CITATION: S. v. A., 2021 ONSC 5976
COURT FILE NO.: FS-16-00223
DATE: 20210909

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
	)	
W.S.	)	Gary Gottlieb and Ryan Alto, for the
	)	Applicant
	)	
Applicant	)	
	)	
	)	
- and -	)	
	)	
P.I.A.	)	Gary Joseph and Alice Parama, for
	)	the Respondent
	)	
Respondent	)	
	)	
	)	**HEARD:** May 10-14, May 17-21,
	)	May 25-28, May 31, June 1-4,
	)	June 7-11, June 14-18, June 21, 22,
	)	25, June 28-30, July 5-9, July 9,
	)	2021 and July 26, 2021

REASONS FOR DECISION

McGEE J.

Decision Overview

[1] Mr. S and Ms. A were married on October 9, 2011 and separated on July 19, 2016. They have two young sons, L who is seven, and A who is five. At the time of their separation, L was 33 months old and A was four months old.

[2] Mr. A issued this Application in November 2016 after Ms. A resisted all efforts to resolve the parenting issues. On the first day of Trial in May of 2021, the financial issues were resolved leaving only the parenting issues to be determined in accordance with the *Divorce Act* R.S.C. 1985, c.3 (2nd Supp.), as amended. By separate Order dated July 27, 2021, I have already granted Mr. S's claim for a divorce.

[3] The parenting issues resulted in a 39-day Trial conducted over nine weeks. During that time Mr. S testified for seven days, and Ms. A testified over eight days, inclusive of expanded reply evidence. I received a number of records and reports on consent such as police records, supervised access notes, children's aid society notes, and a jointly retained developmental assessment and a separate, joint retained psycho-educational assessment of the oldest child.

[4] The applicant father seeks final Orders for decision making responsibility, and for a transfer of L and A's primary care to him with an initial period of no contact with the mother. Thereafter, he proposes a therapeutic process that would work towards shared parenting. In support of his Orders sought, the father called to testify five jointly retained access supervisors, a jointly retained section 30 assessor[1], one of the two jointly retained reunification counsellors, three child protection workers, and the jointly retained psychologist.

[5] The respondent mother proposes final Orders granting her decision-making responsibility, and that the father have unsupervised parenting time on alternate weekends with a regular mid-week dinner or video call, as well as holiday and summer vacation. At the same time, she asserts that she and the children are victims of physical, verbal, emotional, financial, and sexual abuse and that the boys have justifiably rejected their father and ought not be forced to see him. In effect, she asks for final Orders that are not enforceable.

[6] To support her case, the mother called the evidence of the other jointly retained reunification counsellor and a private investigator hired by one of her brothers to conduct

[1] That is, an assessor retained pursuant to section 30 of the *Children's Law Reform Act,* R.S.O. 1990 c.12 as amended

surveillance on the father and the access supervisors. For oral reasons given during the Trial, I did not admit into evidence the investigator's reports or video surveillance. The balance of the mother's case consisted of the evidence of her two brothers, the children's babysitter and pediatrician, three of the children's teachers and an after-school caregiver, two of the mother's three counsellors, and in a final grand flourish, the grandfather of one of the children's friends.

[7] I have concluded in these reasons that but for the first reunification counsellor whose evidence supported the father's case, the mother's witnesses were either allies, dupes or well-meaning persons whose evidence concerning the issues in this litigation was shaped by the selective misinformation provided to each of them by the mother.

[8] Throughout the course of this litigation and right through to the last day of Trial, the mother presented two parallel and competing narratives. In her court attendances of the past five years she has formally stated that she wants her sons to have a relationship with their father and, in furtherance of that assertion, she has consented to Orders for various services and parenting schedules intended to normalize the children's parenting time with their father.

[9] Away from Court the mother has intentionally acted to undermine the agreed, court ordered parenting schedules and has twice attempted to sabotage reunification counselling with false allegations of sexual abuse designed to terminate the children's relationship with their father. Specifically, she has made a series of escalating complaints of physical and sexual abuse of the children by the father to the Peel Police, the Peel Children's Aid Society and the Toronto CAS. All have proved to be unfounded. In her most damaging act, she caused her six-year-old son to make a false allegation that his father was sexually abusing his four-year-old brother.

[10] By the conclusion of this Trial, Ms. A's narrative that she wanted her sons to have a relationship with their father had entirely collapsed. In reality, Ms. A has never wanted any such thing.

[11] From the time of the criminal charges that removed Mr. S from the family home on July 19, 2016 – of which he was acquitted – to the present situation of no parenting time at all, Ms. A's actions demonstrate that her words of support for a positive father-son relationship cannot be trusted.

