

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *R.F. v K.F.*, 2022 NSSC 194

Date: 20220707
Docket: 103237
Registry: Sydney

Between:

R.F., E.F.

Applicants

v.

K.F., G.W.

Respondents

LIBRARY HEADING

Judge: The Honourable Justice Pamela Marche

Heard: May 30, 31, and June 1, 2022 in Sydney, Nova Scotia

Final Written

Submissions: June 14, 2022

Written Decision: July 7, 2022

Summary: The matter involves a seven year old child. There is an interim shared parenting arrangement in place between the maternal grandparents and the father. The mother voluntary placed the child in her parents' care due to child protection concerns. The mother resides with her parents. The father is seeking primary care, final decision-making authority and supervision of the mother's parenting time. The maternal grandparents seek a continuation of the status quo parenting arrangement and shared decision-making authority. The parties are highly conflicted.

Issues: (1) What parenting arrangement is in the best interests of the child?

Result:

The child has been exposed to high adult conflict from all parties. The child has behavioural issues which are the subject of ongoing assessment.

There is no presumption of primary care being awarded to a mother or a father; the paramount consideration is the best interest of the child.

The father failed to establish that the mother's parenting time should be supervised.

The shared physical parenting schedule will continue undisrupted. Shared decision-making is not feasible given the lack of communication and cooperation between the parties. The maternal grandparents will have final decision-making authority but only after meaningful consultation with the father and only if the professional involved in the child's care is unable or unwillingly to provide a recommendation in terms of the decision to be made.

Parenting time for the mother will continue to be at the discretion of her parents.

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Written Release: July 7, 2022
Counsel: Rosemary Osasere for the Applicants R.F., E.F.
Jon Patterson for the Respondent K.F.
Theresa O’Leary for the Respondent G.W.

By the Court:

Overview

- [1] This matter involves a seven-year-old child named AF, born in June 2015. The Court must determine what parenting arrangement is in AF's best interest. This issue has been highly contested between the parties for the past several years.
- [2] RF and EF are the parents of KF and the maternal grandparents of AF. KF is AF's mother. GW and KF had a short and troubled relationship that ended before AF was born. Paternity testing in November 2015 confirmed that GW is AF's father.
- [3] During AF's first year, there were multiple referrals to child protection services (CPS) concerning AF's welfare. At that time KF had been living in an apartment with AF who was then in her care. Protection concerns related primarily to unfit living conditions but also to KF's mental health and substance use. CPS did not start a formal court process but worked with KF to develop voluntary safety plans that involved AF being placed in the temporary care of KF's parents on two separate occasions during 2015-2016 and then permanently in the fall of 2016.
- [4] RF and EF applied for custody of AF in November 2016. GW filed a response in December 2017 but was clearly contesting RF and EF's application from the outset of the application being filed. KF did not file any form of pleading.
- [5] In April 2017, the parties agreed to an Interim Consent Order that granted RF, EF, and GW joint custody of AF, with AF being in the primary care of RF and EF. Pursuant to this consent order, GW had parenting time with AF every Tuesday and Saturday from 12 noon to 5 pm. The order was silent in terms of KF's parenting time.
- [6] In May 2017, the parties agreed to a further Interim Consent Order that confirmed the custodial arrangement but increased parenting time for GW to include overnight parenting time, twice weekly. Again, the order was silent in terms of KF's parenting time.
- [7] In September 2017, the parties entered into a new Interim Consent Order. Pursuant to this order, RF, EF, and GW have "joint and shared custody" of AF. AF is in the care of GW every Thursday to Sunday and in the care of RF and EF

every Sunday to Thursday. The Order is silent in terms of KF's parenting time. The order is silent in terms of decision-making authority.

[8] The matter was heard over three days in May and June 2022. In addition to giving evidence themselves, RF and EF called the following witnesses: AF's teacher's aide, AF's teacher, AF's maternal great-grandmother, AF's uncle and AF's paternal great-uncle. In addition to her own testimony, KF called her sister as a witness. GW testified and called the following witnesses: his mother and his father, a CPS supervisor, and the principal of AF's school.

