

No. 1201-56381 SFHD-13546

IN THE SUPREME COURT OF NOVA  
SCOTIA FAMILY DIVISION  
Citation: *McGrath v. McGrath*, 2002 NSSF 49

BETWEEN:

KIRK B. MCGRATH

APPLICANT

-AND-

NICOLE NADINE MCGRATH

RESPONDENT

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DECISION

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HEARD: BY THE HONOURABLE JUSTICE LESLIE J. DELLAPINNA ON  
OCTOBER 23, 28 and NOVEMBER 7, 2002

DECISION: NOVEMBER 19, 2002

COUNSEL: G. DOUGLAS SEALY- APPLICANT

DEBORAH GILLIS- RESPONDENT

**DELLAPINNA, J.**

[1] This is an interim application by Mr. Kirk McGrath pursuant to the *Divorce Act* for an order for interim joint custody and interim access to the parties' two children and for an order pursuant to Nova Scotia Civil Procedure Rule 22 requiring the Respondent, Ms. Nadine McGrath, to undergo a psychiatric assessment.

[2] Ms. McGrath is opposed a psychiatric examination and although she states she is not opposed to an order for interim access, it is her position that any access by the Applicant to the children should be supervised and proceed slowly and more

particularly, at a pace that she would determine based on what she believes to be in the children's best interest.

## **BACKGROUND**

[3] Mr. and Ms. McGrath were married in Moncton, New Brunswick on September 11, 1982. They have two children namely Jessie Nadine McGrath born [...], 1986 and Josh Bernard McGrath born [...], 1991. Mr. McGrath was actively involved in the lives of the children from the times of their birth up to the date of the parties' separation. His work commitments, particularly since 1991 often required him to work long hours. However, his hours of work were not dramatically different from that of many working parents. He stated in one of his affidavits;

"I still made it a priority to be available for children's events such as Christmas concerts and to coach basketball practices which usually started at 4:30 or 5:00 p.m.. Ninety-five percent of my weekends were at home with my family."

[4] According to Mr. McGrath the parties' marriage started to breakdown approximately one year prior to their physical separation on December 15, 2000. According to Ms. McGrath the problems started in or about 1998 when, according to her, Mr. McGrath became anxious. She described him at that time as becoming "more hostile and moody and argumentative" with her.

[5] Several months before Mr. McGrath left the matrimonial home, Ms. McGrath moved him into an apartment in the lower level of the matrimonial home. Their communication which had deteriorated prior to then did not improve and in December, 2000 Mr. McGrath made the decision to move from the matrimonial home. Even then, he remained hopeful that the parties would reconcile.

[6] Since his departure Mr. McGrath has had almost no access to their children. According to Ms. McGrath, the children do not want to spend time with him. She denies influencing the children's decision not to spend time with their father. To the contrary, she states that she has urged the children to see their father and re-establish a relationship with him. In spite of this, they remain resistant to doing so. She attributes the children's position to the Applicant's emotional detachment from the children and as well to his "moodiness and hostile demeanor" and his "abusive harassing behavior". Other than these general descriptions of Mr. McGrath's behavior, no details were provided to the Court that would assist the Court in assessing whether Mr. McGrath was in fact moody,

hostile, abusive or harassing.

[7] Initially Mr. McGrath did not pressure Ms. McGrath in order to see the children. Instead, he sought individual counselling for advice and he attempted to reconnect with the children through telephone calls, emails and notes as well as discussions with Ms. McGrath. When those efforts failed, he sought legal advice. Only when the parties' lawyers were unable to make any progress did Mr. McGrath resort to Court proceedings.

[8] Mr. McGrath first applied to the Court in January 2002. Among other things, he sought an order for interim joint custody, interim access and an order appointing an assessor. A hearing was not necessary. The parties were able to reach an agreement on an interim order which was issued on February 15, 2002. Included in the order were the following provisions:

1. The issue of custody (whether joint or otherwise) of the children, Jessica Nadine McGrath, born [...], 1986, and Josh Bernard McGrath, born [...], 1991, shall be dealt with upon further application of the parties. In the interim, the primary residence of the children shall remain with the mother, Nichole Nadine McGrath, and the father's access shall be subject to the recommendations of the assessor, Dr. Carolyn A. Humphreys (if agreed by the parties) or further order of this Court.

