

[4] On March 19, 2018, T. commenced a Motion to Change; it is that proceeding that was tried by this Court. Note that, although that process was started before the recent amendments to Canada's *Divorce Act* and Ontario's *Children's Law Reform Act* took effect, the amendments apply to this case. Gone are the antiquated terms of "custody" and "custody order", the latter replaced with "parenting order", and "access" and "access order", the latter replaced with "contact order". The focus now is on parenting time, decision-making responsibility, and contact.

[5] To continue the chronology, on April 3, 2018, at clause 1 therein, the Order of Miller J. compelled this family to attend the Families Moving Forward program, run by Dr. Barbara Jo Fidler. Then, on June 1, 2018, on consent, Coats J. ordered that "[f]ollowing the [Families Moving Forward] intervention, the parties shall continue with the recommendations of the intervention team in terms of follow up care and support for [R.] and [T's] relationship" (clause 4 of the Order).

[6] Dr. Fidler and her team spent days with the family, all together at a resort property, the intervention concluding on July 20, 2018. Progress was made. On August 7, 2018, Dr. Fidler released detailed aftercare recommendations. T. accepted the recommendations three days later. D. did not accept the recommendations. Discussions ensued between everyone involved, but ultimately it all fell apart into rubble. On March 11, 2019, Dr. Fidler wrote a lengthy letter in which she resigned.

[7] Two years later, here we are. This Court heard five days of evidence in March 2021. Numerous exhibits were filed, including affidavits that form part of the evidence of certain witnesses. The family is as polarized as it has ever been. T. wants R. to live with him and his current partner. He wants the final decision-making authority. D. wants to continue with the November 9, 2016 Order.

[8] What is in the best interests of R.? To answer that question is my task, and to make an order that places R.'s best interests above all else, as the paramount consideration, and which strives to meet that objective, is my mandate.

II. Analysis

A Brief Summary of the Trial Evidence

The Father, T.

[9] T. is 71 years old and lives with his partner north of Georgetown, Ontario. In addition to R., he has two adult children in their forties. He is retired from Sun Life.

[10] His relationship with D. began through work. It did not last very long, and it was rockier than the normal ups and downs of every union. For example, in June 2010, less than a year after R. was born, T. was arrested on criminal charges involving D. He pleaded guilty to simple assault and received an absolute discharge.

[11] For most of R.'s life, T. has found himself as the suspect of allegations made by D. I am not referring to what one might expect – the typical accusations of a bad temper, a strong drinking hand, a neglectful attitude, and so on. I am referring to the most heinous and grave commentary imaginable – the type of accusations that, if true, would mean that T. should be locked up or institutionalized as nothing else would adequately protect those around him. He is capable of killing D. and R., and may do so, according to the mother. T. denies these accusations.

[12] Exhibit 2 at trial is an email from T.'s adult son to T. dated January 12, 2010. The correspondence speaks about T. being chased out of his home and threatened (presumably by D.), T. being in an abusive relationship, D. hating T.'s family, and T. having to hide his communications with his adult children. I was told by counsel at trial that the letter was not being tendered for the truth of its contents, but counsel did not clearly articulate for the Court what purpose the email was being tendered for. Frankly, the email should have been objected to being filed at all, and I place no weight on it. I do acknowledge, however, T.'s own evidence at trial that D. had cut-off all contact between him and his adult children.

[13] Exhibit 3 at trial is a document that reveals the results of a polygraph examination that T.'s adult son underwent in response to D.'s allegations that he (T.'s son) had threatened to harm R. Again, I was told by counsel at trial that the document was not being tendered for the truth of

its contents, but of course that would be the only purpose for tendering such a document. Similarly, I place no weight on it.

[14] Since May 2020, T.'s contact with his daughter has been terrible. Inconsistency plagues the visits. No sleepovers. She wears a mask inside his own home. She stays away from him. She does not speak except on the rare occasion.

[15] "This is my last shot"; "she's worth it", said T. at the end of his direct evidence at trial, referring to R. He cried. This mess that he finds himself in is at the hand of D. and her persistent and obsessive efforts to alienate him from R. and poison their relationship; that, in a nutshell, is the father's position.

[16] In cross-examination, T. agreed that he has spoken with his daughter, at times, about things that he should not have talked about, such as Dr. Butkowsky (who was involved with the family's litigation previously).

[17] It turns out that access exchanges have been surreptitiously recorded for a while, at the instance of D. and with the help of the exchange facilitator, T.T. In cross-examination, this Court listened to a recording from Christmas Day, 2020. I could not believe it, frankly. The child sounds like a grown woman. She speaks rudely and aggressively with her father, baiting him into talking about "adult issues". The raised-voices diatribe goes on at length. T., I could tell, was embarrassed about it at trial, and deservedly so. He called it "disturbing". That is an understatement.

[18] During that argument, T. was certainly guilty of speaking about things that he should not have talked about, including D. having put him in jail before, and the CAS, and T.T. being a witness for the trial, and so on.

[19] In re-examination, T. spoke about two "books" that he has become aware of. This was another part of the trial that was reminiscent of Rod Serling's anthology series. According to T., there is a book that D. is writing and will give to R. when the child turns 13 years old. It is a sort of compilation of the life-long misdeeds of R.'s father. There is also a second book, this one authored by the girl herself. That one is a running tally of scathing allegations against her dad. T. has not read the "books", but the child told him about them.

[20] Exhibit 1 at trial is the affidavit of T., sworn on February 8, 2021. In that affidavit, he outlines the myriad of attempts that have been made to repair his relationship with R.: a section 30 assessment, mediation with two different mediators, intensive therapy with Dr. Fidler, and reunification therapy with another professional. He also summarizes the allegations that have been made against him by D., all of which he denies, including that he will kill both D. and R., and that he stabbed D. while she was pregnant and killed that unborn child, and that he attempted to kill D. by shooting her in the head with a gun, and that he beat R. as an infant, and that he struck R. so hard that she was concussed as a result.

[21] In his affidavit, T. also describes at length the relationship that he has with his current partner, and the relationship between R. and his current partner, and the relationships between R. and his family as a whole (see the photographs at Exhibit “SSSS”, for example), all of which have been very positive, but for the negative repercussions of D.’s efforts to alienate his daughter from him and his family.

[22] In his affidavit, T. describes his plan for the child, which plan includes supporting the child’s continued relationship with her mother (paragraph 278). He states that he is capable of being the primary parent in R.’s life, and he stresses that “[w]hen [R.] is away from [D.] for some time, and has a break from [D.’s] influence, my relationship with [R.] is great” (paragraphs 267 and 268).

The Father’s Partner, A.S.

[23] A.S. acknowledged to Mr. Sicco at trial that T.’s relationship with the child is “very strained”. When asked what T. could do to improve it, she could not think of anything in particular.

[24] Exhibit 6 at trial is the affidavit of A.S., sworn on February 8, 2021. Among other things, she describes her background in the nursing profession, her loving and close relationships with T. and his other family members, her relationship with R., T.’s relationship with R., and “the drastic change in [R.’s] behaviour over the past 8 years”, to the point where the child is now unrecognizable (paragraph 75).

Camille Morris of the CAS

[25] Ms. Morris is currently a child protection supervisor, and she was at the material time a child protection worker.

[26] In late June 2014, D. reported suspected physical discipline of the child by T. The CAS investigated. The allegation was not verified.

[27] In September 2014, D. and a school official reported suspected physical abuse of the child by T. The CAS investigated. The allegations were not verified.

