

THE JUNE 27, 2011 ORDER UNDER REVIEW

[2] On June 27, 2011, I made the following order:

1. A.F. is found in Contempt of the order of Thomas J. dated October 24, 2008 and the order of Quinn J. dated March 5, 2010.
2. Pursuant to the *Family Law Rules* to enforce my finding of contempt I sentence A.F. to six months probation. The terms of her probation being that she shall comply with all of the terms of the custody and access order as set out below.
3. If there is a breach of probation the matter is to be brought back to me for submissions on sentencing for that breach.
 - a) The mother, A.F., shall have custody of the three children under the supervision of the Society.
 - b) This order shall be the subject of a review before me in six months to determine if any gains are being made. The expected gains to include:
 - i) The mother has transformed her present projection of the children's father as a person to be feared to someone who is a safe and loving father who should be respected and trusted.
 - ii) The father has stopped any pursuit of having the mother designated as someone who has infused parental alienation syndrome into her children. He must recognize that my findings in these Reasons are findings that relate to the mother's and his conduct and functioning, based on all of the evidence, that impact on the children's needs and define each parents' ability to meet those needs.
 - iii) The negative actions of one parent that lead to the negative reactions within the other parent must stop now.
 - iv) Both parents must work with the Children's Aid Society and any therapist recommended by the Society in accordance with this order.
 - c) The mother shall allow the Society to attend at her home without prior notice to her, and interview the children and supervise the custody.

- d) The mother shall not speak negatively about the father or his present wife S.W. and she shall promote the father, J.W., positively to the children at all times.
- e) The mother shall not permit the children to be subjected to any negative comments or actions of anyone that would negatively impact on the relationship with father and the children.
- f) The children shall meet with me immediately following my oral presentation of these Reasons to the parents. I will then present my reasoning to the children.
- g) The mother shall attend at a meeting with the children and me, immediately following my oral presentation of these Reasons to the parents and the children. She shall tell the children that she promotes the contact and the loving relationship they should have with their father and she will participate in whatever the judge sets out in his judgment in order to make this family work so that the children can have both parents for the rest of their lives.
- h) The Children's Aid Society shall arrange for counselling for the children to deal with the emotional abuse, their distorted reality of their father and promote the reunification of the children and the father.
- i) The Children's Aid Society shall arrange for such counselling for the mother to deal with her anger and need to learn to communicate with the father in order to allow the children to have a positive relationship with their father.
- j) The father shall attend at a meeting with me and the children immediately following my separate meeting with the children and then the children and the mother. This meeting with the father, me and the children is to start the reunification of his relationship with the children and he shall tell the children that he loves them and will do whatever is necessary as the judge directs in order to have a positive loving and healthy relationship.
- k) The father shall attend counselling to deal with his negative perceptions and anger toward the mother and to learn communication skills in order to communicate with his children, given this six months period of transition to the goal of achieving a normalized relationship. The counsellor shall be arranged by the Children's Aid Society.

- l) The father and the mother shall each produce reports from their respective counsellors detailing the progress, if any, in the father and the mother's counselling. These reports are to be sent to the other side and filed in court no later than one week prior to the review of this matter.
- m) The parents shall sign any releases necessary for the Children's Aid to receive any report from their counsellors and the children's counsellors.
- n) The father shall have access to the children in accordance with the schedule below that is a stepped up transition access scheme:
 - i) The first access after the meeting with the father, myself and the children to outline this judgment to them shall be from 4 p.m. to 6 p.m., supervised at the Children's Aid Society, on the first two Thursdays following the release of this judgment. At that access visit the father shall tell the children that his wife S.W will never replace their mother. That he loves them in a way that will never change and cannot be compared to his love for anyone else. S.W. wants to have a close relationship with them but she too does not want to replace their mother.
 - ii) The father shall have access to the children on the Saturday following the second access visit at Glengarda Children's Centre. This access shall be monitored by Glengarda. It shall commence at 10 a.m. and end at 1 p.m. The father's wife S.W. may attend this access.
 - iii) On the Thursday following the Saturday access as above, the father shall have access to the children from 4:30 p.m. to 7:30 p.m. This access shall not be monitored. The father shall pick up the children and drop off the children at the children's residence with their mother. The mother shall bring the children to the father and promote the access in a positive manner.
 - iv) On the weekend following the above Thursday, the father shall have access to the children, unsupervised at his home from Saturday at 10 a.m. to Saturday 7 p.m. The mother shall deliver the children to the father's residence and ensure their transfer to the father and promote the access in a positive manner. The father's wife S.W. may be present

during this access. The father shall return the children to the mother's home.

- v) On the following weekend the father shall have the children from Saturday at 10 a.m. to Sunday at 7 p.m. The mother shall deliver the children to the father's home and the father shall return the children to the mother's home.
- vi) Following the weekend set out in (v) above the father shall have the children during the week, on Tuesday evenings with no supervision from 4 p.m. to 7 p.m. in each week. And on weekends from Fridays at 6 p.m. until Sunday evenings at 7 p.m. alternating from the weekend after the Tuesday set out in this paragraph.
- vii) Neither parent shall take the children out of the province without the written consent of the other or further order of this court.
- viii) The children's names shall not be changed.
- ix) Once per month setting out the progress and describing the therapy and counselling that has been put into place pursuant to this order.

Costs of this trial shall be reserved to me to the hearing of the review of this matter as provided in this order.

Findings of Fact

- [3] In my June 27, 2011 reasons for judgment, I made certain findings of fact that were to form the baseline from which to measure gains for this review. At the core, I found that the mother had distorted the children's reality to such a degree that they feared and disrespected their father for no valid reason. In para. 147 of that judgment, I stated the following:

From her proclamation to J. shortly after separation, that "the children don't want to see you and they are better off without you" until her testimony in this court room, A, has actively set about to excise J. out of the children's life. The children started out a few weeks after separation protesting that they did not want to go with their father. They all transformed into children who feared and professed to have an intense dislike of their father. I find that transformation of the children was

primarily caused by A.'s role in helping to create a distorted reality of their father within the children.

- [4] One of my most significant concerns about the mother's behaviour was the lengths to which she appeared to be willing to go in order to transfer her own feelings about J.W. onto the children's feelings about J.W. As I stated at para. 146:

The mother's own testimony is very instructive of her intentions relative to obeying the court ordered terms of access. She stated that she "has been to hell and back trying to get someone to listen to the children's feelings and to validate those feelings about their father." Incredibly, in response to counsel in cross-examination when asked whether she would comply with a judge's order, were the judge to find her in contempt and order fines per each future missed access, A. responded, "if I had to go into further debt in order to get my children's feelings heard and validated I will."

- [5] I also stated that I was not willing to give up on the children having a positive relationship with both of their parents. In order to achieve this goal, which I found to be in the best interests of these children, I constructed a multi-directional order that included positive duties on both parents to promote the other parent to the children. My order also prohibited all conduct that would give the children a perception that J.W. was someone to be feared or somehow implied that it was okay for them to be disrespectful and, in many ways abusive, to their father.
- [6] Importantly, I also found that the mother had emotionally abused the children and her conduct had placed all three in need of protection in accordance with the meaning of that term as set out in the *Child and Family Services Act*, R.S.O. 1990, c. C. 11, s. 37(2)(f) and (g) which states:

A child is in need of protection where,

...

(f) the child has suffered emotional harm, demonstrated by serious,

(i) anxiety,

(ii) depression,

(iii) withdrawal,

(iv) self-destructive or aggressive behaviour, or

(v) delayed development,

and there are reasonable grounds to believe that the emotional harm suffered by the child results from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child;

...

(g) there is a risk that the child is likely to suffer emotional harm of the kind described in subclause (f) (i), (ii), (iii), (iv) or (v) resulting from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child;

- [7] As I discussed at paras. 171-190 of those reasons, despite finding that all three children were in need of protection in accordance with s. 37(2) of the *Child and Family Services Act*, I could not avail myself of the remedies available in that Act. This is because no application for protection had been brought and even if an application *had* been brought, the remedies under the *Child and Family Services Act* would have been unavailable because the trial took place in a jurisdiction without a Family Division of the Superior Court.
- [8] In order to protect the children, I placed them in A.F.'s care and custody, but under the supervision of the Children's Aid Society (CAS) with very specific terms. I granted this supervision order pursuant to s. 34 of *Children's Law Reform Act*, R.S.O. 1990, c. C. 12 which permits the court to "give such directions as it consider appropriate for the supervision of the custody or access by a person, a children's aid society or other body" as well as my inherent *parens patriae* jurisdiction to act in the best interests of the children and for their protection.
- [9] I also found the mother A.F. in Contempt of two court orders and placed her on probation for six months. The terms of her probation were that she had to comply with all of the terms in the June 27, 2011 order, as set out above.
- [10] By the time of the June 27, 2011 order, the children had not seen their father for a number of months. They refused to communicate with him and refused to call to him "Dad", and instead referred to J.W. as "him".

