

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Baker-Warren v. Denault, 2009 NSSC 59

Date: 20090512

Docket: 10830

Registry: Sydney, Nova Scotia

Between:

Laura Baker-Warren

Applicant/Respondent

v.

Mark Denault

Respondent/Applicant

Decision

Judge: The Honourable Justice Theresa M. Forgeron

Heard: November 20, 2006; June 4, 5, 6, 7, 8, 18, 19, 20, 2007; August 15, 24, 2007; October 2, 3, 4, 5, 2007; November 6, 16, 20, 21, 2007; January 2, 4, 14, 16, 2008; February 4, 7, 25, 26, 27, 28, 2008; March 25, 26, 27, 2008; April 7, 8, 28, 29, 2008; May 1, 2008; July 3, 4, 10, 2008; September 8, 9, 10, 2008.

Submissions Received: September 29, October 3, and 6, 2008

Written Decision: May 12, 2009

Counsel: Elizabeth Cusack, Q.C., Counsel for Laura Baker-Warren
Mr. Mark Denault, Self-Represented

By the Court:

I. INTRODUCTION

[1] Kyra is an eight year old girl who is generally kind, creative, and happy. She enjoys drawing and making crafts. She loves animals of all sorts, sizes, and shapes. Kyra faces some personal challenges because she has attention deficit disorder which makes concentration and impulse control difficult. In addition, and by far, the heaviest burden facing Kyra are the effects of the conflict being waged between her parents, Laura Baker-Warren and Mark Denault.

[2] Ms. Baker-Warren and Mr. Denault have been embroiled in a bitter battle since Kyra was an infant. Time has not softened the parties' hostilities. To the contrary, their rancor has only intensified with time. Kyra's happiness has been sacrificed as each party seeks retribution for the perceived harm that each feels has been unjustly inflicted upon him/her. Each is comfortable in the role of martyr/victim.

[3] Not surprisingly, the parties were unable to reach agreement on the parenting and maintenance issues involving Kyra. Instead, a forty-three day trial became the venue where the grueling battle unfolded. Four additional days were assigned to determine applications made before and during the trial. In the face of such hostility, this court must determine what parenting arrangement is in Kyra's best interests and what maintenance should be paid.

II. ISSUES

[4] The following issues will be addressed in this decision:

- a) What is the applicable burden of proof? [paras. 13 - 16]
- b) What factors have been considered in the credibility determinations which have been made? [paras. 17-21]
- c) What custodial arrangement is in the best interests of Kyra? [paras. 22-35]
- d) In whose primary care should Kyra be placed? [paras. 36-124]

- e) What parenting schedule is in the best interests of Kyra? [paras. 125-127]
- f) What is the appropriate maintenance order? [paras. 128-137]

III. BACKGROUND

[5] Ms. Baker-Warren lived in Cape Breton most of her life; Mr. Denault primarily resided in Ottawa. After completing her education, Ms. Baker-Warren went to Ottawa in the spring of 1999. Ms. Baker-Warren found work with Mr. Denault. They eventually became a couple and moved in together. Their relationship was at times stormy and strained. Kyra was conceived amidst many personal and financial struggles.

[6] Ms. Baker-Warren moved back to Cape Breton towards the end of her pregnancy to give birth. Mr. Denault travelled to Sydney for Kyra's birth in August 2000. In September 2000, Ms. Baker-Warren took Kyra to Ottawa where they both lived with Mr. Denault for about six weeks; they then returned to Cape Breton to live on a permanent basis. Ms. Baker-Warren and Mr. Denault maintained contact. Their turbulent relationship finally ended in the spring of 2001. Mr. Denault eventually moved to Cape Breton in 2002 to establish a relationship with Kyra.

[7] In April 2001, the court process was set in motion when Ms. Baker-Warren made application for custody and child support; Mr. Denault made application for access. In June 2001, Mr. Denault filed an application for joint custody. In May 2006, Ms. Baker-Warren filed an application to move Kyra's permanent residence to Gatineau, Quebec, and to consolidate the other applications not previously determined. In November 2006, Mr. Denault filed an amended application for joint and shared custody, or in the alternative, alternating sole custody and child support.

[8] Many other interim and emergency applications were filed over the years, which included applications for interim custody, access, defaults of access, child support, access termination, access supervision, and assessments of parental capacity. These applications resulted in the issuance of one ex parte and ten inter partes orders.

[9] In addition, parallel proceedings were also initiated in the provincial court against Mr. Denault. He was charged with many different offences over the years. In the end, he was convicted of one offence - breaching an undertaking. All other charges were withdrawn.

[10] The custody applications were not brought to trial until November 2006 despite the many efforts of Mr. Denault to have his application heard on an earlier date. This five year delay compounded the ongoing hostilities. The reflections of Martinson J. in **A. (A.) v. A. (S.N.)** 2009 BCSC 387 (S.C.) at paras 74 to 87 are instructional on this issue. Martinson J. advocates the adoption of an institutional approach in high conflict cases. Such cases should be identified at an early stage. One judge should ordinarily be assigned to the case to ensure effective case management and timely resolution.

[11] The custody trial was originally scheduled for three days in November 2006. The parties continuously underestimated the number of days required. The case, therefore, had to be repeatedly rescheduled when time estimates proved to be less than adequate, and when child protection cases were assigned priority due to legislative time constraints. This led to the unfortunate result of the trial being split over various months between November 2006 and September 2008. Voluminous submissions were in writing and the last one was received in October 2008.

[12] Thirty-six people testified during the trial: Dr. Reginald Landry (Psychologist), constable Jody Wilson, constable Wayne Forgeron, Nancy Carson, constable Michael Abraham, Angie Leduc, Keith Jackson, Karen Hart, Jennifer Woodsworth, Angela Steele-Hall, Beatrice Prince, Amanda Jessome, Sherry Taylor-Fortune, David Farmer, Harold Graham, Stan White, Mark Denault, Laura Baker-Warren, Alexis Manley, Tamara Fulmes, Russell Warren, Kim MacNeil, Jefferson Charles Walter, Margaret Buchanan, Amy Baker, Carol Lynn Baker, Diane Toomey, Marjorie Jean MacLeod, Rose MacDonald, Brenda Leanne Tattrie, M.A. (Psy.), John Hart, Marci MacKinnon, Ray Baker, Donald MacNeil, Alana Serroul, and Anne Martin.

IV. ANALYSIS

[13] **What is the applicable burden of proof?**

[14] In **F. H. v. McDougall**, 2008 SCC 53, Rothstein, J. confirmed that there is only one standard of proof in civil cases - proof on a balance of probabilities. He further held that there are no degrees of probability within the civil standard. In every civil case, a judge should take into account the seriousness of the allegations or consequences, or inherent improbabilities; however, these considerations do not alter the standard of proof. In all cases, the court must scrutinize the evidence when deciding whether it is more likely than not that an alleged event occurred. The evidence must always be clear, convincing, and cogent to satisfy the balance of probabilities test. Testimony must not be considered in isolation, but rather examined based upon the totality of the evidence.

[15] The court must assess the impact of inconsistencies on questions of credibility and reliability which relate to the core issues. It is not necessary for a judge to deal with every inconsistency, but rather a judge must address in a general way the arguments advanced by the parties: **F.H. v. McDougall**, *supra*, paras. 40, and 45 to 49.

[16] In considering the arguments advanced by the parties, I have applied the civil burden of proof. I have reviewed the totality of the evidence with reference to the internal consistencies and inconsistencies, and in reference to the position of each of the parties. In determining whether either party has met the civil burden of proof, I have looked for clear, convincing, and cogent evidence. I have made specific credibility findings based upon the evidence and in light of the civil burden of proof. Each party bears the burden in respect of the arguments which he/she advanced.

[17] **What factors have been considered in the credibility determinations which have been made?**

[18] For the benefit of the parties, I will review some of the factors which I have considered when making credibility determinations. It is important to note, however, that credibility assessment is not a science. It is not always possible to “articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events.” **R. v. Gagnon** 2006 SCC 17, para. 20. I further note that “assessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization.” **R. v. R. E. M.** 2008 SCC 51, para. 49.

[19] With these caveats in mind, the following are some of the factors which were balanced when the court assessed credibility:

- a) What were the inconsistencies and weaknesses in the witness' evidence, which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony, and the documentary evidence, and the testimony of other witnesses: **Re: Novak Estate**, 2008 NSSC 283 (S.C.);
- b) Did the witness have an interest in the outcome or was he/she personally connected to either party;
- c) Did the witness have a motive to deceive;
- d) Did the witness have the ability to observe the factual matters about which he/she testified;
- e) Did the witness have a sufficient power of recollection to provide the court with an accurate account;
- f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions: **Faryna v. Chorney** [1952] 2 D.L.R 354;
- g) Was there an internal consistency and logical flow to the evidence;
- h) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant, or biased; and
- i) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?

[20] I have placed little weight on the demeanor of the witnesses because demeanor is often not a good indicator of credibility: **R v. Norman** (1993) 16 O.R. (3d) 295 (C.A.) at para. 55. In addition, I have also adopted the following rule, succinctly paraphrased by Warner J. in **Re: Novak Estate**, *supra*, at para 37:

There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence. (See **R. v. D.R.**, [1966] 2 S.C.R. 291 at 93 and **R. v. J.H.** *supra*).

[21] Ultimately, I have considered the totality of the evidence in making credibility determinations. I have thoroughly reviewed the *viva voce* and documentary evidence in conjunction with the submissions of counsel, and the applicable legislation and case law.

[22] **What custodial arrangement is in the best interests of Kyra?**

[23] *Position of the Parties:* Ms. Baker-Warren seeks sole custody of Kyra because of the conflict and the inability to communicate. Mr. Denault seeks either joint custody or alternating sole custody. He is concerned that absent a custodial designation, Ms. Baker-Warren will continue to manipulate and alienate Kyra, and that she will continue to act unilaterally by failing to abide by court orders. Mr. Denault also wants to participate in decision-making involving Kyra.

[24] *Decision:* Where parental relationships are rift with mistrust, disrespect, and poor communication, and where there is little hope that such a situation will change, joint custody is ordinarily not appropriate: **Roy v. Roy** [2006] W.D.F.L 2830 (C.A.). This lack of effective communication, however, must be balanced against the realistic expectation, based upon the evidence, that communication between the parties will improve once the litigation has concluded. If there is a reasonable expectation that communication will improve despite the differences, then joint custody may be ordered: **Godfrey-Smith v. Godfrey-Smith** (1997) 165 N.S.R. (2d) 245 (S.C.).

