SUPREME COURT OF YUKON

Citation: *R.K.K.* v. *B.M.M. et al*., 2009 YKSC 33

Date: 20090429
S.C. No. 08-B0053
Registry: Whitehorse

Between:

R.K.K.

PLAINTIFF

And

B.M.M. and R.S.

DEFENDANTS

Before: Mr. Justice L. F. Gower

Appearances:

Debbie P. Hoffman	Counsel for the Plaintiff
Paul Daltrop	Counsel for the Defendant B.M.M.
Drew Mildon	Counsel for the Defendant R.S.

REASONS FOR JUDGMENT

INTRODUCTION

[1] The plaintiff father and the defendant mother, B.M.M., have each made applications respecting the interim custody of the children of the relationship, namely M.D.M.K., born December 10, 2002 ("M."), and C.B.M.-S., born July 5, 1999 ("C."). They also seek an order determining how healthcare decisions shall be made for M., who has been diagnosed with Autism Spectrum Disorder.

[2] More specifically, the father seeks interim joint custody of the children and an order that their residential time be shared between him and the mother on a one-week alternating basis. With respect to the healthcare decisions for M., the father asks for an order that such decisions be made following discussion between him and the mother, and that if a mutually agreeable decision cannot be reached, no decision will be made, and either party may apply for this Court to have the matter determined.

[3] The mother seeks interim primary residence of the children and an order that the children's time between the parties shall be specified, including ongoing parenting and holiday time. She also applies for interim authority to make the final healthcare decisions regarding M., failing agreement between her and the father, with liberty to the father to apply to this Court for a review of such final decisions.

[4] Both the father and the mother seem to be in agreement that a custody and access report should be prepared in anticipation of the trial of this matter.

[5] The defendant R.S. is the biological father of C. The mother was granted sole interim custody of C. by a previous order of this Court in February 2000, upon her separation from R.S. He supports the mother's application.

[6] With respect to holiday time, the father asks for an order that he and the mother make mutually agreeable arrangements, such that the children spend an equal amount of time with each parent, taking into account any holiday time arranged between R.S. and C.

BACKGROUND

[7] The parties (the father and mother) began living together in approximately November 2001 and separated in July 2005. The separation occurred because the

mother began a new relationship with S.R., with whom she currently resides. In April 2007, the father began a relationship with C.S., who has a five-year-old son, L., however the father and C.S. continue to maintain separate residences.

[8] There is one biological child of the relationship between the mother and father, M., who is now six years old. As stated, C. is a child from a previous relationship between the mother and R.S. C. is presently nine years old. When the father and mother separated they entered into a separation agreement which dealt with their property issues. However, the preamble to the agreement expressly stated that the father stood in the place of a parent to C. Following the separation, the father and mother verbally agreed that the children would spend one week with the mother and one week with the father on an alternating basis, switching from one parent's home to the other on Fridays after school during the school year, and on Friday afternoons during school holidays. Special occasions, vacations, respite time, and flexibility around work schedules were negotiated between them as the occasion and need arose.

[9] In the fall of 2006, the parties had M. assessed for autism. They initially consulted with their family physician, Dr. Q., who in turn referred M. to Dr. B.G., a pediatrician in Whitehorse.

[10] After the consultations with Dr. Q. and Dr. B.G., the mother began to research autism and autism treatments. The mother started M. on a special gluten-free and casein-free diet (the “diet") in early 2007.

[11] M. was officially diagnosed with Autism Spectrum Disorder following a consultation with a pediatric consultant in Edmonton, Alberta, in July 2007.

[12] In May 2008, the Autism Society of Central Alberta referred the parties to Dr. H., of Calgary, Alberta. Dr. H. recommended further supplements for M., including vitamin B-12 injections, and ordered a number of physiological tests for M.

[13] The parties and S.R. had a consultation with Dr. H. over the telephone on November 11, 2008. The mother and Dr. H. had a further telephone consultation on December 8, 2008. The mother has provided transcripts of both conversations.

[14] Before M. started the diet, his autism symptoms had become quite acute and his behavior regressed dramatically. He had lost the ability to communicate for the most part, responding to questions by repeating phrases he had heard without context; he could not settle down and sleep at night; he had obsessive nonfunctioning routines that had to be followed or he would rage and cry; his bowel movements were diarrheal and his breath was sour; he did not make eye contact; and his temper was out of control.

