

**SUPREME COURT OF NOVA SCOTIA**  
**FAMILY DIVISION**

**Citation:** *J.R. v. M.R.*, 2023 NSSC 392

**Date:** 2023-12-22

**Docket:** SYDVRO-115098

**Registry:** Halifax

**Between:**

J.R.

Applicant

v.

M.R.

Respondent

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice R. Lester Jesudason

**Heard:** March 22, 23, 24, May 8, June 5 and June 27, 2023, in  
Halifax, Nova Scotia

**Written Decision:** December 20, 2023

**Issue:** Should there be restrictions placed on the mother's parenting time with the parties' 13-year-old son because of ongoing concerns by the father relating to her behavior which he alleged was caused by her alcohol consumption? The mother, while acknowledging she abused alcohol in the past, denied any current concerns with alcohol consumption or in relation to her behaviour. She insisted on unsupervised parenting time with the son.

**Result:** The evidence established ongoing concerns with respect to the mother's alcohol consumption and other troubling behavior which were harmful to the son. The son's best interests required that she have no unsupervised parenting time with the son at this time unless specifically agreed to by the father taking into consideration the son's wishes.

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**Written Release:** December 22, 2023

**Counsel:** Christine J. Doucet for J.R.  
M.R., self-represented

**By the Court:**

**1.0 INTRODUCTION**

[1] This case involves a mother who, despite clearly loving her son, simply refuses to see how her actions have negatively impacted on their relationship. Specifically, she has no insight into how her alcohol addiction, and other harmful behaviour, have damaged the son's ability to feel safe and secure in her presence.

[2] Because of the mother's lack of insight, I have no choice but to place restrictions on how she can spend time with the son. I don't do this lightly. I don't do this because I seek to punish the mother. Rather, I do this solely because the mother's extremely concerning behaviour requires me, in the son's best interests, to impose these restrictions to protect his physical, emotional and psychological safety, and overall well-being.

[3] While I expect that the mother will now, as she has done with many others, blame me for unfairly restricting her time with her son, I hope that this decision will eventually serve as a long overdue wake up call for her. I hope it will cause her to reflect and gain some meaningful insight into this most unfortunate situation. Indeed, there is still time for her to address this situation in a positive way before it becomes too late. If she does, she and the son have everything to gain. She will have a close and loving relationship with the son which she wants, and the son will have a mother who is fully involved in his life in a way which makes him feel happy and safe.

**2.0 FAMILY AND LITIGATION HISTORY**

**2.1 Family History**

[4] The parties married on August 12, 2006. They have two children - a daughter who was born in January 2006, and a son who was born in July 2010. While both children were originally part of this proceeding, the parties agree that, given the daughter's age, the only parenting issue which I must decide is the mother's ongoing parenting time with the son.

[5] The parties were divorced on September 6, 2017, by an Order of the Superior Court of Justice in Kenora, Ontario.

[6] On May 13, 2019, a Corollary Relief Order (the "CRO") was issued that incorporated the parties' separation agreement dated May 26, 2014, and their subsequent amending agreement dated November 8, 2018. It contemplated the

parties moving to Nova Scotia with the children being in the father's primary care and the mother having a gradual increase in her parenting time with exchanges taking place through a Supervised Access Program in Halifax. The CRO also required the mother to absolutely abstain from the consumption of alcohol eight hours before and during her parenting time. It also provided that, after one year, should there be no concerns with regards to the mother's use of alcohol, the supervised exchanges would no longer be required and that the parties would move to a week on/week off shared parenting arrangement.

[7] After the parties moved to Nova Scotia, the father obtained employment in Yarmouth while the mother settled in Dartmouth. Given the distance, the parties agreed that the mother's weekday parenting time was no longer practical. They therefore agreed to instead increase her weekend parenting time. Beginning on June 29, 2019, her supervised parenting time was facilitated by Veith House.

[8] On August 28, 2019, the mother filed a variation application in the Supreme Court of Nova Scotia in Yarmouth claiming that the father had breached the terms of the CRO by failing to allow her to spend time with the children.

[9] On September 19, 2019, the parties, both represented by counsel, appeared in Yarmouth before Justice Pierre Muise. They agreed to a Without Prejudice Consent Variation Order ("CVO") under which they agreed that there had been a material change of circumstances caused by the mother moving to the Halifax area and the father moving to the Yarmouth area with the children. They also agreed to the following:

- The order was intended to cover the parenting arrangements in the near future while the application for variation is not finally resolved and was made without prejudice to either party should they seek different parenting arrangements in the future;
- In seeking a future variation, neither party will be required to prove that there has been a material change of circumstances from the date of the order, and may instead rely on the material change of circumstances contemplated at the time they signed the amending agreement which was incorporated by the CRO;
- The father would have primary care of the children;

- The mother would have regular parenting time every second weekend and liberal telephone and/or text communication with the children which would not be restricted or monitored by the father;
- The father would be responsible for all transportation between Yarmouth and Halifax; and
- The mother shall abstain absolutely from the consumption of alcohol for eight hours prior to and during her access with the children.

[10] In March 2020, the parties agreed to a week about parenting arrangement. However, problems soon arose. The father claimed that the children disclosed to him upsetting incidents which occurred during the mother's parenting time. He had continuing concerns that the mother was still consuming alcohol.