[25] Mr. Denault and Ms. Baker-Warren's interaction is marked by high levels of distrust and disrespect. Communication is poor. Therefore, joint custody, in its traditional sense, would not appear to be viable. Despite this grim finding, sole custody is not the only option. A parallel parenting order must also be considered.

[26] Courts have increasingly embraced the concept of parallel parenting in circumstances similar to the case at bar. A parallel parenting regime is a mechanism which can be employed where there is high parental conflict, and

where a sole custody order is not in the child's best interests. A parallel parenting regime permits each parent to be primarily responsible for the care of the child and routine decision-making during the period of time when the child is with him/her. Significant decision-making can either be allocated between parents, or entrusted to one parent. Parallel parenting ensures that both parents play an active and fruitful role in the life of their child while removing sources of conflict through a structured and comprehensive parenting plan.

[27] In **Ursic v. Ursic** [2006] W.D.F.L 3290 (C.A.), the Ontario Court of Appeal affirmed a trial judge's order for parallel parenting and so guided in a new era for the concept of parallel parenting. Laskin J.A. states at para 26:

26 Also, importantly, the trial judge did not merely order joint custody. He included with it a parallel parenting order. Many trial courts have recognized that joint custody under a parallel parenting regime may be suitable where both parents love the child and should play an active role in the child's life, yet have difficulty communicating or reaching a consensus on the child's upbringing. See *M. (T.J.) v. M. (P.G.)* (2002), 25 R.F.L. (5th) 78 (Ont. S.C.J.) and *Mol v. Mol*, [1997] O.J. No. 4060 (Ont. Gen. Div.). The trial judge viewed parallel parenting to be suitable in this case, and I am not persuaded that he erred in ordering it.

[28] In **Andrade v. Kennelly** [2006] W.D.F.L. 2887 (S.C.J.), Harvison Young J. ordered joint custody with parallel parenting. This decision was upheld on appeal at 2007 ONCA 898 (C.A.). Harvison Young, J. examined case law which held that parallel parenting may be the solution where a parent had a history of making decisions not in the best interests of the child. In such circumstances, a sole custody order was not a solution because sole custody should only be ordered where the court is satisfied that the custodial parent is able to make decisions on his/her own in the best interests of the child. In the case before her, and despite the high levels of acrimony, Harvison Young J. ordered joint custody with parallel parenting. The children were placed in the primary care of the father, although he had not exercised that role before. The father had proven himself to be a better and more stable parent than the earlier assessment had indicated, and the father would support the relationship between the children and the mother.

[29] In **Moyer v. Douglas** [2007] W.D.F.L. 1924 (S.C.J.), parallel parenting was ordered. Communication problems were not seen as an obstacle because cooperation was not a prerequisite to each parent making decisions, nor the parents carrying out his/ her parental responsibilities. Further, parallel parenting was not

made with the hope that parenting skills would improve, but with a recognition that both parties had adequate parenting skills.

[30] In **Howard v. Howard** 2006 SKQB 352 (Q.B.), a parallel parenting award was granted despite the parental conflict and with divided authorities for decision-making. The father was vested with final decision-making on matters concerning education and extracurricular activities in the event of disagreement, while the mother would have final decision making on issues relating to health, religion and child care.

[31] In Nova Scotia, parallel parenting was approved in **Hardy v. Ross** 2003 NSFC 20 (F.C.) and refused in **MacPherson v. Hemlow** 2005 NSSF 14 (S.C.).

[32] The adoption of a parallel parenting regime is not a solution for the vast majority of the cases before the courts. It is reserved for those few cases where neither sole custody, nor cooperative parenting meets the best interests of the child. This is one such case. The adoption of a parallel parenting regime is in the best interests of Kyra in the circumstances.

[33] It is inappropriate to award sole custody to Ms. Baker-Warren because of her alienating behaviours and unilateral conduct in respect of court orders. Kyra's emotional well-being has been jeopardized by Ms. Baker-Warren's conduct. Ms. Baker-Warren cannot be entrusted with sole decision-making. The court is not confident that Ms. Baker-Warren will act in Kyra's best interests in the future on matters pertaining to Mr. Denault.

[34] Nor is it in Kyra's best interests to be placed in the sole custody of Mr. Denault. He has not acted as a primary care parent in the past. Further, he must acquire better anger management and conflict resolution skills. Because he lacks these skills, the court is not confident that Mr. Denault will always act in Kyra's best interests in the future.

[35] Both parties love Kyra. Kyra will benefit from a full relationship with both of her parents provided each makes the requisite changes in his/her behaviour as will be addressed later in the decision. A parallel parenting regime will ensure that Kyra's best interests are met despite the parental conflict. Kyra deserves no less.

[36] **In whose primary care should Kyra be placed?**

- a) Best Interests Test [paras. 37-43]
- b) Impact of Interim Custody Arrangement [paras. 44-47]
- c) Parental Misconduct: Violence [paras. 48 -59]
- d) Parental Misconduct: Substance Abuse [paras. 60-66]
- e) Parental Misconduct: Alienation and Maximum Contact Principle [paras 67-74]
- f) Proposed Move to Gatineau, Quebec [paras.75-80]
- g) Parent - Child relationship [paras. 81-89]
- h) Physical Environment and Financial Factors [paras. 90-94]
- i) Kyra's Educational, Cultural, Spiritual, and General Welfare Needs [paras. 95-101]
- j) Discipline [paras. 102-105]
- k) Health Needs [paras. 106-109]
- l) Family Supports [paras. 110-113]
- m) Time Availability [paras. 114-116]
- n) Kyra's Views, if Appropriate [paras. 117-118]
- o) Summary of the Issue [paras. 119-124]

[37] **Best Interests Test**

[38] Section 18(5) of the *Maintenance and Custody Act* R.S., c. 160, s. 1; 2000,c. 29, s. 2, states that the best interests of the child is the paramount consideration in all parenting decisions. Section 18 (5) states as follows:

(5) In any proceeding under this Act concerning care and custody or access and visiting privileges in relation to a child, the court shall apply the principle that the welfare of the child is the paramount consideration. R.S., c. 160, s. 18; 1990, c. 5, s. 107.

[39] The best interests of the child test has been described as one which has an inherent indeterminacy and elasticity: **MacGyver v. Richards** (1995) 11 R.F.L. (4th) 432 (Ont. C. A.) at paras 27 to 29.

[40] In **King v. Low** [1985], SCJ No. 7, the Supreme Court of Canada held that the trial judge must look to the plan of rival claimants and choose the course which will best provide for the healthy development of the child when applying the best interests test at para. 27:

The dominant consideration to which all other considerations must remain subordinate must be the welfare of the child. This is not to say that the question of custody will be determined by weighing the economic circumstances of the contending parties. The matter will not be determined solely on the basis of the physical comfort and material advantages that may be available in the home of one contender or the other. The welfare of the child must be decided on a consideration of these and all other relevant factors, including a general psychological, spiritual, and emotional welfare of the child. It must be the aim of the Court, when resolving disputes between rival claimants for the custody of a child, to choose the course which will best provide for the healthy growth, development and education of the child so that he will be equipped to face the problems of life as a mature adult...

[41] The factors which compose the best interests of the child are varied and are dependent upon the unique circumstances of each case. Goodfellow, J., in **Foley v. Foley** 1993 N.S.J. No. 347 (S.C.), lists a number of factors which courts typically examine when determining a contested custody dispute. A number of these factors loom more important than others in the custodial determination before me today.

[42] In addition, the factors set out in the second part of the test in **Gordon v. Goertz** [1996] 2 S.C.R. 27 must likewise be addressed in any parenting dispute. These factors are noted at para. 23 of **Burgoyne v. Kenny**, 2009 NSCA 34, wherein Bateman J.A. states as follows:

23. In para. 49 of **Gordon v. Goertz**, *supra* McLachlin J., as she then was, for the majority, summarized the applicable principles. An original custody determination is informed by the following considerations:

1. The judge must embark on an inquiry into what is in the best interest of the child, having regard to all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them.
2. Each case turns on its own unique circumstances. The only issue is the best interest of the child in the particular circumstances of the case.
3. The focus is on the best interests of the child, not the interests and rights of the parents.
4. The judge should consider, *inter alia*:
 - (a) the desirability of maximizing contact between the child and both parents;
 - (b) the views of the child, if appropriate;
 - (c) the applicant parent's reasons for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;
 - (d) the disruption to the child consequent on removal from family, schools and the community he has come to know.

[43] I have based the parenting decision on what is best for Kyra. I have examined the plans of Mr. Denault and Ms. Baker-Warren. I have fashioned a parenting scheme which will meet the best interests of Kyra to ensure that her physical, emotional, intellectual, and moral needs are met based upon her unique circumstances and the ability of her parents to meet those needs.

[44] Impact of Interim Custody Arrangement

[45] Ms. Baker-Warren was awarded interim custody of Kyra by virtue of an *ex parte*, interim order which issued on April 26, 2001. No other order dealt with the issue of custody. Ms. Baker-Warren and Mr. Denault are, therefore, equally entitled to custody pursuant to s. 18(4) of the *Maintenance and Custody Act*

because the ex parte, interim order does not bestow the status of a custodial parent upon Ms. Baker-Warren. This is confirmed in **Burgoyne v. Kenny**, *supra*, a case involving a mother who had obtained an interim, ex parte custody order. Bateman J.A. states at para. 22:

Where there is no prior order or custody agreement, as is the case here, the parents are "equally entitled to custody" with neither being considered the "custodial" or "access" parent (MCA, s.18(4)). The interim orders, which permitted the children to reside with the mother in Quebec pending the custody hearing, do not bestow the status of custodial parent. Thus, to the extent that **Gordon v. Goertz** references, as relevant, the status, interests or wishes of the custodial parent, the factors must be modified.

[46] In addition, there was no defacto agreement about Kyra's custody since June 2001 when Mr. Denault filed an application for joint custody. Mr. Denault initially only sought the status of an access parent. This changed because of the visitation difficulties experienced by Mr. Denault during the early stages of Kyra's life and after the parties' separation.