[15] Currently, M. is enrolled in French Immersion kindergarten and has the benefit of working with educational assistant, J.S., who employs Applied Behavioral Analysis ("ABA"). Both parties acknowledge that J.S. is highly regarded in her field and that M. has made great progress under her tutelage.

[16] Since beginning the diet and his work with J.S., M. has made remarkable progress. He is printing and typing in school; he is taking guitar lessons; he sleeps through the night; he is calmer, more focused and more able to communicate than before; when he becomes upset, he is able to calm himself; he formed a brown stool for the first time in his life November 2008; he makes and initiates eye contact and conversation, and is generally more interactive with the world around him.

[17] In August 2008, the father expressed to the mother a concern about the frequency and the necessity of the vitamin B-12 shots. Subsequent to that, the father also questioned the chelation recommended by Dr. H. Chelation is a treatment in which medications are administered orally or by suppository for the purpose of removing certain heavy metals, mercury in particular, from the blood. The father also objected to Dr. H.'s proposal to treat M. for certain parasites by the administration of medications described as Iodoquinol and metronidazole.

[18] Based upon her research, the mother feels it is crucial, at this stage in M.'s development, to go ahead with the treatments recommended by Dr. H. The father is comfortable with M. continuing the special diet as well as the probiotics and vitamin supplements for which a medical prescription is not required. On the other hand, he has produced research of his own supporting his objections to the recommended treatments referred to above. In support of her application, the mother has filed extensive medical and other records of M. Both parties have also filed numerous excerpts of expert medical opinions relating to the treatments at issue. All of these are in hearsay form, as no evidence was called on the application, and many are directly contradictory.

[19] On October 29, 2008, the mother sent an e-mail to the father stating that she and S.R. had lost confidence in the father's "parenting ability", that C. would be living with the mother and S.R. "full-time... from now on", and that this decision was "non-negotiable."

[20] The father commenced an action on November 21, 2008, and, at the same time, brought this application and an interim interim application for shared joint custody of the children. On December 2, 2008, I made an order that both children would alternate their

residence between the father's home and the mother's home on a weekly basis, until the within application could be heard and decided.

ISSUES

[21] The following issues arise on this application:

1) Should the parties share interim joint custody of the children or should the mother's home be the primary residence for them?
2) In the event that the mother and father are unable to agree on decisions regarding the treatment of M.'s autism, should the mother have interim authority to make final decisions in that regard, subject to the father's right to apply for this Court for review of those decisions?

ANALYSIS

Joint custody versus primary residence of both children in favour of the mother?

[22] The mother's counsel submits that the parties are no longer able to work together to make joint decisions regarding the proper care of the children and, as such, it would not be appropriate or beneficial to continue the shared parenting regime. He referred to the case of *Belisle* v. *Belisle* (2000),13, R.F.L. (5th) 262 (Ont. S.C.), as authority for the proposition that joint custody should only be ordered where the parties: (a) accept each other as fit to have custody; (b) agree that such an arrangement should prevail; (c) demonstrate a sincere and genuine willingness to work together to ensure the success of the arrangement; (d) show an ability to communicate and cooperate in their shared responsibilities; and (e) respect each other's right to a separate life free of unreasonable interference.

[23] It appears that *Belisle* was a decision following a trial (see para. 78), whereas the within application is an interim one, and there are many points of conflict in the evidence that may have to await resolution at trial.

[24] The mother's counsel also relied upon *Richter* v. *Richter*, 2005 ABCA 165, where the Alberta Court of Appeal noted, at para. 11, that, as a general proposition, joint custody ought not to be ordered where the parents are in "substantial conflict" with each other. However, the Court in *Richter* also stated, at para. 12:

> "... as this Court has previously indicated, *de facto* child custody arrangements should not be lightly disturbed pending trial... A primary consideration is to ensure that there is some stability and certainty in a child's life. Still less should significant changes be made based on disputed expert evidence which is itself likely to be introduced and challenged at trial. Instead, the focus should be moving the case on to trial."

[25] The father's counsel relies on the case of *Easton* v. *McAvoy,* 2005 ONCJ 319, where Renaud J., of the Ontario Court of Justice, stated, at para. 24:

> "In matters of interim custody, upon the courts weighing all the evidence, although conflicting, and taking into account the legislative factors mentioned above, the interim order should, unless there is strong and cogent reason for doing otherwise, seek to permit children to have meaningful and maximum contact with each parent."