[28] In November 2015, D. reported suspected physical abuse of the child by T. The CAS investigated. The allegation was not verified.

[29] Also in November 2015, D. reported alleged alcoholism on the part of T. The CAS investigated. The allegation was not verified. In fact, the father took a specific test, and it came back negative.

[30] In May 2017, D. told Ms. Morris that T. was abusive and a stalker, among other things. Those things were never verified by the CAS. That same month, the child told Ms. Morris about the “book” that her mother is writing about her father.

[31] In October 2017, there were more allegations made about T. None was verified by the CAS. The child told Ms. Morris that her mother gives her a special necklace to wear when she is around her dad, to protect her, and that her mom sprays her down with some spray when she returns from access with her father. When Ms. Morris questioned D. about the spraying, D. said that it was “not ill intentioned”.

[32] In November 2017, there were more allegations of abuse against T. D. wrote an email to Ms. Morris alleging that T. struck the child on the head. By now, Ms. Morris was convinced that D. was “sabotaging” the relationship between father and daughter, but she investigated the alleged striking of the child’s head. The allegation was not verified. In fact, Ms. Morris received a report from the child’s psychologist and play therapist which supported her own skepticism of D.’s continued allegations.

[33] What was verified, according to Ms. Morris, was that the family was plagued by adult conflict.

[34] At one point, the child asked Ms. Morris to set-up a meeting between her and both of her parents because she felt stuck in the middle. Unfortunately, that meeting never occurred.

[35] In February 2018, Ms. Morris noticed a “significant shift” in R. She was harsher against her father. She no longer wanted to see him at all.

[36] By May 2018, the situation with the family was so deteriorated that the CAS had decided to pursue child protection proceedings at court unless the family strictly complied with the Order of Justice Miller to attend the Families Moving Forward program.

[37] In the end, Ms. Morris did verify one protection concern – that there was a risk of emotional harm to R. caused by D. and D.’s undermining of the relationship between R. and her father.

[38] Exhibit 7 at trial are the CAS records, June 2014 to March 2018.

The Mother, D.

[39] 48 years old, D. has one child - R. She described her family as being from Italy and close-knit. She has two brothers and one sister.

[40] Fortunately, R. is an excellent student. During the pandemic, she has been learning online. She is in grade 6. She earns very good marks.

[41] D. testified that she has done “everything” for R. for her whole life, including all aspects of child care and appointments of every kind. While doing so, D. has not forgotten the role of T. D. testified that she never criticizes the father in front of R., and she never speaks to R. about adult or litigation issues. She encourages in every way that she can an active and healthy relationship between the child and her father. She does whatever is possible to ensure that R. attends scheduled visits with her dad. For example, she grounds or punishes the child for refusing to attend.

[42] My reaction to this evidence cannot wait until later in these reasons. I must note at this juncture that I simply do not understand this evidence from the mother. Why would any parent encourage a relationship with the other parent if the types of allegations being made by D. are true? With respect, it makes absolutely no sense.

[43] Exhibit 8 at trial is the affidavit of D., sworn on February 25, 2021. In that affidavit, D. alleges that:

- i. T. has a very poor relationship with R. because he has no parenting skills and no desire to acquire any (paragraph 6);
- ii. T. caused D. to have a miscarriage by beating her severely while she was pregnant (paragraph 45); and
- iii. her relationship with T., both while they were together and afterwards, has been plagued with multiple severe physical beatings of her by T., him constantly berating her, him placing a gun to her head and threatening to shoot her, him sticking a gun to her head while R. was sleeping beside D., him physically abusing her while she held R. in her arms, him abusing alcohol, him causing her to flee the home and go to a shelter, him abusing her to the point of exhaustion, him being a racist, him verbally abusing his daughter, him being oblivious to anything of interest to the child, him grabbing the child and straining her neck, him ignoring medical advice for the child, him smacking the child on her head, him shaking R. to the degree of causing her whiplash and her needing a neck collar, him calling the child names and belittling her and D. and D.'s family, him sharing litigation and adult information with R., him allowing his partner to abuse the child, him simply choosing to cancel scheduled parenting time with his daughter, and his refusal to take any interest in R.'s medical needs.

[44] In short, according to D., although not in these words, T. is a raving psychopath who might kill her and R. and who lives constantly one eyelash away from bedlam.

[45] Both in her oral testimony at trial and in her affidavit, D. describes a strong support network that she has with her family, and others, to help her with R. She loves the child more than words can say. She praises the child, engages her in all sorts of extra-curricular activities, and she is proud (rightfully so) of how bright and inquisitive her daughter has become.

[46] Since March 2020, all access exchanges have occurred at the home/workplace of T.T. D. testified that she has never refused to present the child for visitation with her father.

[47] In cross-examination, D. reiterated her allegations that T. is capable of murdering her and the child and incapable of any loving relationship with R. Nevertheless, she wants the Gibson J. Order to continue.

[48] At that point in the evidence, I intervened to ask why D. was not seeking an outright termination of all contact of any sort between T. and R., given the extreme seriousness of the risk posed to the child by being anywhere near her father. I did not understand the mother's response to the question; she said that she simply wanted the "issues to stop".

[49] In cross-examination, D. acknowledged a history of her labelling the court system as "crooked" and her making allegations of bias against Dr. Fidler, Justice Kurz (who case managed this proceeding), Justice Miller (because of a costs award that was made against D.), and Ms. Morris and the CAS. She also acknowledged having recorded the child's teachers without their knowledge and having instructed T.T. to surreptitiously record all access exchanges for a long time now.

[50] D. explained in cross-examination that T. forced her to write supportive letters to the Crown Attorney's Office when T. was charged criminally in 2010. The letters were from D.'s own lawyer at the time, Jill Presser (see, for example, Exhibit 10 at trial). One of the said letters indicated that T. is not a violent person and poses no risk to the child. In addition, Exhibit 4 at trial is a letter from D. herself to the "Presiding Justice at Orangeville Ontario Court of Justice", dated December 7, 2010. In that letter, D. supports an absolute discharge for T., and she states that she "wanted [T.] to be able to participate regularly and fully in R.'s life", and that she is not afraid of T., and that she does not believe that T. is a violent person, and that he has never been violent with R., and that he should be able to have access to firearms because he is an avid hunter.

[51] D.'s position, as she stated during cross-examination at trial, is that what T. is asking for in his Motion to Change will "damage R. to the extreme".

[52] When asked by Ms. Doris if she believes R. when R. tells her about T. hitting her, D. said that she believes her daughter.

[53] D. has also made recordings of conversations between her and the child. For example, Exhibit 9 is a recorded conversation from December 21, 2017. During that conversation (the transcript is Exhibit 9A), when R. says that she does not want to go to her dad's because he hits her, D. responds by saying that there is no reason for R. not to go.

[54] D. gave evidence at trial, in cross-examination, about the arrest of T. in 2010. She stated that he beat her up. She spoke to the police on June 9th or 10th. He was arrested on the 10th. When she spoke with the police, she had bruises from a recent beating. The police saw those bruises, but they charged T. for something that happened in 2008, two years earlier.

[55] In cross-examination at trial, it was revealed that, in addition to the allegations against T. outlined above, D. had also alleged that T. sexually abused her (in her letter to Ms. Morris dated November 11, 2017).