Position of the Parties

The Position of RF and EF

[9] RF has health issues and is currently in receipt of Canada Disability Pension. She does not work outside the home. EF works part time in a pizza shop and also runs a small painting business out of his home.

[10] RF and EF want to finalize the existing terms of the most recent interim order. In particular, they are asking the Court to grant an order that endorses the following parenting arrangement:

- RF, EF, and GW will have shared parenting of AF. AF will be in the care of GW every Thursday to Sunday and in the care of RF and EF every Sunday to Thursday.
- KF will have parenting time with AF at her parent's discretion while AF is in the care of RF and EF.
- RF, EF, and GW will have joint decision-making authority in relation to all major decisions pertaining to AF and will defer to an expert's recommendation when the parties are not able to agree.
- All parties will have access to third party information pertaining to AF.
- All communication between the parties will occur through the Our Family Wizard App.

[11] RF and EF assert they are willing to engage in counselling and participate in a co-parenting course.

[12] In support of their position, RF and EF argue:

- A continuation of the status quo parenting arrangement best meets AF's interests. AF reacts poorly to change and will benefit from the support of both sides of his family.
- AF has been in their primary care since 2016.
- They have demonstrated a willingness to facilitate AF's relationship with GW and to co-parent with GW.
- Although RF and EF acknowledge that GW is a good father, they raise the following concerns about GW's parenting:
 - AF's exposure to second hand smoke in the home in which GW resides.
 - Use of marijuana by the adults in the home in which GW resides.
 - Inappropriate discipline, specifically use of the threat of corporal punishment as a discipline.
 - GW's limited availability to parent given his current work schedule and the resulting reliance upon his parents to provide childcare to AF while GW is at work.
 - GW's refusal to let AF participate in extracurricular or social activities, such as birthday parties, during AF's scheduled parenting time with GW.
 - GW's inappropriate use of a communication logbook implemented as an intervention to support AF's appropriate behaviour in school.
 - GW's inappropriate conversations with AF about contentious parenting issues.

The Position of GW

[13] GW resides with his parents, KW and LW, where he and AF have bedrooms and a private living space in the basement. GW works Monday to Friday from 7:30 am to shortly after 5:00 pm. GW had a serious car accident in 2017 in which he injured his shoulder and now suffers from anxiety and PTSD.

[14] GW is asking the Court to grant an Order that endorses the following parenting arrangement:

- GW will have primary care and final decision-making authority in relation to AF.
- RF and EF will have contact time with AF every second weekend from after school on Friday until Monday morning. On the alternate week, RF and EF will have contact time with AF overnight on Wednesdays.
- AF will walk unaided to and from parenting time exchanges (from the driveway to the front door without an entourage).
- All parties will be entitled to attend education conferences pertaining to AF as well as AF's sporting events or extracurricular activities.
- All communication between the parties will occur through the Our Family Wizard App. Direct communication will be permitted only in urgent or emergency situations.
- KF's parenting time with AF will be supervised at all times.

[15] In support of his claim, GW argues:

- He is AF's biological parent and there is a strong presumption that it is in a child's best interest to be raised by a parent.
- He was improperly excluded from consultation and placement consideration when CPS was involved due to safety concerns for AF while in KF's care.
- He is best able to meet the best interests of AF. GW asserts that, along with the support of his parents, he is able to provide AF with quality care within a stable, calm, and familiar physical environment. GW claims he is a good role model who has good insight into AF's issues.
- The parenting plan put forth by RF and EF is not in AF's best interest because the plan involves KF. GW asserts that CPS does not support KF having unsupervised parenting time with AF. GW claims that KF has been having unsupervised parenting time with AF contrary to CPS direction, and that KF has effectively been exercising primary care and decision-making authority in

relation to AF through the guise of her parents. GW claims that a primary parenting award to RF and EF is akin to awarding primary care to KF. GW argues protection concerns continue to exist in relation to KF who was involved with criminal activity as recently as 2018-2020 and that KF is not a good role model for AF.

