

SUPREME COURT OF YUKON

Citation: *KDFK v WALBS*,
2024 YKSC 39

Date: 20240416
S.C. No. 22-B0060
Registry: Whitehorse

BETWEEN:

K.D.F.K.

PLAINTIFF

AND

W.A.L.B.S.

DEFENDANT

Before Chief Justice S.M. Duncan

Counsel for the Plaintiff

Norah Mooney

Counsel for the Defendant

Paul Di Libero

This decision was delivered in the form of Oral Reasons on April 16, 2024. The Reasons have since been edited for publication without changing the substance.

REASONS FOR DECISION

[1] DUNCAN C.J. (Oral): This is a decision on two applications, one brought by each of the plaintiff mother and the defendant father.

[2] The first application brought by the plaintiff mother is for sole custody and primary residence of the child of her relationship with the father, E.J.S., born [redacted] ("E."), and of O.K., born [redacted] ("O."), a child of the mother from a previous relationship (the "children"). The mother also seeks an order to apply for passports for the children and a Department of Indian Affairs status card for E. without the consent or

signature of the defendant father. The mother agrees to allow the father reasonable access on a schedule to be developed and agreed to by the parties on conditions that the father not consume alcohol or non-prescription drugs while the children are in his care, and that he shall not travel outside the Yukon with the children without the prior written consent of the mother.

[3] The father seeks joint custody of the children and a shared residential schedule. He also seeks an order that neither party travel with the children outside of the Yukon without the consent of the other party, not unreasonably withheld, and that the parties communicate using OurFamilyWizard platform at the father's cost.

Issues

[4] The issues are: a) what custody, residential and travel arrangements are in the best interests of the children; and b) does the father stand in the place of the parent, also referred to as *in loco parentis*, for O.

Background

[5] The father is Tetlit Gwich'in from Fort McPherson, Northwest Territories.

[6] The parties began dating in the fall of 2019 and moved in together in January 2020. The mother had a child from a previous relationship, O., born [redacted], as I said. The mother and father in this proceeding separated on February 7, 2023. There was an earlier brief period of separation in November 2022.

[7] At the beginning of the relationship, the father was working shifts at Victoria Gold mine, two weeks in and two weeks out. During his two weeks off, he divided his time between Whitehorse and Winnipeg. He has two children in Winnipeg from a previous common-law relationship. The mother of those children has custody. The father stopped

working at Victoria Gold in March 2020. He is a soapstone carver. He provides carving workshops, often in the Northwest Territories, and also produces carvings for individuals to purchase.

[8] The mother is a family support caseworker at [redacted] First Nation. She has worked at the Child Development Centre (“CDC”) as a liaison between Indigenous families in [redacted] and other communities and CDC staff, and occasionally providing respite care for Family and Children’s Services.

[9] Multiple lengthy affidavits have been filed by both parties in support of and in response to these applications. There is much disagreement between the parties on a number of issues. Many of the incidents described and responded to in the affidavits do not relate directly to the issues to be decided here. I have focussed on the information and material that is related to the care of the children. The following areas of dispute are relevant to that issue:

- the father’s use of alcohol: he says the mother exaggerates the amount and effects of his alcohol consumption and has in particular exaggerated his behaviour between April and July 2023; he says the relationship stresses and separation contributed to his drinking and he is now sober and committed to ongoing sobriety; the mother says he has continually minimized his drinking throughout the relationship and as a result she has lost trust in him;
- the mother’s marijuana use — the father says it is daily and affects her parenting; the mother says it is medically necessary and does not detrimentally affect her or her ability to parent;

- the father's ability to financially support the children — the mother says his support was erratic and unreliable, while the father says he provided regular support and, while not always timely, it was provided;
- the mother's parenting abilities — the father says she escalates quickly into an emotional state which can cause her behaviour to be extreme, reckless, and possibly harmful to the children — the mother acknowledges she reacts emotionally, she says her reactions became more extreme as a result of the dysfunctional relationship with the father, and that with ongoing counselling her responses are improved.

[10] Supporting affidavits or letters provided by each party from friends, family, and therapeutic supports were also disputed by the other party on the basis that those third parties only had partial information about the situation from the party they were supporting.