[56] According to D., T. also has been non-compliant with Court-ordered access times. For example, there was an incident when he was late returning the child to D. because R. had vomited en route and T. had taken the child back to his house. D. contacted the police, but after speaking with T. and the child the police advised that it was not a police issue.

[57] In re-examination at trial, D. emphasized that she wanted Dr. Butkowsky to testify at trial, but that was not allowed by the case management judge. She said that Dr. Butkowsky, whose recommendations formed the basis for the Gibson J. Order, has more knowledge about the family than anyone relied upon by the father, including Dr. Fidler.

Linda Berry

[58] Ms. Berry's affidavit, sworn on February 24, 2021, is marked Exhibit 11 at trial.

[59] In cross-examination, Ms. Berry stated that she has never met R., that she met T. one time at Court, and that she has been D.'s therapist for many years.

[60] From 2011 until now, D. has presented her allegations to Ms. Berry about T. in a consistent manner, Ms. Berry stated at trial. Ms. Berry is of the view that D. is an honest and reliable person.

[61] In cross-examination, Ms. Berry stated that part of her role is “advocating” for D. She also has to protect R. And she also ensures that there is contact between T. and the child. She helps D. by attending meetings between D. and third parties like the CAS, for example.

[62] Ms. Berry acknowledged that D. has spoken to her about the “crookedness” of the “system”.

[63] In re-examination, Ms. Berry described herself as D.’s psycho-therapist and D as her “client”, for whom she advocates in every way that she can.

[64] Ms. Berry’s affidavit contains a lot of information that confirms D.’s claims that (i) R. is very resistant to attend visits with her father, and (ii) D. encourages her daughter to attend those visits. For example, on December 15, 2020, D. told Ms. Berry that “[R.] was resisting spending time with her father, and [D.] told me that she told [R.] that the schedule is the schedule and that she has to follow it” (paragraph 8).

The Access Exchange Facilitator, T.T.

[65] T.T.’s affidavit, sworn on February 25, 2021, is marked Exhibit 12 at trial.

[66] Having first met D. through Sun Life (D. was her agent), T.T. facilitates access exchanges between the parents. Typically, D. drops off the child at T.T.’s place, which is her home and also her business, a mechanic’s garage, and then D. leaves. T. arrives soon after to pick up the child.

[67] T.T. has been involved in this capacity since 2015. Since March 2020, all exchanges have occurred at her place. Since July 2020, at the request of D., T.T. has been secretly recording all of the access exchanges. T.T. testified that the child is not aware of the recordings.

[68] Although not in her affidavit, T.T. testified at trial that “I was really scared for R.”, and that “you don’t know how many times when R. was dropped off I saw evidence of a crime” and R. “shaking all over”. R. was “crying out for help”.

[69] The recordings sound like two adults talking, T.T. stated at trial. When asked by Ms. Luscombe if she would stop recording the exchanges, T.T. replied “I will keep doing it” and “I don’t agree to stop recording”.

[70] T.T.'s affidavit contains, as an Exhibit, transcripts of many recordings between October 2020 and January 2021. In some of the conversations, the child tells her father to stop talking about D. and about stuff that she does not want to hear. In other discussions, the child complains about the treatment of her by T. and T.'s partner (them calling R. names, and T. pushing her, as examples).

[71] Generally, the recordings reveal a dysfunctional relationship between the child and her father, and they are rife with rudeness and sarcasm on the part of R.

Barbara Jo Fidler

[72] Dr. Fidler was presented at trial as a "joint participant expert witness", and thus she was cross-examined by both sides. Her entire file was marked a trial Exhibit, number 16. She signed a Form 20.2, Acknowledgement of Expert's Duty, which was marked Exhibit 15.

[73] Exhibits 13 and 14 outline in detail Dr. Fidler's credentials. Very briefly stated, she has a B.A., M.A., and Ph.D., has been a registered psychologist for more than thirty years, specializes in high conflict separation and divorce cases involving children and parent-child contact problems (the "area"), has both clinical and academic practices, has published extensively in the area, has testified at court multiple times as an expert in the area, has lectured and presented extensively in the area, founded the Families Moving Forward program, provides family therapy, and is an accredited mediator and an accredited parenting coordinator.

[74] As ordered by the Court, Dr. Fidler and her team conducted a multi-day intervention with this family. Dr. Fidler herself spent well more than 100 hours on the file.

[75] Initially, Dr. Fidler wondered whether the mother's allegations against T. were so severe that the intervention was not appropriate, but she ultimately determined that it was feasible.

[76] Dr. Fidler described in her evidence the concept of "co-parenting" and its different models, including a disengaged model and a cooperative model. The goal with this family was to work towards the disengaged model. That was discussed at length with both parents.

[77] R. reacted “beautifully” to the intervention, Dr. Fidler testified. The child was “elated” and “joyful” to see her parents together. She had a “longing” for time, alone, with her father. She was “not resistant at all” to her dad. She made no allegations of concern about T. She did not at all seem fearful of him.

[78] T. showed an openness to and a willingness for change, according to Dr. Fidler. He was “very open” to the team’s suggestions. He wanted “so badly to co-parent”. He was “responsive” to the intervention and its goals.

[79] D. worked hard as well, but she struggled at times – more so than did the father.

[80] Four days of intense intervention ended on July 20, 2018. By July 25th, five days later, D. was reporting new allegations against the father. She said that he was abusing the child. That D. was making such serious allegations so soon after the intervention was concerning to Dr. Fidler.

[81] In contrast, on August 3rd, T. sent an email to Dr. Fidler saying that “my amazing daughter is back” and she “has been wonderful to be with”.

[82] On August 7th, Dr. Fidler released a very lengthy and thorough document outlining her aftercare recommendations for the family. Three days later, on August 10th, T. accepted all of them.

[83] On September 27th, Dr. Fidler wrote to D.’s counsel to say that the delay in hearing from the mother was “unconscionable”.

[84] In her testimony at trial, Dr. Fidler labelled the aftermath of the intervention a “tragedy” that made her feel “impotent”.

[85] On November 23, 2018, D. emailed Dr. Fidler to say that the child was resistant to seeing her father. About 90 minutes later, however, by chance, Dr. Fidler received a voicemail from T., who was with R. at the time. In the message, T. and R. seemed very happy and pleasant and positive.

[86] There was another set-back in January 2019. Dr. Fidler had been monitoring the parents' Family Wizard communications. T. wanted to take R. for a father-daughter weekend at Loon Lake, near Huntsville. T. has a family connection to that area. The plan required that the child leave school 90 minutes early. D. refused. Dr. Fidler tried to broker a resolution but failed. At trial, Dr. Fidler described the mother's position as being "not child-focussed".

[87] D.'s position on the aftercare recommendations was not received until February 2019, about six months after they had been made. D. did not agree with the recommendations. For example, she crossed-out all references to "co-parenting" or "co-parent". Dr. Fidler saw that as a "regression" to a "more adversarial approach". Dr. Fidler testified that D.'s rejection of such a basic premise signalled the end of the Dr.'s usefulness; it meant that the other goals of the intervention could not possibly be met.

[88] On March 11, 2019, Dr. Fidler released a 25-page letter, plus attachments, in which she resigned/terminated her services (the letter can be found in various places of the record, including in Exhibit 16, but an easier reference for the reader is Exhibit C of the father's trial affidavit, Exhibit 1). The letter makes it very clear that the primary reasons for that decision, which the Dr. stated she had carefully contemplated and somewhat regretted, were the intransigence and unreasonableness of D.'s views and proposals, which positions had left the Dr. with the realization of a repeating and unfortunate pattern. Dr. Fidler ended the letter with a series of additional recommendations for the family, including therapy for R.