- EF and RF have negatively interfered with GW's ability to parent and spend time with AF. EF and RF have excluded GW from consultation and involvement in AF's medical and dental care.
- GW also raises the following concerns about RF and EF's parenting:
 - Exposure to second hand smoke in RF and EF's home.
 - Use of marijuana and alcohol by the adults in RF and EF's home.
 - Inappropriate sleeping arrangements and general overcrowding in RF and EF's home.
 - Limitations of RF to effectively parent given her poor health.
 - Failure to properly limit AF's screen time.
 - Failure to ensure AF attends school regularly.
 - Failure to ensure that AF takes medication properly.
 - Safety concerns regarding AF riding an ATV.

KF

[16] KF moved into RF and EF's home in October 2018. KF works part-time assisting EF in his painting business and intends to return to school in the fall of 2022. The extent to which KF is perceived to be playing a parenting role to AF is a significant cause of disagreement between the parties.

[17] KF supports the parenting plan put forth by her parents RF and EF. She did not put forth a legal claim independent from her parents. KF argues that she has matured significantly since placing AF voluntarily with her parents in 2016 and there is no reason her parenting time with AF should be supervised.

Issue

What parenting arrangement is in the best interests of the child?

Legislation and Case Law

[18] The applicable legislation is the *Parenting and Support Act*, 1989 RSNS c. 160, (the *Act*) which states the paramount consideration in any parenting decision is the best interests of the child:

18 (5) In any proceeding under this Act concerning decision-making authority, parenting arrangements, parenting time, contact time or interaction in relation to a child, the court shall give paramount consideration to the best interests of the child.

[19] Section 18(6) of the *Act* states that the Court shall consider all relevant circumstances when determining the best interests of the child, including:

(a) the child's physical, emotional, social, and educational needs, including the child's need for stability and safety, taking into account the child's age and stage of development;

(b) each parent's or guardian's willingness to support the development and maintenance of the child's relationship with the other parent or guardian;

(c) the history of care for the child, having regard to the child's physical, emotional, social, and educational needs;

(d) the plans proposed for the child's care and upbringing, having regard to the child's physical, emotional, social, and educational needs;

(e) the child's cultural, linguistic, religious, and spiritual upbringing and heritage, including the child's Aboriginal upbringing and heritage, if applicable;

(f) the child's views and preferences, if the court considers it necessary and appropriate to ascertain them given the child's age

and stage of development and if the views and preferences can reasonably be ascertained;

(g) the nature, strength, and stability of the relationship between the child and each parent or guardian;

(h) the nature, strength, and stability of the relationship between the child and each sibling, grandparent, and other significant person in the child's life;

(i) the ability of each parent, guardian, or other person in respect of whom the order would apply to communicate and cooperate on issues affecting the child;

(ia) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security, and well-being of the child, and

(j) the impact of any family violence, abuse, or intimidation, regardless of whether the child has been directly exposed, including any impact on

(i) the ability of the person causing the family violence, abuse, or intimidation to care for and meet the needs of the child, and

(ii) the appropriateness of an arrangement that would require co-operation on issues affecting the child, including whether requiring such co-operation would threaten the safety or security of the child or of any other person.

[20] Section 18(8) of the *Act* states that in making an order concerning parenting arrangements the court shall give effect to the principle that a child should have as much contact with each parent as is consistent with the best interests of the child, the determination of which includes a consideration of the impact of any family violence, abuse, or intimidation.

[21] The list of best interest factors is non-exhaustive. The weight to be attached to any factor varies from case to case depending on the circumstances: **Foley v. Foley**, (1993) 124 NSR (2d) 198.

[22] In determining what is in the child's best interests, I must compare and balance the advantages and disadvantages of each proposed parenting scenario: **D.A.M. v. C.J.B.**, 2017 NSCA 91.

[23] The best interest test is the only test and parental preferences and rights play no role in the determination of a child's best interests: **Young v. Young**, [1993] S.C.J. No. 112, para. 202.