[47] I, therefore, do not afford any rebuttable presumption in favour of Ms. Baker-Warren in relation to the custodial arrangement best suited to meet Kyra's unique needs.

[48] **Parental Misconduct: Violence**

[49] *Position of Ms. Baker-Warren:* Ms. Baker-Warren states that Mr. Denault is an angry, violent man whose conduct negatively impacts upon his ability to parent Kyra safely. Ms. Baker-Warren levied several, serious allegations against Mr. Denault, including that he engaged in the following:

- a) Unpredictable and uncontrollable behaviour;
- b) Physical and emotional brutality; and
- c) Long term harassment.

[50] *Position of Mr. Denault:* Mr. Denault denied the allegations. Although Mr. Denault admitted to one act of striking Ms. Baker-Warren before the parties'

separation, he stated this was an isolated event, and although inappropriate, was not indicative of long term abuse or violence.

[51] *Decision:* I find that Ms. Baker-Warren has proven on a balance of probabilities that Mr. Denault does have difficulties with stress and anger management and must learn better methods to resolve conflict. I find, however, that Ms. Baker-Warren has not proven, on a balance of probabilities, many of the other serious allegations raised. I draw these conclusions based upon my assessment of the evidence, including the evidence outlined below.

[52] *Professional Assessment:* Dr. Landry was qualified, by consent, as an expert to give opinion evidence in the field of psychological assessments for custody, access, and parental capacity matters. Dr. Landry completed two reports. One is dated December 28, 2002, and the second is dated November 16, 2006. His assessments were conducted through personal interviews and the administration of psychometric instruments. Dr. Landry provided the court with an unbiased, balanced, and comprehensive opinion based in part upon objective testing and, in part, upon his professional assessment.

[53] Although the assessments were dated by the time the trial was concluded, I nonetheless accept that Dr. Landry's findings were, for the most part, accurate. I accept Dr. Landry's conclusion that Mr. Denault does not experience psychological difficulties. There were no suggestions of serious psycho-pathology. I agree with Dr. Landry that Mr. Denault is not likely to physically abuse a child in his care, nor is restrictive access in Kyra's best interests.

[54] I also find that the evidence supports Dr. Landry's conclusion that Mr. Denault has difficulty managing his emotional reactions, especially in times of significant stress or when his self-esteem is challenged.

[55] *Reactive and Impulsive Behaviour:* I find that Mr. Denault does sometimes become reactive and impulsive when he feels threatened, anxious, and when he is under significant stress. This is in keeping with Dr. Landry's conclusions. Mr. Denault does not always control his temper and can exhibit poor conflict resolution skills in such circumstances. This negative trait impacts upon Mr. Denault's ability to meet Kyra's needs. Factual findings to support this conclusion include the following:

a) *The exchange with Mr. Graham who is Mr. Denault's neighbour shows poor conflict resolution skills.* I accept Mr. Graham's evidence. Although Mr. Graham described Mr. Denault as a loving, warm, and attentive father who is attuned to Kyra's needs, he also described a situation which arose which shows the reactive side of Mr. Denault's personality. This occurred when Kyra was not in Mr. Denault's charge. I accept the exchange involved two angry men who, according to Mr. Graham, were "hot headed." Each used inappropriate language during the exchange. In addition, Mr. Denault pushed Mr. Graham against the wall because Mr. Denault thought Mr. Graham was going to hit him with a level, which Mr. Graham had grabbed. No one was injured and no additional physical force was used. The men quickly made peace. The incident, however, should not have occurred at all. Mr. Denault must learn to be less reactive and learn healthy forms of conflict resolution.

b) *The exchange between Ms. Hart who is Mr. Denault's former girlfriend represents an unacceptable reaction to stress.* I accept there was no physical violence between the two. On one occasion, when the relationship was unravelling, Mr. Denault spit on Ms. Hart while Kyra was in his care. The act of spitting was an impulsive, derogatory, and crude gesture. The fact that Mr. Denault found such to be an acceptable solution speaks volumes. Further, Mr. Denault acted inappropriately, at times, during his break-up with Ms. Hart. Mr. Denault must come to terms with his actions and learn more mature and responsible reactions to stress and anxiety.

c) *Mr. Denault's fixation on Kyra's refusal to call him "dad" demonstrates an inability to problem solve in a healthy fashion.* I accept that Kyra refuses to refer to Mr. Denault as "dad" because of the alienating behaviour of Ms. Baker-Warren. However, this finding does not excuse Mr. Denault's reaction and perseveration with this issue. The alienation finding does not provide Mr. Denault with a license to raise his voice, become heated, and to engage in angry verbal exchanges with Ms. Baker-Warren or any other person. Mr. Denault must learn skills so that he can properly channel his anger and resolve conflicts in non-confrontational ways.

[56] *Allegations of Harassment and Brutality:* Although I find that Mr. Denault lacks appropriate anger management and conflict resolution skills at times, Ms.

Baker-Warren has not proven on a balance of probabilities that Mr. Denault harassed and brutalized her or other persons. I reject these arguments based upon my findings and credibility assessments, some of which are reviewed as follows:

a) *The lack of conviction on most charges is not determinative of the issue.* Many criminal charges were laid against Mr. Denault based upon information received from Ms. Baker-Warren and other witnesses. All were withdrawn prior to trial, with the exception of a breach charge. Mr. Denault plead guilty to that charge and was placed on a period of probation with conditions. The lack of criminal convictions for the majority of the offences does not resolve the issue before this court. Criminal charges are based on reasonable doubt and civil actions on a balance of probabilities.

b) *The allegations of physical and sexual brutality were not credible.* Ms. Baker-Warren, and witnesses who testified in support, took great liberties in their quest to have Mr. Denault characterized as a brutal man prone to extreme physical and sexual aggression. I reject this evidence. Ms. Baker-Warren's evidence and the evidence of her supporting witnesses was inconsistent and did not flow logically. The evidence was strategic. The witnesses were not always frank; they were evasive at times.

At trial, Ms. Baker-Warren, and others, described the parties' relationship as brutal almost from the relationship's inception. Several witnesses described consistent bruising, and at times severe bruising and assaults. However, few of these serious allegations were mentioned in the initial police reports, or early affidavits, and statements.

In her police statement, Ms. Carol Lynn Baker refers to bruises she allegedly saw in the summer of 1999 on her daughter's neck, which Mr. Denault said were 'hickies.' Yet there is no mention of the more serious bruised eyes and a broken nose, which during the trial Ms. Carol Lynn Baker swore she had observed. Similarly, Ms. Amy Baker failed to mention the severe bruising in her earlier statements, when issues involving the safety of Ms. Baker-Warren and Kyra were being advanced. Ms. Baker-Warren did not mention the alleged "Jamaica incident" until the trial.

Ms. Baker -Warren, in her June 2001 statement to the police, stated that Mr. Denault was "really violent" and that "he beat me so bad that I had

to go to the hospital with bruises all over my abdomen and a smashed up nose and two black eyes. So he's been...he's very, very, violent." Yet when hospital records were requested, none could be located. Ms. Baker-Warren then "clarified" her statement. Although she had gone to the hospital, she did not actually register because she was, and is, a private person. I do not accept this explanation, nor the evidence of Ms. Fulmes. Had Ms. Baker-Warren been as brutalized as she says, she would have obtained medical treatment, for her unborn baby or at a minimum, to deal with the alleged broken nose either in Ottawa or in Cape Breton where Ms. Baker-Warren returned.

There were numerous inconsistencies in the *viva voce* evidence and in the prior statements and affidavits. I find that Ms. Baker-Warren's evidence, and that of her supporters, became increasingly more urgent, descriptive, and exaggerated with time in an attempt to vilify Mr. Denault. Further, if Ms. Fulmes' characterizations of Mr. Denault were accurate, she would never have let her teenage daughter work with Mr. Denault in Ottawa.

Ms. Baker-Warren, throughout her testimony, attempted to minimize any perceived wrong doing or weakness arising from her own actions. She was not capable of making a statement against her own interest. This personality trait is confirmed by Dr. Landry in his two reports. Examples include Ms. Baker-Warren's refusal to characterize her suicide letter as such. Rather than admit she was seriously considering suicide given her unhappy circumstances, Ms. Baker-Warren said the writing was simply a journal entry. It was not. Ms. Baker-Warren was not able to admit that she should have a fence around the entire pool area, or that it was ill-advised to allow the babysitter to drive Kyra on short distances without a car seat. Further, rather than admitting that she sent Mr. Denault a loving Christmas card in 1999 (after the alleged "Jamaica incident"), Ms. Baker-Warren said she only sent the card to keep the peace and placate a disturbed man. This is not in keeping with the message which Ms. Baker-Warren penned on that card which reads as follows:

Dearest Mark,

The Roads that are winding, steep & dangerous usually lead to the most amazing views.

Here's hoping we spend our next year soaking in the beautiful scenery!

All my Love

forever & ever,

Laura

There is no doubt that Ms. Baker-Warren and Mr. Denault were involved in a dysfunctional relationship. However, Mr. Denault was not the brutal fiend alleged by Ms. Baker-Warren and her supporters.

c) *The allegations of Mr. Walter who hired Mr. Denault as a contractor are not credible.* In the course of giving his testimony, Mr. Walter changed his story so frequently that the court lost count. In addition to the many inconsistencies, Mr. Walter's evidence did not make logical sense. Mr. Walter did not report the alleged threats to the police until the day following, and then only after negotiations with Mr. Denault on monetary issues had broken down. The voice message, which Mr. Walter left with Mr. Denault, did not mention threat allegations, but rather focussed on monetary matters and the consequences which would flow if Mr. Denault refused to come to an agreement with him. Mr. Walter did not want to pay Mr. Denault for the contract, and civil proceedings, to collect the debt had been commenced. Mr. Walter's evidence was not clear, cogent, or convincing.

d) *The allegations of harassment have not been made out.* The parties' relationship ended in February/beginning of March 2001. There was communication between Ms. Baker-Warren and Mr. Denault, and between Mr. Denault and the family of Ms. Baker-Warren. The parties were calling one another. I do not accept Ms. Baker-Warren's excuse for calling Mr. Denault's telephone numbers on the numerous occasions that she did. I further find that when Mr. Denault found the suicide note, he became emotional and anxious. He attempted to express his concern for Kyra and Ms. Baker-Warren. When his entreaties were rejected, he became impulsive, reactive, and upset. I find the calls between the parties eventually abated. In addition, Ms. Baker-Warren has not proven that Mr. Denault was physically following her while in Cape Breton.