The Delivery of the Oral Judgment and my Discussion with the Children

- [11] I gave my June 27, 2011 reasons orally, as in high conflict and chronic emotionally abusive cases, the parties often benefit from reading, seeing, and *hearing* the judge's reasoning and directions on how the family is to move forward. I also discussed my judgment with the children. Speaking directly with the children about the judgment allows them to get an unfiltered version of what is expected of all of the family members and provides an equal starting point. Giving the judgment orally and discussing it with the children allows for a reset of family dynamics and a refocus on how best to meet the children's needs.
- [12] After I orally gave my reasons to the parents, I went into a separate room where the children and social workers from the CAS were waiting. I told the children that I was the

one who made the decision after an extensive review of all the evidence. I assured them that they were going to stay in the custody of their mother, but that I was putting rules into place that everyone had to follow. I told them that it was my view that the rules were in their best interests and that it was my hope the rules would benefit everyone. I assured the children that my intention was to provide them with the opportunity to be able to love both of their parents without feeling that they had to choose between one parent or the other. I told them that I would bring both of their parents into the room separately to talk about their support for the new set of rules. Each time I talked to the children, either alone or with either of their parents, I returned to the courtroom and summarized what had taken place on the record.

- [13] When I came into the room with their mother, the children asked A.F. to get me to change my mind. The mother supported my decision and told them that it was important for them to listen to me. They continued to protest and insisted that they should not have to see their father and questioned when they could finally make their own decision to stop seeing him. I emphasized that although judges consider children's views, judges must make decisions based on a number of other considerations in order to reach a decision that is in the children's best interest.
- [14] When I entered the room with their father, all three children were seated with their backs to the door, facing the wall and ignoring both their father and me. I firmly told them to turn around and listen to what their father had to say. He told them that he loved them and that he hoped that someday they would be able to, once again, say that they loved him too. The children did not respond or even acknowledge him.

The Expected Goals Following the Order

- [15] The main goal of the June 27, 2011 supervised custody order was to normalize the lives of the children in all respects. They were doing well in all aspects of their lives, other than their relationship with their father and those who support him – their achievements in school, and social interactions with peers and all adults were excellent. However, the children experienced varying states of anxiety as a result of their unhealthy and unwarranted fear of their father. They also displayed a shocking sense of entitlement to be disrespectful and cruel to their father, regardless of whether that conduct was in the presence of others.
- [16] The order provided for the CAS to supervise the custody arrangements, and to report to me on a monthly basis on the progress or lack thereof. A child psychologist, Dr. Ricciardi, was appointed to help the children transition to a positive relationship with their father and to help them cope with the impact of the emotional abuse their mother, assisted by the maternal extended family, had caused them.

- [17] The order provided for a six month period of transition, which coincided with the mother's six month term of probation for Contempt. It was intended that I would review the custody order after six months in order to determine the progress made, having regard to the positive duties and conduct prohibited by the order as well as the involvement of therapists for A.F., J.W., and the children.

THE REVIEW

- [18] Unfortunately, the review was delayed. It could not be reached by the projected date, of January 2012, and was then scheduled to start in April 2012. Shortly before the matter was to be brought back to court, however, the children's maternal grandfather was involved in a fatal accident. The matter was adjourned and the trial finally started on July 3, 2012. J.W. gave evidence for approximately three days, followed by Dr. Ricciardi, the children's therapist, who testified regarding what, if any, extended summer access should take place while this review was ongoing.
- [19] At the commencement of the review, parties filed, on consent, all of the CAS monthly reports to the judge as well as affidavits from A.F., J.W., and his wife, S.W.

The Initial Gains, between July 26, 2011 and July 6, 2012

Actual Time Spent At J.W.'s Home

- [20] The monthly CAS reports and the father's own evidence stated that the children had gone from not even wanting to be in the same room as him in supervised access, to spending alternating weekends and one evening each week at his house in unsupervised access; by July 6, 2012, the children were at least allowing themselves to be in the same home as their father.

Positive Change in Children's Relationship with J.W.'s New Wife, S.W.

- [21] The evidence also established that the children had made significant gains relative to their relationship with their father's new wife S.W. When they were first introduced to S.W., the children had little interaction with her. When the children were later told that their father was going to marry S.W., the children were "inconsolable" as described by Dr. Lee, their former counsellor. The children's relationship with S.W. then swung 180 degrees, and by July 2011, the father testified that they children had even apologized to S.W. for the manner in which they previously treated her.
- [22] During this time, S.W. and J.W. attempted to get the children to participate in redecorating their rooms at their father's house, but they refused to participate. Although the children each had their own bedroom at their father's house, they refused to be separated and insisted on staying in the same room, with all three of them sleeping in one

single bed. They often went to their room immediately upon arriving at their father's home, without even saying hello. This conduct was eased somewhat as their relationship with S.W. grew closer, as S.W. was able to coax the children out of their room and participate with her and their father.

Interactions Between the Children and J.W.

- [23] In July 2011, the father testified that while the children's attitude toward him was better, they still had distorted views of him. He felt that the relationship was healthier, but not as good as it was before the separation.
- [24] Despite the children's growing relationship with S.W., they kept J.W. on the periphery. At first, the children would not let him play any games with them, only playing amongst themselves or with S.W. Later the children would let him play, but only if he was on the other side of the room from them, and eventually, the children even let him play on the same side of the room as them.
- [25] J.W. also testified that by Sunday of their weekend visits, the children would play games with J.W. and S.W., such as Frisbee or board games, and openly enjoyed these games. As the Sunday drew to a close and the time to return to their mother's grew closer, the children would then shut down.
- [26] J.W. also stated that, on rare occasions, one or two of his younger children would sit on his lap and be somewhat affectionate. J.W. also spoke about how good it felt when, on one occasion when his eldest child, J.L.W. was ill, she permitted him to comfort her and carry her to bed.

The Dog, Bella

- [27] Knowing that the children always wanted a dog, J.W. and S.W. purchased a dog the children named "Bella". Bella quickly became a positive connection between S.W. and J.W. and the children. The children developed a love and attachment to Bella. According to S.W., they would often dress the dog up, make movies starring Bella, and take the dog for walks. They were very affectionate toward the dog and S.W. testified that the children would positively interact and be affectionate with both S.W. and the dog Bella; J.W. ranked below S.W. and the dog.

The July 6, 2012 Hearing and Order for Extended Summer Access

- [28] At the July 6, 2012 hearing, I reviewed all of the evidence discussed above, as well as evidence from Dr. Ricciardi. Based on that evidence, it seemed that the children had made gains and I told both parents that they should be proud of the progress. As I stated

at p. 3 of the transcript, "it's been a huge struggle and it really has gone from zero and a lot of pain to what I view as hope for these children."

- [29] I found that it would be in the best interest of the children to have extended access with their father, and granted an interim order for extended summer access between the children and J.W. As I reminded the parties, at p. 1 of the transcript, the June 2011 order provided for a six month period of transition, with the goal of achieving a normalized relationship; it was not a final order. I also included in the July 6, 2012 order that the parties were to attend before Dr. Ricciardi to deal with assisting the children in being able to deal with any anxiety over the increased access. I further ordered the mother to promote this extended access with the children because, as I reflected at p. 5, "I want this order to be moved forward with respect to interim access in the most positive way possible."
- [30] Finally, I noted that even despite this progress, the children faced significant struggles, given that many of the family dynamics which I previously found caused the children emotional distress were still present. I made it clear that we would deal with those struggles as and when they unfolded.