[24] A court may consider biological ties in assessing a child's best interest but only if there is a link between the biological tie and the child's best interest, otherwise biological ties should be given minimal weight. There is no presumption in favor of a child being raised by a biological mother or father: **B.J.T. v. J.D.**, 2022 SCC 24.

[25] Courts have identified effective communication and cooperation between parents as essential components of shared parenting. Shared parenting is usually not appropriate when parenting relationships are rife with mistrust, disrespect, poor communication, and where there is little hope that the situation will change: **PM v. MW**, 2021 NSSC 72.

[26] Whether parenting time should be supervised must also be considered within the framework of what is in a child's best interest. Justice Forgeron in **D.S. v. R.T.S.**, 2017 NSSC 155, laid out legal principles of restricting parenting time:

- *The burden of proof lies with the party who alleges that access should be denied or restricted, although proof of harm need not be shown.*
- *Proof of harm is but one factor to consider in the best interests test.*
- *The right of the child to know and to be exposed to the influence of each parent is subordinate in principle to the child's best interests.*
- *The best interests test is a positive and flexible legal test which encompasses a wide variety of factors, including the desirability of maximizing contact between the child and each parent, provided such contact is in the child's best interests.*
- *The court must be slow to extinguish or restrict access. Examples where courts have extinguished access include cases where access would place the*

child at risk of physical or emotional harm, or where access was found to be contrary to the child's best interests.

- *An order for supervised access is seldom seen as an indefinite or long-term solution.*
- *Access is the right of the child; it is not the right of a parent.*
- *There are no cookie-cutter solutions. Courts must examine the unique needs of each child and craft an order that protects and enhances that child's best interests.*

[27] In paragraph 30 of **D.S. v. R.T.S.**, *supra*, Justice Forgeron reviewed circumstances in which the Court may impose supervision as a condition to parenting time:

- *Where the child requires protection from physical, sexual, or emotional abuse.*
- *Where the child is being introduced or reintroduced into the life of a parent after a significant absence.*
- *Where there are substance abuse issues.*
- *Where there are clinical issues involving the access parent.*
- *Supervised access is not appropriate if its sole purpose is to provide comfort to the custodial parent.*

Findings and Decision

[28] I must weigh the advantages and disadvantages of the parenting plan proposed by RF and EF versus the plan proposed by GW. Although I have not addressed the factors set out in s. 18 of the *Act*, *supra*, individually, I have considered all factors relevant to this case.

About AF

[29] I must consider AF's physical, emotional, social, and educational needs, including the need for stability and safety, taking into account AF's age and stage

of development. I must examine these considerations also within the context of past care and proposed future care.

[30] AF just turned seven and is finishing grade one. AF is very bright and is an excellent reader. Having heard from AF's teacher, teacher's aide and principle, it is clear that AF has significant behavioural issues that require specific interventions to assist him in advancing within a typical learning environment.

[31] Professionals involved with AF do not yet know the cause of AF's behavioural issues. Further assessment is required before any diagnosis and treatment plan can be established. However, the witnesses who testified in relation to AF's education were clear that consistency is important to supporting appropriate behaviour from AF and that AF struggles with change.

[32] AF has dental issues that require attention. AF has refused to take antibiotics while in the care of RF and EF. AF's family doctor is retiring and a new physician will need to be identified for AF.

[33] AF has extended family on his mother's side who are actively involved in AF's life and care deeply for him. Similarly, AF's father and paternal grandparents are genuinely concerned for AF's well-being. AF is much loved by both sides of his family.

High Conflict

[34] However, AF is at the center of significant conflict between the adults involved in his life. AF has been exposed to this conflict.

[35] Of particular concern is the tension surrounding parenting time exchanges. Every Sunday GW and his father transport AF back to the home of RF and EF. Each Sunday, there is an entourage of extended family ready to greet AF upon his return. RF, EF, and GW admitted to an intention to have witnesses present for the exchange. All parties acknowledged that tensions are often high and terse words are frequently exchanged. Each party blames the other for the situation.