[11] The father moved to Halifax in June 2020. The parties, still represented by counsel, agreed to a counsellor, Joyce Morouney, meeting with the parties and the children and making ongoing recommendations on parenting. In her report dated June 27, 2020, Ms. Morouney recommended that the mother's parenting time be reduced to one two-hour visit in a public setting every two weeks due to concerns about the mother consuming alcohol. Ms. Morouney also indicated that if the children were ordered to attend unsupervised visits with the mother, a referral to Child Protective Services be made. Ms. Morouney expressed concerns about both parents' behaviour and recommended that the children be referred to therapeutic counselling. Specifically, she stated:

“[The children] love both of their parents, as almost all children do regardless of the quality of parenting. In this situation, neither parent has consistently provided the children with the ingredients they need to grow into strong, self-confident adults. There is still time. The children need to be protected from the chronic alcohol abuse and dysfunction of the mother. The father needs to help these children to stabilize by planting deep roots in a community and providing the objective support they need from a qualified therapist. I would also urge [the father] to be aware of the negative impact that “teasing” can have on a child's self-esteem. It is his job to nurture and praise, not to humiliate.”

[12] As recommended by Ms. Morouney, the father arranged for the children to see their own counsellor, Christina Wilson. On October 27, 2020, Ms. Wilson sent an email to the father which, amongst other things, expressed concern about the mother sending a video to the children of an alleged suicide attempt. Ms. Wilson stated:

“I appreciate you updating me on the incident of mom sending a video to the kids engaging in what appeared to be a suicide attempt. I viewed the video you sent me and even as an experienced therapist it was very challenging and upsetting to watch [the mother] saying “hey guys I love you and I can’t do this anymore” with proceeding to take a large knife to her throat with visible blood. It is wise and protective of you to shield [the children] from viewing this video even if mom is claiming it was a joke. It would be ideal for mom to seek and follow-through on mental health and addiction specific therapy...”

...I reached out to [the mother] today via text to update her that the children have attended 4 sessions to date and that family therapy cannot start with me until she has committed to her own mental health support...”

[13] Ms. Wilson also noted that the children shared the following with her:

1. They love their mom very much and want to see her, but consistently share concerns that she is “never sober” and often agitated. This makes time with her stressful.
2. They have reached a point after a number of negative visits with mom that they are requesting a break from visits until further notice.
3. Both of the children are missing [P’s (the mother’s ex partner’s)] presence during visits as they explain that he makes family time more enjoyable and they care about him.

[14] After this email was sent, the mother advised that she no longer wanted the children seeing Ms. Wilson. Ms. Wilson was not called as a witness during the trial. I was advised that there was an agreement between the parties that, as a therapeutic counsellor for the children, she would not be compelled to testify at any trial.

[15] Despite the concerns outlined by Ms. Wilson, the father simply did not cut off parenting time between the children and the mother. Rather, he hired Roxanne LaPierre, a private supervisor, to supervise the mother’s parenting time. Ms. LaPierre supervised five visits between the children and the mother in January and February 2021. She reported that she suspected that the mother was intoxicated during two of the visits. She eventually withdrew her services because she felt the mother was under the influence of alcohol on more than one occasion and had breached the communication rules put in place by communicating in a harassing and inappropriate way with her and her employer.

[16] Following Ms. LaPierre's withdrawal, the father hired Brayden Supervision Services Inc. ("Brayden") to supervise the mother's parenting time. Service Director, Robert MacKenzie, acted as supervisor with the first visit occurring on April 1, 2021. Brayden ended their services after the mother complained about Mr. MacKenzie and sent several emails to the Brayden's Managing Director. In the Managing Director's letter dated August 9, 2021, the father was advised that Brayden suspended their services due to the multiple inappropriate emails sent by the mother.

[17] After this second failed attempt to pay for a private supervisor to ensure that the mother would continue to have time with the children, the father was no longer willing to pay for private supervision services. The parties eventually agreed to a limited number of supervised visits (four) between the mother and the son through Veith House in Halifax when they appeared before me on March 21, 2022.

[18] The visits at Veith House, by all accounts, appeared to go well. When the parties appeared by phone before Justice Pamela MacKeigan for Case Management on April 13, 2022, Justice MacKeigan offered to grant a further order extending the Veith House visits. The mother steadfastly refused and requested a trial. She advised she would be calling 50 witnesses but did not provide any names.

[19] When the parties came before me on May 30, 2022, the father advised that he was agreeable to continuing with Veith House parenting time or to supervised parenting time in the community with a mutually acceptable supervisor. The mother refused asserting that there was no need for her parenting time to be supervised.

[20] When they next appeared on June 15, 2022, the mother agreed to an additional four visits through Veith House. The parties also agreed that she would have three phone calls each week with the son. The mother was to be child-focussed, respectful and not be impaired by alcohol during those calls. The father was entitled to end the calls if the mother failed to abide by any of these conditions.

[21] After the Veith House visits ended, the father agreed to the mother having some visits in the community and ongoing telephone calls with the son. Specifically, between June 27, 2022, and January 3, 2023, the mother had 9 community visits and close to 60 calls with the son. Despite this, the father continued to be concerned that the mother was intoxicated during several of the visits as the son shared with him that she was drinking. The father also noted that the mother had slurred speech when he would pick up the son at the end of the community visits.

[22] On October 3, 2022, the father's counsel filed a motion for an updated "Voice of the Child Assessment" to be done by Ms. Morouney. Typically, the language used for this type of report is a Voice of the Child Report (VCR) so I will use that language in my decision.

[23] When the parties appeared before me on December 6, 2022, I had a lengthy discussion with the parties about the father's request for an updated VCR to be done by Ms. Morouney. The mother strongly opposed Ms. Morouney being further involved as she vehemently disagreed with the information and recommendations provided by Ms. Morouney in her earlier report of June 27, 2020. She did, agree, however, that the son's voice should be heard when determining the ongoing parenting arrangements. I therefore suggested that an entirely new person, with no history with the family, do the VCR. I also pointed out to the father's counsel that Ms. Morouney was not on the approved list of qualified court-appointed assessors to do VCRs.