[57] *Summary on Issue of Violence:* Mr. Denault during times of high stress and anxiety, can become reactive, impulsive, and angry. He can display poor problem-solving and conflict resolution skills. He can be prone to angry outbursts. This does not occur on every occasion. Indeed, in the face of many false allegations and unilateral access restrictions, Mr. Denault for the most part did not react negatively or inappropriately. He usually exercised restraint and pursued relief through the judicial process. Mr. Denault did not brutalize Ms. Baker-Warren in the manner described. Kyra is not in danger while in Mr. Denault's care.

[58] What is troubling, however, is that Mr. Denault did not voluntarily engage in therapy or counselling to successfully change despite Dr. Landry identifying the problem area. Mr. Denault has done nothing to learn techniques to properly channel his anger, stress, and emotional overlay. I am concerned that until Mr. Denault learns to deal with stress and anger management that he will, at times, erupt and use inappropriate language, tears, and may perserevate on topics troubling to him, such as the "dad" issue.

[59] Mr. Denault must engage in therapy to learn healthy anger management and problem solving skills and techniques. This is necessary in order for Mr. Denault to successfully nurture Kyra. I have no doubt that Kyra will continue to display, at times, problematic behaviours because of the alienation and loyalty conflict which she has experienced. This may in fact increase for the short term once the parenting regime is changed. Mr. Denault must have the capacity to deal with the stress which will occur in an appropriate parental fashion.

[60] ***Parental Misconduct: Substance Abuse***

[61] *Position of the Parties:* Ms. Baker-Warren alleges that Mr. Denault has a significant substance abuse problem which negatively impacts upon his ability to parent Kyra in a safe manner. Mr. Denault denies this allegation and then levied a similar allegation against Ms. Baker-Warren's past.

[62] *Decision:* I find that neither party has successfully proven this allegation. Whatever substance abuse problems existed before Kyra's birth, no longer are an issue for either party. No credible evidence of current alcohol or drug abuse by Ms. Baker-Warren was produced. To the contrary, I find that Ms. Baker-Warren is

but a social drinker and the evidence which suggests another inference is without foundation.

[63] Similarly, the evidence that Mr. Denault has a substance abuse issue is likewise not sustainable. John Hart's evidence that Mr. Denault was growing marijuana in November 2007, is not credible for several reasons. First, Mr. Hart indicates that his identification of the marijuana plant was based upon an entertainment poster he had earlier observed in someone's room. Second, it makes no logical sense that Mr. Denault would or could grow marijuana in November in an unheated building in Cape Breton, which was not a sun house, and where the building was visible from the street. Third, Mr. Hart confirmed that he had no difficulty with his grandson driving with Mr. Denault after he allegedly observed the marijuana. Finally, Mr. Hart was angry with Mr. Denault because of the Regional Housing complaint.

[64] Mr. Warren also suggested that Mr. Denault was under the influence during a Christmas exchange in 2007. I do not accept this allegation. If Mr. Warren believed that Mr. Denault was under the influence, he would not have allowed Kyra to go with Mr. Denault without first contacting the police to ensure that Mr. Denault's ability to drive was not compromised. There was no call to the police even after Kyra left with Mr. Denault.

[65] The suggestion from Mr. Walter, who I previously characterized as not credible, also fails to support the allegation. Mr. Walter suggested that he smelled marijuana once at the construction site. Mr. Denault said that he had spoken to the worker who had used the marijuana, and had advised Mr. Walter that such would not occur again.

[66] Likewise the suggestion that Mr. Denault had "glassy eyes" on occasion when he transported Kyra from the babysitter is not convincing.

[67] ***Parental Misconduct - Alienation and Maximum Contact Principle***

[68] *Position of the Parties:* Mr. Denault argues that Ms. Baker-Warren has, since the inception of the case, attempted to alienate Kyra from him. Ms. Baker-Warren strenuously denies this allegation. She states that she has done nothing, nor has she allowed third parties in her presence, to do anything which would harm or disturb the father-daughter relationship. Ms. Baker-Warren argues that any

parental deficit is caused by Mr. Denault's own conduct. She cites Mr. Denault's lack of consistency in the exercise of access, lack of interest in Kyra's life, and his harmful conduct during the exercise of access as factors which support her position.

[69] *Decision:* Mr. Denault has proven, on a balance of probabilities, that Ms. Baker-Warren has attempted to alienate Kyra from him. I base this finding on the evidence, including the following:

- a) *Kyra has false memories about events which never occurred.* Kyra told Dr. Landry that when she was a baby, Mr. Denault tried to steal her from her mother and tried to kill a family pet named Bear. Kyra told Dr. Landry that she remembers when this happened. Even Ms. Baker-Warren acknowledges that this event did not occur. Ms. Baker-Warren denies any involvement. I find, however, on a balance of probabilities, that Ms. Baker-Warren either directly or indirectly allowed Kyra to hear negative discussions about Mr. Denault such that Kyra now believes that her father is capable of killing a family pet and kidnapping her. In addition, Ms. Baker-Warren has done nothing to dispel this fear. It has not been addressed therapeutically or otherwise. To the contrary, I find that Ms. Baker-Warren has nurtured such fears in Kyra.
- b) *Ms. Baker-Warren uses emotional pressure to elicit favourable reactions from Kyra.* When questioned as to why she did not want to go for sleepovers with her father, Kyra told Dr. Landry that Mr. Denault didn't let her call home once and that she missed home because her mother and Mr. Warren told Kyra that they are sad when she spends the night with Mr. Denault. Kyra identifies with her mother and attempts to please her by disassociating with her father. This loyalty conflict was also somewhat evident during the Christmas concert when Kyra did not perform in her usual manner because both parties were present.
- c) *Ms. Baker-Warren only pays lip service to the maximum contact principle.*

Ms. Baker-Warren's actions and attitude display a strong, contrary view which is readily transferred to Kyra because of the mother-daughter attachment. When Mr. Denault arrives at Ms. Baker-Warren's home to transport Kyra for access, several negative messages are given to Kyra. These messages suggest that Mr. Denault cannot be trusted. Typically a third party, often Mr. Warren, will enter Mr. Denault's truck and, in Kyra's presence, will take an inventory of the contents of Kyra's suitcase. There are two security cameras pointing at Mr. Denault at all times. When Mr. Denault, on one occasion, attempted to walk up the steps of the house, he was greeted with much upset and then a subsequent

letter under the protection of property legislation. Further, Ms. Baker-Warren is unable to mask her disdain for Mr. Denault. While giving evidence, when one would expect best behaviours, Ms. Baker-Warren's voice dripped with scorn and contempt for Mr. Denault. I have no doubt this tone and attitude is readily recognized by Kyra.

d) *Kyra has created an internal divide wherein she distinguishes Mr. Denault as her father, but not her dad.* Dr. Landry stated that this internal dichotomy from a young child is quite unusual, especially given the typical child's flexibility in having more than one father figure. I accept that Kyra called Mr. Denault "dad" in 2001 and stopped in 2002. Kyra was much too young to make a distinction at that young age. I infer that Ms. Baker-Warren was instrumental in having Kyra stop calling Mr. Denault "dad."

e) *Ms. Baker-Warren has consistently defied court orders and acted unilaterally when it suited her purpose.* Access was refused or restricted as a result. The access history confirms this finding.

A supervised access regime was ordered in July 2001. Mr. Denault began to exercise regular visitations on Sundays and Wednesdays with Kyra until mid-September 2001, when he returned to Ottawa for work. Ms. Baker-Warren stated that she had no knowledge of Mr. Denault's whereabouts after September 2001, and attributed disinterest for the lack of access. I find disinterest was not the reason. Ms. Baker-Warren was well aware that Mr. Denault had returned to Ottawa to work. This finding is supported by the evidence of the babysitter and the letters between counsel who were representing the parties at the time.

Ms. Baker-Warren further states that she did not allow access to occur during Christmas of 2001, because she had no knowledge that Mr. Denault would be attending the area. The evidence shows otherwise. Ms. Baker-Warren did not allow the visit on Christmas Day because Christmas did not fall on Wednesday or Sunday. December 26th, however, fell on a day when Mr. Denault was scheduled to have access. Ms. Baker-Warren did not permit this visit because it did not suit her purpose. Mr. Denault returned to Ottawa with Kyra's presents and without seeing his daughter at Christmas.

Access was re-established in 2003, initially through the supervised access program at the YMCA. Eventually, unsupervised access was ordered in October 2003. Ms. Baker-Warren made false allegations to stop the unsupervised access from continuing. She said that when she entered Mr. Denault's home to pick up Kyra that Mr. Denault tried to push her down his stairs. Ms. Baker-Warren fabricated this incident because unsupervised access was going well. Ms. Baker-Warren did not want contact between Kyra and Mr. Denault. A terrified Ms.

Baker-Warren would not have entered Mr. Denault's home in the first place, especially unescorted. Ms. Baker-Warren had to enter the home alone to create an opportunity for the false allegation to be raised. Access was terminated, unilaterally, again.

Visitations were reinstated in November, 2003, by unsupervised visits, with supervised access exchanges through the YMCA program. Ms. Baker-Warren made further false allegations about Mr. Denault. She once again terminated all access without court order.

I accept the evidence of the YMCA workers and Mr. Denault where it conflicts with the evidence of Ms. Baker-Warren and her mother in relation to what occurred during the supervised access exchanges at the YMCA. Kyra was properly dressed and was not upset in Mr. Denault's presence during the access exchanges. Kyra only became upset after she returned to her mother's care. There was no inappropriate action by Mr. Denault. A court order again confirmed that access should be unsupervised following a full hearing in May 2004.

Access, although limited to 1.5 hours, was exercised until Kyra started school in September 2005. Then, Ms. Baker-Warren stopped all contact between Kyra and Mr. Denault. The existing court order could not be followed because access times were scheduled during school hours. I do not find credible the suggestion that Amy Baker contacted Mark Denault on two occasions, by phone, to reorganize the access time. I accept Mr. Denault's evidence that he received no such messages from Amy Baker or anyone else. Access was finally reinstated for 45 minutes on Christmas Day because school was on break. Access times were eventually changed to Tuesdays from 3:00 to 4:30 after court conciliators became involved at the end of 2005.