[36] Trust is low between the parties and communication is limited. There is name calling and actual/threatened surveillance. Extended families are engaged in the dispute. GW's mother was particularly vitriolic in her testimony and uttered a slur towards the maternal family upon her entry into the courtroom to testify.

Each party feels justified in their actions given their assessment of the behaviour of the other party.

[37] In terms of AF's current circumstances, I find RF, EF, KF and GW all complicit in terms of contributing to the conflict and failing to protect AF from the turmoil. I point this out with the hope that each party will consider modifying their behaviours going forward for AF's sake. It is contrary to AF's best interests to continue to be exposed to such conflict.

Parenting Concerns

[38] Many of the parenting concerns raised by GW in relation to RF and EF, and vice versa, are a reflection of the heated conflict between the parties. With the hope of reducing the level of contention on the issues raised, I find as follows based on my review of the evidence:

- There is prescribed marijuana use in both homes.
- AF has been exposed to second hand smoke in both homes.
- I am not convinced that AF has been inappropriately exposed to alcohol use by either party.
- I am not concerned that AF's physical safety is at risk in either home. I am satisfied that RE, EF and GW are all capable of making appropriate parenting decisions regarding screen time, sleeping arrangements, the use of recreational vehicles, etc.
- AF's school attendance record is not overly concerning. The educational professionals involved with AF acknowledged his attendance record to be average and not terribly unusual given the pandemic.
- I am not convinced that the physical health of RF or the mental health of GW presents a barrier to effectively parenting AF.
- There is no evidence that GW's learning disability limits his ability to effectively parent AF.
- I am not concerned that the work schedule of GW presents a barrier to effectively parenting AF. EF and RF have asked me to make a credibility

finding in relation to GW's testimony about his work schedule. I find there was confusion in this line of questioning about whether travel time and from work was included in GW's characterization of his work schedule. I do not find that there was a deliberate attempt to be misleading. This issue did not weigh heavily in the analysis of AF's best interests.

- I am not concerned with lack of child support paid by either party. A shared parenting arrangement has been in place since 2017 and the issue of child support has never been put formally before the court.

Parenting Role of KF

[39] Much of the conflict between the parties has to do with the parenting role KF has with AF. GW argues that KF's parenting time with AF was meant to be restricted by supervision as a condition of AF's voluntary placement with RF and EF. GW further argues that RF and EF's failure to supervise KF's parenting time with AF demonstrates RF and EF's inability to put AF's interests before KF's interests. GW is of the firm belief that CPS took the position that KF's parenting time with AF should be supervised at all times. GW seeks an order explicitly stating that KF's parenting be supervised on a go forward basis.

[40] RF, EF and KF all testified that KF is never left unsupervised with AF. RF, EF and KF also testified that they see no reason for KF's parenting time with AF to be supervised. They argue that KF has matured significantly, pointing to KF's significant weight loss as demonstrative of this fact. They claim that any protection concerns in relation to KF are long in the past. KF testified that her parents will consult with her in terms of decision-making pertaining to AF, but that RF and EF have the final say.

[41] Upon hearing the testimony of the CPS Supervisor, I am satisfied of the following:

- On three occasions in 2015-2016, KF voluntarily placed AF with her parents, RF and EF, primarily because of unfit living conditions, but also due to concerns about KF's mental health and substance use.
- KF was not asked to participate in services or programs to remediate risk because safety concerns were removed upon the voluntarily placement of AF with RF and EF.

- Upon the placement of AF with RF and EF, child protection workers advised RF and EF that KF's parenting time should be supervised and should not include overnight parenting time at KF's residence.
- At the same time, child protection workers also advised RF and EF to obtain an order under the *Parenting and Support Act, supra*, upon which KF's parenting time would be at the discretion of RF and EF.