Incidents of Concern

The ABBA Tribute Concert

- [31] J.W. and S.W. brought the children to a live music tribute to the musical group ABBA. They thought the children would enjoy this experience, as the children had talked about seeing the movie "Mamma Mia" at their mother's home. According to S.W., the children did enjoy the concert and laughed and talked about who was singing the loudest at the concert. It appeared that the eldest child, J.L.W., knew many of the songs.
- [32] After the children returned to the mother's home, they told the CAS supervising social worker, Tara, that although they went horseback riding and to the ABBA concert, they did not have any fun with J.W. and S.W. The eldest child told Tara that their dad made them go and they did not even like ABBA. When the mother testified about the ABBA concert, she stated that the children did not want to go and their father had made them go. She felt that the children were upset, as they told her that he just sprung it on them and that he simply *made* them go. S.W. testified that she was the one who arranged for the tickets as a fun outing and told the children about it. I find this to be an example of yet another positive outing with the children and their father and S.W. that was turned into a negative after the children had time to talk about it with their mother.

The Hamster Incident

- [33] Both S.W. and J.W. testified that on one occasion, in or around the summer months of 2011, they were returning the children from a good access visit. In the car, the children were excited that they got new hamsters at their mother's house. Both J.W. and S.W. testified that the children asked both of them if they would come into their mother's house to see their new hamsters. Both S.W. and J.W. stated that upon arrival at A.F.'s home, J.W. parked their car in A.F.'s driveway and everyone got out of the car to go to A.F.'s house. J.W. stated that he was about six to eight feet behind everyone as he got the dog Bella out of the car. Both S.W. and J.W. stated that as they were all walking to get on A.F.'s porch, A.F. opened the door and let S.W. and the children in. When they entered the home, A.F. shut the door while J.W. was still outside with the dog. A few moments later, J.W. stated that while he was standing on the porch he could hear his eldest child J.L.W. say to her mother "but what about Daddy and Bella can they come in to see the hamsters?" and then he heard A.F. reply "Daddy and Bella are just fine." S.W. corroborated this version of events.
- [34] A.F. had a completely different version of this event. She testified that J.W. parked out on the street, not in her driveway, and did not get out of the car. According to A.F., she is the one who asked the children whether they wanted their father to come in and see the hamsters. She stated that it was one of the children who said that "he is just fine".
- [35] At one point in her testimony at this review, A.F. stated that she desperately wanted the children to see their parents be able to interact together and that should be encouraged. However, when asked if she would have asked J.W. to come in to see the hamsters she stated; "that would be weird but if that is what the children wanted I would do it for them." She also stated that she could see J.W.'s shadow from the hall entrance yet denied that he was on the porch. In her affidavit of June 11, 2012, however, A.F. stated that it was not possible for J.W. to hear the children say anything as he was sitting in his vehicle on the street.
- [36] I do not find A.F. to be credible. When looking at all of my findings, from the prior trial together with her testimony during this review, I find that A.F. has continued to demonstrate the same pattern of misrepresentation of events I had seen in advance of my June 27, 2011 reasons. I find that this hamster incident is another example of A.F. saying that she supports the children's involvement with their father, yet sending the exact opposite message to her children through her actions.

The Access Returns

- [37] In my reasons for judgment of June 27, 2011, I found that A.F.'s extended family was significantly involved in promoting a paternally negative environment for the children. In

the order, I specifically compelled A.F. to encourage positive views of J.W. and to not allow others to express negative views of him.

- [38] S.W., A.F., and the CAS social worker, Tara, testified that since the order of June 2011, on almost all occasions when J.W. and S.W. returned the children to A.F.'s home, they were met with the entire maternal family sitting on her porch. Often, this would include A.F.'s brother- and sister-in-law, as well as the children's maternal grandfather and grandmother.
- [39] Tara testified that A.F. did not feel comfortable in allowing J.W. to approach her home and that was part of the reason her family was present when the children were returned.
- [40] J.W. and S.W. asked A.F., on numerous occasions, to stop having the whole family on the porch for these returns, as it prohibited their ability to say a loving goodbye. According to J.W., when the children saw their maternal family on the porch, they immediately jumped out of the car and ran to them, without even saying goodbye to their father and S.W. A.F. never agreed to make arrangements to adjust this behaviour and always took the position that the children wanted her maternal family to be on the porch at this time. During this review, I ordered the mother to stop having her family present on the porch when the children were returned to her house.

The Verdi Club Christmas Concert

- [41] In December 2011, the children accidentally revealed to their father that they would be performing at a Christmas concert at the Verdi Club. J.W. was told about this concert only a few days before the event was to take place. When J.W. asked a school representative if he could get a ticket, he was informed that the event was sold out. However, he still attended the event, and had intended to ask the principal if he could just stand at the back to see his children perform. According to J.W., as soon as he entered the club, he was greeted by A.F. who sternly asked him if he had a ticket. J.W. told her that he was going ask the principal if he could simply watch the children perform. A.F. stated that she and her mother told J.W. that he could get a ticket to the event. I do not accept this testimony.
- [42] As he was standing at the back, his daughter J.L.W. came up to him and told him she did not want him to be there and asked him to leave. J.W. told his daughter that if she did not want him to watch her he would not, but that he would like to watch her sister, A.C.W, perform. J.L.W. left and went to sit with her mother and her grandparents but returned shortly after almost in tears and told her father A.C.W. also did not want him there and they all wanted him to leave before the concert. J.W. left so he would not upset his children any further. A.F. does not dispute that the children did not want their father to be

at this concert, however, A.F. did not challenge her daughters about the manner in which they treated their father either on the night of the event or at any time later.

- [43] I do not intend to review every single incident that was brought out in the evidence of a similar nature. There were far too many examples like the above that I find to be the continuation of the mother not supporting the father's relationship with the children. In fact, I find that A.F. permitted and promoted the children's view that it was all right to disrespect, fear and treat their father cruelly without any regard to the impact of their conduct on him or those who supported him.

Vacation 1: July 2012 Extended Access

- [44] Upon arriving at their father's home for the first extended access vacation, the children, abruptly expressed to J.W. and S.W. that they did not want to be there and promptly went upstairs, protesting that they wanted to go back to their mother's home. They knew S.W. and their father had made plans for the vacation, however, when they arrived they stated that they would refuse to go anywhere until S.W. and their father gave up trying to make them.
- [45] According to S.W., all the children were crying on the Sunday when they arrived and would not engage with either J.W. or with her. After the children had spent a short period in their rooms, S.W. went to talk to them and was able to engage them by talking to them about their recent soccer tournaments. Although this somewhat broke the ice, the children rejected their father and S.W.'s suggestion that they spend the week going to places like the zoo and water parks. When the children did eventually go out with J.W. and S.W., they refused to eat the ice cream that their father had bought for them.
- [46] S.W. continued to make every effort to encourage the children to engage with them and to enjoy this vacation. Instead of the zoo and water park, S.W. did crafts with the children. S.W. stated that they eagerly engaged in this activity and were excited about being able to take them to their mother's home and show them to her.
- [47] The later part of this holiday was very positive. J.W. and S.W. took the children to S.W.'s parent's cottage. The children had a lot of fun playing on the beach with Bella, running, throwing and catching a ball. According to S.W. they loved this experience.
- [48] When the children first arrived, they did not have sufficient clothes to last them the week and so, on the way to the cottage, S.W. and J.W. stopped to buy them clothes. This was one of the times that the children permitted their father to be with them in public.
- [49] By the end of the vacation, the children told S.W. that they liked the cottage and the petting zoo they eventually went to and the crafts that they did together. Both J.W. and

S.W. felt good about the way the vacation had ended on a positive note and looked forward to the next vacation access.

Between the July Vacation and August Vacation

- [50] After the first somewhat successful vacation week in July, S.W. and J.W. did not see or talk to the children for a period of ten days, when the children were with their mother and her family. The first visit after the July vacation was a brief three-hour Tuesday evening access. On this occasion, they had a hard time leaving their mother and little interaction with S.W. and their father.
- [51] J.W. and S.W. had a meeting with A.F. and her sister-in-law, J.F., at the CAS on July 31, 2011. This meeting was set up to try and discuss issues A.F. and J.W. were concerned about and to try to work out solutions. Only the issues presented by the mother were addressed. When the father wanted to discuss his concerns, such as not having the mother's extended family sitting out on her porch when he returns the children from his access, the mother simply responded that these matters were before the court and will be dealt with in that manner. To put it mildly, the meeting at the CAS on July 31, 2011 was not a positive meeting.
- [52] The children next saw S.W. and their father on a weekend access in August prior to the next vacation week. When the children arrived they were resistant, disrespectful, and cruel. They did not greet S.W. or their father, and instead went up to their rooms, announcing that they wanted to return to their mother's home.
- [53] The second extended access that I ordered for August was equally disastrous. The children would not participate in any activities and continued to act disrespectfully and sometimes in a shockingly cruel manner to their father and to S.W.