[11] I would like at this stage to comment in particular about the letter from the father's counsellor. I agree with counsel for the mother that it is unusual for a counsellor to provide evidence for use in court about the substance of the counselling sessions, especially when they relate to relationship and childcare issues and the counsellor has never met or spoken to the partner or the children. I have given no weight to the information provided by the counsellor about the nature of the relationship between the father and the mother.

[12] Having said this, given the 20 years of experience of the counsellor and the fact that she is a registered social worker, a counsellor, and a trauma therapist, I do place weight on her observations and analysis of the father's triggers for use of alcohol, his

significant efforts and motivation to address these, and the success of therapy to date. I also accept her evidence on the choice of treatment provided and why, and the details of the therapeutic treatment provided.

[13] These conclusions do not require an assessment of anyone outside of the therapeutic relationship, and they accord with the counsellor's expertise.

[14] Despite the conflicting affidavit evidence from the parties, I am able to find the following as facts, based on general agreement or admissions by the parties or from the more objective evidence filed, such as text messages:

- a. the father has had issues with alcohol and, when he was drinking, he could not be relied upon for consistent childcare or financial support;
- b. the mother has had issues with stress and anxiety which can cause her to react emotionally and inappropriately; and
- c. the parties' relationship was dysfunctional, and they have had and still have difficulties in communicating much of the time.

[15] I will address additional relevant facts in the analysis of the issues to be determined.

Custody

Law

[16] The *Children's Law Act*, RSY 2002, c 31 ("*Children's Law Act*"), is the applicable statute in this case (not the *Divorce Act*, RSC, 1985, c 3 ("*Divorce Act*")) because the mother and father were unmarried. "Custody" is defined in the *Children's Law Act* as follows:

... [I]n relation to a child, includes the right to care and nurturing of the child, the right to consent to medical

treatment for the child, the right to consent to the adoption or the marriage of the child, and the responsibilities associated with those rights, including the duty of supporting the child and of ensuring that the child is appropriately clothed, fed, educated and disciplined, and supplied with the other necessities of life and a good upbringing. (s. 28(1))

[17] The person or persons with custody have primary responsibility for important decisions about the health, safety, education, and welfare of the children. Included in this is making appointments, ensuring proper hygiene, arranging extracurricular activities, organizing birthday parties, attending parent-teacher interviews, and so on, for the child.

[18] The best interests of the child are the primary consideration in the determination of who gets custody and how the rights and responsibilities by those with custody are exercised.

[19] In the Yukon, factors for the Court's consideration in determining the best interests of the child of a common-law relationship are set out in s. 30(1) of the *Children's Law Act*. They are:

...

- (a) the bonding, love, affection and emotional ties between the child and
 - (i) each person entitled to or claiming custody of or access to the child,
 - (ii) other members of the child's family who reside with the child, and
 - (iii) persons, including grandparents involved in the care and upbringing of the child;
- (b) the views and preferences of the child, if those views and preferences can be reasonably determined;

- (c) the length of time, having regard to the child's sense of time, that the child has lived in a stable home environment;
- (d) the ability and willingness of each person applying for custody of the child to provide the child with guidance, education, the necessities [as written] of life and any special needs of the child;
- (e) any plans proposed for the care and upbringing of the child;
- (f) the permanence and stability of the family unit with which it is proposed that the child will live; and
- (g) the effect that awarding custody or care of the child to one party would have on the ability of the other party to have reasonable access to the child.

[20] This list is not exhaustive. Indeed, the beginning of s. 30 says "the court shall consider all the needs and circumstances of the child".

[21] These factors, or factors similar to these which appear in legislation in other jurisdictions, have been examined in many court decisions. Courts generally agree that each case in which best interests of the child are to be determined must be looked at individually and requires a weighing and balancing of all the relevant factors.