2. Dr. Carolyn A. Humphreys is hereby appointed an "assessor" with the view of determining the most appropriate manner to re-establish the relationships between the father and the children. It is ordered that both parents cooperate fully with the assessor. Without limiting the generality of this, both parents shall attend such meetings as required by the assessor, shall allow the assessor to have open communication with the counsellors employed by the respective parents and shall cooperate fully with regard to any further assessments required of them by Dr. Humphreys.

3. With the view of determining the most appropriate manner to re-establish the relationships between the children and their father, both parties shall continue with their individual counselling and their respective counsellors are ordered to share with Dr. Humphreys any insights which either or (sic) them have with regard to the re-establishment of these relationships.

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10. This matter shall be adjourned to a docket date which, subject to availability, shall occur on or about March 28, 2002. Dr. Humphreys shall provide to counsel for the respective parties, one week prior to the adjourned date, an interim report detailing her initial findings with regard to the

assessment and, without limiting the generality of the foregoing, commenting upon the cooperation of each of the parties with regard to the assessment. The status of custody and access of and to the children shall be reviewed at the adjourned date as shall such further matters as may be required by either of the parties, with the proviso that each party shall provide notice to the other and to the Court, two weeks prior to the adjourned date, or any other matters to be dealt with at the adjourned date."

[9] Dr. Humphreys is a psychologist employed in private practice in Halifax, Nova Scotia. She obtained a Bachelor of Arts degree, majoring in psychology, from the University of Toronto in 1970, a Masters of Education degree from the University of Alberta specializing in developmental psychology in 1973 and a PhD. from the University of Toronto in 1980, specializing in counselling psychology. She has been recognized by the Court as an expert on many occasions and is a highly respected member of her profession. Presumably those qualifications were considered by the parties before they approved of her as a court-appointed assessor.

[10] As contemplated by clause 10 of the Order, a review hearing date was scheduled for April 4, 2002. Between February 15 and April 4, Dr. Carolyn Humphreys met with both children individually (Jessie twice) as well as both parties individually. Mr. McGrath continued to meet with his own therapist and Ms. McGrath met with a Reverend Hall who was providing her with therapy. Reverend Hull is an ordained minister through Victory Churches International and is registered with the Province of Nova Scotia. She has a diploma in theology from the A.S.K. Bible Training Centre in Lower Sackville, Nova Scotia. Although she apparently has some experience in individual and family counselling, she has no training in psychology and was not recognized by the Court as an expert.

[11] As required by the Court order, Dr. Humphreys provided an interim report dated March 26, 2002 which contained the following conclusion:

In conclusion, I am of the opinion that it is beneficial psychologically and emotionally for Jessie and Josh to have a relationship with their father. I believe that the restoration of this relationship needs to happen as soon as possible. If not, there is a real danger of the children and their father becoming alienated from each other. Such alienation is likely to be emotionally and psychologically harmful to these children.

[12] Her report also contained a number of recommendations intended to gradually reintroduce the children to their father, hear their concerns and develop a plan for future access.

[13] By the April 4, 2002 review hearing, the parties had reached agreement on the wording of a second interim consent which had the effect of continuing the terms of the February 15, 2002 order. The second order, as it related to the children, contained provisions similar to its predecessor and included the following provisions:

4. As a first step in re-establishing the relationship between the father and his children, the parties shall meet together with Dr. Humphreys (who shall assume the role of a family therapist for this purpose) to focus on the children's needs and to develop a plan for access.

5. The mother shall continue to meet with her counsellor, Reverend Barbara Hull, for support in dealing with her anxiety about the children's relationship with their father and to assist her in accepting their need for such a relationship.

6. The father shall continue to meet with his counsellor, Donna Curtis, for support in dealing with the stress of his lack of contact with his children. A letter is to be provided by Donna Curtis confirming this involvement.

7. The children, Jessie and Josh, shall have occasional meetings with a counsellor during this process (either Dr. Humphreys or Reverend Hull as children's counsellor) to monitor their emotional well-being. At a time to be determined by Dr. Humphreys, in consultation with Reverend Hull, the father shall write letters to each of the children with those letters to be reviewed by the family therapist and to be read in the presence of the children's counsellor.