The Audio-Recorded Access Exchanges

- [54] During the trial of the review, a *voir dire* was conducted in order to determine the admissibility of two recordings of access exchanges. I admitted the recordings after balancing the prejudice vs. the probative value of the recordings as well as their reliability.
- [55] I am well aware of the struggle many courts face when considering the issue of recordings made without the knowledge and consent of the other person. In *Hameed v. Hameed*, 2006 ONCJ 274, [2006] O.C.J. No. 3109, Sherr J. did not admit surreptitious recordings taken by one of the parties to a family law proceeding and stated, at paras. 11-13 of his reasons:

I ruled that this evidence was inadmissible. Surreptitious recording of telephone calls by litigants in family law matters should be strongly discouraged. There is already enough conflict and mistrust in family law cases, without the parties' worrying about whether the other is secretly taping them. In a constructive family law case, the professionals and the courts work with the family to rebuild trust so that the parties can learn to act together in the best interests of the child. Condoning the secret taping of the other would be destructive to this process.

I agree with Justice Henry Vogelsang who said in paras. 5 and 6 of *Tatarchenko v. Tatarchenko* (1998), 83 A.C.W.S. (3d) 792, [1998] O.J. No. 4685, 1998 CanLII 14087, 1998 CarswellOnt 4374 (Ont. Fam. Ct.):

There is a wide scope for potential abuse in this practice.

The reliability of such evidence is very difficult to determine, even for a trial judge who has the benefit of much more opportunity to explore all of the evidence than that enjoyed by a motions judge. The suspicious and disturbing circumstances surrounding the production of this "evidence" convince me that it should be struck in its entirety and should not be before the court.

The court in deciding whether to admit such evidence will need to weigh these policy considerations against its probative value. The party seeking its admission should establish a compelling reason for doing so. The reasons that the father put forward in this matter fall well short of this standard.

- [56] I agree that in most family law cases, the surreptitious taping of the other party should be generally discouraged. I also agree that much of the reasoning behind the desire to discourage such conduct is that the parties should build trust in the other to be able to parent after separation. However, in far too many cases, like the matter before me, the goal of building of trust became masked by one party saying one thing in public and doing something very different when she thought the she was safe from scrutiny. The behaviour demonstrated in the recordings reveals that the mother's outward compliance with my June 27, 2011 order was merely a façade.

- [57] A.F. constantly verbalized compliance with my court order. At para. 3(b)(i) of my June 27, 2011 order, I set out the following expected gains, which were directed at the mother A.F., “the mother has transformed her present projection of the children’s father as a person to be feared to someone who is a safe and loving father who should be respected and trusted.” She was also ordered at para. 3(e) and (f) to not speak negatively about the father or his present wife S.W. and to promote the father, J.W., positively to the children at all times.
- [58] The children’s therapist, Dr. Ricciardi, testified that he personally saw no evidence that she was not complying with the court order. The conduct revealed on the audio recordings, however, shows that she was not complying with the terms of my order and goes to the very root of the consideration that is facing me on this review: Is the emotional abuse of the children, as found by me, still continuing? Are the children still in need of protection and can they be protected from this abuse without further intervention by this court?

September 21, 2012 Recording

- [59] The September 21, 2012 recording, which is over one hour in length, is shocking in itself, even without considering that pursuant to my June 27, 2011 order, A.F. was under strict terms to actively support the J.W. as a parent and not to talk about him negatively.
- [60] Instead, she approached J.W. and S.W.’s house and, in front of the children, was critical of and verbally abusive to both J.W. and S.W. Despite being asked by J.W., on numerous occasions, to please leave and to resume the discussion at a later time, out of the presence of the children, A.F. refused and tenaciously pushed on with complete disregard for the impact the argument was having on the children.
- [61] From listening to the recording, it is apparent that as A.F.’s demeanour became more hostile and anxious, so did the children’s behaviour and demeanour: her feelings became the children’s feelings, her demands became the children’s demands. She riled her children into a state of frenzied and tearful exchanges with their father.
- [62] The only inference that can be drawn from this episode is that A.F.’s comments and statements give permission to the children to be disrespectful, fearful and cruel to J.W. and S.W. A.F. continues to conduct herself in the same abusive manner as she was when I found her in Contempt and found the children in need of protection. Despite my June 27, 2011 order, this recording is evidence that she is not complying with the court order and, sadly, continues to emotionally abuse her children
- [63] Set out below are a few of the more disconcerting and significant exchanges captured by the September 21, 2012 recording.

- [64] As A.F. approached his home with the children on September 21, 2012, J.W. testified that he became concerned about what she might do or say, as it was odd that she had arrived early for the access. As she grew close, A.F. began demanding, in front of the children, to know why a snack cabinet was locked. It was at this point that J.W. decided to turn the recording function of his cell phone on.
- [65] In particular, A.F. demanded to know why J.W. and S.W. had locked their pantry containing the treats. After being told that it was locked because the children had been sneaking snacks, A.F. then demanded to know if the phones in their house were also locked up. When assured that the phones were, indeed, not locked up, A.F. responded in a condescending manner.
- [66] It is clear from the recording that despite J.W.'s attempts to finish the access transition, A.F. insisted on discussing the snack cabinet in front of the children, stating that "kids need food". J.W. assured A.F. that the children were being fed, but the children protested, stating that their father made them eat at the table all the time. When J.W. tried to get the children to come into his house and talk about it, A.F. told J.W. "it's your way of expressing, J.W. it causes them a lot of distress. I'm just here to be helpful".
- [67] At this point, the children started to cry and stated "what are we going to eat, they never let us eat... it's like we have to ask and what if there is nothing... and that's what are we supposed to do..." It is clear to me that A.F. sent the children into a frenzy by demanding that "children need to eat", as they then became concerned about being fed. This type of emotional manipulation is horribly abusive to the children.
- [68] A.F. then asserted that the children had been like this for the past week "since you locked the snack cabinet and put them on a timer". As A.F. spoke, the children interjected with approval. A.F. continued, "...they've been a bit stressed for several weeks because of your decisions. So I'm just trying to be helpful..." J.W. interjected to tell A.F. that this was not helpful and that they should have had a private discussion outside of the presence of the children. A.F. replied, "it involves the children; they tried to talk to you about it".
- [69] At this point in the recording, one of the children could be heard crying very hard and stating: "I even said that I would rather get hurt than go with you... and I said that I would rather move..." A.F. continues to assert that the children are extremely distressed and had been for a couple of weeks. She then demands, "I want to know that they have access to food. That is what I would like to know", and when told by S.W. that they always have access to food, A.F. demands "without a key and without a lock" and states that she will not leave until she knows the lock has been removed.
- [70] When A.F. was told that S.W. might not run in the Marathon as she sustained an injury, A.F. was critical of S.W. and accused her of not being truthful. A.F. then accused S.W. of

being very disingenuous and later stated in front of the children "you've been lying the whole time and thats really not cool...ok girls see you later".