[24] The parties agreed to proceed with my suggestion. Ms. Morouney would not be involved. The father's counsel prepared the form of Consent Order for a VCR which was issued on December 9, 2022. Stacy Darku was selected to do the VCR. She prepared a VCR dated February 15, 2023.

[25] The trial was originally scheduled for March 22, 23, and 24, 2023. The parties were given filing dates for evidence several months before then which I also summarized in a written Conference Memorandum (Exhibit 1). In that Conference Memorandum, I referenced that the mother had advised Justice MacKeigan that she intended to call 50 witnesses and I stated, "**I have indicated that calling 50 witnesses is not practical and that [the mother] needs to provide her witness list and only seek to call individuals who are necessary**" [Emphasis in original].

[26] Despite these clear directions, the mother never provided any witness list and didn't file any evidence from any witness including herself. I expressed concern about this at the beginning of the trial. In response, the mother suggested that, for various reasons, she hadn't "had the time to put the paperwork in because [she wanted] things to be right".

[27] The trial took longer than the parties initially estimated so I found additional court time in May and June to ensure the matter could be completed. The father's counsel filed written post-trial submissions. Because the mother was representing



herself, I gave her several days to review the father's written post-trial submissions and then come back to court and make oral post-trial argument.

### **3.0 ISSUE**

[28] The issue I must decide is how should the September 2019 CVO be varied in relation to the mother's time with the son? As noted, that Order did not determine final parenting arrangements and the parties agreed that no material change need be established before that Order could be varied.

### **4.0 PARTIES' POSITIONS**

#### **a) Father's Position**

[29] The father seeks a variation order requiring that the mother's parenting time with the son be supervised at Veith House. He proposes that, after the son turns 14 years old, that the son be able to choose the amount of time he spends with the mother and also be able to decide if such time needs to continue to be supervised. The father also suggests that the Variation Order would be reviewable in the event the mother successfully completes an alcohol addiction program.

#### **b) Mother's Position**

[30] The mother agrees that the son remain in the father's primary care but seeks unsupervised parenting time with the son in her home every weekend.

### **5.0 PARTIES' ARGUMENTS**

#### **a) Father's Arguments**

[31] In support of his position, the father makes several arguments. I have considered them and don't propose to outline or discuss every one of them. Broadly speaking, however, the father's main arguments can be summarized as follows:

- The mother consistently showed a lack of awareness of her challenges with alcohol and downplayed her alcohol addiction and the negative impact it had on those around her including the children;
- Even if the mother's behaviour was not related to alcoholism, her behaviour is nevertheless concerning since arriving in Nova Scotia in 2019. She fails to recognize how her actions and behaviour have negatively impacted on the son; and

- The VCR of Ms. Darku clearly shows that the son does not wish to have time alone with the mother due to his concerns about her drinking.

#### **b) Mother's Arguments**

[32] The mother, despite being given clear filing directions and every opportunity to file evidence, didn't file any affidavits from herself or any of the 50 unnamed witnesses she asserted she would be calling. Despite this, I permitted the mother, with the consent of the father, to give oral evidence during the hearing. I did so because I wanted to make the best decision for the son based on the best evidence available.

[33] The mother presented oral evidence and argument. At a high level, her arguments in support of being given unsupervised parenting time with the son boil down to a blanket denial that she continues to consume alcohol and her assertion that she poses no risk to the son. She was clear that she was unwilling to follow through with any requirement for supervised parenting time whether through Veith House or otherwise. She insisted that there is no basis to place any restrictions on her parenting time with the son.

### **6.0 PRELIMINARY ISSUES**

[34] Before delving into the law and my analysis on the issue of the mother's ongoing parenting arrangements with the son, I will discuss two preliminary issues. The first is the issue of credibility. The second relates to significant concerns I have in relation to Ms. Darku's VCR.

#### **6.1 Credibility**

[35] Both parties assert that the other wasn't credible. For example, the father's counsel asserts that the mother often contradicted herself or would make blanket statements which could not be supported by the evidence. Similarly, the mother would often suggest witnesses who gave evidence she disagreed with, including the father, were liars.

[36] Assessing credibility isn't a science. As the judge, I am not required to believe or disbelieve either of the parties' evidence in their entirety. I am to assess the totality of the evidence and can believe none, part of, or all of the witnesses' evidence and attach different weight to different parts of their evidence.

[37] Guidance on assessing credibility comes from cases such as *Baker-Warren v Denault*, 2009 NSSC 59, as approved in *Hurst v. Gill*, 2011 NSCA 100, where various factors are outlined. I won't list them but have considered all of them.

[38] I agree with the father that the mother often contradicted herself or made blanket statements which could not be supported by the evidence. I could give many examples of the mother's inconsistencies in her evidence. However, I will simply highlight three examples:

- The mother claimed that the father stole all her possessions and her money. I do not find that credible considering that both parties had counsel in Ontario representing them in the divorce proceedings. The Corollary Relief Order dated May 15, 2019, provided that "all corollary issues have been resolved by an Amending Agreement duly executed by the parties, dated November 8, 2018", The Amending Agreement did not change the terms of the parties' Separation Agreement entered into May 26, 2014, which resolved all the property issues by agreement.
- The mother repeatedly suggested that she never let alcohol negatively impact on the parties' family or the children. Yet an email sent to the father on September 16, 2022, from her email account, stated:

"Since I have time on my hands, I loved [you] very much still do. My drinking was a killer. It ended us. I'm sorry for that. I did not mean to hurt [you]. We had [a lot] of fun with the kids...I'm sorry for drinking. [T]o be real I don't remember much."