[42] I find that CPS did not impose an ongoing condition that KF's parenting time with AF be supervised upon the *Parenting and Support Act, supra*, orders being issued. Furthermore, the three Interim Consent Orders issued in 2017, silent in relation to KF, contain no prohibition on KF's parenting time. Any parenting time KF had with AF would have been at the discretion of RF and EF and may have included unsupervised parenting time.

[43] GW bears the onus of proving on a balance of probabilities that KF's parenting time with AF should be supervised on a go forward basis. The core of GW's case for supervision rested primarily upon CPS holding a similar position. GW's argument that KF's parenting time with AF should be supervised prospectively fails for a number of reasons.

[44] First, it is important to remember that while the position of CPS might certainly be taken into consideration when determining whether parenting time should be supervised, such a decision rests with the court and cannot be delegated. The position of the CPS is not determinative. At any rate, CPS took no position as to whether KF's parenting time should be supervised.

[45] Second, GW failed to provide evidence sufficient to support the need to restrict KF's parenting time with AF through supervision. It was for GW to establish, on a balance of probabilities, that KF's parenting time with AF should be supervised. It was not for KF to prove that her parenting time need not be supervised.

[46] All that being said, I do not accept the evidence that AF has never spent unsupervised time with KF. KF has been living with her parents since 2018. For a significant period of time, KF and AF shared a bedroom in RF and EF's home. I find that RF, EF and KF were not credible when testifying that KF is never alone with AF.

[47] It is clear to me that KF has assumed an active parenting role of AF while AF has been in the care of RF and EF. KF testified that she wants “more rights” in terms of AF, particularly in relation to decision making authority.

[48] I also find that both RF and EF minimized concerns related to KF in their testimony. Their depiction of the protection concerns that brought AF into their care in the first place, particularly the unfit living conditions of KF’s apartment, paled in comparison to the description offered by the CPS Supervisor who testified that the state of KF’s apartment was one of the worst she had ever seen.

[49] Furthermore, RF and EF downplayed KF’s criminal activity when describing that issue as minor and in the past. KF was convicted of fraud in 2018 and failure to appear in court in 2020. She is currently on probation with the possibility of an absolute discharge in September 2022. RF, EF and KF all testified that KF has come along way since then, having matured and changed significantly.

[50] I do not accept that a significant weight loss is demonstrative of increased maturity or improved parenting skills. However, at this point, it is important to clarify that I am analyzing the role KF plays in AF’s life within the context of the parenting plan put forth by RF and EF. In this plan, KF’s parenting time with AF is at the discretion of RF and EF who are responsible for AF’s care and decision-making. There is insufficient evidence to suggest that RF and EF have not or will not exercise this discretion in AF’s best interests when they chose to extend parental authority to KF.

[51] The analysis would differ if I were weighing a parenting plan put forth by KF, without RF and EF having the primary parental responsibility for AF.

Parenting Role of GW

[52] I am concerned that GW has improperly engaged AF in conversations about adult topics, particularly in relation to parenting issues. GW acknowledged telling AF that KF does not have a parenting role. GW inappropriately used the school communication logbook to communicate this message. GW is clearly resentful of the role KF plays in AF’s life and carries a fair amount of disdain for RF, EF, and their family. However, AF is only seven and should always be protected from the burdens of adult concerns, regardless of whether or not the adults in AF’s life feel those concerns are justified. It is not in AF’s best interest to be engaged in adult topics of conversation.

[53] It is not in AF's best interest to be kept from extracurricular and social activities while in GW's care. AF has behavioural issues that create social difficulties. GW must put aside his own needs to spend time with AF and his distrust that the maternal family is deliberately planning activities on "his" time. It is AF's time and AF should be afforded every opportunity to engage in social and extracurricular activities.

[54] GW's biological tie to AF does not put him in any greater position to meet AF's best interests. I am concerned about the ability of GW to communicate and cooperate with RF and EF on parenting issues related to AF, given the level of conflict between the parties.