[26] It should also be remembered that s. 31(1) of the *Children's Act*, R.S.Y. 2002, c. 31 states:

> "Except as otherwise provided in this Part, the father and the mother of a child are equally entitled to custody of the child."

As I noted in *C.M.S*. v. *M.R.J.S*., 2009 YKSC 32, at para. 19, this is a *de facto* presumption of joint custody.

[27] I also agree with the father's counsel that, until recently, the parties had a significant history cooperating as parents. They lived together for almost four years and have successfully co-parented since the separation, for the better part of three years. It seems that it is only when the disagreements over M.'s treatment began to arise last fall that their communications became problematic.

[28] I pause here to note with some interest the mother's position that the father has become "increasingly hostile" towards her and has said "mean-spirited things" about her. The implication here is that it is the father's actions which have contributed to the breakdown in communication between the parties. Based on my review of the affidavit evidence, it seems as though the opposite is the case. I will refer to a few examples which reflect the tone of the mother's recent change of attitude towards the father.

[29] After the mother e-mailed the father on October 29, 2008, with her unilateral decision disallowing C. from living with the father, he responded by e-mail on November 13 and 14, 2008, asking the mother to reconsider her decision to prevent C. from coming over for her regular stay. He stated that C. was very upset and confused by the decision, and that she had made it very clear that she wanted to be with the father through the week. The mother's reply e-mail on November 14, 2008, included the following comments:

> "... You always have to suck the life out of everything and everyone. I'm not going to let you screw with me until I'm as miserable as you and your old lady... You are a control freak of the highest order. If you think you can use [M.] as a bargaining chip to make me change my mind about [C.], then you have grossly underestimated me and how committed I am the decision I made.
>
> Don't ask her to stay again, and DON'T ask if she can stay right in front of her. Don't arrange her parent/teacher

> interviews. Don't attend them. When I said I've lost confidence in your parenting, I meant it. If you continue to undermine this decision, my credibility, my autonomy, and my right to parent my child, you will see less of [C.], not more. The next time [C.] asks, you can remind her that she no longer lives with you.
>
> ...
>
> Get it straight, [R.]. I'm not going to endure any more of your patriarchal 'discussions' before I do things with and for my kids.
>
> Like the pills. You tell me not to order some more during the teleconference, then you tell me I need to have a 'discussion' with you before he takes them. I have NOTHING to say to you about them..."

[30] In her third affidavit, the mother made the following statements about the father:

- "I cannot leave my children's healthcare decisions in the care and control of someone [i.e. the father] who will not even look after himself."
- "He never asks for anything. He gives orders. He never says please or thank you. Compromise is not an option."
- "It's my observation that the [father] approaches many things with [M.] neither calmly nor positively."
- "I did not inform [the father of the parasite treatment] because I was sure that his objections were specious."
- She said that the father had made veiled threats of non compliance with the diet and that his intent in doing so "showed reckless disregard for [M.'s] well-being".
- She referred to the father's diffusing of M.'s "meltdowns" in public as "an ostentatious display of positive parenting".
- She said [the father] "does not care about the children's stress".
- "Since we separated, the [father] has let his health, hygiene and appearance go. He appears to drink more now. Until very recently, and even then (only under social coercion), he made no effort to spend time with his family..."

[31] In my respectful view, it is this type of evidence from the mother which can be characterized as being “mean-spirited” and seemingly unwarranted. I agree with the father’s counsel that it would appear that the mother has not a single positive thing to say about the father in any of the three affidavits she filed in support of her application. There is also an element of unwillingness to compromise. If she proposes something and the father wants to discuss it, as counsel put it, the mother reacts with “a storm of negativity” towards the father. In contrast, I could not find an example in any of the father’s material of him displaying obvious hostility towards the mother. Indeed, he concedes that she is a good mother and seems to acknowledge that she has played a pivotal role in M.’s progress to date.

[32] If a party introduces a level of negativity or hostility to a parental relationship, and that leads to a breakdown in their communication, then it would seem unfair to allow that party to rely upon the inability to communicate as justification for sole versus joint custody.