In March 2006, Ms. Baker-Warren once again, unilaterally, terminated access because Kyra got soaked while walking on the beach during an access visit. No further access was permitted until another interim order issued in July 2006. This order permitted more access than Kyra ever enjoyed before. The access was subsequently increased to permit over night access by further order in October 2006.

Only since the matter has been before this court in 2006, has Ms. Baker-Warren, for the most part, followed the access provisions of the court order, albeit unwillingly at times. Without fundamental changes, I have no doubt that Ms. Baker-Warren will once again start to take liberties with access.

f) *Ms. Baker-Warren fails to accept responsibility for her unilateral conduct.* Rather, she transfers the blame to her former counsel and her child's doctor -

neither of whom were called to testify. The doctor could have testified without providing expert opinion. Ms. Baker-Warren is accountable for her actions. The history of unilateral conduct and failure to abide by the various court orders is troubling and casts serious doubts upon Ms. Baker-Warren's ability to act in the best interests of Kyra.

[70] *Summary on Parental Alienation and Maximum Contact Principle*: One of the principle components of the best interests test is the maximum contact principle: **Young v. Young** [1993] 4 S.C.R. 3. Ms. Baker-Warren told Dr. Landry and the court, often in eloquent soliloquies, that she understood the importance of a relationship between Mr. Denault and Kyra. Unfortunately, Ms. Baker-Warren has shown little ability to implement this obligation. As a result, Kyra's emotional well being is, and will continue to be, jeopardized.

[71] Because of Ms. Baker-Warren's intense loathing of Mr. Denault, Kyra has and will continue to suffer. The loyalty conflict and the failure of Kyra's two worlds to intersect, has placed Kyra in a most unenviable position. She does not have the emotional fortitude or wisdom, at such a young age, to navigate and find solutions to the problems which have been created by her parents. As a result, Kyra applies dysfunctional, coping mechanisms. These include pretending to be unhappy during access exchanges; feigning upset when access times roll around; refusing to talk to her father on the phone while in her mother's home; and creating an emotional distance from Mr. Denault because he is not her dad, he is only her father. These behaviours stand in stark contrast to the independent witnesses who described an engaged and happy Kyra when she is in her father's presence. I accept the evidence of Angie Leduc, the YMCA staff who observed Kyra's interactions with Mr. Denault, Beatrice Prince, Amanda Jessome, Harold Graham and Stan White. I accept the evidence of Dr. Landry who noted that Kyra sought proximity to Mr. Denault, was jovial, and comfortable in his presence. I accept the first testimony of Ms. Hart, when she described a positive father/daughter relationship. I also accept the evidence of Mr. Denault when he described his relationship with Kyra.

[72] Dr. Landry recommended therapies for Kyra and the parties. The order will require significant intervention to ensure the alienation stops and Kyra's emotional needs are properly addressed. These therapies are described later in the decision.

[73] Ms. Baker-Warren must recognize that if she does not make the requisite changes to her parenting, and continues to flout her responsibilities as a parent and pursuant to the court order, that she may create a situation which will lead to a change in custody such that all contact between she and Kyra is terminated or substantially restricted.

[74] Ms. Baker-Warren must stop all unilateral conduct. Court orders must be respected. I adopt the comments of Slatter, J. in **K. (R.) v. K. (S.)** 2005 CarswellAlta 1276 (Q.B.) wherein the court held that family law cannot tolerate self-help remedies at paras 8 and 12:

8 As I have said on previous occasions, family law cannot tolerate self-help remedies: **Cardinal v. Tatum**, 2004 ABQB 672 (Alta. Q.B.). It is inappropriate and unacceptable for one parent unilaterally to decide that the best interests of the child have changed, and unilaterally to make a change in the custody or primary residence of the child. This is particularly so where there is a court order in place specifying custody and access: the parties are expected and required to obey court orders until they are amended by the court.

...

12 Lawyers acting as counsel are officers of the court, and are expected to safeguard the administration of justice and to promote respect for the orders of the court. It is a most remarkable situation where counsel instructs a client to disobey a court order, as happened in this case. A lawyer should not assist in the breaching of court orders: **Berube v. Wingrowich**, 1999 ABQB 547, 251 A.R. 128 (Alta. Q.B.) at paras. 25-27. In cases involving the care of children the court relies heavily on its officers. They have a duty to think carefully about the advice they give their clients, and the submissions they make to the court; counsel are not simply gladiators whose job it is to win at all costs.

[75] ***Proposed Move to Gatineau, Quebec***

[76] *Position of the Parties:* Ms. Baker-Warren is seeking to move Kyra's permanent residence to Gatineau, Quebec, where Mr. Warren has a home. Mr. Denault initially resisted the move, primarily because of his relationship with Ms. Hart and his concerns about enforcement of the order. Ms. Hart and Mr. Denault are no longer a couple. At various times during the trial, and in his submissions, Mr. Denault said he was in agreement with Kyra's relocation to Gatineau, Quebec.

Earlier in the proceedings, Mr. Denault stated that he would move to Ottawa should Kyra's permanent residence be relocated there.

[77] *Decision:* I find that it is in Kyra's best interests to move to Gatineau where Ms. Baker-Warren wishes to move to live with her husband, but subject to Mr. Denault's active involvement in Kyra's life. Dr. Landry said that there would be minimal psychological impact on Kyra upon her relocation to Gatineau *provided* Kyra maintains a relationship with Mr. Denault.

[78] Mr. Denault raised valid concerns about custody and access enforcement. In the past, Ms. Baker-Warren has made false allegations and acted unilaterally in the face of court orders. Therefore, before Kyra's permanent residence is changed to Gatineau, Ms. Baker-Warren will supply this court with proof that the court order and decision have been translated into the french language and that the terms of the order are registered as an order with the courts in Quebec for enforcement. Until this occurs, Kyra's permanent residence will remain in Cape Breton.

[79] The move to the Ottawa Gatineau region is in Kyra's best interests. The parental relationships can be strengthened once the therapeutic interventions ordered in this decision are implemented. Further, Kyra will have a better opportunity to develop relationships with her paternal relatives who live close to the Ottawa region. In addition, I find that Kyra's educational, recreational, and spiritual needs will be met in the Gatineau/Ottawa region based upon the evidence of both parties and Mr. Warren. Kyra's new home is located in a child-friendly suburb. The school and church Kyra will be attending are close by, as are many recreational opportunities.

[80] A move to Gatineau will, of necessity, require Kyra to make new friends, adjust to a new school, and be exposed to another language. Kyra has been able to maintain friendships in the past and will have no difficulty maintaining friendships in the future. Kyra has already visited the Ottawa/Gatineau region. She has met children her age and played with them. She is looking forward to the move. She will be able to adjust to a new school. She will be able to adjust to a new language. Learning another language, while challenging, is also rewarding and can open up many opportunities for Kyra. Kyra can maintain contact with her family and friends in the local area through telephone contact, visits, and web cam communication.

[81] ***Parent - Child Relationships***

[82] *Position of the Parties:* The parent/child relationship is a significant factor to examine when comparing the rival parenting plans placed before the court. Ms. Baker-Warren states that she has a nurturing and positive parent/child relationship. She states that Kyra clearly identifies her as the primary care giver who provides security, consistency, and structure in a loving manner. Ms. Baker-Warren states that there are few positives in the relationship between Kyra and her father.

[83] Mr. Denault, on the other hand, states that the relationship between Ms. Baker-Warren and Kyra is destructive because Ms. Baker-Warren fails to recognize the importance of his involvement in Kyra's well-being and development. He also notes that although Kyra does not recognize him as "dad," they, nonetheless, have a good relationship that will only get stronger as Kyra spends more time with him. In addition, Mr. Denault states that he has shown that he can provide for Kyra's day-to day needs by virtue of his actions since the 2006 order issued, which order finally provided for more extensive, unsupervised access.

[84] *Decision:* Kyra recognizes Ms. Baker-Warren as her primary care giver because Ms. Baker-Warren has exercised this role since Kyra's birth. She has been the parent who has been responsible for the health, education, and general welfare needs of Kyra. She has participated in all facets of Kyra's life. Mr. Denault has had limited exposure to much of the primary care-giving role.

[85] In addition, Kyra has failed to recognize Mr. Denault as her "dad." Kyra is more emotionally connected to Ms. Baker-Warren than she is to Mr. Denault. Kyra's stated preference is her mother. The parent/child relationship, however, must be examined other than through the lens of a nine year old child. The relationship which Kyra has with each parent is a reflection of the circumstances which have evolved since Kyra's birth. Ms. Baker-Warren has done all within her power, and with some success, to prevent a positive relationship between Kyra and Mr. Denault. She has acted unilaterally on access issues. Ms. Baker-Warren bears significant responsibility for the fact that Mr. Denault's care giving role has been somewhat limited to date.

[86] On the other hand, Mr. Denault could have assumed a greater role in the areas of primary care when the opportunity was afforded to him by the 2006 order. He could have made more contact with the school and taken on a greater role with

Kyra's educational needs. He could have pursued an active role with Kyra's religious instruction. Mr. Denault did not. Instead, he waited for Ms. Baker-Warren to keep him advised of what was taking place. As a result, Mr. Denault does not have the experience with educators and health professionals that Ms. Baker-Warren has.

[87] I find that Ms. Baker-Warren can meet Kyra's day-to-day physical needs in an able fashion. Likewise, she has proven to be an excellent advocate in meeting Kyra's educational and physical health needs. Ms. Baker-Warren, however, has failed in meeting Kyra's emotional needs because of her inability to recognize the importance of the relationship between Kyra and Mr. Denault and by her alienating conduct.

[88] Similarly, I find that Mr. Denault can ably meet the day-to-day physical needs of Kyra. Mr. Denault does not try to prevent a mother/daughter relationship. I find that Mr. Denault has the intellectual capacity and ability to meet the educational and health needs of Kyra, if he were to assume a greater role in Kyra's life. I further find that Mr. Denault's impulsive, and reactive personality does, at times, impede his ability to meet Kyra's emotional needs.