- [71] A.F. called S.W. a liar a number of times and then returned back to the discussion regarding the snack cabinet: "no... hang on a second. No hang on a minute. You haven't asked... you haven't told me if you're going to unlock the snack cabinet. Tara [the CAS social worker] said it's important for children to have food." Despite further reassurances that the children are not being deprived of food, A.F. exclaims "you're locking them from food" and one of the children promptly says, "I don't wanna go if the foods locked up". As J.W. tries to end the conversation, one of the children can be heard to say "Mommy wait why is the food locked?" to which A.F. replies, "I don't know why the food is locked".
- [72] A.F. also challenged J.W. on a number of other parenting decisions in front of the children, including a reward system J.W. put in place to assist the children to behave positively. Rather than address her concerns to J.W. in private or with the CAS, she challenged him in the presence of the children: "As far as I understand your token economics did not include any input from the children", to which one of the children replied: "Ya...You know". A.F. went on: "So what they're trying to do now is to talk to you about how they feel. That's interaction, J.W." The child replies "and I'm sorry... but we got Mommy to say something but... now its. But now we need you to listen to Mommy", and another child states: "if we're here with Mommy, I at least feel right about talking to you. J.W. replies, "So these are very valid and I'll kindly discuss them with you. Ok, but when you're in the house ok?"
- [73] A.F. then went back to demanding that the snack cabinet be unlocked as it causes the children distress. J.L.W. then stated, "Dad I'm telling you a story. My friend Madison said that anybody can be a father, but it takes a real person to be a real dad", to which A.F. replied "hats off to Madison". J.W. then asked the children if they thought he was not a good father, to which A.F. responded: "you did lock the snack cabinet, you're keeping water from them".
- [74] A.F. then tells J.W. that what you try to ram down their throats to understand or feel, is not how they feel, so to know that the snack cabinet is locked, to a child, doesn't make them feel safe or secure.
- [75] Finally, J.W. states that unless this stops he will have to call the authorities. One of the children asks what the authorities are and A.F. responds "he is going to call the police", to which one of the children asks their father "why would you call the police?" J.W. does contact the police and tells them that this is not urgent but that he was having a difficult time with access transition. A.F. is heard on the recording saying, "Okay, listen girls, come on in. Well I don't know what your dad wants to do but I gotta go. Well you can

tell the police that okay?" One of the children replies "No I don't wanna leave without you I don't like asking for food all the time! I don't..." A.F. responds that "your dad has just said that he will make sure that you guys eat", and the child replies: "ask him to eat... I am so scared..." A.F. asks the child what she is scared of, then states "oh well, looks like I'm gonna get arrested". J.W. tries to assure the children that no one is going to get arrested.

- [76] What happened on September 21, 2012 was deplorable. A.F. acted in reckless disregard for the emotional damage she was causing her children by speaking to J.W. and S.W. this way in the presence of her children. This sort of behaviour strikes at the children's soul. While the injuries are not visible, they are obvious and extreme.

September 25, 2012 Recording

- [77] The second recorded event occurred when J.W. and S.W. picked the children up after a soccer practice on one of their access nights.
- [78] When J.W. and S.W. arrived and A.F. told the children that they were going home from the soccer game with their father and S.W., they immediately started to cry. J.L.W. became insistent that A.F. should be the one to take them to their father's home, not their father. As J.W. and S.W. approached A.F.'s car, the children increased their protest and insisted they did not want to talk to their father, to which A.F. replied she guessed the girls had a rough weekend with him. J.W. stated that this was not the time and place to have such discussions, but A.F. demanded, "then what is the place?" A.F. then told the children, that "Maybe he'll call the police again". Once again J.W. stated that this is not the place to have this discussion. He told A.F. that he was kind enough to come to the soccer field to pick up the girls on his access and A.F. once again told him to call the police. She then said to the children: "we'll have a lot to talk about later girls... Hopefully one day your dad and S.W. can talk about what's really bothering them and why they seem to be so nasty to you girls". She then told J.W. to call his lawyer and the police if he thought that she was not following the court order.
- [79] Instead of assisting with a smooth transition, A.F. essentially encouraged the children to fear their dad, and can be heard saying, "they can't hurt you and they can't touch you". When J.W. replied that of course he would not hurt them, A.F. stated "that is not what I have been hearing". Shortly after that exchange, one of the children pled with A.F. not to make them go and A.F. once again repeated, "they can't hurt you".
- [80] At this point in the recording, J.L.W. threatens that she will run away. As she continues to protest, she says to A.F. that she is scared to go and doesn't want to go. When J.W. asks A.F. to please help to get the children into the car A.F. responds, "they are here J.W., why don't you get the police to grab them and put them in the car or would you like to listen

to what is bothering them". When J.W. states that the children need to get into the car and that A.F. needs to leave, A.F. responds: "Stop bullying me" and the children repeat that phrase to their father as well. A.F. replies, "they are in a lot of distress and I'm not creating the situation." A.F. repeatedly alleges, that J.W. was "terrorizing" the children on their last weekend, and again stated that he could feel free to call the police.

[81] A.F.'s continued in this way until J.L.W. stated to her father, "I'm going to give you a choice: either I go with Mommy or I run away". The two younger children got into their father's car, while J.L.W. started to walk toward the wooded area of the soccer field and again stated, "I said either Mommy drove me to your house or I was gonna run away. You decided. So I ran away." J.L.W. continued to walk on the trails into the woods as S.W. followed her. A.F. drove away. The younger children got out of the car and started to follow their oldest sister. The girls continued to try and elude their father and S.W. J.W. then told the children that the longer they stayed away the longer they will stay with him at his house. At that point, all three children got into the car. When they arrived at their father's house, they ran upstairs and shut themselves in their room and remained there until just a few minutes before they were to be brought back to their mother's. They did not interact with either their father or S.W. that night.

[82] This incident is yet another example of horrible emotional abuse the children suffer at the hands of A.F. She has forced them to feel such venom, hatred, disrespect, and fear about their father, that it is extremely unhealthy for them.

[83] At para. 17 of my June 27, 2011 reasons for judgment, I quoted the assessor, Dr. Schnare, which I again repeat here:

Finally, it cannot be over emphasized that all parties involved in the children's lives, including the extended family members, need to understand how important it is for the children to maintain close and caring relationships with each parent and their extended families. In this regard, it is hoped that all the parties will endeavour and make a sincere effort to foster a positive relationship between the children and the other parent and their respective families. Failure to do so may have a detrimental effect on the children's development. [Emphasis added.]

[84] The order I made June 27, 2011 gave the parties the opportunity to foster that positive relationship with both parents that all children require for proper development. A.F. has routinely acted to her children's detriment, ignoring the needs of her children. Her actions have gone far beyond not supporting the father as a parent, and transcended into inducing fear and anxiety in her children, actually causing them emotional harm. I found that harm existed on June 27, 2011, but I hoped that the children could remain in the mother's custody if she was supervised and all parties were given help. I no longer feel that it is

possible to remove the emotional harm that is being caused if the current arrangement continues.

A.F.'s Complaint to the CAS, September 27, 2012

- [85] On September 27, 2012, the mother contacted the CAS social worker, Tara, and expressed her discontent with the manner in which the CAS was handling her file. According to Tara, A.F. was very angry and yelling at her the whole time they talked on the telephone. This type of conduct is eerily reminiscent of my findings in the first trial, when I was provided with evidence that A.F. would angrily lash out at anyone who disagreed with her regarding the raising of the children.
- [86] According to Tara, in this conversation, A.F. accused the CAS of taking the father's side and not listening to the children. Many times during her involvement with the matter, and again on this occasion, Tara stated that A.F. said "no one is listening to my children". In my June 27, 2011 reasons, I strongly stated that part of the emotional abuse that A.F. perpetrated on the children was her tendency to turn her own unwarranted fears, anger, and disdain into the children's feelings about their father, neither of which had any basis in reality. The phone call ended with A.F. telling Tara that she would continue to search for someone who would listen to her children.
- [87] A.F. expressed the above sentiment to the CAS after the first somewhat successful first vacation of the children with their father. It was within this same time frame that the children went from leaving their first extended access with their father on a happy and positive note to returning to a state that whereupon the children have so regressed in their feelings toward their father that I am concerned for their safety and wellbeing.

The Errant Text

- [88] Another example of A.F. not acting in compliance with my June 27, 2011 order comes from a text message that she intended to send to her sister-in-law on October 22, 2012, yet inadvertently sent to J.W. instead. It reads, "Thanks for the email. I sent to ric [Dr. Ricciardi] last night and forwarded all emails. He is becoming an animal. He has it in for [J.L.W.] because he know that to others are strong because she is. She really is a natural born leader and her sisters are showing loyalty... Very important qualities".
- [89] A.F. testified that she was merely venting to a confidant. I do not agree. She was ordered by me to promote J.W. in a positive manner as a parent, especially with her family. In June 2011, I found A.F.'s family to be a direct contributor to the paternally negative environment to which the children were exposed. Instead of A.F. abiding by the terms of my order and preventing further negativity about J.W., she promoted these negative influences to her family. It appears by the nature of the text that she was also supporting

her eldest child J.L.W.'s resistance to J.W. and applauding the fact that J.L.W. had encouraged her siblings to be loyal to A.F. at the expense of having a relationship with J.W. I find that this text provides a further example of A.F.'s refusal to abide by my June 2011 order. I also note that A.F.'s sister-in-law, brother and mother could have and should have testified on the review. I was not provided an explanation as to why they did not testify. A.F.'s mother sat in the body of the court for most of the trial on this review. She was available but did not take the stand. Given my finding that the maternal extended family contributed to the children's distorted view of their father, I expected members of A.F.'s family to testify and explain how they were no longer contributing to the children's distortion of reality, especially once the errant was included in the evidence and once the father's counsel asked the court to draw an adverse inference if they were not called. I do draw an adverse inference that none of A.F.'s family members were called because their testimony would not have helped A.F., and rather, would have shown that their negative and critical behaviour continued.