8. Following this, if recommended by Dr. Humphreys in consultation with Reverend Hull, an initial access visit may take place between the father and the children with the children's counsellor and Dr. Humphreys present.

9. A report shall be provided to the Court and to counsel for both parties by Dr. Humphreys on or before June 3, 2002. This report shall outline progress to date and recommend further steps in re-establishing the relationship between the father and the children.

[14] By the wording of this order, the parties agreed that Dr. Humphreys' role would be extended so that she was not only a court-appointed assessor but also would function in the role of a family therapist for the purpose of re-establishing contact between Mr. McGrath and the children. A further review hearing was scheduled for June 10, 2002.

[15] Between April 4 and June 10, little progress was made to reconnect Mr. McGrath with the children. Dr. Humphreys met with the parties on just two occasions. She provided a second report dated June 3, 2002 and in the second

paragraph of her report stated:

There have been fewer sessions than anticipated, as Nadine initially informed me that she would not participate in the sessions. However, she has since attended both sessions and has brought issues to discuss to both sessions.

[16] She went on to say:

It is my plan to focus, in the next session, on the issue of developing the steps for the children's reintroduction to their father. I anticipate that three sessions will be sufficient to develop such a plan and to start implementing it.

[17] She concluded her report by stating:

In the two joint sessions, I have seen no behavior by Kirk, or described by Nadine about Kirk, that would suggest that his behavior would in any way be harmful or hurtful to the children... I am hopeful that Nadine will support her children's relationship with their father, such that a plan for reestablishing their relationship can be developed. Her support is critical.

[18] By the June 10, 2002 review hearing the parties had again agreed on the wording of a further interim order. The wording of that order was a continuation of the wording of the April 10 order. Yet another review hearing was scheduled for July 29, 2002.

[19] A third report was provided by Dr. Humphreys dated July 18, 2002. In that report, Dr. Humphreys confirmed her meetings with the parties as well as her conversations with Mr. McGrath's counsellor and Ms. McGrath's counsellor. She also reported that the process of reuniting Mr. McGrath with the children was at a critical stage. She recommended visits between Mr. McGrath and the children to take place at weekly intervals during which Ms. McGrath as well as her counsellor, Reverend Hull, would be present. Those were terms that were negotiated with Ms. McGrath. Dr. Humphreys again stated that she was of the opinion that Mr. McGrath posed no emotional, psychological or physical risk to the children. In addition, she stated:

To this date, the progress although positive, has been quite slow, primarily because Nadine has had frequent changes of mind, forgets some details of conversations in which issues already have been addressed, and adds "new" requirements. At this point, I believe all her concerns have been thoroughly addressed. As well, Kirk has frequently modified his position or requests to accommodate Nadine's objections or suggestions. Nadine now must recognize

that the process needs to move forward without delay. She has certainly been positive and supportive in both the reading of the letters and initiating the first visit, and this support is vital to the process.

However, I believe it is important to put a time line on this process. Full access between Kirk and his children should be in place by the end of September, 2002. This timeline is reasonable given the ages of the children and the history of a positive relationship between Kirk and his children.

[20] On July 19, 2002 more than a year and a half after leaving the matrimonial home, Mr. McGrath finally got to meet with the children, albeit in the company of Ms. McGrath and Reverend Hull. The meeting took place in a restaurant and lasted for approximately one half hour.

[21] At the July 29 review hearing, a further review date was scheduled for September 16, 2002 as well as a hearing date of October 23 in the event that the parties were unable to reach agreement. After the July 29 hearing date, Mr. McGrath saw the children on three additional occasions all in the company of Ms. McGrath and Reverend Hull and all of which lasted for approximately one half hour. Since August 30, 2002 Mr. McGrath has not seen either of the children.

[22] At the September 16 review hearing, the Court was advised that the parties had reached an impasse. They could not agree on how to proceed. Evidence was therefore heard commencing on October 23.

[23] Dr. Humphreys prepared a fourth report dated September 6, 2002. In this report, she acknowledged that few of the steps outlined in her July 18 report were followed. She stated also that there was no likelihood of full access between Mr. McGrath and the children being established by the end of September and said:

This is because Nadine McGrath has taken it upon herself to direct and control every aspect of this process.