Descriptions from the case law of how the best interests of the child test is to be interpreted include the following:

- a fluid and all-embracing concept that encompasses the physical, emotional, intellectual, moral, and social well-being of the child (*Juraville v Armstrong*, 2021 SKQB 73 at para 58 quoting Julien D. Payne and Marilyn A. Payne, *Canadian Family Law*, 8th ed. (Toronto: Irwin Law, 2020) at 585);

- “highly contextual” because of the “multitude of factors that may impinge on the child’s best interest” (*Kanthisamy v Canada (Minister of Citizenship and Immigration)*, 2015 SCC 61 at para. 35);
- must be applied in a way that is responsive to a child’s age, capacity, needs, maturity, and level of development (*RJ v PJ*, 2021 NBCA 28 at para. 21);
- “what is in the child’s best interests must be examined from the perspective of the child’s needs with an assessment of the ability and willingness of each parent to meet those needs” (*Peterson v Peterson*, 2019 SKQB 24, at para. 52 quoting Julien D. Payne & Marilyn A. Payne, *Canadian Family Law*, 7th ed, (Toronto: Irwin Law, 2017) at 586); it is not an assessment of the needs and desires of the parents (*Children’s Aid Society of Hamilton v M.*, 2012 ONSC 6828 at para. 40);
- the factors in the legislation are not a checklist to be tabulated; the determination of best interests calls for the court to take a holistic look at the child and the people around the child; and the factors are non-exhaustive (*Phillips v Phillips*, 2021 ONSC 2480 at para. 47); and
- no single factor is given a priority, and the weighing of the factors depends on the individual circumstances of the child (*Bazinet v Bazinet*, 2020 ONSC 3187 at para. 31).

[22] In determining whether the best interests of the child are served by joint custody or shared decision-making between the parents, several consistent concepts have emerged from the cases.

[23] As noted in *LB v PE*, 2021 ONCJ 114, mutual trust and respect must be present in order for effective decision-making to occur. This does not mean that courts require a complete absence of conflict between the parents. That would be an unrealistic expectation. However, courts must consider whether a joint custody order is more or less likely to de-escalate or inflame the parents' conflict, more or less likely to expose the child to parental conflict, or whether a parent is seeking joint custody as a way to control the other parent inappropriately.

[24] All the evidence must be assessed in deciding whether any communication issues between the parents are significant enough to prevent a joint custody order. The source of the communication issues must be considered. For example, if one parent is creating the conflict with the other parent through inappropriate behaviour, that parent should not be able to use that conflict as a justification for sole custody of the child. As well, the nature, extent, and frequency of the conflict or communication issues must be assessed. The parents must be able to cooperate and communicate in a sufficiently functional way about matters relating to the child. If the evidence shows a history during the relationship of an inability to communicate effectively, and both parties are responsible, then joint decision-making may not be appropriate. This may be the case even where both parties are competent, attentive, and loving parents. It is particularly significant where the child or children are very young and unable to communicate their needs.

Application of Law to the Facts***E.***

[25] Here, it is clear that both parents love E. very much. There is much evidence of the love, affection, and emotional ties with both parents.

[26] E. has lived for all of her short life in the mother's home or with the mother. The mother owns her home. While part of that time the home was shared by both parents, on balance, the mother has been the primary caregiver because of the father's absences due to his visits with his family in Winnipeg, his trips to Northwest Territories to visit family and conduct carving workshops, including his unplanned trip for several months after their separation, and his absences due to drinking. During April and May 2023, the father travelled to the Northwest Territories without notice or advance warning and was absent for his weeks of scheduled time with the children. The mother spent most of her maternity leave in 2021 at her parents' home in Ontario. The father was with her and the children for part of that time.

[27] E. continues to live with her mother and stepsister now in the same house.

[28] The mother has arranged for daycare, medical appointments, including ongoing speech pathology, and extra-curricular activities such as swimming lessons for E. She has been the primary financial support for her as a result of her steady full-time employment.

[29] She has admitted to experiencing stress and anxiety and to using marijuana regularly to calm her, and she is also seeing a counsellor to assist with her mental health. She has suffered from depression but says it is now controlled by medication.

[30] The father has also played a significant role in E.'s life. He has provided a stable and calm influence in the family household when he is sober, especially when the mother experienced anxiety, stress, and difficulty with emotional regulation. He travelled on his own with E. to Winnipeg in October 2022 to visit with members of his family from his previous relationship. The visit was successful. He has also travelled with E. and other family members to Fort McPherson, Northwest Territories, and has begun to educate her about her Tetlit Gwich'in heritage.

[31] He is active in his community and wants E. to benefit from exposure to his cultural practices. More specifically, he wants to pass on the cultural traditions learned from his parents and grandparents, such as harvesting animals respectfully and sharing harvested meat with the community as well as the values of respect, helping others, and living positively. He is a Christian and wishes to share his faith practices with E. He enjoys various outdoor and indoor activities with E. He now rents a three-bedroom home in Whistle Bend.