The Children's Regression

- [90] Based on all of the evidence, I find that my June 27, 2011 order was not successful at excising the emotional abuse and its damaging impact from the children's lives. Had the mother complied with the terms of the order, the children would no longer be the subject of emotional abuse and no longer be in need of protection.
- [91] Unfortunately, the children have now regressed to such an extent that I have grave concerns for their wellbeing. They refuse to allow J.W. or S.W. to be a part of their lives, refusing to be in any pictures with their father or with S.W. and refusing to open any gifts that come from their father or S.W.
- [92] They had started to develop a close and healthy relationship with S.W. and now they refuse to even interact with her, which I find is as a result of A.F.'s conduct in the recorded access transfer of September 21, 2001. During that abusive exchange, A.F., called S.W. a liar in front of the children on at least four occasions. She also derided S.W. in the same manner as she derided J.W. about parenting decisions. By the end of that terrible incident, A.F. had taught the children that S.W. was as deserving of disrespect and fear as their father.
- [93] Another positive in the children's lives, their relationship with Bella, has become worryingly negative. At the beginning, all three children loved that dog; they played with her, took her for walks, and genuinely cared for her. When the children's behaviours took a turn for the worst after the first week of extended access in August 2012, the children's behaviour toward their dog Bella became abusive. They locked the dog in the closet, and overfed her to the point that she got sick. They squirted cold water on her with water

guns. They acted with a sense of entitlement to be abusive in all things related to their father.

- [94] When the children were making gains in their relationship with their father, S.W. and J.W. encouraged the children to be independent in a safe manner. On one occasion they allowed all three children to go to a nearby park without adult accompaniment. They gave them a cell phone and directions on how to act and what to do. This was a positive experience for the children, until they told their mother. When the children next returned to their father's home, they chastised him for letting them go to the park alone. They asserted that they could have been hurt and that he should never have allowed this. From that point on, the children would not go outside and when they did go out, they would not take the dog for a walk or even go outside of the property line.

CAS's Position

- [95] The CAS social worker assigned to supervise and prepare the judicial reports was Tara Ivancic. She stated that CAS viewed their role as supervising the children who had been found in need of protection, as well as monitoring compliance with the order and assisting the family with counselling. After the judgment of June 27, 2011, Tara testified that the CAS looked at each incident as well as the total history when considering the risk of emotional abuse to the children. Tara performed the lead role for the CAS from the date of my order on June 27, 2011 until the time of her testimony commencing November 27, 2012. According to Tara, it is the CAS's view that the children are still in need of protection based on the risk of emotional harm. She stated that although there were early gains, the children have regressed significantly.
- [96] As Tara stated, the children still resist any relationship with their father and view this aspect of their world as "us vs. him". Tara stated that the children view her as siding with their father. When Tara asked the children about good times they might have had with their father, the children responded that they did not have any fun. The children no longer had a good relationship with S.W. as they felt she was also mean and she supported their father.
- [97] Tara was also very concerned about the children's latest reaction to their dog, Bella. Something that was such a positive in their life with their father was now very negative to the point of the children being abusive to the dog. Tara stated that the children have never given a reason why they no longer like the dog.
- [98] Tara became concerned that the mother, A.F., was showing the children the CAS judicial reports. She gave an example that the children had been taken to Walmart by S.W. and J.W. to buy things to decorate their playroom in his house. One of the judicial reports mentions that J.W. and S.W. spent approximately \$100 on toys. On the very next visit

between Tara and the children after the report was issued, the children spontaneously stated that J.W. and S.W. did not buy \$100 worth of toys when they went shopping.

- [99] Tara provided another example of her concerns regarding her June 2012 report. In that report, Tara made reference to a picture of S.W. and the girls beside a fish tank. The picture had obviously captured a happy and fun moment with the children and S.W. After the report was released, the children deleted all pictures from the camera.
- [100] Tara became so concerned about the children knowing the contents of the reports that she recommended that the reports go only to the judge. After the next report was issued, the eldest child, J.L.W., asked Tara if her father was getting to see the reports and wondered if her dad and her mom could get them.
- [101] Tara testified that aside from A.F. telling the children to go with their father on access and to have fun, she has never otherwise seen her being positive about J.W. in front of the children. She never observed A.F. try to reframe or challenge the children when they complained about their father.
- [102] According to Tara, the CAS has not taken further action as they are relying heavily on the fact that this matter is presently before the court. They intend to review their role pending the decision of this court.
- [103] The CAS did not feel the litany of concerns expressed by A.F. and the children were valid. Tara stated that she did not view the locking of the snack cabinet as a child abuse issue. She was aware of the explanation given by J.W. and S.W., that the children would take full family-sized bags of chips and eat them in their room, would sneak other bags of candies, and would leave wrappers all over the house. The children were told that they could no longer exhibit this behaviour, that they needed to participate in the cleaning, and that leaving things around the house attracted insects. They were told that they needed to eat healthy meals as a family and they could have treats at proper times and upon good behaviour. This sensible parenting plan was later distorted as depriving the children of food and water.
- [104] The children and their mother also complained about the father taking locks off of their bedroom door. The explanation given was that the children would come for access, refuse to greet or say hello to J.W. and S.W., go up to their rooms, and lock the doors.
- [105] The children complained that they were put on a timer when they made calls to their mother. J.W. and S.W. explained that when the children finally came out of their rooms, they would spend between a half hour to an hour talking to their mother or some other member of their maternal family. CAS did not see that this timer system was inappropriate on the part of J.W. and S.W., and I agree.

- [106] What became concerning to J.W. and to S.W. was the level of cruelty the children displayed. They would often emerge from their rooms, come downstairs, look at the clock, and cheer that another 15 minutes had gone by so they could go home soon. Near the end of their visits, the children counted down the time with joy that the access was about to end.
- [107] In the October 2012 report, Tara stated that A.F. told her that “you can’t change peoples’ feelings”. This is the same mindset A.F. had prior to the June 27, 2011 judgment. Tara feels that A.F. is of the view that the children are justified in their feelings toward their father and continues to bring forward concerns that someone needs to see and help the children. According to Tara, A.F. expresses to her that the children’s refusal to have pictures taken with J.W. and S.W., refusal to open their presents and refusal to communicate with them is the father’s problem to solve.
- [108] Tara described the eldest child, J.L.W, as the ring leader. Often the two younger children will say things such as: “I think J.L.W. said much of the things so I won’t tell you”. The children often insist on being interviewed together and the younger children often look to J.L.W. for assurance on what to say and how to act. If J.L.W. gets anxious or cries, so do the other children.
- [109] Tara testified that on September 27, 2012, she talked to A.F. by phone. She stated that A.F. was very angry and yelled at her throughout the call. She accused J.W. of calling the police on her and slamming the door in her face on September 21, 2012, the first recorded access. When the children later talked to Tara, they related the story in the same manner as their mother had. This is another example of the mother distorting the reality to the children and forcing her views and feelings on the children. As noted above, the recording of the event does not support the mother’s version adopted by the children. Tara also stated that in that same telephone conversation, A.F. again stated that no one is listening to her children and accused the CAS of not helping at all and only listening to the father.
- [110] According to Tara the mother’s counsellor, Mr. Kerr, called her on a couple of occasions supporting the mother. It was his view that the mother was only acting “as an advocate for her children”. Mr. Kerr took issue with the CAS positions and told Tara that they should take a more balanced view of the matter. Tara did not agree with Mr. Kerr, and neither do I. I find that Mr. Kerr did not inform himself of the essential background. As he did not read the judgment of June 27, 2011, he therefore did not understand the presenting problems. He operated from a narrow point of view where he dealt with what A.F. brought to him and adopted her self-reports without scrutiny.
- [111] Tara was not aware of the incident when A.F. took one of the children to Dr. Ricciardi because the child threatened to harm herself, as will be discussed below. Once Tara

became aware of this fact during the review, she stated that the CAS will take these types of facts very seriously and review it and any findings of the court. Tara also stated that the examples which point to the creation of an exaggerated reality for the children were very concerning. She stated that it can be disastrous for the children to accept such demonization of their father to the extent that they threaten harm to themselves.