[89] Dr. Fidler testified at trial that there are serious potential negative consequences to R., both short and long-term, as a direct result of her being embroiled in such a high-conflict situation.

[90] Dr. Fidler only sees two options now for the father: (i) say goodbye to his daughter and walk away, or (ii) pursue a change in what was formerly referred to as custody and have the child live primarily with him.

[91] An experienced counsel, Mr. Sicco, on behalf of his client, dutifully and vigorously cross-examined Dr. Fidler. He pointed out that the Multi-Day Family Therapy Intervention Agreement, signed by both parents, did not mention at all the notion of co-parenting. The Dr. agreed. He pointed out that her job was not to implement an entirely new parenting plan but rather

to assist with the implementation of the Court-ordered plan that was already in existence. The Dr. agreed. He pointed out that he had requested a meeting with all concerned as early as August 27, 2018, the same month that the aftercare recommendations were released. The Dr. agreed.

[92] Notwithstanding those agreements, Dr. Fidler was adamant during questioning by Mr. Sicco that (i) there was nothing inconsistent between co-parenting and the Order that was in effect, and (ii) co-parenting and sole custody to one parent may co-exist, and (iii) nobody intended to change the custodial provisions contained in the Gibson J. Order (I pause here to note that the Order actually does not even expressly stipulate “custody” to the mother), and (iv) co-parenting was necessary here to address all sorts of issues besides custody, and (v) co-parenting was discussed with both parents, repeatedly and at length, and agreed to by both parents, both before and during the intervention.

[93] Dr. Fidler commented that, in fact, at the meeting that everyone attended on November 22, 2018, there was no objection at all by or on behalf of the mother to the references to “co-parenting” or “co-parent”.

[94] Dr. Fidler testified that both parents had clearly committed to co-parenting, as evidenced by the joint narrative that they wrote to their daughter as part of the therapeutic process.

[95] Dr. Fidler strongly disagreed with Mr. Sicco’s suggestions that co-parenting necessarily means equal parenting or that the term “co-parenting” is ambiguous.

Other Trial Exhibits Not Referred to Above

[96] Exhibits 5 and 5A are a recording and a transcript of a recording of a discussion between T. and D. that took place on January 24, 2010. These two Exhibits were entered during the testimony of T.

[97] The whole subject matter of these two Exhibits is rather convoluted. At Exhibit “I” of trial Exhibit 8 (D.’s affidavit), there is a handwritten letter from T. to his two adult children. In the letter, it states that, in the past, T. got angry with D. and threatened to shoot D. and himself, and he also became physical with D. and she subsequently had a miscarriage. It is a short note, undated.

[98] During T.'s trial testimony, he said that the admissions that he made in that letter were false. He wrote the letter only to placate D. D. told him what to write. D. told him that she would go to counselling to try to reunite the family (D., T., and R.) if he wrote the letter. The letter has apparently never been sent to or read by T.'s adult children.

[99] In an effort to support his evidence that D. coerced the letter out of him, T. relies on Exhibits 5 and 5A. Those Exhibits do demonstrate that T. and D. spoke about the letter, and that he read to her what he had drafted, and that she told him to add things to the draft including something about her miscarriage, and that he asked her what she wanted him to write in the letter, and that she told him, repeatedly, to write the truth.

[100] Exhibit 17 at trial, the final one entered, is a lovely handwritten card. It was done by R. It is an invitation to "Mom/Dad" to attend her Advent celebration on December 5, 2017, at her Catholic school's parish. I enjoyed reading it. Sadly, the Advent was the source of some conflict between the parents, but I think to say anything more about it here would only serve to legitimize the absurd. Suffice it to say that there was no whole family celebration time in honour of the child's invitation. The child was let down, again.

[101] Exhibit A at trial is a scholarly article about parental alienation. It was referred to by Ms. Doris in her cross-examination of D. It speaks about the long-term negative effects on children of parental alienation. As I indicated to counsel at the time that the article was filed, it was entered as a lettered Exhibit because it is not "evidence". I have not read the article, and I place no weight on it.

The Positions of the Parties

The Father

[102] T. has outlined, in writing, the terms of the Order that he is seeking, and (using the current terminology resulting from the recent amendments to the *Divorce Act* and the *Children's Law Reform Act*) those include but are not limited to (i) R. living exclusively with him, and (ii) him being the sole decision-maker, and (iii) therapy for the child, and (iv) no contact at all between the child and D., which no contact provision shall commence immediately and shall continue until, at

the earliest, 90 days after R. returns to T.'s home after therapy, and (v) the case returning to the trial judge in four months.

[103] The Gibson J. Order would be varied accordingly.

[104] In her closing submissions, Mr. Doris, on behalf of the father, stated that, although a final order was being sought, the case should return to Court in four months' time in order to look at the situation. At that time, all three "pillars" (my word) of the newly-worded legislation would be capable of being reviewed – parenting time, decision-making authority, and contact. Between the date that the Court's decision is released and the return date, the child, under the father's plan, would be assisted by a professional therapeutic program, such as Family Bridges.

[105] Ms. Doris described the decision by the mother to audio record the access exchanges as sabotaging the relationship between T. and the child; the recordings are a classic example of the mother manipulating the child and using her as a pawn and as a litigation weapon, submitted Ms. Doris. The father relies on *Ukiri v. Erskine*, 2020 ONSC 4294 (CanLII), particularly paragraphs 24 through 30 of that decision, and *Palod v. MacDonald*, 2018 ONCJ 507 (CanLII).

[106] Ms. Doris submitted that T. was a more credible witness at trial than was D. Counsel gave several examples of the mother's alleged lack of credibility, including her evidence concerning the events that preceded T.'s arrest, and the mother's reluctance to admit that the recording of the access exchanges was her idea.

[107] According to Ms. Doris, neither Ms. Berry nor T.T. (the access exchange facilitator) was a neutral or independent witness. Dr. Fidler, on the other hand, was. And Dr. Fidler was clear in her evidence that there are only two options available currently: either T. walks away from any relationship with the child, or there is a change along the lines of that being suggested by the father.

[108] Ms. Doris submitted that it is an error in law for a court to not make a change in "custody", as that term was formerly known, where the circumstances presented demonstrate clear parental alienation. The father relies on *A.A. v. S.N.A.*, 2007 BCCA 363 (CanLII) and *A.M. v. C.H.*, 2019 ONCA 764 (CanLII). According to Ms. Doris, this is such a case; R. exhibits classic traits of an alienated child.

The Mother

[109] D., at paragraph 14 of the written opening statement filed on her behalf, states that she “agreed to accept Dr. Fidler’s recommendations so long as it was clear that they did not supersede the terms of the Gibson J. Order”. D. wants the Order of Justice Gibson to continue.