[24] She went on to say:

Although I have had significant concerns about Nadine's emotional and psychological functioning throughout my involvement with her, I have been working from a framework of building trust and cooperation with her and encouraging her to focus on the children's needs, thereby gaining her support with the proposed process. I have also been attempting to prevent any further emotional stress for the children, which comes from their exposure to Nadine's high anxiety. Thus, in my reports to date, I have identified some difficulty with

the process but have understated how extremely difficult and concerning Nadine's behaviour has been. My concern about her behaviour has continued and in fact has increased."

[25] Dr. Humphreys advised in her report how Ms. McGrath withdrew from the sessions with Dr. Humphreys and Mr. McGrath and how she tried to dictate how Mr. McGrath's sessions with the children would take place. Dr. Humphreys also stated that it was clear to her that Ms. McGrath was discussing every aspect of the divorce proceedings including the proceedings relating to access, directly with the children although the information that she provided to the children appeared to have been inaccurate. She states in the second page of her report:

There is no doubt that Nadine is instilling fear in her children about their father. Her fear is clearly irrational and appears to be based on a belief that she is being cruelly victimized and must protect herself at all costs. There are strong elements of paranoia in her fear. The children are living with this daily, with no opportunity to get a different perspective. Obviously, they would be reluctant to do anything other than what their mother decides regarding contact with their father. They have little choice but to totally adopt her views. Even if they wanted to disagree, it is my belief that the emotional distress she would show in response to any deviation from her beliefs or plans would quickly persuade the children not to disagree. I have observed Nadine's intense emotional distress and the escalation of her anger and anxiety on several occasions when her ability to control the process was being threatened, and it is likely the children would want to avoid creating a situation where their mother is upset.

[26] Dr. Humphreys opined that Ms. McGrath's behavior shows many characteristics of "parental alienation syndrome".

[27] As for Mr. McGrath's involvement, Dr. Humphreys stated that according to Reverend Hull who was present during all four access visits, Mr. McGrath acted appropriately at all meetings with the children and in Dr. Humphreys' opinion Mr. McGrath continued to pose no emotional, psychological or physical risk to the children.

[28] In her reports and during her testimony, Dr. Humphreys did not and apparently could not identify any behavior on the part of Mr. McGrath that one could reasonably describe as abusive or harassing in nature. In her September 6 report, however, she said that Ms. McGrath is

..demonstrating ideation that suggests she feels she is being persecuted. She cannot tolerate any perspective other than hers and sees any disagreement as

harassment or abuse. She needs to control every process and if she does not have the control, she takes it. Unfortunately, with all of this behaviour she is holding her children hostage, since she uses their well being as the explanation for her actions. She essentially threatens Kirk that his future relationship with the children will be jeopardized if he does not do everything according to her plan.

It is my opinion that Nadine is showing significant mental health problems that require further assessment and treatment. The behaviours described above are suggestive of a mental illness. I am recommending that Nadine have a full psychiatric assessment to determine her mental health needs and appropriate treatment. This is necessary not only for her own health but also because of the impact her behaviour is having on her children.

Obviously, the process outlined in my letter cannot be followed, because of Nadine's lack of cooperation. I do believe that the children need an opportunity to meet with their father without their mother present. I have discussed this with Kirk and he is prepared to do this, even knowing that the children may express a great deal of anger toward him and blame him for many things.

[29] At the conclusion of her report, Dr. Humphreys provided her recommendations. In addition to a psychiatric assessment of Ms. McGrath she recommended that the children have meetings with Mr. McGrath with Dr. Humphreys present. During these sessions, the children would have an opportunity to express their anxieties, fears and worries directly to their father, and he would be allowed the opportunity to respond.

[30] The sessions would take place weekly. If those sessions proceed successfully then further weekly access visits between Mr. McGrath and the children in a public setting, involving an activity, could then be initiated. Those sessions would be supervised either by Dr. Humphreys or by another qualified supervisor as recommended by Dr. Humphreys. If they are unsuccessful, Dr. Humphreys would reassess the children to determine the reason for the lack of success.

[31] Dr. Humphreys also recommended that in the event that Ms. McGrath does not comply with these recommendations (assuming they are accepted by the Court) that the Court give consideration to placing the children in the custody of Mr. McGrath because of the increased risk of emotional harm to the children should they remain in their mother's care. Mr. McGrath accepts Dr. Humphreys' recommendations.