This email was part of several emails introduced as Exhibit 9. While the mother acknowledged sending and receiving many of those emails, she denied sending this email. She instead claimed to believe that this email was sent by her former partner to the father. I don't find that explanation credible.

- The mother claimed that she couldn't drink alcohol, in part, because she was "too busy" to do so. She claimed to attend online Alcoholics' Anonymous (AA) online meetings every day at 7 a.m. and also attend an in person AA meeting if she was free in the afternoon. If she was unable to do so, she claimed to attend another online AA meeting at 7 p.m. On some occasions, she claimed to attend three AA meetings a day. This evidence was inconsistent with other evidence she gave. For example, claimed to work "16 hour days" and testified she provided homecare to seniors most days from 6 a.m. to 4 p.m. and also babysat a young child for a pharmacist "pretty much every night" from 6 p.m. until 11 p.m. or 12 a.m. By her own evidence, there simply would not be time to attend multiple AA meetings daily at the times she claimed.

[39] When compared with the mother's evidence, the father's evidence was much more consistent throughout the trial. Thus, on the issue of credibility, I conclude that where the parties' evidence conflicts, I generally accept the father's evidence over the mother's evidence.

## **6.2 Concerns with respect to Stacy Darku's VCR**

[40] I have already outlined the circumstances which led to the VCR Order in paragraphs 22-24 herein. It was agreed that Ms. Morouney would not be involved in the preparation of the VCR, and that a new person, without any history with the family, would conduct same.

[41] The VCR Order prepared by the father's counsel stated the purpose of the report in paragraph 2:

"The purpose of the report is to obtain the views and preference of [the son] respecting:

- a. The child's observations, viewpoint and life experiences with each parent including the child's preferences if they wish to express a preference about anything relevant to the present or future parenting arrangements;
- b. The ability and maturity of the child to arrive at and express their viewpoints and preferences; and
- c. The independence of the child's viewpoint and preferences as expressed, including whether there has been any parental coaching surround the child's stated views or preferences."

[42] Paragraph 3 of the VCR Order directed that the report shall be prepared in accordance with the *Voice of the Child Report Guidelines*.

[43] Paragraph 4 of the VCR Order directed that "The assessor shall have access to or be provided any materials as authorized by the court".

[44] Paragraph 5 of the VCR Order directs that the parties shall cooperate to do what is reasonably necessary to facilitate the completion of the assessment including making themselves and the child available to meet with the assessor.

[45] I have several significant concerns with the VCR prepared by Ms. Darku. I will outline them now.

### **a) The assessor went far beyond the ordered scope of her report.**

[46] A VCR is not what is sometimes referred to a "custody and access assessment" or a "parental capacity assessment". Those types of reports may make

recommendations as to parenting arrangements and a parent's capacity to appropriately parent children.

[47] As described in the VCR Order I granted, a VCR is much more limited in scope. Despite this limitation, in her report dated February 15, 2023, Ms. Darku goes well beyond the court-ordered scope of her report. Under the heading "**Purpose**", she expressly asserts that one of the purposes of her report was "to determine parenting arrangements for the child" [Emphasis added].

[48] With respect, giving an opinion on the ultimate parenting arrangements for the son is well beyond Ms. Darku's mandate as outlined in the VCR Order.

[49] Ms. Darku goes on to make specific recommendations on the parenting arrangements. Specifically, under the heading, "**Recommendations for further invention, if any**", Ms. Darku make the following recommendations:

- Visitations between the son and the mother cease until the mother received appropriate support through addiction rehabilitation and sobriety has been maintained for a sufficient amount of time according to the professionals she will be working with;
- Prior to the mother gaining access to the son, an alcohol assessment and parental capacity assessment be conducted;
- Once the mother has been sober for a significant amount of time and the assessments have been conducted and don't yield any major concerns, the son and the mother engage in family therapy to help heal this relationship and to provide space for the mother to make amends with the son and build their relationship; and
- The son continue to have phone calls with the mother with adult supervision on Christmas, his birthday, and on Mother's Day, to maintain connection between them.

[50] While Ms. Darku may believe her recommendations were valid and helpful ones to make, she is a court-appointed assessor who must take her mandate from the VCR Order. She is not entitled to provide opinions which clearly strayed far outside of that mandate.

**b) The assessor contacted the son's therapist despite the VCR Order not providing her with authority to contact collateral individuals**

[51] Ms. Darku contacted Christina Wilson, the children's therapist on January 13, 2023, for what she described as a "brief interview". As noted earlier, it was

agreed between the parties that Ms. Wilson would not be called as a witness to give evidence at the trial.

[52] Furthermore, while paragraph 5 of the VCR Order provided that the assessor could meet with the parents, it does not give the assessor the authority to simply interview whomever they wish. Indeed, included with the *Voice of the Child Guidelines*, is a precedent order which allows for the interview of collaterals if the judge deems this to be appropriate. Here, I didn't provide Ms. Darku with the authority to simply interview whomever she wanted especially when neither the court nor the mother were given any advance notice that she would be interviewing Ms. Wilson when conducting her VCR.

[53] Not only did Ms. Darku interview Ms. Wilson, but I learned that she also sought to obtain the contact information for the son's teacher which the father subsequently provided in an email dated February 9, 2023. She testified, however, that she did not proceed to interview the teacher because she "didn't have time". Ms. Darku acknowledged that she should have listed this contact she had with the father in the section of her report entitled, "Summary of contact with adult litigant" but forgot to do so.

**c) The assessor received materials contained in the court file directly from the father's counsel and had a conversation with her**

[54] During questioning of Ms. Darku, I learned that, prior to conducting her assessment, she had a conversation with the father's counsel who subsequently directly provided her with a copy of the father's affidavit sworn on April 16, 2021, previously filed with the court. That affidavit attached a copy of Ms. Morouney's report dated June 27, 2020.