[110] Mr. Sicco, on behalf of the mother, made the following major points in his closing submissions:

- i. the mother cannot be blamed for the long-term failure of the Families Moving Forward program, as she worked very hard and adhered to all Court Orders that related to the said program;
- ii. in fact, it is the father who has not complied with all Court Orders made in this proceeding, and specifically he has not sought out professional help for his relationship with R., as per clause 27(ii) of the Gibson J. Order made in November 2016;
- iii. with regard to the recorded access exchanges, there is no evidence that the mother coached or scripted the child, but there is evidence from T.T. that the child was distressed from being with her father;
- iv. the child “finds her voice” with T.T. being present at the access exchanges; R. feels safe with a third party adult present, and that explains the content of the recordings;
- v. why does T. not simply listen to the child’s concerns and do what she asks, said counsel rhetorically, such as stop belittling D.;
- vi. the recorded access exchanges prove that it is the father who speaks about adult issues with the child, such as witnesses for Court, and it is obvious that the mother has not discussed these things with R. because the child seems surprised when T. brings them up;
- vii. concerning the Coats J. Order made on June 1, 2018, clause 4 therein, and the question of whether the mother complied strictly with that clause, it must be remembered that Dr. Fidler’s aftercare recommendations were not known at the time of that Order, and further Dr. Fidler’s co-parenting idea was not known then either;
- viii. Dr. Fidler unfairly and unilaterally changed her retainer and exceeded her authority by inserting into the Gibson J. Order the notion of co-parenting, and the mother cannot be blamed for objecting to that;
- ix. that R. was so happy and engaged with Dr. Fidler points away from any allegation that the mother had alienated the child away from her father;

- x. there is simply no evidence that D. has alienated this child; it is just a baseless allegation made by the father; in fact, Dr. Fidler testified that she saw no evidence of alienating behaviour during the intervention itself;
- xi. after the intervention with Dr. Fidler, there was no delay on the part of the mother;
- xii. at trial, the mother was generally a more credible witness than was the father, and examples of T.'s lack of credibility are (a) his professional discipline when he was employed by Sun Life (T. was found to have engaged in improper conduct by the regulatory authority, the quasi-judicial tribunal, and he was disciplined accordingly), and (b) the handwritten letter that T. prepared for his adult children but which he says was forced upon him by D., which allegation is not supported by Exhibits 5 and 5A;
- xiii. the evidence of Ms. Berry only serves to confirm how much the mother tries to encourage a relationship between R. and her father, something that has not been helped by T. himself cancelling visits in order to suit his own needs; and
- xiv. the bottom line is that there is no evidence that the admittedly poor relationship between R. and T. is the mother's fault or because of parental alienation; it could equally be the result of the father's own conduct, such as his constant belittling of D. in the child's presence.

[111] The mother argues that the Gibson J. Order should continue, as that is in the best interests of R. Alternatively, perhaps there should be an assessment ordered before this Court makes a decision, the mother submits. That would give R. a voice, and that would also help this Court determine whether Family Bridges or a similar program would be suitable for the child. In addition, perhaps there should be a formal parenting capacity assessment done because the father is an "unknown quantity", in the words of Mr. Sicco.

[112] Counsel for D. ended his submissions by saying that the mother is currently meeting all of the child's needs, and to change everything now would be far too traumatic for R.

What Was Not Part of the Closing Submissions Delivered on Behalf of the Mother

[113] Mr. Sicco did not take issue with any of the case law being relied upon by the father, and Mr. Sicco did not refer to any legislation or jurisprudence in his submissions.

[114] As well, nothing was mentioned in Mr. Sicco's closing submissions about the father's alleged history of abuse perpetrated against both D. and R.

The Reply Submissions on Behalf of the Father

[115] In reply, Ms. Doris took issue with many of the submissions made by Mr. Sicco, but three in particular were focussed on.

[116] First, the father disputes any suggestion that he has not complied with the therapy/counselling as ordered by Gibson J. in November 2016. He participated actively with Ms. Simopoulos, and with Dr. Fidler, and he took a parenting course.

[117] Second, the father objects to any further assessments being ordered by the Court. Prior to trial, Justice Kurz, in an Endorsement made on September 25, 2020, rejected the mother's request for an assessment.

[118] Third, the father disputes any suggestion that there is no evidence of parental alienation/manipulation in this case. As just one example, there is the independent and uncontradicted evidence of Ms. Morris about the mother spraying the child down after R. comes back from visits with her father.

Whether There Has Been a Material Change is Not a Contentious Issue

[119] There is no issue that has been raised about whether there has been a material change in circumstances since the Order of Justice Gibson was made. Both sides have proceeded on the clear basis that there has been a material change and, thus, this Court need not address that issue. I would simply point out that there is no question that circumstances have indeed materially changed since November 2016, evidenced in part by the fact that even D. admits that the parenting schedule in the said Order has not been followed since May 2020 (see Schedule "A" of the written opening statement filed on D.'s behalf).

The Legislation

[120] This Court shall take into account only the best interests of R. – section 24(1) of the *Children's Law Reform Act* ("CLRA"). As the parties were never married, it is the CLRA that governs.

[121] In determining the best interests of R., I shall consider all factors related to her circumstances. I shall give primary consideration to her physical, emotional, and psychological safety, security, and well-being. Section 24(2) CLRA.

[122] Further, sections 24(3) through (6) are important, and those provisions are set out below.

Factors

(3) Factors related to the circumstances of a child include,

- (a) the child's needs, given the child's age and stage of development, such as the child's need for stability;
- (b) the nature and strength of the child's relationship with each parent, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;
- (c) each parent's willingness to support the development and maintenance of the child's relationship with the other parent;
- (d) the history of care of the child;
- (e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
- (f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;
- (g) any plans for the child's care;
- (h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
- (i) the ability and willingness of each person in respect of whom the order would apply to communicate and co-operate, in particular with one another, on matters affecting the child;
- (j) any family violence and its impact on, among other things,
 - (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
 - (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to co-operate on issues affecting the child; and
- (k) any civil or criminal proceeding, order, condition or measure that is relevant to the safety, security and well-being of the child. 2020, c. 25, Sched. 1, s. 6.

Factors relating to family violence

(4) In considering the impact of any family violence under clause (3) (j), the court shall take into account,

- (a) the nature, seriousness and frequency of the family violence and when it occurred;
- (b) whether there is a pattern of coercive and controlling behaviour in relation to a family member;
- (c) whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;
- (d) the physical, emotional and psychological harm or risk of harm to the child;
- (e) any compromise to the safety of the child or other family member;
- (f) whether the family violence causes the child or other family member to fear for their own safety or for that of another person;
- (g) any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve the person's ability to care for and meet the needs of the child; and
- (h) any other relevant factor. 2020, c. 25, Sched. 1, s. 6.

Past conduct

(5) In determining what is in the best interests of the child, the court shall not take into consideration the past conduct of any person, unless the conduct is relevant to the exercise of the person's decision-making responsibility, parenting time or contact with respect to the child. 2020, c. 25, Sched. 1, s. 6.

Allocation of parenting time

(6) In allocating parenting time, the court shall give effect to the principle that a child should have as much time with each parent as is consistent with the best interests of the child. 2020, c. 25, Sched. 1, s. 6.

Jurisprudence – Parental Alienation and the Best Interests of Children

[123] That (i) parental alienation exists and (ii) is a phenomenon that is not in the best interests of children are two general propositions that are so universally and widely accepted that they have been the subjects of judicial notice by many courts in the past.

[124] During the trial, when we were discussing Exhibit A, I said the above, and both counsel unreservedly agreed with me.

[125] *A.M. v. C.H., supra* is a good illustration of how difficult these cases are. A parent's consistent undermining of the relationship between the child and the other parent is a form of emotional abuse. In some instances, it will be determined that the long-term best interests of the child require a change in "custody" and a temporary suspension of contact between the child and the parent who has been responsible for the said undermining. That was the penultimate finding of the Judge in *A.M. v. C.H., supra*, and the Court of Appeal for Ontario did not intervene.