[33] The comments of the Veale J. in *E.J.M*. v. *D.D.I.*, 2008 YKSC 21, at para. 21, are appropriate here:

> “It has been a practice in this court to make joint custody orders despite communication breakdown between the parents to encourage parents to rebuild their relationship for the benefit of their child. There are, admittedly, some relationships that are so toxic that joint custody makes absolutely no sense as it leads to continued conflict which is harmful for the child. I do not find this parental relationship to be so irreparable that they cannot communicate about their child. Both parents are devoted to the child and sincerely wish for the child’s best interests, albeit from their point of view... This child is at a crucial developmental stage and needs the care and contact of both parents.”

[34] It is also important to note that, as I understand it, neither the father nor the mother have yet taken the “For the Sake of the Children” parenting after separation workshop, which is presented over two sessions, as Level I and Level II. Pursuant to a practice direction of this Court, it is mandatory for the parties to complete this workshop. I expect them to do so as soon as reasonably possible, and I am confident that it will provide the parties with skills and strategies to improve their communication.

[35] Further, I am also concerned that, given the heavy handedness that the mother employed in her unilateral decision to have C. reside with her full-time, awarding the mother primary residence of the children may have an adverse effect on the father's access to them until trial.

[36] R.S. opposes the father having joint custody of C., as he feels that this may adversely affect his existing parental rights and that his continuing access to C. will require the consent of the father. Currently, R.S. has access to C. for two months every summer (generally), for two weeks at Christmas, and for one week during spring break. In addition, he occasionally travels from his home in Vancouver to the Yukon to visit C., and has also had additional visits with C. when she has traveled to Vancouver with the mother. R.S. is of aboriginal ancestry and he feels very strongly about fostering this aspect of C.’s identity. He is concerned that if the father has joint custody of C., that would cause confusion for C. with respect to her cultural identity.

[37] In my view, R.S.’s concerns are unfounded. There is no basis for them in the evidence filed on this application. There is certainly no evidence that the father has ever interfered in the relationship between R.S. and C. If anything, the evidence suggests that the father fully appreciates the importance of the relationship between C. and R.S., and

has, in the past, even helped to finance C.'s travel to Vancouver for her access visits. Indeed, the father's Notice of Application specifically states that the order he seeks regarding the children's holiday time with him and the mother should specifically take into account any holiday time arranged between R.S. and C. Finally, I agree with the submission of the father's counsel that a joint custody order would not "take anything away" from R.S., because he did not previously have any custodial rights respecting C.

[38] With the exception of the relatively brief period from the end of October to the beginning of December 2008, the parties have had a *de facto* joint custody arrangement respecting both children for almost 3 1/2 years. In my view, that arrangement should not be lightly disturbed pending trial. My primary concern is for the best interests of the children. On this interim application, the significant change sought by the mother with respect to primary residence of the children would not be in the children's best interests, especially given that so much of her rationale for the change is based on disputed expert evidence, which will have to be sorted out at trial. Rather, I favour continuation of the meaningful and maximum contact which the children have had with each parent for most of the last 3 1/2 years. Accordingly, I order that the father and mother shall share interim joint custody of M. and C. until trial of this matter.

Should the mother have interim authority to make final decisions regarding the treatment of M.'s autism, subject to the father's right to apply for judicial review of those decisions?

[39] I have struggled with this difficult issue.

[40] The mother is to be fully credited for her extensive research and her tireless advocacy on M.'s behalf. I agree with her counsel that M.'s progress has been remarkable since he began the diet in early 2007. I also appreciate the mother's concern

that time is of the essence in terms of M.'s medical interventions. She stated in her third affidavit that "the golden window of opportunity to make any real and lasting difference for children with autism is between 18 months and five years old." M. is now six years old. However, as I have noted, there is much conflicting evidence about the efficacy and safety of the treatments at issue, which are principally the vitamin B-12 shots, the parasite medications, and the chelation therapy. Dr. H. obviously supports all these forms of treatment, as he apparently prescribed them. Dr. J.F.C., in his letter dated December 18, 2008, also supports vitamin B-12 and chelation therapy. With respect to the latter, he stated:

> "When appropriately administered, it can dramatically lower the body burden of heavy metals, and has frequently brought significant improvement to [autism] spectrum children."

I don't believe Dr. J.F.C. expressed any opinion on the proposed parasite treatment. Dr. Q. also generally confirmed that Iodoquinol and metronidazole are both appropriate treatments for the parasites at issue, although he did not specifically endorse or approve their use for M.