[32] At the time of the hearing of this application, he had had approximately nine visits with E., which went well. He has been seeing a counsellor weekly since the summer of 2023, and thus far is successfully addressing his triggers for alcohol use. He is receiving good support from a Council of Yukon First Nations family preservation support worker and a Skookum Jim support worker, who I believe is in the courtroom today.

[33] The father fears that if the mother has sole custody, he will be denied reasonable access to E. He says this has been demonstrated by unnecessary insistence by the mother on supervised access visits since last summer, and the reduction in his visiting time that has resulted.

[34] The mother agrees that the father cares for E. very much and has good parenting skills when he is sober. She says she wants him to have a role in E.'s life, as long as he remains sober. Her concerns for E. in his presence stem from her absence of trust that he will remain sober.

[35] The mother also has concerns about his ability to support E. financially. She gives examples throughout her affidavits of the father's debts and financial instability. Many of these financial concerns of the mother are disputed by the father. He says he contributed to the household expenses through e-transfers and has worked out payment plans to address his debts.

[36] I accept that the mother has a legitimate lack of trust in the father due to his drinking. The father does not deny he was drinking during the relationship; he denies the extent and its effect. He is capable of sobriety, as he has shown during his five years in Winnipeg, and his current sobriety since the summer of 2023. I accept that the stresses of the relationship and the initial separation may have made it more difficult for him to stop drinking. I also accept that the current circumstances, including his ongoing counselling with positive results, as well as the other supports he has accessed, have improved his ability to remain sober. He is to be commended and congratulated for his efforts, commitment, and motivation. However, given the history of the relationship, including the evidence of his drinking throughout, which is undisputed by the father, as I have said, except to its extent, it is unsurprising that the mother fears a relapse and is mistrustful.

[37] With respect to the mother's financial concerns, it is difficult for me to draw any definitive conclusions from the affidavit evidence about their accuracy, validity, and

scope. I have no assurance that the evidence I have contains all of the relevant financial information. It would take a significant amount of time to analyse the raw data without a summary or analysis that I have been given. I note that the mother has a consistent full-time job, while the father's work is related to his soapstone carving business. Its financial viability is not in evidence, as he has only recently re-established it. I accept that finances caused a stress for the mother during the relationship and after it ended, even with some support from the father from time to time, she does not trust the father's consistency in financial support.

[38] There is no evidence that the father is unable to provide for the necessities of life for E. during his access visits, and he has demonstrated his willingness to support her financially beyond this with his support payments and purchase of winter clothing and other items for her. However, given the history of financial challenges in the relationship and the absence of evidence thus far about the financial viability of his business, I accept the consistency and reliability of his financial support is a legitimate concern of the mother.

[39] Viewing the situation holistically and considering the best interests of E., at this time, the mother meets the test for custody. She has been the primary caregiver, has provided and continues to provide a stable home environment, and has met the financial and other needs of E. As long as the father remains sober, she will support his access to E. and his presence in her life. She is supportive of E.'s exposure to the father's Indigenous culture and has engaged with Indigenous cultural activities herself with E., both at traditional culture camps in Fort McPherson, where they skinned hides, and assisted in harvesting a moose in Whitehorse. She has taught E. some Tetlit

Gwich'in words. She has also enrolled E. in the Yukon First Nation Education Directorate's Early Years Program that provides cultural programming, such as mitten making, sewing nights, drop-ins at the CDC, and so on. The mother requested a worker for E. from Inuvik who knows the S. family.

[40] I note that this is not a substitute for the father's teaching and the sharing of cultures and values from and with his own immediate family, but I am raising it to show that the mother is aware of the importance of E.'s Indigenous identity and culture, and is supportive of nurturing it.

[41] Both parents have set out in their affidavits the difficulties in communication between them. The mother describes their relationship as dysfunctional and co-dependent. The father says their communication was and is toxic and has contributed to making him feel hopeless and overwhelmed. After separation, the father's mother in Fort McPherson was used as a communication intermediary between the mother and the father. The father now seeks an order that OurFamilyWizard be used because of the ongoing difficulties and stresses of communication.