[55] RF and EF have asked me to make a credibility finding in terms of GW's use of corporal punishment. On the basis of the evidence provided, I find that GW and his parents have a 1-2-3 rule: first a warning, then a time-out and then a spanking. I also accept the evidence of GW that he has never actually spanked AF. The threat of a spanking is a form of discipline in the GW home but there was no evidence that a spanking has actually occurred. The use of corporal punishment would not be in AF's best interest and I would caution against the threat of such punishment as a means of discipline.

Parenting Role of RF and EF

[56] I am concerned that RF and EF have been unable to ensure that AF properly takes medication as prescribed. It is in AF's best interest to have adults in his life that can support AF in making proper choices in difficult and challenging situations.

[57] I am satisfied that RF and EF intended to deny GW regularly scheduled parenting time citing the need to care for AF during and after a dental surgery (the dental surgery was eventually cancelled so AF's parenting time with GW was not actually disrupted). RF testified to having specific knowledge about a rare family medical condition that puts her at a distinct advantage in terms of taking AF to medical appointments. I do not accept this to be the case. There is no evidence to suggest that GW could not effectively manage AF's medical and dental appointments.

[58] I am also satisfied that RF and EF improperly withheld AF from GW for approximately five weeks in March 2020. RF and EF cite public health restrictions as the reason for suspending AF's regular parenting time with GW. I

find that conflict between the parties, compounded with the failure to communicate and cooperate, was the primary reason AF was kept from his father. It is in AF's best interests to have his relationship with GW properly and fully supported.

Decision

[59] Seven-year-old AF has been in a shared parenting arrangement for the past five years. AF is experiencing behavioural challenges that will likely involve ongoing interventions from both medical and educational professionals. AF will no doubt need a great deal of support from the adults in his life as he navigates the issues he is facing.

[60] The adults in AF's life love him fiercely but have all demonstrated some difficulty putting AF first because of the conflict in which they are embroiled. RF, EF, KF and GW need to start taking responsibility for their own actions and stop blaming each other.

[61] I am not prepared to disrupt AF's current parenting schedule. AF will benefit from continuing to enjoy maximum contact with all parties. There is insufficient reason to reduce AF's parenting time with either party.

[62] While it is in AF's best interest to spend relatively equal amounts of time in both homes, it is impossible, unfortunately, to order shared decision-making in this case given the high conflict between the parties. The parties have demonstrated a limited ability to communicate and cooperate regarding AF.

[63] Given AF's age, stage of development, education and medical needs, important decisions will likely need to be made in the next several years. RF, EF, and GW will need to consult meaningfully with each other on critical decisions pertaining to AF's care. It is reasonable to expect however, given the history of conflict between the parties, that there may be disagreement on what is best for AF. If the parties cannot agree, they will follow the advice of a professional who provides care to AF.

[64] However, given AF's special behavioural needs, it is necessary to make provision for final decision-making authority so that important decision points for AF are not delayed because the parties are mired down in conflict. If the professional is unable or unwilling to provide a specific course of action for AF's care, RF and EF will have final decision-making authority.

[65] I have noted a concern that RF and EF have contributed to the conflict and have been, at times, exclusionary in terms of GW's role in parenting AF. To be clear, GW is to be recognized as an active and informed participant in the decision-making process in terms of access to information and consultation. The detailed terms and conditions that I will direct be contained in the order to follow this decision are meant to reflect this fact.

[66] However, given the high conflict between the parties and AF's behavioural challenges it is necessary to award final decision-making authority in this case to ensure that AF's best interests are met. RF and EF will be given that authority, again only in specific circumstance outlined previously, because they more readily expressed a willingness to engage with GW on co-parenting AF and they generally demonstrated less hostility.

[67] I have carefully considered the legislation, case law and evidence. I have determined it is AF's best interest to order the following:

Physical Care Arrangements

- RF, EF, and GW will have shared physical care of AF. AF will be in the primary care of GW every Thursday to Sunday and in the primary care of RF and EF every Sunday to Thursday.
- KF will have parenting time with AF at her parent's discretion, while AF is in the care of RF and EF.