[89] The relationship between Kyra and each of her parents is somewhat marred because each party has failed to recognize his/her own deficits and, thus, each has failed to obtain the necessary therapy which is required in order to meet Kyra's best interests.

[90] ***Physical Environment and Financial Factors***

[91] *Position of the Parties:* Ms. Baker-Warren states that she has the ability to meet Kyra's financial needs. She has been the parent who has borne the vast majority of the financial responsibility for Kyra to date. She plans to move to Gatineau with her husband and reside in their home. Kyra will have her own room and lots of ability to forge new friendships with the neighbourhood children.

[92] Mr. Denault states that he has a good home in Glace Bay which provides Kyra with all that she needs. If the move to Gatineau is approved, Mr. Denault will likewise move to the Ottawa area. He will sell his two Cape Breton properties to assist with the costs of relocating. Mr. Denault notes that his family's cottage is located within twenty minutes of the Baker-Warren Gatineau home, nestled in a

beautiful and historic section of the Ottawa area. This will provide an excellent base for Kyra.

[93] *Decision:* Both Ms. Baker-Warren and Mr. Denault have the financial ability to care for Kyra. Ms. Baker-Warren has a suitable home in Cape Breton and in Gatineau where she hopes to reside with Kyra and Mr. Warren. Mr. Denault, although earning less income than Ms. Baker-Warren, nonetheless, has and will continue to ensure that his accommodations are clean, safe, and appropriate, although likely not as elaborate as those owned by Ms. Baker-Warren. Financially both can, and would, meet Kyra's needs.

[94] I also accept that both parties have the ability to meet Kyra's transportation needs. In the past, Mr. Denault drove Kyra in a vehicle after the safety inspection sticker had expired. In the past, Ms. Baker-Warren permitted the babysitter to transport Kyra without a proper car seat. Kyra is to be transported in vehicles which meet all provincial transportation laws and regulations. Neither party is to place Kyra at risk by failing to follow such laws. Both parties have the financial ability to conform with all transportation laws and regulations.

[95] ***Kyra's Educational, Cultural, Spiritual, and General Welfare Needs***

[96] *Position of the Parties:* Each party states that he/she is better equipped to meet Kyra's educational, cultural, spiritual, and general welfare needs than the other party.

[97] *Decision:* As indicated previously, Ms. Baker-Warren has assumed an active and positive role in meeting Kyra's educational and physical health needs. Mr. Denault is only beginning to become involved, although he has the capacity to meet these needs.

[98] Mr. Denault has actively been engaged in meeting Kyra's social, cultural, and recreational needs, even when access was severely restricted. Mr. Denault recognizes the importance of developing Kyra's skills and interests by being involved in activities. He enrolled Kyra in swimming at a young age and swims with her on a regular basis. He takes her skating and snow boarding. He rides bicycles with Kyra. Mr. Denault was the parent who taught Kyra how to ride without training wheels. Mr. Denault recognized Kyra's love of animals and fostered that love. He takes her to ride horses and ponies. They visit the Wild Life

Park. He bought her a dog. Mr. Denault takes Kyra to visit neighbours and friends who have bunnies and other animals because Kyra enjoys these. Mr. Denault also takes Kyra to the library.

[99] Ms. Baker-Warren did not assume as great a role with the development of Kyra's interests and activities until after the trial began and once Mr. Warren became involved in Kyra's life. Sports camps have been cut short and lessons have been discontinued. However, Ms. Baker-Warren has consistently ensured that craft materials were available to Kyra.

[100] Both Ms. Baker-Warren and Mr. Denault claim that each wants to meet Kyra's moral and spiritual development. Indeed, a great deal of court time was spent on this one issue. I find that Ms. Baker-Warren's mother was committed to ensuring Kyra's religious training was met through church attendance. By the time of trial, Ms. Baker-Warren was attending to Kyra's formal religious training. Mr. Denault was not. If both parents want to commit to Kyra's religious development, there is nothing stopping either of them. They both state that Kyra should be raised in the Roman Catholic faith.

[101] In summary, Mr. Denault has in the past, and will more likely in the future, ensure that Kyra's interests and skills will be engaged through outside activities. Both parties are encouraged to have Kyra participate and enroll in activities which are suited to her interests and abilities. There is nothing preventing either party from contributing to Kyra's spiritual development. Ms. Baker-Warren has ably attended to Kyra's educational and physical health needs.

[102] ***Discipline***

[103] *Position of the Parties:* Ms. Baker-Warren states that she is a better disciplinarian, and that Mr. Denault is loud and aggressive with Kyra. She states that Mr. Denault is unable to control Kyra. Mr. Denault states that Ms. Baker-Warren is inconsistent with her discipline, and "tickles" Kyra to positively reinforce Kyra's acting out during access transfers.

[104] *Decision:* Kyra is generally reported to be a compliant child at school and at home. A few disciplinary issues arose while Kyra was at school and on the bus. Ms. Baker-Warren effectively dealt with these issues in consultation with the school. Kyra, on occasion, requires discipline while in the care of both parties.

Neither party employs corporal punishment, but rather uses various forms of time out, removal of privileges, and discussions. Ms. Baker-Warren also started to use a reward system to modify behaviours.

[105] I find that both parties are more permissive in their limit setting than appropriate. Mr. Denault is conscious of the alienation and compensates by imposing fewer boundaries than a parent otherwise should. Ms. Baker-Warren is too lenient, indulgent, and solicitous of Kyra's whims. Both parties must learn to set more boundaries and limits in an age appropriate fashion. Both will obtain professional guidance in this area. Ms. Baker-Warren also promotes Kyra's acting out during access transition through the "tickle method" as described by Mr. Warren, which I accept as an accurate description.

[106] ***Heath Needs***

[107] *Position of the Parties:* Each party states that he/she is able to meet Kyra's health needs.

[108] *Decision:* Kyra has asthma and ADD. She also requires therapy because of the parental conflict and because of this custody dispute. Both parties will also be required to participate in the therapy which will form a pivotal part of this order to ensure positive outcomes for Kyra.

[109] Both parties can meet Kyra's health needs. Mr. Denault was excluded from playing a role with health concerns in the past. Such a situation is not in Kyra's best interests for two reasons. First, Kyra spends time with her father and he must know, and in a timely fashion, about all health concerns. Second, genetically, Kyra is connected to Mr. Denault and his family's history should be known and discussed with appropriate physicians and therapists. Ms. Baker-Warren did not act in Kyra's best interests when Mr. Denault was excluded. Mr. Denault must also be given a puffer for Kyra's use when she is with him, and any other medications which are prescribed.

[110] ***Family Supports***

[111] *Position of the Parties:* Ms. Baker-Warren states that Kyra has many family supports on the maternal side who have aided in Kyra's development. Mr. Denault states that his family has been shut out of Kyra's life because of the alienation.

[112] *Decision:* Ms. Baker-Warren has a strong family support network. Kyra has been involved with her maternal family since birth; she has a close and loving relationship with them. Kyra also has a loving relationship with Mr. Warren. Kyra has benefited from these relationships, except to the extent that these individuals have contributed to the minimization of Mr. Denault in Kyra's life.

[113] Kyra also has an extended family through her paternal relatives. Unfortunately, Kyra has no connection with them. They live in Ontario. They have had no real opportunity to meet Kyra since Kyra was a baby. Ms. Baker-Warren says she attempted visits between Kyra and her paternal grandmother after the trial began. These attempts can be described as insincere at best. If Ms. Baker-Warren wanted Kyra to connect with her paternal grandmother, she would have called or written first to ensure the grandmother was at home. Unannounced, unplanned visits are not likely to be successful, especially when the tradition of Mr. Denault's mother travelling to Florida in the winter months was known. Kyra will benefit from a relationship with her extended, paternal family.

[114] **Time Availability**

[115] *Position of the Parties:* Each party states that he/she will have time to commit to parenting Kyra.

[116] *Decision:* Neither party has definite plans for employment in the Ottawa-Gatineau area. Ms. Baker-Warren hopes to work from her home, if she is permitted to move to Quebec. Mr. Denault hopes to be self-employed. I find both parties will commit time to ensure that they are available to Kyra when Kyra is in their respective care, although both will likely have to engage some child care, either through family, friends, or an after-school program.

[117] ***Kyra's Views, if Appropriate***

[118] Kyra's views are not determinative of the issue. She is young. She has been the subject of alienation. She is not equipped to state what is in her best interests. I do not consider her views to be a significant factor in the parenting decision which I make.

[119] ***Summary of the Issue "In Whose Primary Care Should Kyra Be Placed?"***

[120] It is in Kyra's best interests to have healthy relationships with both parents. Currently, this is compromised by Ms. Baker-Warren's manipulation and alienation, and by Mr. Denault's impulsive and reactive personality. Both flaws pose risks to Kyra.

[121] Despite these significant limitations, the court must, nonetheless, determine the type of parenting plan in Kyra's best interests. Ms. Baker-Warren has been the primary care parent. Mr. Denault does not have the parenting experience that Ms. Baker-Warren has. It is, therefore, in Kyra's best interests to be placed in the shared and parallel parenting of the parties, but in the primary care of Ms. Baker-Warren. This finding is contingent on the parties fully cooperating with the therapies and making the necessary changes in his/her conduct. If the parties refuse or are unable to make the necessary changes, then this parenting plan will likely have to be revisited.

[122] The shared parenting plan is necessary so that Kyra benefits from both of her parents. The parallel parenting regime will permit the establishment of a meaningful and balanced relationship between Kyra and each of her parents. The shared parenting plan will ensure that Kyra's material, emotional, educational, and social welfare needs are met.

[123] The plan will be tailored to meet the needs of Kyra - not the needs of Ms. Baker-Warren or Mr. Denault. Kyra will spend significant block time with each party. Weekly transitions between households will be reduced. The plan will also decrease conflict by providing the parties with few opportunities to make independent scheduling choices.

[124] The parallel parenting regime does not follow Dr. Landry's recommendations on a verbatim basis. Dr. Landry's expert opinion was exceedingly helpful, albeit dated by the time the trial concluded. I have veered from the recommendations based upon the totality of the evidence and to ensure the best interests of Kyra are met. The court cannot delegate its judicial role and responsibilities to health care professionals in any event.