[55] Ms. Darku testified that she felt that the sending of the affidavit by the father's lawyer was "odd" and caused her concern. She testified that this was the first time a lawyer sent her that type of information directly. She therefore testified that she did not read the affidavit.

[56] There was absolutely no reference to any of this contact between Ms. Darku and the father's counsel in Ms. Darku's report. I first learned about it during the trial. Ms. Darku acknowledge that this should have been listed in the portion of her report where she listed her summary of all the contacts she had with collateral sources when preparing her VCR.

[57] The father's counsel prepared the VCR Order which, as noted earlier in paragraph 3 of the VCR Order, did not permit the assessor to obtain any materials

from the court file unless authorized by the court. Here, no request was made to me for the assessor to be provided with affidavit evidence from either party nor was the provision of any of that material authorized by me. The fact that the father's affidavit containing Ms. Morouney's report was provided unsolicited to Ms. Darku directly from the father's counsel is particularly concerning given that it was agreed that Ms. Morouney would have nothing to do with the VCR. Indeed, to address the mother's objection to Ms. Morouney being involved, it was agreed that an entirely new assessor would conduct the VCR.

[58] The father's counsel acknowledged my concerns. She was given the opportunity to also address these concerns both during the trial and in the father's post-trial submissions. She attributed the providing of the affidavit to Ms. Darku as an innocent mistake which did not result in any prejudice because Ms. Darku testified that she didn't read the affidavit.

[59] Based on all of the above, I have considerable concerns about Ms. Darku's VCR. The father's counsel agrees that Ms. Darku went beyond the purview of the VCR Order and agrees that certain portions of her report should therefore be given no weight. However, the father asks that other statements and portions of the VCR be accepted and relied upon by me when determining the ongoing parenting arrangements between the mother and the son.

[60] Having carefully considered the issue, the test for admissibility of expert opinion, and my overall gate-keeping role and duty to ensure a fair process to both parties, I have decided to assign no weight to Ms. Darku's VCR when determining the ongoing parenting arrangements. I conclude that there are simply too many problems with the VCR, and the circumstances which led to its creation, which make its prejudicial value outweigh its probative value. I also point out that this is the second time I have expressed concern about Ms. Darku straying beyond the scope of her mandate when conducting a VCR and interviewing collateral individuals which were not authorized by a VCR Order: See *H.P. v. P.P.*, 2023 NSSC 251: Paragraphs 71-72

[61] Clearly, my inability to rely upon Ms. Darku's VCR would pose a significant problem in this case if I didn't have other reliable information which would allow me to determine what ongoing contact between the mother and the son is currently in his best interests. Fortunately, I have such information and can appropriately determine this issue without relying upon Ms. Darku's VCR. I will therefore go on to my analysis of that issue now.

## **7.0 ANALYSIS**

## 7.1 Legislation and Law

### a) *Divorce Act*

[62] The legislation which governs my decision on parenting is the *Divorce Act*, RSC, 1985, c. 3 (2<sup>nd</sup> Supp). As noted earlier, the parties agreed under the September 2019 CVO that no material change need be established and both now seek to vary that order.

[63] Section 16(1) of the *Act* provides that when making a parenting order, I must take into consideration only the son's best interests.

[64] Section 16(2) notes that I must give primary consideration to the son's physical, emotional and psychological safety, security, and well-being.

[65] Section 16(3) provides a lengthy list of factors which must be considered when determining the son's best interests. I will summarize them as covering areas such as the son's needs, the son's relationship with each parent and other family members, each parent's willingness to foster the son's relationship with the other parent, the history of child care, the son's views and preferences giving due weight to his age and maturity, the son's cultural, linguistic, religious and spiritual upbringing and heritage, each parents' parenting plan, the ability and willingness of each parent to care for and meet the son's needs, each parents' ability and willingness to communicate with the other on matters affecting the son, and the impact of any family violence.

[66] Section 16(5) directs that when determining the son's best interests, I shall not take into consideration the past conduct of either parent unless the conduct is relevant to the exercise of their parenting time.

[67] Section 16(6) directs that when allocating parenting time, I shall give effect to the principle that the son should have as much time with each parent as is consistent with his best interests. While many have referred to this section as the "maximum contact principle", in *Barendregt v Grebliunas*, 2022 SCC 22, Justice Karakatsanis of the Supreme Court of Canada suggested that the maximum contact principle is more appropriately referenced as a "parenting time factor" which is more neutral and that the focus must continue to be a child-centric inquiry of what is in a child's best interests: paragraph 135.

[68] Conducting a best interests analysis is highly contextual because many factors may "impinge on the child's best interests": paragraph 97 of *Barendregt*. Furthermore, determining best interests simply isn't a matter of scoring each parent



on a generic list of factors. Rather, one must analyze the best interests factors using a balanced and comparative approach: *DAM v CJB*, 2017 NSCA 91.

## 7.2 Review of Best Interests Factors

[69] I have considered all the evidence with respect to each of the best interests factors outlined in the *Divorce Act*. I don't propose to go through each and every one of those factors in my decision. Instead, I will highlight some of the key concerns I have based on the evidence which cause me to restrict the mother's parenting time with the son.

### a) The mother's ongoing issues with alcohol consumption

[70] A number of witnesses testified about concerns they had with respect to the mother's alcohol consumption and the negative impact this had on the children.