[32] Ms. McGrath believes that she does not require any psychiatric counselling

and is opposed to an order requiring a psychiatric assessment. She believes that it is Mr. McGrath who requires counselling.

[33] She proposes that access between Mr. McGrath and the children be supervised by Reverend Hull and “proceed gradually with the children’s emotional and physical well-being as the primary goal as they re-establish contact with the Applicant”. She suggests that Reverend Hull act as both a mediator and a monitor. She does not provide any time table but does ask that no access occur for at least one month so as to give the children a break. She further proposes that the reports of Dr. Humphreys be sealed by the Court and that Dr. Humphreys have no further involvement in this matter.

[34] Ms. McGrath’s counsel argued that the Court should not accept the recommendations of Dr. Humphreys for a number of reasons. It was argued that Dr. Humphreys was not or appeared not to be impartial, that her recommendations go beyond the scope of her mandate and that her recommendations conflict with the wishes of the children and therefore are not in their best interests. In support of her first argument, it was pointed out that before Dr. Humphreys was approved as an assessor by Court order, she was contacted by Mr. McGrath’s counsel who asked her if she would consider being the guardian ad litem for the children. This fact was never hidden from Ms. McGrath and her previous counsel. It was also argued that Dr. Humphreys formed an infinity to Mr. McGrath during the course of her involvement with the family and this was somehow demonstrated by her acceptance of letters and emails from Mr. McGrath and by the fact that her reports were generally addressed to Mr. McGrath’s counsel as opposed to the Court.

[35] While Dr. Humphreys’ reports should perhaps have been addressed initially to the Court and copied to the parties, no complaint had been made in that regard by Ms. McGrath’s previous counsel. Also, Dr. Humphreys stated during cross examination that it was common for parties in the position of Mr. and Ms. McGrath to express their thoughts to the assessor during the course of the assessment process. It is part of the assessor’s job to decide what to do with that information. During her cross examination Dr. Humphreys emphasized that in all cases like this, her recommendation is based on what she believes is in the children’s best interests. Her opinion is not shaped by who contacts her first or who pays her account.

[36] I was not in any way persuaded that Dr. Humphreys was anything but impartial and she presented her honest, expert opinion. Ultimately, it is for the Court to decide how much weight to give to that opinion.

[37] The interim orders also gave Dr. Humphreys a broad mandate to offer her opinion as to how to most appropriately re-establish the relationships between Mr. McGrath and the children, including her opinion on further assessments that may be required of the parties. It is my view that Dr. Humphreys' recommendations did not go beyond the scope of her that authority.

[38] Section 16 of the *Divorce Act* provides as follows:

**Order for custody** 16. (1) A court of competent jurisdiction may, on application by either or both spouses or by any other person, make an order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage.

**Interim order for custody** (2) Where an application is made under subsection (1), the court may, on application by either or both spouses or by any other person, make an interim order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage pending determination of the application under subsection (1).

**Application by other person** (3) A person, other than a spouse, may not make an application under subsection (1) or (2) without leave of the court.

**Joint custody or access** (4) The court may make an order under this section granting custody of, or access to, any or all children of the marriage to any one or more persons.

**Access** (5) Unless the court orders otherwise, a spouse who is granted access to a child of the marriage has the right to make inquiries, and to be given information, as to the health, education and welfare of the child.

**Terms and conditions** (6) The court may make an order under this section for a definite or indefinite period or until the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just.

**Order respecting change of residence** (7) Without limiting the generality of subsection (6), the court may include in an order under this section a term requiring any person who has custody of a child of the marriage and who intends to change the place of residence of that child to notify, at least thirty days before the change or within such other period before the change as the court may specify, any person who is granted access to that child of the change, the time at which the change will be made and the new place of residence of the child.

**Factors** (8) In making an order under this section, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.

**Past conduct** (9) In making an order under this section, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of a child.

