subject to his sole control, including funds on deposit, together with accrued but unpaid interest, in banks, savings institutions, or other financial institutions, which accounts stand in the husband's sole name or from which the husband has the sole right to withdraw funds or which are subject to the husband's sole control.

H-5. All sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases thereof, the proceeds therefrom, and any other rights related to any profit-sharing plan, retirement plan, Keogh plan, pension plan, employee stock option plan, 401(k) plan, employee savings plan, accrued unpaid bonuses, disability plan, or other benefits existing by reason of the husband's past, present, or future employment.

H-6. All individual retirement accounts, simplified employee pensions, annuities, and variable annuity life insurance benefits in the husband's name.

H-7. All policies of life insurance (including cash values) insuring the husband's life.

H-8. All brokerage accounts, stocks, bonds, mutual funds, and securities registered in the husband's name, together with all dividends, splits, and other rights and privileges in connection with them.

H-9. The 2003 Ford F-350 motor vehicle, vehicle identification number 1FTWW33PX3EB40308, together with all prepaid insurance, keys, and title documents.

H-10. $100,000.00 payable by KAREN QUIGLEY to GARY WILLMORE by judgment in accordance with the terms of this Decree of Divorce.

Property to Wife

IT IS ORDERED AND DECREED that the wife, KAREN QUIGLEY, is awarded the following as her sole and separate property, and the husband is divested of all right, title, interest, and claim in and to that property:

W-1. All household furniture, furnishings, fixtures, goods, art objects, collectibles, appliances, and equipment in the possession of the wife or subject to her sole control.

W-2. All clothing, jewelry, and other personal effects in the possession of the wife or subject to her sole control.

W-3. All sums of cash in the possession of the wife or subject to her sole control, including funds on deposit, together with accrued but unpaid interest, in banks, savings institutions, or other financial institutions, which accounts stand in the wife's sole name or from which the wife has the sole right to withdraw funds or which are subject to the wife's sole control.

W-4. All sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases thereof, the proceeds therefrom, and any other rights related to any profit-sharing plan, retirement plan, Keough plan, pension plan, employee stock option plan, 401(k) plan, employee savings plan, accrued unpaid bonuses, disability plan, or other benefits existing by reason of the wife's past, present, or future employment.

W-5. All individual retirement accounts, simplified employee pensions, annuities, and variable annuity life insurance benefits in the wife's name.

W-6. All policies of life insurance (including cash values) insuring the wife's life.

W-7. All brokerage accounts, stocks, bonds, mutual funds, and securities registered in the wife's name, together with all dividends, splits, and other rights and privileges in connection with them.

W-8. The _____(**year and make**) motor vehicle, vehicle identification number _____, together with all prepaid insurance, keys, and title documents.

Debts to Husband

IT IS ORDERED AND DECREED that the husband, GARY WILLMORE, shall pay, as part of the division of the estate of the parties, and shall indemnify and hold the wife and her property harmless from any failure to so discharge, these items:

H-1. The balance due, including principal, interest, and all other charges, on the promissory note payable to EAST TEX MOTORS, and given as part of the purchase price of and secured by a lien on the 2003 Ford F-350 motor vehicle awarded to the husband.

H-2. Any and all debts, charges, liabilities, and other obligations incurred solely by the husband from and after November 1, 2006, unless express provision is made in this decree to the contrary.

H-3. All encumbrances, ad valorem taxes, liens, assessments, or other charges due or to become due on the real and personal property awarded to the

husband in this decree unless express provision is made in this decree to the contrary.

Debts to Wife

IT IS ORDERED AND DECREED that the wife shall pay, as part of the division of the estate of the parties, and shall indemnify and hold the husband and his property harmless from any failure to so discharge, these items:

W-1. Any and all debts, charges, liabilities, and other obligations incurred solely by the husband from and after November 1, 2006 unless express provision is made is made in this decree to the contrary.

W-2. $100,000.00 payable to GARY WILLMORE by virtue of a civil judgment against her in accordance with the terms of this Decree of Divorce.

IT IS ORDERED AND DECREED that each party shall send to the other party, within three days of its receipt, a copy of any correspondence from a creditor or taxing authority concerning any potential liability of the other party.

For the purpose of a just and right division of property made in this decree, IT IS FURTHER ORDERED AND DECREED that Petitioner, GARY WILLMORE, is awarded judgment of $100,000.00 against Respondent, KAREN QUIGLEY, plus interest at the legal rate, for which let execution issue.

This judgment is part of the division of community property between the parties and shall not constitute or be interpreted to be any form of spousal support, alimony, or child support.

To effect an equitable division of the estate of the parties and as a part of the division, and for services rendered in connection with conservatorship and support of the child, each party shall be responsible for his or her own attorney's fees, expenses, and costs incurred as a result of legal representation in this case.

Income Taxes

IT IS ORDERED AND DECREED that, for the calendar year 2008, each party shall file an individual income tax return in accordance with the Internal Revenue Code.

...

Resolution of Temporary Orders

IT IS ORDERED AND DECREED that Petitioner and Respondent are discharged from all further liabilities and obligations imposed by the temporary order of this Court rendered on March 30, 2007.

...

Decree Acknowledgment

Petitioner, GARY WILLMORE, and Respondent, KAREN QUIGLEY, each acknowledge that before signing this Final Decree of Divorce they have read this Final Decree of Divorce fully and completely, have had the opportunity to ask any questions regarding the same, and fully understand that the contents of this Final Decree of Divorce constitute a full and complete resolution of this case. Petitioner and Respondent acknowledge that they have voluntarily affixed their signatures to this Final Decree of Divorce, believing this agreement to be a just

and right division of the marital debt and assets, and state that they have not signed by virtue of any coercion, any duress, or any agreement other than those specifically set forth in this Final Decree of Divorce.

...

Clarifying Orders

Without affecting the finality of this Final Decree of Divorce, this Court expressly reserves the right to make orders necessary to clarify and enforce this decree.

Relief Not Granted

IT IS ORDERED AND DECREED that all relief requested in this case and not expressly granted is denied. This is a final judgment, for which let execution and all writs and processes necessary to enforce this judgment issue. This judgment finally disposes of all claims and all parties and is appealable.

Date of Judgment

SIGNED on September 3rd, 2008.

Judge Chap B. Cain (signed)
JUDGE PRESIDING