### Joyce Morouney

[71] Ms. Morouney has worked as a social worker for 35 years with 20 years being in a child protection role. She was retained by both the mother's and father's counsel in June 2020 to meet with the children and share their views about their relationships with their parents. In Ms. Morouney's report dated June 27, 2020, she noted the following about the children's perceptions of the mother's challenges with alcohol:

- The daughter stated that the mother "drinks a lot every day", which makes longer visits difficult.
- The daughter stated that she liked supervised visits because the mother wouldn't be drunk or mean.
- The son clearly knows that the mother is not a healthy, well-functioning parent and would prefer not to visit with her for any length of time.

[72] When responding to questions posed by me during the trial, Ms. Morouney testified that she believed the children would be at a risk of physical and emotional abuse if they were left alone with the mother.

[73] The mother adamantly denied the validity of Ms. Morouney's concerns and findings. She made derogatory comments about Ms. Morouney including that "she smoked crack", her report was "bull crap" and that "she sucks".

### Roxanne LaPierre

[74] As noted earlier, the father paid for five supervised visits between the mother and the children in January and February 2021. Ms. LaPierre concluded that the mother was under the influence of alcohol on two of those visits. Specifically, on the visit of February 19, 2021, Ms. LaPierre noted that the mother staggered, spoke loudly and repetitively, was impatient and demanding, and dropped a slow cooker on the table.

[75] Prior to the next visit, Ms. LaPierre spoke to the mother by phone to discuss her concerns that she was under the influence of alcohol and warned her that she would end the visit if this happened again. The mother denied being under the influence of alcohol and blamed her behaviour on her medications, being anxious and tired, and not eating properly.

[76] Despite this warning, on the next visit with the children on February 25, 2021, Ms. LaPierre again suspected the mother of being under the influence of alcohol. She noted that the mother lost her balance several times and grabbed on to furniture to stop herself from falling.

[77] Ms. LaPierre withdrew her services on March 6, 2021, and advised she would not continue to supervise visits until the mother received some sort of treatment. In her final note, Ms. LaPierre described the mother as “out of control, demanding, and does not appear to have boundaries.”

### **Robert MacKenzie**

[78] Mr. MacKenize of Brayden Supervision Services Inc. supervised seven visits between the mother and both children between April 2021 and June 2021.

[79] Mr. MacKenzie testified that he believed that the mother was under the influence of alcohol during the April 8, 2021, visit.

### **The Father**

[80] The father gave extensive evidence about the mother’s historical issues with alcohol consumption as well as more recent behaviours which cause him to believe that she continues to drink. He described her as a “high functioning alcoholic” who was able to work while drinking.

[81] The father gave evidence about the children reporting to him that they believed the mother was drinking regularly. He gave evidence about his own observations during unsupervised visits the mother had with the son last fall and winter. Specifically, in his supplemental affidavit, he stated:

I was very concerned during several visits that [the mother] was under the influence of alcohol. At the beginning of a visit she would appear okay, but it was evident from her slurred speech and behavior that she was intoxicated when I would pick [the son] up at the end of a visit.

After a few of the visits, [the son told to me he thought the mother] was drinking or drunk. He told me that he knew her water bottle did not have water in it because of the color and how [the mother's] behavior would change the more she drank from it.

[82] The father also testified about how, based on his many years of history with the mother, he could tell when she was drinking based on her mannerisms, the way she talks, and the way she acts. He testified about how her personality changes and how she becomes repetitive, loud and boisterous, and insulting. He gave evidence about how, after the first day of the trial, the mother called the son that evening and was clearly drinking and how her behaviour negatively impacted on the son.

### **The Mother**

[83] Despite not filing any affidavit evidence, the mother's oral evidence and statements she made during the trial confirm that she has issues with alcohol consumption. She agreed she is an alcoholic but denied that she was currently dependent on alcohol. She was unable to provide consistent answers as to when she stopped being dependent on alcohol. For example, at different points, she testified:

- It was "a couple of years ago";
- When she "went to rehab" before the Covid-19 pandemic; and
- "Couldn't tell ya".

[84] When asked during cross-examination if she had ever undergone an assessment to determine if she was dependent on alcohol, the mother confirmed she did but was unable to provide details or the location of the assessment. She said her former, partner, P, made her do it and that it was carried out by a doctor in Dartmouth resulting in her going to "rehab". She suggested this occurred in 2019 and the rehab program was for seven days but, after six days, she was told to leave as she "didn't have an issue".

[85] A very concerning exchange about the mother's alcohol consumption occurred when she was cross-examining the father. She asked the father, "What has you sold on Veith House?". The father responded that, "it offers a safe environment for [the son] and you to spend time together".

[86] The mother's first series of visits through Veith House started in late June 2019. Despite being subject to the May 2019 CRO which required her to "abstain absolutely from the consumption of alcohol for eight hours prior to, and during her parenting times", the mother then stated, "What if I told you in those months that we first started Veith House, I was drunk every visit. How would that make you feel if you knew I was drunk at every visit? And the company didn't do anything about it. I will have you know that I was drunk". She then stated, "I am a pretty good drunk. I don't drink anymore".

[87] During my questioning of the mother, I asked her how much she was drinking in in May 2019. She responded "not much" because her former partner, P, wouldn't let her drink. She then clarified that meant she was drinking a few bottles of wine a week. I then directed the mother to an affidavit she filed on July 31, 2019, in which she stated that she had been "completely sober for the last six months". Clearly, what she swore in her affidavit wasn't true. Again, this is extremely concerning.

**b) Concerns about the mother's hostile behaviour and actions towards professionals trying to help her and the children**

[88] The mother repeatedly came into conflict with almost every professional who was involved with trying to help her or the children. She would lash out at them in an inappropriate and, at times, hostile and aggressive way.