[125] *What parenting schedule is in the best interests of Kyra?*

[126] The parallel parenting order, and new schedule, will commence Thursday, May 21, 2009. Until that time, the schedule stated in the most recent interim order will be followed by the parties. The parallel parenting order which is in the best interests of Kyra is as follows:

a) Parallel Parenting: Laura Baker-Warren and Mark Denault will share custody of Kyra Lynn Baker, born August 4, 2000, in a parallel parenting regime.

b) Regular Schedule:

(i) *Two Week Rotation:* The shared parenting will follow this two-week rotating schedule except during special occasions and holidays which will follow a separate parenting schedule. During week one, Mark Denault will have Kyra in his care from Saturday at 12:00 noon until Tuesday at 9:00 a.m. commencing Saturday, May 23, 2009, and continuing every second week thereafter. During week two, Mark Denault will have Kyra in his care from Sunday at 12:00 noon until Tuesday at 9:00 a.m. commencing May 31, 2009, and continuing every second week thereafter. At all other times, Laura Baker-Warren will have Kyra in her care.

(ii) *Transportation and Transitions:* Mark Denault, or a third party on his behalf, will be responsible for transporting Kyra to and from school when Kyra is in his care. Laura Baker-Warren, or a third party on her behalf, will be responsible for transporting Kyra to and from the residence of Mark Denault for parenting exchanges. Neither Laura Baker-Warren, nor any third party who transports Kyra in her stead, is to leave the vehicle when he/she arrives at the residence of Mark Denault. Mark Denault is not to enter the vehicle. The person transporting Kyra will wait until Kyra enters the residence of Mark Denault before leaving. There will be no communication between Mark Denault and the party transporting Kyra to and from his residence. The exchanges will not be filmed or recorded. Kyra will carry any clothes or book bags from the vehicle during the exchanges. Laura Baker-Warren will not supply food items for Kyra's residential time with Mark Denault. Laura Baker-Warren will supply clothing for Kyra's residential time with Mark Denault.

c) *Special Occasions and Holidays*: The regular schedule will be suspended for special occasions and holidays, and the following parenting schedule will be followed in its stead:

(i) *Transportation and Transitions*: Mark Denault, or a third party on his behalf, will be responsible for transporting Kyra to and from school when Kyra is in his care. Laura Baker-Warren, or a third party on her behalf, will be responsible for transporting Kyra to and from the residence of Mark Denault for all special occasions and holiday parenting time in the event there is no school. Neither Laura Baker-Warren, nor any third party who transports Kyra in her stead, is to leave the vehicle when he/ she arrives at the residence of Mark Denault. Mark Denault will not enter the vehicle. The person transporting Kyra will wait until Kyra enters the residence of Mark Denault before leaving. There will be no communication between Mark Denault and the party transporting Kyra to and from his residence. The exchanges will not be filmed or recorded. Kyra will carry any clothes or other belongings from the vehicle during the exchanges. Laura Baker-Warren will not supply food items for Kyra's residential time with Mark Denault. Laura Baker-Warren will supply clothing for Kyra's residential time with Mark Denault.

(ii) *Spring Break*: Spring break is deemed to cover a nine day period from 9:00 a.m. on Friday on the last day of school until Sunday at noon before school recommences. Mark Denault will have Kyra in his care for the spring break of every even numbered year. Laura Baker-Warren will have Kyra in her care for the spring break of every odd numbered year. The parties will revert back to the regular parenting schedule at the conclusion of the spring break holiday.

(iii) *Easter*: Easter is deemed to cover the period from Good Friday at 9 a.m. until Easter Monday at 12:00 noon. Mr. Denault will have Kyra in his care on the Easter weekend of every odd numbered year. Laura Baker-Warren will have Kyra in her care on the Easter weekend of every even numbered year. The parties will revert back to the regular parenting schedule at the conclusion of the Easter Holiday.

(iv) *Long May Weekend:* The long May weekend is deemed to cover the period from 9:00 a.m. the Friday before the long May weekend until Monday at 12:00 noon. Mark Denault will have Kyra in his care for the long May weekend of every even numbered year. Laura Baker-Warren will have Kyra in her care for the long May weekend of every odd numbered year. The parties will revert back to the regular schedule at the conclusion of the long May weekend.

(v) *Summer Vacation:* Commencing in 2010, Mark Denault will have Kyra in his exclusive care every July 19th to July 29th of every year for summer vacation. Commencing in 2010, Laura Baker-Warren will have Kyra in her exclusive care every August 5th to 15th of every year for summer vacation. The parties will revert back to the regular schedule at the conclusion of his/her 10 day summer vacation. The summer vacations will not be exercised until 2010 to allow for the completion of the therapeutic interventions.

(vi) *Kyra's Birthday:* If one party is not scheduled to have Kyra in his/her care for a portion of August 4th, that party will have Kyra in his/her care from 3:00 p.m. until 6:00 p.m. on August 4th.

(vii) *Labour Day:* The Labour Day weekend is deemed to cover the period from Friday at 9:00 a.m. before the Labour Day weekend until Monday at 12:00 noon. Mark Denault will have Kyra in his care on the Labour Day weekend of every odd numbered year. Laura Baker-Warren will have Kyra in her care on the Labour Day weekend of every even numbered year. The parties will revert back to the regular schedule at the conclusion of the Labour Day weekend.

(viii) *Thanksgiving:* Thanksgiving is deemed to cover the period from Friday at 9:00 a.m. before the Thanksgiving weekend until Monday at 12:00 noon. Mark Denault will have Kyra in his care on the Thanksgiving weekend of every even numbered year. Laura Baker-Warren will have Kyra in her care on the Thanksgiving weekend of every odd numbered year. The parties will revert back to the regular schedule at the conclusion of the Thanksgiving holiday.

(ix) *Halloween:* Halloween is deemed to be from 2:00 p.m. until 8:00 p.m. on every October 31. Mark Denault will have Kyra in his care for Halloween of every odd numbered year. Laura Baker-Warren will have Kyra in her care for Halloween of every even numbered year. The parties will revert back to the regular schedule at the conclusion of Halloween.

(x) *Christmas:* Christmas is deemed to cover the period from 9:00 a.m. on December 23rd until 12:00 noon on January 3rd. Laura Baker-Warren will have Kyra in her care from 9:00 a.m. on December 23rd until 3:00 p.m. on December 25th; and from 3:00 p.m. on December 28th until 9:00 a.m. on December 31st. Mark Denault will have Kyra in his care from December 25th at 3:00 p.m. until December 28 at 3:00 p.m.; and from December 31st at 9:00 a.m. until January 3 at 12:00 noon at which time the parties will revert back to the regular schedule.

(xi) *Father's Day/Mother's Day:* In addition to the regular schedule, Laura Baker-Warren will have Kyra in her care from 10:00 a.m. until 5:00 p.m. of every Mother's Day. In addition to the regular schedule, Mark Denault will have Kyra in his care from 10:00 a.m. until 5:00 p.m. of every Father's Day.

(xii) *Ad Hoc Special Family Events:* The parties will use their best efforts to accommodate any special family reunion, wedding, or event, which is scheduled at a time when Kyra is in the care of the other party. Written notice will be provided, well in advance of the scheduled event, to determine if the regular schedule can be altered to permit Kyra's attendance at the special function. The parties will be as flexible as possible in such circumstances, however, no change in the schedule will occur without the express, written authorization of the party in whose care Kyra is scheduled to be at the time of the special family function. If accommodation cannot be made, the party refusing must provide the other party with written reasons for the refusal. Make-up time will be provided to the party who agrees to rearrange the schedule as he/she requests.

d) *Make Up Parenting Time:* On the occasions when Kyra is too ill to be moved between households, make-up time will be supplied to the other parent at times to be decided by the parent who lost the parenting time with Kyra.

e) *Travel:* Each party will notify the other of travel plans which require Kyra to spend an overnight 150 kilometres, or more, from the residence of that parent. Notice will include dates of travel, location, address, and telephone numbers where Kyra can be reached and any applicable flight details. Neither party will be permitted to travel with Kyra outside of Canada without the prior written consent of the other party or order from a court of competent jurisdiction. All passport documentation will require the signatures of both parties.

f) *Telephone Contact with Kyra:* If a party does not have physical contact with Kyra on a given day, telephone access will be arranged such that Kyra will contact the other party at 7:00 p.m., unless travel plans make such contact impossible. The telephone call will not last longer than 15 minutes.

g) *Decision-Making Authority:*

(i) *Routine Decisions:* Each party will have routine, day-to-day decision making authority and control when Kyra is in his/her physical care, including any child-care decisions. Each party will notify the other by email of the following routine decisions made while Kyle is in his/her care: particulars of minor illnesses and any medication that has been administered; particulars of assignments for homework, projects, and tests; and particulars relating to significant social welfare matters.

(ii) *Emergency Decisions:* In the event of a medical emergency, the party having physical care of Kyra will be entitled to make decisions which are necessary to alleviate the emergency, and will notify the other party as soon as possible and practical as to the nature of the emergency and as to the nature of the emergency treatment.

(iii) *Educational Decisions:*

a) *Major Decisions*: Laura Baker-Warren will determine major educational decisions on Kyra's behalf, including the choice of school and educational program.

b) *Meetings, Concerts, and Programs*: Both parties are entitled to attend parent teacher meetings and major school events such as concerts and programs. In the event that tickets are limited to such performances, each parent will have priority for tickets. The use of any additional tickets will be determined by the parent who has residential care of Kyra on the day the special event occurs.

c) *Schedule will Determine Parental Contact with School*: Each parent will refrain from making contact with, or attending at the school during the time that Kyra is in the care of the other of them, except and excluding times when major school events such as parent teacher meetings, concerts, and programs are scheduled. The parent who is providing the residential care for Kyra will be responsible for attending to Kyra should she become ill at school. The school will be provided with the schedule and contact information for each party for such purposes.

d) *Educational Assistance*: Each party is responsible for assisting with homework and any special needs training related to Kyra while Kyra is in his/her residential care. Each parent will cooperate with all professionals to learn strategies to assist Kyra with any special learning requirements.