Transportation and Exchanges

- GW will continue to transport AF for parenting time exchanges.
- AF will walk unaccompanied to and from parenting time exchanges. GW will drop AF off in the driveway. Either RF or EF may greet AF at the door. There will be no family entourage present from either side and the exchange will be civil. There will be no recording of the exchange.

Access to Information

- RF, EF, and GW can each make inquiries and receive information from AF's educators, counselors, caregivers, healthcare providers and religious leaders.

- RF, EF, and GW may each receive AF's school report cards, medical reports, dental reports, specialist reports, and information regarding the AF's recreational activities.
- RF and EF will keep GW informed about the institutions and individuals involved with AF. Institutions include schools, hospitals, churches, care programs, and recreational associations. Individuals include teachers, school staff, day care and childcare staff, doctors, dentists, medical specialists, counselors, therapists, coaches, and trainers. Information will be in writing and will include the name, address, and contact details.
- RF and EF will notify GW in writing about all of AF's medical and professional appointments as soon as they are booked and provide full particulars immediately after the appointment.
- If contacts are required for AF, RF, EF, and GW will all be listed as contacts.
- RF, EF, and GW can each speak directly with AF's teachers, caregivers, physicians, dentists, and other healthcare providers about AF.
- The Order will contain a clause that states that the Order will serve as each party's consent and authorization to all persons, including teachers, doctors, dentists, and others involved with the AF to speak fully and openly with RF

Consultation and Decision-Making

- RF, EF, and GW will meaningfully consult with each other on all major health, education, and religious decisions respecting AF. If the parties cannot agree, they will follow the advice of a professional who provides care to AF. If the professional is unable or unwilling to provide a specific course of action, RF and EF will make the final decision.
- In an emergency, RF, EF, or GW may authorize AF's emergency medical care. RF, EF, and GW must immediately notify each other if AF has a serious illness or accident while in his or her care.

Communication

- All communication between the parties will occur through a software program such as Our Family Wizard App. Communications will be brief, civil, and

focused on parenting. Direct communication will be permitted only in urgent or emergency situations.

- Neither party will allow any person to make negative or disparaging comments to AF about the other party or members of their family or household.
- At all times, the parties will encourage AF to have a positive and respectful relationship with the other party and members of the other party's family and household.
- Neither party will discuss adult matters with AF or in the presence of AF.
- The parties will not involve AF in conveying messages or documents between them.
- The parties will not question AF or comment to AF about the other party.

Therapeutic Intervention

- RF, EF, and GW will engage in counselling with the express goal of reducing parental conflict. Proof that a party has sufficiently engaged in such counselling may be required before that party is permitted to advance an application to vary the terms the parenting order.
- RF, EF, and GW shall each complete a high conflict co-parenting course, even if such courses have been completed in the past. Proof that a party has sufficiently such a course may be required before that party is permitted to advance an application to vary the terms the parenting order.
- All parties will support AF in any counselling that may be recommended by any professional to address the parental conflict to which AF has been exposed.

Attendance at Activities

- RF, EF, and GW may each attend AF's activities, such as recreational activities, medical and dental appointments, and parent-teacher meetings. KF's attendance at such events will be as the discretion of RF and EF.

- There must be no conflict between the parties at such venues and the parties must keep a reasonable distance between themselves and the other party.
- Neither party will schedule AF's activities during the other's time with AF, unless the other party agrees.
- Neither party will unreasonably withhold their consent to scheduling an activity for AF.
- Where the parties have agreed to an activity, each party is responsible for transporting AF to the activity during his or her parenting time.

[68] I ask that counsel for RF and EF kindly prepare an Order that reflects the terms and conditions of this decision.

[69] The Court was not asked to make a decision on how parenting time should be shared over holidays and special occasions. Written submissions may be received on this narrow issue on or before August 1, 2022. If no such submissions are received, the parenting schedule outlined in this decision will continue unchanged regardless of holiday or special occasions.

[70] Any parties wishing to be heard on costs must file written submissions on the issue on or before August 1, 2022.

Pamela A. Marche, J.