[89] I have already given examples with respect to her interactions with Ms. Morouney, Ms. LaPierre and Mr. MacKenzie. Clearly, she blames them for a litany of complaints she has with respect to their involvement while accepting absolutely no responsibility for her own actions.

[90] Another telling example was how she acted towards Justice MacKeigan during the Case Management telephone appearance of April 13, 2022. I asked the mother whether she thought she was disrespectful to the judge during that appearance and whether she recalled using any profanity towards the judge. The mother testified that she could not recall the appearance but "cannot see me swearing at a judge".

[91] Because the mother testified she could not recall the appearance, I arranged for the audio to be played back during the trial. Any objective listener would conclude that Justice MacKeigan was being patient, respectful, and trying to be helpful. She offered to extend the mother's Veith House visits so that the mother could continue to see the son.

[92] The mother adamantly refused and eventually became extremely escalated. This included repeatedly directing profanity-laced names at Justice MacKeigan. She also made extremely derogative comments toward the father's counsel and the father. She also kept interrupting Justice MacKeigan and made comments like "you will never, ever be on the docket again". Despite being appropriately admonished by Justice MacKeigan, the mother would not stop with her highly inappropriate outbursts such that Justice MacKeigan had to eventually end the call.

[93] Upon listening the audio, the mother suggested it was a "long time ago" and eventually agreed that her behaviour "probably wasn't" appropriate that day. She, however, continued to deflect responsibility for her actions and suggested she was justifiably upset by Justice MacKeigan suggesting she could extent the Veith House visits.

[94] While the mother has never behaved in such a similarly hostile manner in any of the appearances before me, the fact that she repeatedly aggressively targets all the people who she perceives as doing a disservice to her and the son, while refusing to accept any responsibility for her own inappropriate behaviour and outbursts, is most troubling. It vividly demonstrates how easily she becomes emotionally dysregulated. Exposing the son to such behaviour isn't in his best interests.

[95] I can understand the mother's behaviour to a limited extent. I accept she genuinely loves the son and wants to spend time with him. I also accept that representing herself in this proceeding would be extremely difficult and stressful for her. The stress of family law proceedings can sometimes understandably result in people behaving in a way which does not reflect the best versions of themselves. However, I cannot excuse the extent to which the mother lashes out at all individuals who say things she doesn't agree with and who were genuinely trying to help her and the children. Her utter inability to control her emotions and instead become quickly dysregulated is very concerning.

**c) Mother actions and behaviour towards her own children**

[96] Perhaps what troubles me the most is how the mother acts and behaves towards her own children. The children are not professional strangers who she might perceive as being against her. Rather, they are her own flesh and blood who she professes to love dearly. Despite this, the mother has repeatedly engaged in harmful actions towards the children and shows little insight into the harm that her behaviour causes them. Again, I could give many examples, but I highlight the following:

**i) Video sent to the children simulating suicide**

[97] On October 27, 2020, the mother sent a very disturbing video to the daughter and other older children she has from a different relationship simulating herself committing suicide. The son didn't have his own phone so was not sent the video. The video apparently showed the mother with a knife slitting her throat with blood flowing from an apparent wound. The father was able to intercept the daughter's phone before the daughter viewed the video.

[98] The mother acknowledged that she sent the video to the children and that it showed fake blood coming from her neck. She downplayed this as a joke stating, "Yeah, my kids have an ongoing prank, and that was a prank".

**ii) Inability to attend Veith House visits on time**

[99] The mother showed up significantly late to four of her eight Veith House visits with the son in the summer of 2022. The son was left waiting wondering if the mother would show.

[100] The fact that the mother would not be able to coordinate her affairs so she could show up on time for the limited visits she was having with the son is concerning. It shows a lack of prioritizing the son's needs. When asked during cross-examination whether she recognizes that it is important for a parent to be on time with visits for a child, the mother dismissively stated, "I think he would live".

**iii) Strained relationship with daughter**

[101] The parties' daughter is now 17 years old. Given her age, the parties agreed that I would not have to determine parenting time between her and her mother. I learned however that the daughter has chosen to spend little to no time with the mother since July 2022. During the trial, the mother dismissed her role in that strained relationship and was often critical of the daughter's actions. She suggested that the son is her favorite child and is her "golden child".

**iv) Children's letter to the mother**

[102] On December 14, 2020, with the help of their counsellor, Christina Wilson, the children prepared a letter to the mother which they both signed. In the letter, the children say several things including the following:

"We are writing this letter to you because we love you."

“We are so worried about your health (mind and body) and wonder if you do not get help soon you may get even sicker. When we try to tell you we are upset with your drinking and bad mood you tell us you do not have time to drink.”

“We want to trust, but it is hard and it is going to take time and honesty. We want to come back to your house to see you and spend time together as a family, but we do not feel comfortable if you are drinking or trying to lie about being okay.”

“Dad does not get in the way of us spending time with you. The main thing that is keeping us apart is how much you deny and blame others for stuff. You are responsible for your behaviour and your health. You are responsible for being our mom even if you are hurt and angry at stuff.”

“Dad does not tell us stuff about you or drinking because he does not want us to worry. We see things for ourselves and we do worry. We know the truth after so many years of living it. Mom, you have a drinking problem for almost our whole life... We all love you and want you to be happy. We want to come back for sleepovers without you acting loopy, passing out, screaming, or swearing at us.”

“Christmas is so soon and last year’s holiday with you was really fun. Yes, we know you were drinking, but things went ok. We really like cooking with you mom. Remember when we cooked steak and peppers in the fondue pot? We had salads too and then we watched movies.”

“We would really like a sober, happy mom for xmas but we know that is going to take time, bravery and effort.”