(iv) *Medical and Dental Treatment*:

a) *Health Card and Insurance Forms*: Laura Baker-Warren will provide Mark Denault with the health card number for Kyra and particulars/forms for any health plan which covers Kyra's medical expenses.

b) *Family Physician and Dentist*: Laura Baker-Warren will select Kyra's family physician and dentist and notify Mark Denault of the contact particulars. Laura Baker-Warren will be responsible for scheduling and taking Kyra to her non-emergency check ups, except if Kyra becomes ill and requires emergency medical attention during a time Kyra is in the residential care of Mark Denault, he will be responsible for taking Kyra to the health care professional.

c) *Significant Decisions*: Laura Baker-Warren will be responsible for making significant health and dental care decisions on Kyra's behalf with the exception of matters pertaining to Kyra's therapeutic treatment, and emergency treatment.

d) *Information Sharing*: The parties will keep each other informed of all medical and dental decisions that are made and any, and all, treatment in a timely and regular fashion through email communication.

(v) *Religious Formation*: The parties may each continue with Kyra's religious formation. Each party will ensure that Kyra attends any applicable religion classes while Kyra is in his/her care. Dates for special ceremonies will be shared between the parties by email

(vi) *Extracurricular Activities*:

a) *Registration for One Organized Activity*: Mark Denault may choose and enroll Kyra in one organized, extracurricular activity per season, which can be scheduled during Kyra's residential time with Laura Baker-Warren. The party who has physical care of Kyra will be responsible for her transportation to and from the activity, and such party is the only parent entitled to attend the activity, except for special ceremonies or tournaments, in which case both parties may attend. The cost of this special activity will be equally shared between the parties. Particulars regarding this extracurricular activity, including the

scheduling, will be provided to Laura Baker-Warren by Mark Denault.

b) *Other Activities*: Both parties are free to enroll Kyra in activities which occur during his/her residential time and each will be solely responsible for any associated costs.

h) *Access To Professional Records and Information*: Each party has the right to communicate with all professionals involved with Kyra, and each has the right to obtain information and documentation respecting Kyra from all medical professionals, educators, and all social welfare professionals without the prior consent of the other party.

i) *Communication Between the Parties*: Matters relating to Kyra's health, education, religion, or general welfare will be the subject of communication between the parties. All communication will be respectful and child focussed and will be facilitated by the following:

(i) *Email Communication*: The parties will communicate through email exchanges, unless there is an emergency. All email communication will be compellable for court purposes. Each party will provide the other party with an up-to-date email address where he/she can be reached, and changes thereto on a timely basis. Each party will maintain internet access and a current email address so communication can be facilitated. Each party will review his/her email once a day, unless health or other commitments make daily access impossible.

(ii) *Telephone and Residential*: The parties will advise each other of his/her residential addresses, telephone numbers, and changes thereto on a timely basis.

j) *Communication with Kyra*: Each party will speak respectfully of the other and of his/her extended family in Kyra's presence. Each party will immediately remove Kyra from the presence of any third party who is speaking disrespectfully of the other or of his/her extended family. Kyra will not be used as a messenger between the parties. Kyra will not be provided with a copy of this decision.

k) *Therapeutic Interventions*: The parties will cooperate and participate in therapeutic interventions, and will ensure that Kyra participates, according to the following terms and conditions:

(i) *Kyra*: A child psychologist, or other professional acceptable to both parties, will treat Kyra in a therapeutic setting, individually and with each party, for the following purposes:

a) to repair, facilitate, and strengthen Kyra's healthy relationships with both parents, which will include therapy related to Kyra's false memories of Mark Denault;

b) to teach Kyra critical thinking and healthy problem solving skills so she is better able to cope with parental conflict and alienation issues; and

c) to assist Kyra in maintaining a balanced, and realistic perspective of herself and of her parents.

ii) *Laura Baker-Warren*: A psychologist, or other professional acceptable to both parties, will treat Laura Baker-Warren in a therapeutic setting, for the following purposes:

a) to teach Laura Baker-Warren skills so she can learn to critically assess her behaviours and to prevent future alienation;

b) to understand the effects that her alienating behaviours have on Kyra now, and potential future effects, and to learn skills to ensure that Kyra is not placed in the middle of the parental conflict;

c) to understand the importance of a father/daughter relationship to Kyra's well-being;

d) to obtain a more balanced and realistic perspective of parenting weaknesses with an aim to strengthen her ability as a parent;

e) to learn the importance of appropriate boundaries for Kyra and how to enforce such boundaries; and

f) to learn skills which will aid in effective communication with Mark Denault through email or otherwise.

(iii) *Mark Denault*: A psychologist, or other professional acceptable to both parties, will treat Mark Denault in a therapeutic setting, for the following purposes:

a) to facilitate, repair and strengthen Kyra's relationship with him, including parenting skills to responsibly deal with the father/dad issue;

b) to learn skills to effectively deal with anger, anxiety, and stress in a healthy fashion;

c) to learn techniques to ensure that Kyra is not placed in the middle of the parental conflict;

d) to obtain a more balanced and realistic perspective of parenting weaknesses with an aim to strengthen his ability as a parent;

e) to strengthen Mark Denault's skills in nurturing Kyra by setting and enforcing appropriate limits and to learn to deal with Kyra's negative behaviours in a productive and healthy fashion; and

f) to learn skills which will aid in effective communication with Laura Baker-Warren through email or otherwise.

(iv) *Decision and Order*: The professionals conducting the therapeutic interventions will be provided with a copy of the decision and order so that they are aware of the court's findings and the parameters of his/her therapies.

(v) *Payment:* Each party is responsible for the payment of fees associated with his/her own therapeutic sessions. Each party is responsible for 50% of the cost, after any insurance reimbursement, of Kyra's therapeutic interventions.

l) *Reviews:* Three reviews will be assigned. The parties will attend court on May 20, 2009 @ 9:45 to 10:15 to obtain details respecting the review hearings. In addition, the parties are to have details of the professionals he/she wishes to retain and confirmation of the professional's availability in respect of the therapeutic interventions. In the case of disagreement, a hearing will be scheduled to determine the issue.

m) *Kyra's Move to Gatineau:* Laura Baker-Warren will be permitted to move Kyra's permanent residence to Gatineau, Quebec, once the following conditions have been met:

a) The order and decision are translated into the french language by a certified translator; and the terms of the order and decision become an order of a Quebec court of competent jurisdiction for enforcement purposes. Proof that these conditions have been met must be supplied to this court at one of the review hearings to be scheduled; and

b) Kyra and Laura Baker-Warren have attended the therapeutic interventions as described and have made sufficient progress as will be determined by the court at a review hearing.

[127] I will remain seized of this matter pending Kyra's residential move to Gatineau, Quebec. Nothing in this order prevents Kyra from spending time in Gatineau prior to her permanent move, provided the shared parenting regime is maintained, and provided Kyra is available for the therapeutic interventions.

[128] **What is the appropriate child support order?**

[129] *Position of the Parties:* Ms. Baker-Warren is seeking to impute income to Mr. Denault, while Mr. Denault wishes to have his income stipulated to be in the \$12,000.00 to \$15,000.00 range.

[130] *Decision*: I have determined that this is an appropriate case to impute income to Mr. Denault because he is either under reporting income/over reporting expenses to Revenue Canada, or he is underemployed.

[131] Sections 19(1)(a) and (f) of the provincial *Child Support Guidelines* are applicable. These sections state:

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

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

...

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

[132] Section 19 of the *Provincial Child Support Guidelines* provides the court with the discretion to impute income in specified circumstances. The discretionary authority found in s. 19 must be exercised judicially and in accordance with rules of reasons and justice - not arbitrarily. A rational and solid evidentiary foundation, grounded in fairness and reasonableness, must be shown before a court can impute income: **Coadic v. Coadic** 2005 N.S.S.C. 291 (S.C.).

[133] Mr. Denault did not disclose all of the financial information which he was court directed to do. Therefore, the court cannot properly assess Mr. Denault's actual income. This is a factor which I have considered when determining the imputation issue. When determining the amount of income to be imputed, however, I am not restricted to actual income earned, rather I must review Mr. Denault's income earning capacity having regard to his age, health, education, skills, and employment history, work availability, and all other relevant matters impacting on Mr. Denault's income earning capacity: **Coadic v. Coadic**, *supra*, and **Hansen v. Hansen**, [1999] B.C.J. No. 2532 (S.C.), and **Saunders-Roberts v. Roberts** 2002 NWTSC 11 (S.C.).

[134] I find that Ms. Baker-Warren has met the burden of proof which is upon her. I find that on a balance of probabilities, Mark Denault has an income earning capacity of \$20,000.00 per annum. Mr. Denault's attempts at self-employment have not been financially remunerative if one is to accept that his net, business income is restricted to what was reported on his tax assessments. If such represents all that Mr. Denault can earn as a self-employed contractor, he must rethink his occupation. Kyra cannot be expected to shoulder the burden of Mr. Denault's improvident, employment decisions.

[135] Mr. Denault is a healthy man with years of experience in the work force as a contractor, self-employed business person, and at various times an employee working in restaurants and at a call center. He is knowledgeable, has some post secondary education, possesses technical skills, and has much work place experience. An income based upon a salary of \$10 to \$15 an hour, thirty-two hours a week is something within the capacity of Mr. Denault. This represents his income earning capacity.

[136] Mr. Denault's request to retroactively vary the interim child support order is denied. Child support will be paid at a rate of \$161 per month, commencing May 15, 2009 and continuing on the 15th day of every month thereafter, until further order from a court of competent jurisdiction. The usual income disclosure rules will also apply and form part of the court order.

[137] The court must also comment on Mr. Denault's decision to stop paying child support in the face of the access difficulties. As noted previously, unilateral conduct is not acceptable. Court orders must be followed. Maintenance and access are not related. The unilateral severance of one does not provide permission to respond in kind. All arrears are to be brought up-to-date at a rate of \$100.00 per month.

[138] **Conclusion**

[139] The following relief is hereby granted:

- a) A shared parenting order based upon a parallel parenting scheme according to the schedule, and subject to the conditions, including extensive therapeutic interventions, as stated in this decision, and which regime will become effective May 21, 2009;

- b) A child support order in the amount of \$161 per month, together with the payment of all maintenance arrears at a rate of \$100 per month; and
- c) A review hearing to confirm compliance and progress with the therapeutic interventions.

[140] If either party wishes to be heard on the issue of costs, written submissions are to be provided by June 3rd and any response by June 16th. The court will draft the order and forward to Mr. Denault and counsel under separate cover.

Forgeron, J.