[126] In these types of cases, a stark dilemma is presented. Although tempting to do so, in cases of the clear manipulation of a child (which is what parental alienation is), focussing too much on the short-term effects on the child that would result from a drastic change in "custody", and therefore keeping the child with the parent who has been responsible for the manipulation, can amount to reversible error. *A.A. v. S.N.A., supra*.

Findings by the Court

[127] Reasons for judgment are primarily for the benefit of the unsuccessful side of the litigation, and thus I will endeavour to address each of the key submissions that were made on behalf of the mother.

The Mother Cannot be Blamed for the Failure of the Families Moving Forward Program

[128] I respectfully disagree with the mother's position. The major reason why the intervention with Dr. Fidler did not succeed, long-term, is because the mother unreasonably refused to accept the notion of co-parenting.

[129] The father immediately accepted Dr. Fidler's aftercare recommendations, as he was already required to do in light of the Coats J. Order. The mother did not. It is as simple as that.

The Father has Not Complied with the Gibson J. Order

[130] I respectfully disagree with the mother's position. The Order of Justice Gibson, particularly clause 27(ii) therein, does not mandate either parent's participation in any one specific parenting course or program.

[131] What T. has participated in and completed since November 2016, although not the same as what D. undertook, more than satisfies the Order that was made.

The Audio Recording of the Access Exchanges

[132] To borrow a word used by Justice Trimble in *Ukiri v. Erskine, supra*, at paragraph 24, I find what was done here to be “repugnant”.

[133] For months and months, in a clandestine manner, with the assistance of a co-conspirator - the supposed neutral and independent access facilitator (T.T.), D. elected to record all of the access exchanges between R. and her father.

[134] The objective, undoubtedly, was to gather evidence for use in Court. In fact, much of the mother’s case at trial, including through the cross-examination of the father, focussed on the recordings.

[135] I have listened to the recordings. I have read the transcripts. This is not a healthy or a normal interaction between an 11-year old child and her parent. One does not need a degree in psychology to know that.

[136] The child is clearly “baiting” her father into talking about things that he is not supposed to talk about, such as D. The child is rude, aggressive, and totally disrespectful to her father.

[137] This is not the same child described by her report cards from school or by the independent witnesses, Ms. Morris and Dr. Fidler.

[138] I do not know whether R. knew that the access exchanges were being recorded, but I do know that she saw those interactions as opportunities to essentially interrogate her father about subject areas that she herself was saying that she did not want to talk or hear about. It is very bizarre when one listens to the recordings.

[139] I cannot be sure that the mother “coached” or “scripted” the child, but D.’s hatred for T. (that is a very strong word, but I think that it is appropriate here) has infected these access exchanges, and the proof of that infection is in the recordings themselves.

[140] As for the evidence of T.T. about the child being distressed after being with her father, including shaking, I reject that evidence. T.T. is not an objective witness; she allowed herself to be conscripted by the mother into a plot to surreptitiously record the conversations between R. and her father. T.T. is also not a reliable witness; in fact, there is nothing in her affidavit about these alleged observations of the child being distressed after access visits. I am not suggesting that T.T. lied to the Court. What I am suggesting is that her evidence cannot be trusted because she has come to see the relationship between R. and her father through the eyes of D.

[141] It was submitted on behalf of the mother that the child “finds her voice” with T.T. being present at the access exchanges; R. feels safe with a third party adult present, and that explains the content of the recordings. With respect, there is no evidence to support those assertions. There could have been evidence from D. and/or T.T. that the child has expressed those views to them or either of them, for example, but none was tendered at trial.

[142] Why does T. not simply listen to the child’s concerns and do what she asks, said counsel rhetorically, such as stop belittling D. First, I do not believe that T. is in the habit of belittling the mother. Second, the recordings show an impressive level of restraint on the part of the father. He is not perfect, and he does say things that he should not have said, but in the face of his daughter’s relentless “baiting” of him, he remains calm and measured.

[143] I reject the submission that the recorded access exchanges prove that it is the father who speaks about adult issues with the child, such as witnesses for Court, and it is obvious that the mother has not discussed these things with R. because the child seems surprised when T. brings them up. Except on the rare occasion, and even that is clearly inappropriate, I do not believe that it is the father who speaks about adult issues with R. I agree with Mr. Sicco, though, that the recordings alone do not provide any evidence that the mother has discussed certain adult issues with the child.

Whether the Mother Complied with the Coats J. Order

[144] Mr. Sicco submitted that, concerning the Coats J. Order made on June 1, 2018, clause 4 therein, and the question of whether the mother complied strictly with that clause, it must be

remembered that Dr. Fidler's aftercare recommendations were not known at the time of that Order, and further Dr. Fidler's co-parenting idea was not known then either.

[145] I agree with both of those points. But those are reasons, perhaps, why the mother should have thought harder about whether she would consent to the Order in question. Those points are irrelevant to whether the mother complied with the Order or not. She clearly did not. It was ordered that "[f]ollowing the [Families Moving Forward] intervention, the parties shall continue with the recommendations of the intervention team in terms of follow up care and support for [R.] and [T's] relationship" (clause 4 of the Order). The mother, unquestionably, did not "continue with the [aftercare] recommendations". She rejected the recommendations. In failing or refusing to accept and continue with them, she violated the Court Order made by Justice Coats.

Dr. Fidler Acted Inappropriately

[146] I reject, resoundingly, the mother's criticisms of Dr. Fidler and her team.

[147] I strongly disagree that Dr. Fidler unfairly and unilaterally changed her retainer and exceeded her authority by inserting into the Gibson J. Order the notion of co-parenting.

[148] I accept the evidence of Dr. Fidler that the mother was well aware of the co-parenting model that was being pursued, and she did not object to it during any of the discussions before or during the multi-day intervention.

[149] I accept the evidence of Dr. Fidler that the co-parenting principle is in no way inconsistent or incompatible with the Gibson J. Order, in so far as that Order appears to give sole custody of the child (as that term was then used) to D. I say "appears" because the Order does not expressly say so.

[150] I agree with Mr. Sicco that it would have been ideal if the retainer/engagement document that he cross-examined Dr. Fidler about extensively at trial had explicitly referred to the notion of co-parenting and how that might affect the Order of Justice Gibson, but I am not sure how that would have been possible given that Dr. Fidler's work with the family had barely commenced at that time.

[151] In any event, I am of the strong opinion that there was nothing unfair or unilateral or improper about Dr. Fidler's aftercare recommendations. They were thorough. They were clear and understandable. They were responsive to this family's gross level of dysfunction, in that they left nothing to the imagination (sad, but necessary here).

[152] Dr. Fidler and her team worked very hard for this family. Real progress was made during the intervention. The child was ecstatic to see her parents working together, for once in her lifetime of memories. She showed absolutely no resistance to her father. Dr. Fidler was able to bring her wealth of expertise to the table, a level of knowledge about successful parenting strategies for a family like this one that is far beyond anything that these litigants, or their lawyers, or this Court, have/has. Ultimately, all that was accomplished came crashing down, leaving the child in an even worse position than previously and an experienced professional (Dr. Fidler) feeling totally exasperated.

[153] And why? Because the mother had a change of heart and could no longer accept anything "co-" when it comes to T. What a shame. I suspect that the mother could have preserved much of the Gibson J. Order, including those provisions that effectively gave to her the majority of parenting time with the child and final decision-making authority on major issues concerning the child, but with some amendments to the Order to incorporate Dr. Fidler's aftercare recommendations. In the eyes of the mother, however, it was not meant to be.