“We love you so so much!! Please get help. We do not expect you to tell us about your private time in therapy. We just want you to be okay. You are worth it. We are worth it. Family is forever. You can do this Mom!!!!!!”

[103] When questioned about this very poignant and heartfelt note from the children, the mother again totally dismissed any concerns. Rather, she testified that she didn’t accept the letter represented how the children felt and suggested the children wrote false things because they were coerced to do so by the father or Ms. Wilson.

## **8.0 CONCLUSION**

[104] I have carefully considered the evidence, the law, and the arguments of the parties. After applying a holistic and child-centered lens, I conclude that it is in the son’s best interests that the mother not have any unsupervised parenting time with him at this time unless the father specifically agrees to same taking into consideration the son’s wishes.

[105] I leave it to the father to determine the appropriate location for supervised parenting time to occur (Veith House or otherwise), as well as the amount of time and form of contact which the mother may have with the son which may include, but is not limited to, in person, video or telephone contact.

[106] I decline to expressly order that the mother must successfully complete a residential treatment program for alcohol addiction after which the parenting arrangements can be reviewed.

[107] I also decline to expressly order that, when the son turns 14, he be given the sole discretion to decide what ongoing contact he has with the mother and whether that contact should continue to be supervised.

[108] I come to these conclusions for the following reasons:

- I am satisfied that the mother has ongoing issues with alcohol consumption which she has been unable to control which require me to place these restrictions on her parenting time with the son. His physical, emotional and psychological safety, security and well-being must be paramount. Continuing to expose him to the negative impact of the mother's alcohol consumption is not in his best interests. This is especially so when the mother adamantly denies there are any ongoing concerns with respect to her alcohol consumption and has not satisfied me that she will do anything to address this in the future.
- Even if I were to accept the mother's evidence that she has no present issues with alcohol consumption, her actions towards the professionals who were trying to help the children and, more significantly, her actions towards her own children, are extremely concerning. Her tendency to become easily emotionally dysregulated and aggressive while completely failing to understand how her actions negatively impact on the son, require me to place restrictions on her parenting time with the son even if alcohol consumption is not the root cause of her behaviour.
- The mother testified that unsupervised parenting time for her is warranted, in part, because the son is bigger than she is and "can beat the shit out of her silly in two seconds". Such comments utterly fail to recognize that this case isn't about whether her son is bigger than she is, or whether the son can physically protect himself from her. Rather, this case is all about the son's best interests. His best interests go beyond protecting his physical safety, but also go to protecting his emotional, psychological safety and overall well-



being. The son must be protected from the harmful effects of the mother's behaviour to ensure any time he spends with the mother is a positive experience for him and allows him to feel safe and secure.

- I do not accept the mother's assertion that the father is denying her parenting time with the son. To the contrary, I find that he has done everything which reasonably could have been expected of him to support the development and maintenance of a positive relationship between the son and the mother. I have confidence he will continue to do what is in the son's best interests.
- The son's needs are, by all accounts, being well-met by the father. I am confident that the father can appropriately determine the amount of contact the son has with the mother and whether, at some point, supervision is no longer required taking into consideration the son's wishes.
- I do not find it to be in the son's best interests to simply order that, when he turns 14, he be given the unfettered ability to choose the amount of time he spends with the mother, and to solely decide whether that time should continue to be supervised. In my view, that would place too much pressure on the son to make such important decisions in his best interests. It could render the son vulnerable to pressure from the mother to spend time with her when he may not feel safe to do so. It would also potentially remove the father's legal ability to protect the son from any negative behaviour from the mother and possibly expose him to a contempt proceeding should he take steps to shield the son from any ongoing negative behaviour after the son turns 14. While, at 14 years old, the son would hopefully be more mature and able to self-protect himself from any negative behaviour from the mother, I do not believe I should squarely place all the burden and responsibility on him to do this although his views and preferences should certainly be considered.
- I do not believe it is in the son's best interests to expressly order a review of the parenting arrangements should the mother complete a residential treatment program for alcohol addiction. Reviews should not be routinely ordered. When they are, they should be "tightly circumscribed" to avoid being seen as an invitation for parties to simply reargue or relitigate a case: ***Leskun v. Leskun*, 2006 SCC 24.**

Here, the mother has given me little confidence to believe she will now go to any residential treatment program for alcohol addiction. Furthermore, as I have made clear, I conclude that the mother may have significant issues

which impact on her ability to positively parent her son which go beyond any issue of her alcohol consumption. Thus, I decline to order a review simply because the mother successfully completes a residential program for alcohol addiction. Rather, as is the normal course, either party can seek to vary these parenting arrangements upon establishing a material change of circumstances. It may be that the mother's successful completion of a residential treatment program for alcohol addiction would constitute a material change which would allow my parenting Order to be varied. Any variation application would, of course, be determined on its merits when brought before the court.

[109] Finally, given the time of year, I would hope, but am not expressly ordering, that the father would ensure that the mother has at some contact with the son over the holidays provided this can be done in a safe and appropriate way. Such contact could be in person, through video or telephone, through gifts or cards, etc.

## **9.0 ORDER**

[110] I reserve the jurisdiction to deal with any implementation issues arising from my decision. I also direct that counsel for the father prepare the appropriate form of Order reflecting my decision. The Order should be sent to me no later than four weeks from today and should also be sent to the mother.

## **10.0 COSTS**

[111] Both parties have the right to be heard on costs. I strongly encourage the father's counsel to consider whether pursuing costs here will only result in further legal costs and conflict between the parties. She should also consider my findings with respect to Ms. Darku's VCR report which clearly resulted in unnecessary costs and court time being required.

[112] Should the father wish to pursue costs, any submissions should be filed in 30 days. The mother will then have two weeks after that to file any response.

Jesudason, J.