[42] As noted above, difficulties in functional communication about the children that arise from the relationship and are not due to the deliberate conduct of one party are a reason not to award joint custody. The rationale for that is that shared decision-making in the best interests of the children is not possible as the conflict between the parties does not permit appropriate communication about those decisions. At this time, the evidence persuades me that the parents are unable to communicate well enough to share custody. In addition, there remains a significant degree of mistrust of the father by the mother. The passage of time and consistency of the father's behaviour may reduce

this level of mistrust. For now, however, the situation is such that I am awarding sole custody of E. to the mother.

[43] I note that the father has taken For the Sake of the Children Workshop and the Communication Skills After Separation or Divorce Workshop offered by the Family Law Information Centre. The mother has said that she has not yet taken these courses, and I recommend that she attend and take these courses as soon as possible. I also recommend that both parents attend the other workshop that is offered by the Family Law Information Centre (Managing Conflict After Separation or Divorce Workshop), at the earliest possible time.

[44] If communication between the parents improves and the father continues along his current stable path of maintaining sobriety, his home in Whistle Bend, and a financially viable carving business or some other employment, joint custody of E. in future may be possible. A material change in circumstances affecting the best interests of E. would be required to be shown.

O.

[45] O. is the mother's child from a previous relationship and not the father's biological child. O. was approximately two years old when the parties began to live together. She was four years and 10 months old when the parties separated.

[46] The father seeks joint custody of O. as well, although in oral submissions his counsel offered as an alternative that the father will agree to the mother having sole custody as long as she provides information about O. to the father and he is consulted on major decisions affecting her. The father argues in support of his position on joint

custody that he has been *in loco parentis* — or in the place of the parent — with O. since he started living with the mother in early 2020.

[47] I understand the father’s argument to be that a finding of *in loco parentis* of O. means that she should be treated in effect as his biological child with whom he has a close relationship and this strengthens his application for joint custody. The best interests of the child test must still be applied and a finding of *in loco parentis* also contributes to this determination. For the following reasons, I find that the doctrine of *in loco parentis* does not apply in this case.

[48] Whether someone is *in loco parentis* requires consideration of factors such as: does the person provide the child with day-to-day care and with financial support; does the person treat the child as their child in a public way, that is, at public events and places and no differently in private; does the person discipline the child; and does the child have a relationship with the absent biological parent?

[49] The leading cases in this determination were decided in the context of a married relationship (*Chartier v Chartier*, [1999] 1 SCR 242 (“*Chartier*”); and *LBM v RDE*, 2016 YKSC 4 (“*LBM*”)). Many of the cases relate to the nature and extent of a step-parent’s obligation to support a stepchild under the *Divorce Act*. The conclusion of the Court in *Chartier* was that once the *in loco parentis* relationship has been established, it cannot be unilaterally terminated.

[50] There are other cases in which the determination of the same question of financial support of a child by a person who is claiming to be standing in the place of a parent have been decided in the context of a common-law relationship. In those cases, the court was interpreting a provincial statute governing common-law relationships that

contained a provision about the obligation of a person standing in the place of a parent to provide financial and other support under certain conditions.

[51] I have not been provided with any cases in which the court has interpreted the effect of a finding of *in loco parentis* in a common-law relationship when there is no reference to *in loco parentis* in the relevant statute.

[52] Here, the governing statutes for the parties, who were in a common-law relationship, is the *Children's Law Act* for custody and related matters, and the *Family Property and Support Act*, RSY 2002, c 83, for support matters.

[53] The *Children's Law Act* makes no reference to *in loco parentis* — or a person standing in the place of a parent. It allows, however, for any person to apply for custody (s. 33(1)), but it does not give any unique rights to a person *in loco parentis*. This appears to be a deliberate choice of the legislature.

[54] By contrast, the Yukon *Family Property and Support Act* defines “parent” to include “a person who has demonstrated a settled intention to treat a child as a child of his family”. This statute addresses financial support obligations of parents, among other things. So, in the Yukon, the *in loco parentis* concept has been imported into the *Family Property and Support Act*, but not into the *Children's Law Act*.

[55] It is necessary then to look at the development of *in loco parentis* in the common law and determine whether it has any application to custody issues here in the Yukon.