[41] On the other hand, the father's research indicates that chelation is a "controversial treatment" and that some scientists dispute the link between autism and the heavy metal mercury. Some animal studies have apparently suggested that chelating agents can cause "cognitive damage." The research also indicates that chelation can wash out important metals such as iron, calcium and manganese, along with the problematic mercury and lead. There is also a fear that chelating agents can be toxic to the liver. Finally, the father states that both Dr. Q., the family physician , and Dr. G., the

pediatrician who examined M. and met with the parties in early 2007, are extremely wary of chelation therapy because of these risks.

[42] The father also emphasizes that Dr. G. tested M. in 2007 and determined that that M. had “no mercury levels” in his blood. Consequently, says the father, there is no need for chelation. The mother responded by stating that she has copies of two independent laboratory tests which show that M. is “full of mercury”, yet somewhat surprisingly she appears not to have attached those results to any of her affidavits. Further, it is puzzling to me that nowhere in the transcripts of the telephone consultations with Dr. H. on November 11 and December 8, 2008, is there any mention of M. having mercury in his system.

[43] The father’s objection to the parasite treatment is that, in his view, M. shows no signs or symptoms of illnesses as a result of the targeted parasites, blastocystis hominus and cryptosporidium. Thus, he also feels that this treatment is unnecessary. Further, his research indicates that long-term use of Iodoquinol in particular can have severe side effects, such as vision impairment, muscle weakness, and liver or kidney failure. Finally, he is concerned that the Iodoquinol may lead to “escalating behaviour” in children with autism, whereas the goal with M. is to calm him down.

[44] With respect to the vitamin B-12 shots, the father’s reservations seem to stem from those of Dr. G., the pediatrician who examined M. and met with parties in early 2007. Also, there was one occasion between August 12 and 17, 2008 when the father forgot to give M. one of his B-12 shots and decided to wait another two days to see if there was any effect on his behaviour. He has stated that M.’s mood and behaviour did not change one way or the other as a result of the missed shots. However, when the

father resumed the shots, M. became “cranked up and his behaviour escalated... soon after giving him the [initial] injection”.

[45] The father is also concerned about the professionalism of Dr. H. He points to the transcripts of the telephone consultations of November 11 and December 8, 2008. He says that it was made clear to Dr. H. that he “had some questions about the Iodoquinol” and that he and the mother needed to talk further about that treatment, as well as the chelation. However, during the December 8th consultation, which the father did not participate in, the mother indicated to Dr. H. that she intended to begin the chelation treatment during the time that M. was residing with her, and Dr. H. said nothing to dissuade her, even though he knew the father had not yet provided his unequivocal consent to the treatment. Moreover, Dr. H. encouraged the mother to “do the best you can when [M.’s] with you.”

[46] The father also challenges the opinion of Dr. J.F.C. because he has not examined M. nor has he spoken with either of the parties. Yet, despite not having had a discussion with the father about his position in these matters, Dr. J.F.C. seems to have presumed that the father is acting contrary to M.’s best interests. Based upon the following quote from Dr. J.F.C.’s letter of December 18, 2008, the father's criticism would seem to be justified:

> “When I see positive response to biomedical treatment of an autistic child, and at the same time become aware that there is indifference or hostility to the protocol from some relatives of the child, I do my best to point out to the doubters that the decision to discontinue the protocol will have profoundly adverse effects on the child’s long-term goals. Continuing the protocol can mean the difference between a person's being able to function in society as a gainfully employed adult, versus needing long-term care.”

[47] Finally, the father is skeptical of both Drs. H. and J.F.C., as both are in the business of selling many of the medications they prescribe and therefore stand to profit from recommending certain treatments.

[48] In my view, there is a legitimate difference of opinion between the mother and father over the best medical treatment for M. As Corbett J. said in *Iddon v. Iddon* (2006), 145 A.C.W.S. (3d) 282 (Ont.S.C.J.), at para.2: "Reasonable parents can differ in their sincere views about appropriate medical treatment." To be clear, I have not been asked on these cross-applications to decide which of these treatments are in M.'s best interests. Rather, I must determine the process by which the parents will make these decisions going forward.