[12] Regrettably, I find it necessary to note from the onset of these reasons that Ms. A has acted in bad faith during this litigation by pretending to support the boys' relationship with their father while taking extraordinary steps – some of which were not discovered until Trial – to destroy any prospect of that relationship. She has engaged in shadow advocacy by using three personal counsellors as advocates: the first and second to press her case with the CAS and the third as a foil to an agreed reunification process. I also find that the mother is in contempt of the Order of November 2, 2018.

[13] The parental conflict of these past five years and specifically, the emotional harm caused to L and A by the mother and her brothers' conduct has been dramatic and traumatic. The emotional health of both sons has been compromised, and the psychological wellbeing of the oldest son may be in crisis. At six years of age, he brandished a knife at the family babysitter while proclaiming that he was "the man of the house", and he continues to be abusive towards both his younger brother and his mother.

[14] In this decision, I will first review the applicable law and then set out my reasons for concluding that the only path forward that will protect L and A's physical, emotional and psychological safety, security and well-being, and that will allow each of the boys to spent as much time with each parent as is consistent with their best interests, is to transfer their primary care to the father and to grant him decision making responsibility.

[15] I reach that conclusion by finding at this time, that the father is the only parent able to foster and protect the boys' emotional wellbeing, and moreover, that he is the only parent willing to support the children's relationship with the other parent.

[16] I do not find that the mother's allegations of physical, financial, and sexual abuse have been made out. I accept that she was verbally abused during the marriage and that she experienced emotional abuse, but in considering the timing, duration, and

nature of that abuse and the evidence of the father's improved parenting over the past five years, I find that Mr. S's abusive conduct during the marriage has no impact on his present ability to be a primary caregiver and decision maker for the children, or to cooperate with the mother on parenting issues.

[17] Because the mother has demonstrated no ability to support the boys' relationship with their father, I find it necessary to provide for a 90-day period during which the mother will have no unsupervised parenting time but for Zoom calls. Thereafter, I do provide for a stepped-up parenting plan that will result in a shared parenting schedule. I do so because it is in the children's best interests to have as much time with each parent as is possible, and in the first 90 day period the father will have the time necessary to establish the boys in his home and settle them into a therapeutic process that will foster their well-being should the mother chose not to improve her post separation parenting.

[18] In making these final Orders, I recognize that the transfer of primary care will require a change in school for the boys, a new pediatrician, and a new dentist; decisions which will hereinafter be made by the father after timed consultations with the mother.

[19] These final Orders shall incorporate the terms of the May 10, 2021 Minutes of Settlement but for the father's payment of child support, which is now terminated. For enforcement purposes, the final Orders shall be issued with the parties' and the children's full names and birthdates. To protect the children's privacy, these reasons and any published copies of the final Orders shall initialize the parties' and the children's names and shall not state their birthdates.

Law Applicable to this Decision

[20] Section 16.1 of the *Divorce Act* provides the court with the authority to decide parenting time and/or decision-making responsibility, prohibit the removal of a child from the jurisdiction, and provide for an entitlement to information and other incidents of parenting. When making such decisions, the court shall only take into consideration the best interests of the child. The factors to be considered when determining best interests

are set out in section 16(3) of the *Divorce Act,* and the factors relating to family violence can be found at section 16(4.) They read as follows:

Section 16(3) Factors to be considered

(3) In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including

(a) the child's needs, given the child's age and stage of development, such as the child's need for stability;

(b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;

(c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;

(d) the history of care of the child;

(e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;

(f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;

(g) any plans for the child's care;

(h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;

(i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;

(j) any family violence and its impact on, among other things,

(i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and

(ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and

(k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

Section 16(4): Factors relating to family violence

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

(a) the nature, seriousness and frequency of the family violence and when it occurred;

(b) whether there is a pattern of coercive and controlling behaviour in relation to a family member;

(c) whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;

(d) the physical, emotional and psychological harm or risk of harm to the child;

(e) any compromise to the safety of the child or other family member;

(f) whether the family violence causes the child or other family member to fear for their own safety or for that of another person;

(g) any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child; and

(h) any other relevant factor.

Past conduct

(5) In determining what is in the best interests of the child, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the exercise of their parenting time, decision-making responsibility or contact with the child under a contact order.

Parenting time consistent with best interests of child

(6) In allocating parenting time, the court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child.