[56] The Court of Appeal in *Monkman v Beaulieu*, 2003 MBCA 17 (“*Monkman*”), noted the different historical context in which the doctrine of *in loco parentis* developed at common law. That Court noted that in *Chartier*, the Supreme Court of Canada had

quoted the conclusion of Alison Diduck in an article she wrote in 1990 about the concept's origins:

25 ...

The *in loco parentis* doctrine is a creature of 19th century patriarchy. It evolved during a time when it was a morally offensive notion for a man to be held responsible for another man's child. As Mendes da Costa U.F.J. stated in a 1987 decision, it has "its roots deep in history" and "carries with it connotations of times past" [*Re Spring and Spring* (1987), 61 O.R. (2d) 743 at 748 (U.F.C.)].

[57] Historically, *in loco parentis* was considered not to be a permanent relationship.

The adult could voluntarily enter into and leave such a relationship without legal obligation. There was little focus on the closeness of the relationship.

[58] Modern decisions interpreting *in loco parentis* focus on the interests of the dependent child. Recognizing that increasing numbers of children are raised in common-law relationships:

38 The trend in family law has been to extend legal obligations to children regardless of the legal status of the relationship of the adults. ...

[59] This is reflected in the provincial and territorial statutes (including in the Yukon *Family Property and Support Act*), which import the concept of standing in the place of a parent to child support obligations after the termination of the relationship between the adults.

[60] Unlike the historical common law doctrine of *in loco parentis*, there is no longer a presumption that the adult can unilaterally terminate the relationship without ongoing obligation to a child with whom they have or have had a parental relationship.

[61] In this case, the father wants the Court to apply the *in loco parentis* concept not in a financial support context, but in a custody context. The historical doctrine of *in loco parentis* at common law is no longer applicable for the reasons I have just noted. Further, the concept is not specifically included in the *Children's Law Act*, which deals with custody, because any person can apply for custody under the *Children's Law Act*. The best interests of the child test is used to decide custody.

[62] I disagree with the father's submissions that the rulings in *Chartier*, *Monkman*, and *LBM* support the application of the concept of *in loco parentis* in a determination of custody in a common-law relationship. All three of these decisions were child support obligation cases, not custody disputes.

[63] The Court of Appeal of Manitoba in *Monkman* discussed *in loco parentis* as it appears in the *Divorce Act* provisions and in *The Family Maintenance Act, RSM 1987, c F20*, now repealed but the provincial statute that governed support when *Monkman* was decided. That act contained specific sections (ss. 36(3)-(4)) describing the obligations of support, maintenance, and education of a person in a common-law relationship with another person to the child of that person from another relationship. As well, that act describes specifically the obligations of a person to a child to whom they are *in loco parentis*. The limitations of those obligations in both scenarios are also set out, that is, secondary to that of the child's parents. There is no discussion in *Monkman* about the application of the concept in the common law generally, that is, where there are no statutory provisions to be interpreted; and there is also no reference to its use in assisting in the determination of custody matters.

[64] The Yukon decision *LBM*, referring to *Chartier* and *Monkman*, is also a support obligation case in the context of a married couple, making the *Divorce Act* provisions applicable.

[65] As a result, for all of those reasons, I will not apply the doctrine of *in loco parentis* in this case.

[66] But having said all this, a determination for an application of custody under s. 33(1) of the *Children's Law Act* requires me to consider all of the evidence provided by the father about the nature of his relationship with O. in deciding what is in her best interests. This evidence is the same as that advanced by the father for his *in loco parentis* argument.

[67] I accept that the father was a parental figure for O. during the relationship with her mother. There is no evidence that O.'s biological father is part of her life. The father in this case helped care for O.'s needs; enjoyed activities with her, such as fishing, nature walks, and ATV trips; took her to swimming or gymnastics lessons; helped to de-escalate her emotional outbursts; provided financial support; and generally treated and referred to her as his daughter. She referred to him as "Daddy".

[68] O. has special needs. She has difficulties in daily functioning, including transitions and emotional regulation. She becomes overstimulated easily and loses emotional control as a result.

[69] These struggles led the daycare she was attending to advise the mother that O. could no longer attend unless she had an inclusion support worker. The mother arranged for O. to enroll in the Therapeutic Preschool at the CDC two afternoons a week. It is designed to help children with emotional regulation issues affecting their

behaviour in childcare settings. This was challenging for the mother, especially as she continued to work full time. The mother did this without the help of the father.