**Maximum contact** (10) In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

[39] In determining this application, the Court is to be guided only by the best interests of the children. Counsel for Ms. McGrath referred to the Supreme Court of Canada decision, *Young v. Young*, [1993] 4 S.C.R. 3. In *Young (supra)* at paragraph 17, the Court referred to the “best interest” test in the context of Section 16:

... the test is broad. Parliament has recognized that the variety of circumstances which may arise in disputes over custody and access is so diverse that predetermined rules, designed to resolve certain types of disputes in advance, may not be useful. Rather, it has been left to the judge to decide what is in the “best interests of the child”, by reference to the “condition, means, needs and other circumstances” of the child. Nevertheless, the judicial task is not one of pure discretion. By embodying the “best interests” test in legislation and by setting out general factors to be considered, Parliament has established a legal test, albeit a flexible one. Like all legal tests, it is to be applied according to the evidence in the case, viewed objectively. There is no room for the judge’s personal predilections and prejudices. The judge’s duty is to apply the law. He or she must not do what he or she wants to do but what he or she ought to do.”

[40] With respect to Section 16 (10), the Supreme Court stated at paragraph 18:

... Section 16(10) provides that in making an order, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child”. This is significant. It stands as the only specific factor which Parliament has seen fit to single out as being something which the judge must consider. By mentioning this factor, Parliament has expressed its opinion that contact with each parent is valuable, and that the judge should ensure that this contact is maximized. The modifying phrase “as is consistent with the best interests of the child” means that the goal of maximum contact of each parent with the child is not absolute.

To the extent that contact conflicts with the best interests of the child, it may be restricted, but *only* to that extent.

[41] Then, at paragraph 24, the Court stated:

AI conclude that ultimate criterion for determining limits on access to a child is the best interests of the child. The custodial parent has no “right” to limit access. The judge must consider all factors relevant to determining what is in the child’s best interests; a factor which must be considered in all cases is Parliament’s view that contact with each parent is to be maximized to the extent that is compatible with the best interests of the child. The risk of harm to the child, while not the ultimate legal test, may also be a factor to be considered. This is particularly so where the issue is the quality of access - what the access parent may say or do with the child. In such cases, it will generally be relevant to consider whether the conduct in question poses a risk of harm to the child which outweighs the benefits of a free and open relationship which permits the child to know the access parent as he or she is. It goes without saying that, as for any other legal test, the judge, in determining what is in the best interests of the child, must act not on his or her personal views, but on the evidence.”

[42] It has been suggested to me on behalf of Ms. McGrath that the Court should respect the views of the children and to “force” them to spend time with their father would be contrary to their best wishes.

[43] The wishes of the children should not to be ignored. Everyone agrees that both Jessie (who is now 16) and Josh (11) are resisting spending more time with their father and have stated that they have no desire, at this time, to re-establish relationships with him. The weight to be given the wishes of the children is an issue to be considered in every case. This is particularly so with a child the age of Jessie. The reasons for the views expressed by the children or how the children arrived at their opinions, must be considered.

[44] I do not believe that the views expressed by Jessie and Josh are necessarily an indication of what they truly want. I do not accept that the views that they have expressed to Dr. Humphreys are opinions that they formed independently of their mother. Prior to the parties’ separation, the children had good relationships with their father. Their relationships deteriorated markedly after Mr. McGrath moved from the matrimonial home. Ms. McGrath has on numerous occasions thwarted Dr. Humphreys’ attempts to implement an access schedule and to keep it going. During the few access visits Mr. McGrath has had with the children, Ms. McGrath attended along with Reverend Hull. Although Reverend Hull stated in her letters (which form part of Dr. Humphreys’ file materials) that the children wanted their

mother present for support, her attendance at those meetings also served a second purpose. It provided her with an opportunity to maintain control over the process and over the children.

[45] I accept that Ms. McGrath discusses these proceedings with the children and that the children are well aware of Ms. McGrath's feelings regarding Mr. McGrath. The children know full well how their mother feels about their father and what their mother's reaction is likely to be if they expressed a desire to spend time with their father. It is likely that they feel unable to freely express a desire to spend time with their father out of fear of the repercussions that may come from their mother. They have been forced to choose between their parents.

[46] Ms. McGrath also views Dr. Humphreys as a threat to her control over the children. In her report of September 6, 2002 Dr. Humphreys left no doubt as to what her opinion was concerning Ms. McGrath.