There is No Evidence of Parental Alienation

[154] That R. was so happy and engaged with Dr. Fidler points away from any allegation that the mother had alienated the child away from her father, Mr. Sicco submitted.

[155] I respectfully disagree. Even the tightest grip can have moments of weakness. I think that the true R. was revealed during the intervention, but that does not mean that the mother had not manipulated the child previously.

[156] There is simply no evidence that D. has alienated this child; it is just a baseless allegation made by the father; in fact, Dr. Fidler testified that she saw no evidence of alienating behaviour during the intervention itself, Mr. Sicco submitted.

[157] I agree with the latter but not the former submissions.

[158] Although I hinted at this several times throughout the trial, I do not think that the mother appreciates the incomprehensiveness of her position. On the one hand, she paints a picture of T. as being a violent, abusive monster who poses a clear and present danger to her and to R. On the other hand, she states that the Order of Gibson J. should continue. Those two things are totally and completely irreconcilable. If the mother's allegations are true, then this man cannot be permitted to be within one hundred feet of the child, never mind visit with her alone on a regular basis.

[159] Either (i) the allegations of the mother are untrue, or greatly exaggerated, or (ii) the allegations about violence and abuse perpetrated by T. are true. The mother seems to think that only (i) would be bad for her. But (ii) is also bad for her litigation position because this Court would be left with the inescapable conclusion that the mother is not a fit parent in that she knowingly and voluntarily places her child at risk of being assaulted, even killed, by her father. In fact, the mother goes so far as to punish the child for not going to see this maniac that might kill her.

[160] I am confident that (i) is a correct statement. I do not believe that T. has ever hit, grabbed, smacked, shook, or assaulted his child in any way, shape, or form. I do not believe that T. did any of the serious things that the mother has alleged, such as but not limited to causing her to have a miscarriage by beating her severely while pregnant, or beating her at all, or placing a gun to her head and threatening to shoot her, or sticking a gun to her head while R. was sleeping beside D., or physically abusing her while she held R. in her arms.

[161] I find it impossible that a woman who hates the father of her child to the degree that D. does, for as long as D. has, would not have transferred some of those feelings, even if unintentionally, to the child. That is a form of parental alienation. That is a form of emotional abuse.

[162] It is not the terminology that is as important as the substance. One can refer to D.'s behaviour as parental alienation, emotional abuse of the child, child manipulation, or all of those. Those are labels, though. What is most important is to identify the crux of the problem – this

mother, D., has done things that have caused or contributed to the creation of further and further distance between R. and her father and the consequential deterioration of their relationship.

[163] It is simply untrue that there is no evidence to support this. The evidence is overwhelming. The mother chose to audio record access exchanges, which (even if unknown to R.) automatically created an atmosphere of combativeness between one side (D., R., and T.T.) and the other side (the father). The mother sprays down the child and has her wear a special necklace in order to protect her against her own father. The mother is writing a book about T., for the “benefit” of the child (and we all know what kind of content that book must have). Despite an invitation from the child for both of her parents to attend a special Advent, the mother chose to not attend and also to deprive the child from being there with her father. The mother refused a simple request that the child miss part of one school day to go on a special getaway with her father. The mother had no hesitancy contacting the police when there was an isolated occurrence of the child not being returned right on time (as it turns out, the child had become ill en route while being driven by the father).

[164] All of these things, and there are many more examples that could be given, have contributed to a further and further widening of the gulf between (i) mother and child and (ii) father. They are selfish on the part of the mother. They are grossly unfair to the child.

[165] I reject the submission that it is baseless to allege that D. has alienated the child from her father. To the contrary; that allegation is well-grounded in the trial evidence, and I make a positive finding that D. has consistently and for many years now engaged in conduct that amounts to parental alienation.

The Mother did Not Delay the Process with Dr. Fidler, Post-Intervention

[166] I respectfully disagree with the mother’s position.

[167] I do not fault Mr. Sicco for what happened after Dr. Fidler released her aftercare recommendations. But the mother clearly delayed the process. The father agreed with everything and told Dr. Fidler so within days of the recommendations being released. The mother chose to put her back up because she had second thoughts about “co-parenting”. She treated the period

post-intervention as a negotiation, contrary to the consent Order of Coats J. and contrary to the reality that Dr. Fidler was the expert and was not there to bargain with the parents.

The Mother was a More Credible Witness, Compared to the Father

[168] I respectfully disagree with the mother's position.

[169] In totality, between the two parties, the father's evidence was more consistent with that of the two independent witnesses, Ms. Morris and Dr. Fidler. For example, contrary to the evidence of the mother but consistent with the evidence of the father, Ms. Morris testified that the only child protection concern ever validated by the child welfare agency was that R. was being emotionally harmed by her mother. As another example, contrary to the evidence of the mother but consistent with the evidence of the father, Dr. Fidler testified that the notion of co-parenting was discussed extensively with and supported by both parents both before and during the intervention.

[170] In addition, the examples given by the respective sides about an alleged lack of credibility on the part of the opposing parent are much stronger in favour of the father. The disciplinary proceeding against T. has nothing to do with his attitude towards D. or with his parenting. Exhibits 5 and 5A do support the father's position that the letter was influenced by D., as she clearly told him to write about the alleged miscarriage. On the other hand, the mother's evidence about what happened before T. was arrested is totally absurd and does relate directly to her attitude towards the father. She wants this Court to believe that she went to the police, was interviewed, showed them bruises on her body from a recent beating at the hands of T., yet the police ignored the bruises and charged the father with historic incidents. I do not believe that.

[171] Finally, I repeat, what crushes the credibility of the mother are her irreconcilable positions that the father is a danger to her and R. but, at the same time, the Gibson J. Order should continue.

[172] I prefer the evidence of T. over that of D.

The Evidence of Ms. Berry Supports the Mother's Evidence

[173] The evidence of Ms. Berry only serves to confirm how much the mother tries to encourage a relationship between R. and her father, something that has not been helped by T. himself cancelling visits in order to suit his own needs, Mr. Sicco submitted.

[174] I respectfully disagree.

[175] I do not find that the father has a history of cancelling visits with his daughter. And I do not find that the mother encourages a healthy relationship between R. and T. Ms. Berry was a good witness at trial, but her evidence is totally at the mercy of D.'s reporting to her. I do not believe that reporting.

The Mother's "Bottom Line"

[176] The bottom line is that there is no evidence that the admittedly poor relationship between R. and T. is the mother's fault or because of parental alienation; it could equally be the result of the father's own conduct, such as his constant belittling of D. in the child's presence, Mr. Sicco submitted.

[177] I respectfully disagree. There is a wealth of evidence that the deteriorated relationship between R. and T. has been caused by, or significantly contributed to by, the mother's poisoning and undermining of that relationship.

[178] Further, I do not find that the father is in the habit of belittling D. in the presence of the child.

[179] The mother argues that the Gibson J. Order should continue, as that is in the best interests of R. I find to the contrary. The continuation of the Gibson J. Order is not in the best interests of the child. It is also not practical as it is currently not being adhered to.

[180] Alternatively, perhaps there should be an assessment ordered before this Court makes a decision, the mother submits. I disagree. This family has been counselled and assessed to death. I accept the evidence of Dr. Fidler that only two options exist at this time – (i) accept that there will be no relationship between T. and the child, or (ii) change the situation along the lines being

suggested by the father. Besides, the suggestion that the father is an “unknown quantity” whose capacity to parent at all should be assessed is at odds with the mother’s position that the Gibson J. should continue, which Order (if followed) assumes that he is a fit parent.