- [112] Overall, Tara testified that she did not feel that A.F. had complied with my June 27, 2011 order.

Dr. Ricciardi's Position

- [113] Dr. Ricciardi is the children's therapist. When he testified the second time in this review, on October 3, 2012, he had seen the children on nine occasions, from July 12, 2012 to September 26, 2012. The children were brought to see him by the mother on six of these sessions, and the father brought the children to him on three of these sessions. In total, he sees the children for approximately one and half hours each month. By October 3, 2012, he had also reviewed the two recordings containing the audio of the September 21, 2012 access exchange and September 27, 2012 access exchange. In preparation for his testimony, he had discussions with the mother's counsel but not with the father's counsel.
- [114] Dr. Ricciardi testified that he has never had a therapy case that was as difficult and severe as these three children, a similar assessment to Dr. Lee, the children's therapist in the first trial. In the June 27, 2011 judgment, I noted, at para. 130, that Dr. Lee had started her therapy with the children on December 6, 2010 and felt that the children's progress was very slow. As I also noted, at para. 133 of my judgment, Dr. Lee had seven sessions before A.F. started to slowly come around, whereas prior to that, A.F. did not feel it was up to her to intervene in the girls' actions with their father and felt that was up to him to work it out. Prior to my June 27, 2011 order, Dr. Lee was of the view that it would be difficult for A.F. to support access between the children and their father if she continued to believe that the children's feelings of fear and dislike of their father were caused by their life with him and that the children were not being heard and validated.
- [115] Throughout the course of his therapy, Dr. Ricciardi has taken a completely child-centric approach. He has been dealing with issues that are presented by the children and been attempting to show them that while things may be different in dad's house, different does not mean bad. Dr. Ricciardi candidly admits that he has not been successful at convincing the children of this. Despite the children being in therapy since December 2010, I find that they still appear to be rigidly fixated on their father as being bad, incapable, and a mean man.

- [116] Dr. Ricciardi agreed that A.F. has not shown that she has the ability to back off, and is convinced that she is the children's advocate. He also stated that he feels that she has not progressed very far since his intervention in this matter.
- [117] I agree with Dr. Ricciardi's statement that, as the children's therapist, he cannot do it all. In my June 27, 2011 order, I put into place certain expectations of the parents and certain goals they were to achieve in therapy. In my order, I directed the CAS to arrange for counselling for A.F. and J.W. to deal with any anger and to learn to communicate with each other, so that the children may develop a positive relationship with their father. A.F. did not achieve these goals, and J.W. only partially achieved these goals. I find neither of the parents' counsellors scrutinized the facts given to them by their client and largely validated and re-enforced the positions their clients took. To a large extent, the counsellors became their clients' advocates.
- [118] Dr. Ricciardi attempted to take a neutral position and foster a therapeutic relationship with the children. He stated that he felt that the children liked and trusted him, and that a relationship based on trust is required for the children to want to work with him. He did not assess the parenting capacities of the mother or the father and did not challenge the facts as they were presented to him. He stated that the lack of progress was as a result of the complicated family dynamics, and not the techniques he had been using. I agree with Dr. Ricciardi in this regard.
- [119] I find that Dr. Ricciardi's testimony was guarded when he commented on some of the very concerning incidents. He attempted to soften the impact of these incidents in order to preserve a balanced approach. In his opinion, the children's most significant fear is that they may lose their mother. It is my view that his testimony reflected this concern. When asked about the recorded access exchanges, he stated that you must view these recordings with the consideration that the father knew the exchange was being recorded but the mother and the children did not. I fail to see the significance of this under the circumstances of this case. In this situation, the father was not attempting to get evidence in an entrapment type of scenario, but rather, was constantly trying to end the discussion despite what I find to be an extremely abusive exchange from A.F. I find that if J.W. was trying to entrap the mother and therefore skew the evidence in his favour, he would not have been desperately trying to end the conversation. Dr. Ricciardi commented that he was concerned that the taping was a breach of trust between J.W. and A.F. and would cause further complications in the future. I find that to be a misplaced concern. The focus of his inquiry must remain on the conduct captured on the recording and its impact on these children.
- [120] When Dr. Ricciardi was asked to comment on the children's behaviour that seems to indicate an entitlement to be disrespectful and at times cruel to their father, he responded

in cautious phrases like “the children not greeting the father is not optimal or was not preferred.” He also stated that the father’s choice of some of the parenting methods, such as locking the snack cabinet was not a preferred approach, especially when he knew the level of the children’s resistance to him in the first place. I find that Dr. Ricciardi was attempting to walk a tightrope of middle ground in order to hold on to what he views as his existing therapeutic alignment with the children, which is understandable given his role as the children’s therapist.

[121] Dr. Ricciardi testified that it was reasonable to infer that if the children had a positive time with their father, as they did during the July extended access vacation, and then spent ten days with A.F. and their maternal family, the extremely negative reaction that the children immediately displayed to the father and S.W. on the next access visit was probably caused by being with their mother. Dr. Ricciardi did not feel that the children had managed to get beyond their distorted view of the reality of their father. He testified that there needs to be a fundamental change in the family dynamics in order for the children to have a better relationship with their father. In his view, incidents like those recorded access exchanges could not happen again.

[122] Dr. Ricciardi stated that he needs to move to the next stage of his therapy, which will involve having joint sessions with the parents and the children. He was of the view that gains will be slow and difficult, but not impossible. It was his view that A.F. wanted the negative dynamic between the children and their father to be resolved, stating:

Ultimately what A.F. wants is what is in her children’s interests, and from an emotional standpoint she sees the agitation and upset that the children are experiencing. She wants that resolved and that certainly will be resolved through more positive interactions and relationship with J.W.

[123] I do not share Dr. Ricciardi’s view of A.F. I find that she has not shaken her vision of J.W. as someone who is not a capable to parent and someone who should be feared by her children.

[124] Despite attempting to be neutral, at certain times in Dr. Ricciardi’s testimony, notably on November 26 and 27, 2012, he gave the court mixed messages. Although, Dr. Ricciardi testified that he was of the impression the mother is, “invested in the therapy of fixing the turmoil and the relationship between the children and their father”, he stated that he formed that impression from speaking with her and did not have outside corroboration of this fact.

[125] I find that Dr. Ricciardi did not take into consideration the CAS’s view that A.F. was not complying with my previous order, nor did he seem to consider the extremely negative behaviours exhibited by the mother on the September 21 and 25, 2012 recorded access

exchanges or her errant text message to her sister-in-law calling J.W. an "animal" and praising J.L.W. for being strong and standing up to her father.

[126] Finally, Dr. Ricciardi also stated that he did not have evidence that A.F. was not positively promoting the father to the children. He stated that when he commented in his testimony that he had not seen evidence of A.F. being negative about J.W. in his presence, and was not referring to other evidence where she might have been negative in front of the children.

[127] I agree that Dr. Ricciardi must move to the next step of dealing with the family dynamics. However, I do not feel that this can be successful with the children receiving the same level of distortions they continue to receive on a daily basis. Dr. Ricciardi stated that he could and probably should increase the frequency that he sees this family. I agree with that comment.