[49] The mother wants interim authority, pending trial, to make the "final decisions" respecting M.'s medical treatments, "failing agreement between the parties." If the father is unhappy with any of the mother's decisions in that regard, she suggests he can apply to this Court for a review of the decision. I have two problems with this request. First, it is quite clear from the affidavit evidence that the mother has no real regard for the father's views on these medical matters. As I have noted above, whenever the father expresses a note of caution or outright disagreement on a point, the mother commonly reacts with a storm of negativity, rather than a genuine attempt to negotiate a solution. Indeed, the mother has demonstrated a willingness to commence certain treatments without the father's knowledge or consent. In that regard, I agree with the submission of the father's counsel that the mother has shown a flagrant disregard for the father's opinions. This gives me no confidence that she will make a genuine and sincere effort to seek the father's agreement before making her "final decision" on a given issue.

Consequently, I am left with the view that granting the mother's request will essentially give her unilateral and dictatorial authority over M.'s treatment. In other words, I do not expect the father would have any real opportunity for input before such decisions are made.

[50] My second concern is that the only recourse for the father would be to make continual court applications to seek redress until trial. Not only will that put him to significant expense, it will also take time, during which M. may already be undergoing a particular treatment, which may ultimately be proven to be unnecessary at best, or harmful at worst.

[51] I appreciate the mother's apparent frustration with the mainstream medical system. She is critical of the system because of its conservatism and slowness to accept the types of new ideas proffered by groups such as "Defeat Autism Now!", with which Dr. J.F.C. is associated. Her apparent success with M.'s new diet is admittedly a good example of an intervention which seems to benefit children with autism, regardless of whether it has achieved universal acceptance within the medical community.

[52] On the other hand, some of these treatments, depending on how they are administered, appear to potentially have significant risks. Therefore, there is some danger in moving too quickly and confidently with a given treatment, before a comprehensive assessment of the pros and cons.

[53] Having said that, as I indicated at the hearing, I am not particularly enamoured with the father's proposal either. He suggests that all of M.'s medical decisions be made jointly by him and the mother, and if they cannot agree, then either party may apply to this Court to have the matter determined. First of all, it seems that the prospect of

agreement between the parties on these treatments is slim at the present time. Thus, I envision what could be a number of applications, again involving conflicting hearsay expert opinion on matters in which this Court has no expertise. Rather, I suggested to the parties that they may wish to consider a process where they submit their differences of opinion on a given medical treatment to an independent third-party expert for determination. I specifically suggested the family physician, Dr. Q., as he has familiarity with M.'s history and also enjoys the apparent confidence of both parents. It seems to me that such a process would be substantially quicker, more economical, and ultimately wiser than coming to this Court for such determinations.

[54] However, I cannot force the parties to agree on any particular process to resolve these medical issues. Rather, I must make this determination on the basis of the evidence presented and the submissions made by either side. Having reviewed both, it is my view that the preferable alternative, and one which will best serve M.'s interests, is the father's proposal.

[55] I would also urge the parties to have this matter set down for trial as soon as possible, so that, hopefully, the conflicting medical opinions can be more constructively scrutinized.

[56] Before concluding, I would simply observe that M. seems to have made remarkable progress as a result of the interventions employed thus far. I understand these to include the new diet, the supplements and probiotics, as well as the expert tutelage of M.'s learning assistant, J.S. While the mother is of the view that more is required (vitamin B-12, anti-parasitics, and chelation) sooner rather than later, there was little or no evidence to suggest that M. would do qualitatively or quantitatively better than

he is presently doing if these additional treatments are commenced immediately. In that sense, there does not appear to be any significant urgency for the treatments.

CONCLUSION

[57] On these cross-applications, I concluded as follows:

1. The father and the mother shall share interim joint custody of the two children, M. and C.;
2. The residency of the children shall continue as set out in my order of December 2, 2008;
3. Each major medical decision to be made for M., and more specifically those relating to his Autism Spectrum Disorder, shall be jointly made by the mother and father following a good-faith discussion between them, during which they will make their best efforts to come to a resolution. Failing such agreement, either the mother or the father may apply to this Court to have the matter determined;
4. The father and the mother shall make mutually agreeable arrangements regarding the children's holiday time away from school, such that the children shall spend an equal amount of time each parent, after specifically taking into account any holiday time arranged between R.S. and C.;
5. I recommend the preparation of a custody and access report pursuant to s. 43(1) of the *Children's Act* ; and

6. As the father was substantially the successful party on these cross-applications, I award him costs in the cause.

Gower J.