[70] O. saw a developmental therapist, a play therapist, and an occupational therapist through the CDC. The mother arranged for O. to be assessed by a child psychologist and also attended a meeting with the CDC and the school to assist O. with her transition to kindergarten. O.'s age then made her ineligible for supports through the CDC, so the mother has applied to Jordan's Principle for funding to enroll her in ongoing play therapy and occupational therapy. As of December 2023, the mother had O. on a waiting list for play therapy and Eye Movement Desensitization and Reprocessing Therapy, a form of mental health treatment. O. now has her own educational assistant in kindergarten to assist with her big emotions and dysregulation. The mother meets with her teacher at least once a week.

[71] The mother acknowledged that, during the relationship, both she and the father would intervene to help O. when she was having a tantrum. She described that both of them have felt overwhelmed, frustrated, and uncertain about how to address O.'s behaviours. These feelings motivated the mother to seek help from the CDC.

[72] I accept, from reviewing the evidence, that the father's responses to O.'s behaviour in general assisted in creating a calm and stable environment for her, even though it did not always result in the desired outcome.

[73] The father has shown interest in the services and treatment provided to O. but has been inconsistent in his involvement. The mother has been the primary parent responsible for O.'s special needs.

[74] The mother says O.'s special needs require her to have consistency and stability. The unpredictability of the father's visits since separation and the uncertainty of the situation has been difficult for her. The mother says her teachers have noticed behavioural issues after the visits with her father.

[75] While the father has demonstrated a loving, affectionate, caring, and bonded relationship with O., on a holistic review of her best interests, the mother is best placed to be the sole custodial parent. She has been the primary caregiver and provided a stable environment for O. for her whole life. This stability is unlikely to change in the foreseeable future. While I accept the father's evidence (and it has been partially admitted by the mother) that the mother has been frustrated by O.'s behaviour and has not reacted ideally to her during her relationship with the father, I also note the tremendous amount of work that she has done to find supports for O. and to assist with her needs. This is ongoing.

[76] The same concerns about joint custody as I noted earlier with respect to E. exist here for O.: the mother's absence of trust with respect to the father's alcohol use and financial support and overall stability (subject to change with the passage of time and consistency of the father's behaviour) and difficulty in communication between the two. There is the added complication with O. of her special needs, which require more communication, coordination, and collaboration. The groundwork for that kind of partnership at the moment is just not present.

[77] I therefore have decided that the mother shall also have sole custody of O.

Information to be provided to the father

[78] For both children, I agree with the father's request that the mother provide to him information related to their health, education, developmental, and counselling needs, as well as any other information related to important decisions for both of them. This includes extra-curricular activities and friendships. He is a committed father, with interest in maintaining involvement in their lives. This should continue. The mother will though, at this time, be the final decision-maker.

Passports and Status Card

[79] The mother may apply for passports and status card for the children without the consent of the father or his signature.

Access schedule

[80] The parties request that the residential schedule or access schedule be worked out between them. I have already decided in an earlier ruling that supervised access by the father is no longer necessary, as long as certain conditions related to alcohol consumption are met. And as long as those conditions continue to be met, I encourage the mother to be generous with the access permitted to the father, having regard to O.'s special needs. I encourage the parties through their counsel to work out an agreed upon schedule by way of a consent order, but if they need assistance they may, of course, return here.

[81] I also impress upon the father the importance of consistency in the visits, not only for O. — recognizing her need for stability — but also for the mother and E. Consistency and reliability from you will help to rebuild the trust that has been lost and, of course, it will be good for the children. Children need routine, consistency, and reliability from the

adults in their lives because this makes them feel safe and secure. It will also help the mother in preparing them for visits with you, so that they may be positive and happy times.

[82] I will order the use of OurFamilyWizard to be paid for by the father.

Communication has been and is a significant problem in the relationship. If

OurFamilyWizard can help fix these issues, then let us try it. It may not be necessary forever or even for a significant period of time, but I will leave that to the parties to decide if and when it is no longer necessary. Given the amount of time that has passed since the hearing of this application, you may decide that it is not necessary even now, but I do not know what the current situation is.

DUNCAN C.J.