Law and Analysis

[128] Section 16 of the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.), governs custody orders and states as follows:

Order for custody

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

Interim order for custody

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

Application by other person

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

Joint custody or access

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

Access

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

Terms and conditions

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

Order respecting change of residence

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

Factors

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

Past conduct

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

Maximum contact

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

- [129] My order of June 27, 2011 was a supervised custody order under the *Divorce Act*, subject to review. The purpose of this review is to determine if the goals and expectations that I set, in regards to the best interests and protection of the children, have been met. In my judgment of June 27, 2011, I found that the children were in need of protection from emotional abuse. Not unlike a status review brought within the *Child and Family Service Act*, this review is partially a consideration of whether or not the children remain within the concept of children in need of protection, as found in my June 27, 2011 judgment. If they are, what kind of order is necessary that would be in their best interest and protects them from the harm that may exist.
- [130] As noted above, on June 27, 2011, I found that the children's distortion of reality regarding their father were caused by the severely negative conduct of the mother and her family over that lengthy period to the point where the children would work themselves into such drama and hysterics at the mere thought of having to see their father. I also noted that the CAS never "connected the dots" with a complete review of the whole file in order to determine the root cause of the problem which, if conducted, would have led them to bring the matter to court pursuant to the *Child and Family Services Act* for a finding that the children were in need of protection pursuant to s. 37(2)(f) and (g). As I explained above, I made an order to protect the children relying on my inherent *parens patriae* jurisdiction as well as my jurisdiction under s. 34 of the *Children's Law Reform Act*.
- [131] The logical analysis I must go through in order to make an order that would be in the children's best interest must include a consideration of the concepts noted in the *Child and Family Services Act*. My frustrating limitation on this review, as at the trial, is that if I find the children are still in need of protection, I can make certain custody orders but I am limited in being able to direct the CAS to act, other than by way of supervision, as in the previous order.
- [132] Based on all of the evidence discussed above, I find that all three of these children continue to suffer severe emotional abuse and that abuse is caused by their mother. She is not able to disengage her extreme anger and disdain for the father and as a result, has led the children to have severe anxiety about anything to do with their father. This anxiety has manifested itself in the children expressing a desire to hurt themselves. At times, A.F. whips them up into such an emotional swirl that they become hysterical. They have been taught that it is okay to disrespect their father and that anyone who supports him is frightening. They show a complete disregard for the impact of their conduct on their father, and a shocking lack of empathy. They have exhibited cruel and disrespectful conduct to his wife S.W., who they had previously grown to love and respect. In many ways, their most disturbing behaviour has been the abuse they have foisted on the dog Bella, a pet they were previously affectionate with and loved. I find that A.F.'s

emotional abuse of the children has caused this behaviour. The status quo is frightening and dangerous for the children, and it cannot continue.

- [133] A.F. did not seize upon the opportunity given to her by my June 27, 2011 order. Although she became adept at articulating support for the access between the children and their father, it is clear now that her articulation was hollow, completely devoid of any meaningful substance. The sad truth is that A.F. never gave the children permission to love and respect their father.
- [134] The children knew they could never show they had fun with him or S.W, and when there was evidence that they did have fun and the mother learned of it, such as the picture of the children with S.W., they quickly got rid of the evidence, denied that they ever had any fun, and even questioned their father as to why he was telling people they were having fun when they were not.
- [135] One of the most concerning pieces of evidence was the eldest child J.L.W.'s school biographical project in the fall of 2012. Her class was given an assignment to write a short note of who they were. J.L.W.'s note included "I am afraid of monsters and my Daddy". That note along with all of the other children's notes was hung on the hallway just outside the child's class with a picture of the child J.L.W. I was shocked that the teacher who hung this on wall felt that there was nothing wrong with this. She did not see how hurtful that might be to the child's father. She justified, curiously enough, with the similar refrain of the mother, that child was just expressing her feelings.

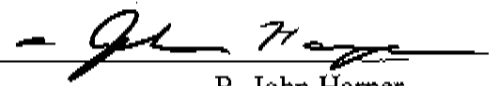
Custody

- [136] I find that the children can no longer be in the custody of the mother. She has not been able to remove the children from the harm and future risk of harm of emotional abuse. This case goes far beyond merely not being supportive of the children's relationship with the other parent. I echo the assessments of Dr. Lee and Dr. Ricciardi that this is the worst case of emotional abuse I have seen. As a result of their mother's emotional manipulation, the children feel entitled to disrespect and be abusive to anyone who does not agree with them, which impedes their continued healthy development.
- [137] The mother was given the opportunity to achieve expectations that were spelled out for her in my judgment of June 27, 2011. She admitted in her testimony on this review that she never read that judgment and only relied on her memory of what was said orally, which is telling of her commitment to adhere to the order.
- [138] A.F.'s counsellor, Mr. Kerr, stated that he was only given a copy of my order and that it was not until recently that he read my judgment and my detailed findings of fact that the mother was the root cause of the children's reality distortions. He admitted that these

types of findings would inform a counsellor on issues that would need to be dealt with in therapy. As he never read the judgment, that was never done, and the sessions continued based on A.F.'s perception of the problem and her perceptions of the facts.

- [139] As I noted above, Dr. Ricciardi testified that he did not see any evidence that A.F. was not complying with my order and he too could not recall if he read my judgment. This is despite the fact that my order in para. 3(h) states: "The Children's Aid Society shall arrange for counselling for the children to deal with the emotional abuse, their distorted reality of their father and promote the reunification of the children with their father." It is difficult, and perhaps impossible, for the counsellors to adequately deal with the emotional abuse and distorted perceptions of the children if they did not have an informed and neutral understanding of the family dynamics, as expressed in my June 2011 judgment.
- [140] I order that the father shall have custody of all three children. The custody change shall take place no later than July 5, 2013 at noon. This order is made with the sole consideration of the children's best interest and their protection. I found in my judgment of June 27, 2011, and I reiterate that finding today, that J.W. is a normative loving parent. He testified that if he were given custody, he would keep the children in the same school and the same activities and transport them daily. J.W. has never tried to limit the involvement of A.F. in their lives. He states that the only struggle in what has been referred to as a high conflict case is his struggle to see his children and have a normal relationship with them. I must note, however, that I found in my June 27, 2011 judgment that he was obsessively pursuing the concept of parental alienation syndrome and must stop that pursuit. I made it clear that I thought chasing such labels polarizes the professionals and results in a limiting view of the solutions to a complex problem.
- [141] Sections 16(10) and 17(9) of the *Divorce Act* expressly require the court, in making an order for custody or access, to give effect to the principle that a child should have as much contact with each parent as is consistent with the best interests of the child. For that purpose, the courts must take into consideration the willingness of one parent to facilitate contact with another parent: see *Young v. Young*, [1993] 4 S.C.R. 3, at para. 17; *Vamos v. Vamos*, 2012 ONCA 262. This maximum contact principle is mandatory, but it is not absolute – the court must have regard to the best interests of the child, and if other factors show that it would not be in the child's best interests, the court can and should restrict contact: *Young v. Young*, at para. 204. The risk of harm to the child, while not the ultimate legal test, is also a factor to be considered: *Young v. Young*, at para. 210.
- [142] Courts generally recognize that regular access to the non-custodial parent is in the best interests of a child. The right of the child to have contact with and maintain an attachment to the non-custodial parent has been viewed as a fundamental right that should only be judicially withheld in the most extreme cases: *Jafari v. Dadar*, [1996] N.B.J. No. 387 (Q.B.).

- [143] I find this is an extreme case. The mother A.F. shall have access to the children during the therapy sessions with Dr. Ricciardi only. Such access shall be facilitated and supervised by the Society. It is my hope that the next phase of the therapy sessions will bring the gains that I talked about in my first judgment in this matter. I am confident, however, such gains cannot be achieved under the present custodial arrangement and the existing level of emotional distress of the children.
- [144] I am still of the view that these children need both of their parents. It is my intention that access be increased given input with Dr. Ricciardi. However, the mother must be able to demonstrate that she is able to both act and articulate to the children in a manner that promotes the ability of the children to have a loving relationship with both of their parents.
- [145] The mother will have to bring a motion to change in order to change the access, if she can demonstrate what I have indicated above.
- [146] As Dr. Ricciardi expressed his willingness to remain as the children's therapist he shall continue as their therapist. Therapy sessions shall be increased to at least once per week. Both parents shall equally pay the cost of this therapy. Both parents shall cooperate with the therapist. The father shall not take the children to any other therapist without further order of the court.
- [147] The Children's Aid Society shall continue to supervise the custody and the emotional state of the children. They shall attend at the mother's residence along with Dr. Ricciardi in order to effect the change of custody.
- [148] If the Society is of the view that the children are in a crisis state that there is a real risk of emotional harm, they shall take the appropriate action. If the children are apprehended it is my expectation that they shall be placed in a neutral setting in order to assist with the transition to the father.
- [149] Counsel may provide written submissions as to costs within 30 days if no agreement on costs are reached.



R. John Harper
Justice

CITATION: A.F. v. J.W., 2013 ONSC 4272
COURT FILE NO.: FS-08-00007251

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

A.F.

Applicant

-- and --

J.W.

Respondent

REASONS FOR JUDGMENT

Harper J.

Released: June 28, 2013