[21] Section 16(2) sets out the primary consideration when weighing the above factors: the child's physical, emotional and psychological safety, security and well-being. As stated by Justice Kraft in *White v Kozun* 2021 ONSC 41, at paragraph 174:

> [174] The list of "best interests" criteria in the *Divorce Act* amendments is a non-exhaustive list. The list does not prioritize any one criterion over another, with the exception of the primary consideration. No single criterion is determinative, and the weighting for each criterion will depend on the circumstances of the particular child.

[22] Section 16.1 of the *Divorce Act* came into force on March 1, 2021. It formally codified well-established family law considerations as factors. As Justice Chappel carefully concluded in *McBennett v. Danis* 2021 ONSC 3610 at paragraph 95,

> [i]n reality, section 16(3) and the options that it permits are simply reflective of what has been happening "on the ground" with respect to decision-making in Family Law cases for many years, both in the context of the *Divorce Act* and provincial parenting law regimes.

[23] I start these reasons with a statement of law because the mother asserts that the father's history of abuse singularly prohibits him from playing any primary care or decision-making role in the children's lives. She proposes that her claims of abuse

predetermine the parenting issues because a recognition of family violence is at the forefront of the *Divorce Act* amendments.

[24] A history of family violence has always been an important factor in the adjudication of parenting disputes. An Order for decision making is never appropriate when there is evidence that it will be misused to frustrate or control the other parent or a child in a manner that is not in the child's best interests. A history of family violence is also relevant when deciding a parenting plan, specifically, its impact on the ability and willingness of the parent who engaged in family violence to care for and to meet the needs of the child, and to cooperate with the child's other parent.

[25] Children must first and foremost be safe in their parents' care. The *Divorce Act* amendments recognize this primal need in Section 16(2) by making a child's physical, emotional, and psychological safety, security, and wellbeing the primary consideration. No conduct by a caregiving parent that deliberately undermines a child's sense of safety or self should be sanctioned or permitted to continue.

[26] As these reasons will demonstrate, the pattern of family violence that threatens L and A's present sense of security and self is not the conduct of the father during the marriage; it has been the post-separation conduct of the mother that has failed to allow the boys to have separate feelings for their father than those held by the mother.

[27] L and A have never been permitted to feel safe in their father's care. Ms. A is disinterested in their enjoyment of time with him and disbelieving of their affection for him. She sees herself and the boys as one emotional unit sharing the same feelings of fear and anger towards Mr. S; and she does not hesitate to use the boys to express her distaste for him. L and A's sense of security and self in relation to their father has been overwritten by their mother's determination to erase her former spouse from her life.

[28] These reasons will show that L and A have no secure relationship with the father and as a result, have lost important connections not just with him, but their extended paternal family. Tragically, the maternal family has not mitigated the mother's conduct. They have seized upon it and made things so much worse.

[29] All the factors in section 16(3) of the *Divorce Act* are important considerations and must be balanced in a parenting decision but in this case, subsections (c) and (i) of section 16(3) of the *Divorce Act* weigh the heaviest. Children are entitled to develop the best relationship possible with each of their parents, independent of the relationship between their parents. As referenced in *Malhotra v Henhoeffer* 2018 ONSC 6472, citing the work of Dr. Fidler, children who are caught in a cycle of unjustified rejection are more likely to suffer from low self-esteem, self-hatred, self-blame, guilt and substance abuse problems.

[30] Whether passively permitted or actively encouraged, a child who rejects a parent is parallelly empowered to reject other important people in his life. He is taught to avoid difficult feelings instead of how to cope with them and to work through them. He suffers an emotional impairment that deprives him not only of the love and protection of a parent, but of a wide array of complex social relationships.

[31] When a parent is unwilling to support the development and maintenance of a child's relationship with the other parent, and has no insight into the resulting emotional harm caused to their child, the Ontario Court of Appeal in *A.M. v. C.H.* (ONSC), aff'd in *A.M. v. C.H.* 2019 ONCA 764 sets out four options:

1. do nothing and leave the child with the favoured parent.

2. reverse decision-making and primary residence and place the child with the rejected parent.

3. leave the child with the favoured parent and order therapy and counselling; or

4. provide a neutral, transitional, placement for the child and order therapy, so as to facilitate a placement with the rejected parent at a later date.

[32] When a reversal of decision-making and primary residence is ordered, courts may also order that the alienating parent have no contact with the child for a minimum period: see *M.M.B (V.) v. C.M.V.,* 2017 ONSC 3991; *Foley v. Foley,* 2016 ONSC 4925.

A “cooling-off period” should be ordered with no contact to the alienating parent when the parent will not comply with therapy, see *Yousufy v Yousufy* 2019 ONCJ 791.