[181] Justice Kurz already rejected the need for more assessments, and I agree.

[182] Counsel for D. ended his submissions by saying that the mother is currently meeting all of the child’s needs, and to change everything now would be far too traumatic for R. I do not concur with either remark. The mother is not meeting one of the most basic needs of the child – to have a healthy relationship with her father. With the proper precautions in place, and with a review at Court in four months’ time, the hard adjustment that the child will surely experience will not be too traumatic for her. It will be difficult. The alternative, however, is much worse. The alternative for the child is a complete severing of any relationship with her father, very likely forever.

III. Conclusion

[183] I repeat, a parent’s consistent undermining of the relationship between the child and the other parent is a form of emotional abuse. In some instances, it will be determined that the long-term best interests of the child require a change in “custody” and a temporary suspension of contact between the child and the parent who has been responsible for the said undermining. *A.M. v. C.H., supra.*

[184] That is our case.

[185] Given this Court’s findings, in particular that T. has never abused R. in any way, and that he has never been violent with D. as alleged by her, and that he once had a better relationship with R., and that D. has engaged in a consistent and long-term pattern of conduct that has alienated the child from her father, I have concluded that to maintain the status quo would be an error. I cannot focus too much on the short-term effects on the child that would result from a drastic change in “custody”, and therefore keep the child with the parent who has been responsible for the manipulation. *A.A. v. S.N.A., supra.*

[186] I accept Dr. Fidler's evidence that only two options exist currently, and this Court chooses the option that allows the chance for a healthy relationship between R. and both of her parents, in her best interests. That option is the Order that the father is seeking.

[187] The most important person in this case is R. She is 11 years old. She has two parents who love her dearly but who are hurting her with a thousand cuts. That must stop, and the Order being made herein stands the best chance of success in making that happen. In determining the best interests of R., I have considered all factors related to her circumstances. I have treated as paramount R.'s physical, emotional, and psychological safety, security, and well-being. And, finally, I have attempted to account for sections 24(3) through (6) of the CLRA.

Order of the Court

[188] The father's Motion to Change is therefore granted. The Order of Gibson J. dated November 9, 2016 is varied as per the draft Final Order filed by counsel for the father, subject to the following comments:

clause 1 of the draft Final Order – sole decision-making authority for the father – that is granted without amendment;

clause 2 of the draft Final Order – the father not being required to seek the mother's input on decisions affecting the child – that is granted without amendment;

clause 3 of the draft Final Order – the father being required to enrol the child in therapy – that is granted with one amendment – the enrolment must be completed within thirty (30) calendar days of the release of these reasons;

clause 4 of the draft Final Order – a short vacation for father and child between the conclusion of the therapeutic intervention and the return of the child to the father's home – that is granted without amendment;

clause 5 of the draft Final Order – the father having the right to conceal from the mother the location of the therapeutic intervention – that is granted without amendment;

clause 6 of the draft Final Order – the mother being required to stay at least 8 kms. away from the child – that is granted without amendment;

clause 7 of the draft Final Order – the mother being required to have a third party deliver the child's belongings to the father's home within ten (10) calendar days – that is granted without amendment;

clause 8 of the draft Final Order – the father having the sole authority to consent to the child's travel, and other related provisions – that is granted without amendment;

clause 9 of the draft Final Order – the mother being required to sign consents to the release of information within a specified time period – that is granted without amendment;

clause 10 of the draft Final Order – until further Order of the Court, there being no contact between the child and the mother and between the child and others close to the mother – that is granted without amendment;

clause 11 of the draft Final Order – that clause shall be amended to provide that the no contact provision (clause 10) shall be for ninety (90) days commencing on the date that the child returns to the father's home after the therapeutic intervention, subject to the review provided for in clause 19;

clause 12 of the draft Final Order – that the Court shall determine the details of the resumption of contact between the child and the mother, and between the child and those close to the mother, with the assistance of the therapist – that is granted with one amendment to state that the said determination may be made when the case returns to Court as provided for in clause 19;

clause 13 of the draft Final Order – that the father has the right to confiscate and prevent R.'s use of electronic devices – that is granted without amendment;

clause 14 of the draft Final Order – further details concerning the 8 kms. radius during the no contact period – that is granted without amendment;

clause 15 of the draft Final Order – that all communications between the parties shall be by way of Our Family Wizard – that is granted without amendment;

clause 16 of the draft Final Order – police enforcement clause – that is granted without amendment;

clause 17 of the draft Final Order – that all records and potential evidence of the therapeutic professionals who assist the child under the terms of this Order shall be immune from subpoena by either party and shall not be compellable at Court – that is granted without amendment;

clause 18 of the draft Final Order – only the first sentence of that clause is granted (that the Court shall address any changes to the no contact terms when the case returns to Court for review); the rest of that clause is not granted as it is not appropriate, in my view, to dictate to the Court what will and will not be considered when assessing any changes to the no contact terms;

clause 19 of the draft Final Order – that the case shall return to Court in four (4) months' time – that is granted without amendment;

clause 20 of the draft Final Order – that the mother shall pay 50% of the child's therapy costs, capped for her share at \$35,000.00 – that is granted without amendment;

clause 21 of the draft Final Order – that the mother shall pay 100% of her own therapy costs – that is granted without amendment; and

clause 22 of the draft Final Order – that the mother shall pay costs of the trial – that relief is not granted (at least not yet) and shall be deleted from the Order. Clearly, the father has been successful and is presumptively entitled to some costs, however, it is premature to say anything about costs in the Order as this Court will be inviting written submissions from counsel in that regard.

[189] A Final Order shall issue in accordance with these reasons. This Order takes effect immediately, including but not limited to the no contact provision between the child and the mother.

[190] It should be noted that, immediately before the Court released these reasons, I met with the child, privately, to tell her what the decision was. In fact, the reasons were emailed to all counsel while I was meeting with the child, who had a familiar and independent professional support person with her. I repeat, the Order takes effect immediately, and that means, among other things, that the parties must adhere to the Order as of the moment that my meeting with the child has concluded. My understanding is that the Family Bridges program is ready to receive the child this very weekend (tomorrow, May 1, 2021). Thus, effective immediately, the child shall be in the care of the father, and there shall be no contact between the child and the mother.

[191] Please, for the sake of this special child, I beg the parents to respect this Order. It is non-negotiable. It is mandatory.

Costs

[192] Unless the parties can resolve the issue of costs, the Court will receive written submissions. Each submission shall be limited to three pages, excluding attachments. No reply is permitted without leave of the Court. The father shall file first, within thirty (30) calendar days of the release of these reasons. The mother shall file next, within fifteen (15) calendar days of her counsel's receipt of the father's submissions.

Thank you

[193] I wish to thank Ms. Doris, Ms. Luscombe, and Mr. Sicco for their able assistance during the trial. I want to thank the child, R., for helping me learn more about her and her family.

(“Original signed by”)

Conlan J.

Released: April 30, 2021

CITATION: D. v. T., 2021 ONSC 2945
COURT FILE NO.: FS-16-2387
DATE: 2021 04 30

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

D.

Applicant

– and –

T.

Respondent

REASONS FOR JUDGMENT

Conlan J.

Released: April 30, 2021