[47] Against this background, I have concluded the following:

- Ms. McGrath may be suffering from a mental illness. It is in her interest but more importantly in the children's interest that she undergo a psychiatric assessment. The results of such an assessment may be a crucial tool to the Court in re-establishing a relationship between the children and Mr. McGrath.
- I find that Mr. McGrath poses no risk to the children.
- There is no rational reason for either of the children to fear their father.
- It is generally in the best interests of children to have a healthy relationship with both of their parents, if possible. Mr. McGrath impressed me as a person who loves his children and has a strong desire to spend time with them. He appears to be an intelligent and caring man who would have a lot to offer his children.
- It would be in the children's best interest for the Court to put in to place an arrangement designed to re-establish the relationship between Mr. McGrath and the children. This process should be gradual but progressive. It should afford Mr. McGrath the opportunity to communicate with his children unimpeded by Ms. McGrath in such a way that the children can rediscover their father in a forum in which they should feel safe.

[48] Therefore, the following is ordered:

- i. Dr. Humphreys' role as an assessor will continue for the purpose of determining the most appropriate manner to re-establish the relationships between Mr. McGrath and the parties' children;
- ii. The parties will share interim joint custody of the children;
- iii. the children's primary residence will remain with Ms. McGrath unless varied by future order of this Court;
- iv. Ms. McGrath shall self-refer to a qualified medical practitioner for the purpose of a psychiatric examination and Ms. McGrath shall make available to the Court and Mr. McGrath the results of that examination as soon as they are available. She will cooperate fully with the assessment process. That assessment shall be concluded within three months of the date of the Court's order unless the time allotted is extended by further Court order. Ms. McGrath shall authorize and direct the assessing physician to immediately release to the Court and Mr. McGrath her/his report on the results of the assessment. Any costs associated with the preparation of that report that are not covered by MSI shall be financed by Mr. McGrath subject to the Court's ultimate decision on costs.
- v. Mr. McGrath will have access to Jessie and Josh on a weekly basis with the first of such sessions to commence within 14 days of the Court's order. While Mr. McGrath does not require supervision during these sessions, these sessions will nevertheless be in the company of Dr. Humphreys, and Dr. Humphreys will continue to assess the progress of Mr. McGrath's reintroduction to the children and provide counselling to Mr. McGrath and the children during these sessions. Knowing how Ms. McGrath feels about Dr. Humphreys' continued involvement, I considered appointing another expert for this task. However, I believe that under the circumstances Dr. Humphreys is best suited to continue with this role. She has the required expertise. Her qualifications have never been questioned. She was previously accepted by both parties to assume the role as both assessor and counsellor. To engage someone else for this task at this time will necessarily delay the process and delay would not be in the children's best interests. There is no logical reason for the children to fear or mistrust Dr. Humphreys. I appreciate that the children may perceive this provision as forcing their father upon them. However, it is my hope that with Dr. Humphreys present she will, in her capacity as a family therapist, prepare the children for these sessions.

- vi. The aforementioned access sessions will be at a location to be chosen by Dr. Humphreys and the cost of Dr. Humphreys' services will continue to be funded by Mr. McGrath with the ultimate decision regarding her fees to be determined either by agreement between the parties or, failing such an agreement by further order of the Court. The children's sessions with their father and Dr. Humphreys will initially be approximately one hour in length unless Dr. Humphreys determines that meetings of a shorter duration would better serve the interest of the children. It is the intention of the Court that if these sessions with Mr. McGrath and Dr. Humphreys are successful that such sessions will be extended in length in the future;
- vii. Ms. McGrath shall encourage the children to take part in this process. Let there be no misunderstanding. It is not sufficient for Ms. McGrath to simply offer no resistance to the access as ordered by the Court. She has a positive obligation to encourage the children to attend and to cooperate with Dr. Humphreys. Should Ms. McGrath not comply with the Court's order, the Court will give consideration to a change in custody;
- viii. This matter will be adjourned for a further review hearing on my docket to take place in approximately four months time or at the final divorce hearing (which need not be necessarily on my docket), whichever event occurs first;
- ix. Dr. Humphreys shall provide a report to the Court and to counsel before the next hearing date which report shall outline the progress to date and recommend further steps in re-establishing the relationship between Mr. McGrath and the children.

[49] Unless the parties are able to agree, I am prepared to hear argument with respect to costs.

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Leslie J. Dellapinna, J.