[33] In my view, a reversal of primary care is the most difficult of parenting decisions. It is an option that must be approached with caution, and each case must be considered on its own facts. *A reversal is not a vindication of which parent is right or wrong.* It is a finding as to which parent can best provide physical, emotional, and psychological safety and security to a child in distress. Which parent will best protect the child from the conflict and place the child’s well-being above the litigation “win”.

Background and Litigation Chronology

Summer of 2006 to October 9, 2011 Marriage

[34] The parties are 15 years apart in age. In the summer of 2006, they met by chance in a movie-worthy scene at a Greek airport. Twenty-seven-year-old Ms. A was a young professional with a master’s degree who had grown up in rural Ontario and was working on contract in Greece. Mr. S was a forty-two-year-old Toronto banking executive who was on vacation. As they chatted, they discovered their mutual Greek origins and love of all things Greek, particularly its food. As each departed, Mr. S offered his card to Ms. A in the event that he could ever be of service to her in Toronto.

[35] Ms. A’s contract ended later that year and when she returned to Ontario, she took Mr. S up on his offer of assistance. They met for lunch in December of 2006. As she describes it, the relationship progressed quickly. Over the next five years the couple was to delight in, and despair of each other in an intense on-again, off-again relationship.

[36] At some point in the spring of 2007, Ms. A discovered that she had contracted Herpes from Mr. A. She was devastated and he was apologetic. Her disappointment turned to anger when she found an item that persuaded her that he had known of the risk. She took steps to end the relationship but, in her words, Mr. S “begged her back.” He asked her to marry him and a date was set for September of 2007.

[37] In June 2007, and in anticipation of the wedding, the parties jointly closed the purchase of a Brampton home and they moved in together. Although the relationship

appeared whole, the stress of planning a wedding proved too much. Ms. A felt that the S family were critical of her and that Mr. S's mother meddled in the wedding planning. Mr. S did not understand Ms. A's rejection of his mother. Ultimately, Ms. A cancelled the wedding because "it did not feel right."

[38] The parties continued to live together throughout the fall of 2007 but Ms. A's ongoing negative views of Mr. S's mother and other sources of disagreement created conflict between the couple. Mr. S decided to move back to his home in Toronto. The parties did not see each other again for about a year.

[39] Each takes a different view of its initiation, but Mr. S and Ms. A agree that their relationship started up again in late 2008 with a series of coffees in downtown Toronto, which evolved to lunches and evenings out.

[40] In March of 2009, Ms. A discovered that she was pregnant. Mr. S seemed happy about it and the couple announced their pregnancy to the A family at a barbeque. Almost immediately after the announcement, Mr. S panicked and asked Ms. A to get an abortion, an act that was abhorrent within their shared Greek Orthodox religion. Ms. A felt betrayed and I accept that she was devastated. She did get the abortion; a decision that she carries with her to this day.

[41] Once again, the relationship was over, and the parties did not date for another year. Ms. A continued to live in the Brampton home and Mr. S was again, back living in his Toronto home, which he shares with his mother.

[42] In January of 2010 the parties again started meeting for coffee, often to discuss work strategies and common interests. Both were working in high level project management positions. They did not tell their families that they were seeing each other again. A quiet trip to Greece was planned and when they returned, Mr. S moved back into the Brampton home. They told their families that they were getting married.

Marriage: October 9, 2011 to July 19, 2016

[43] The parties were married at a Toronto Greek Orthodox Church on October 9, 2011.

[44] Ms. A acknowledges that the first period of marriage was good. They lived well. She had advanced to a challenging, well-paid position as a Regional Project Manager for a major hospital and Mr. S was by now demanding six figures as a Project Manager for a Toronto Bank. Ms. A testified at Trial that they never agreed about their finances, but I did not find credible her assertion that she was ever subjected to any form of financial abuse. By the date of separation, she had $143,000 in savings to which Mr. S did not have access. The couple never had a joint account.

[45] The parties became parents at the respective ages of 34 and 49 when their first child, L arrived in October of 2013. A second son, A followed in March of 2016. Both children were planned and welcomed not only by their parents, but by their delighted maternal and paternal extended families, for whom they were and remain the only grandchildren. None of Ms. A's three older brothers have permanently partnered or had children. I will refer to her brothers as "CA," the oldest in her family of origin, who lives with the maternal grandmother, "PA" a Brampton businessman and "JA" a College IT Manager. Mr. S's brother, whom I will refer to as "PS," is a businessman who was widowed and has recently remarried.

[46] I accept Ms. A's evidence that Mr. S did not initially adjust well to parenthood. His traditional view of gender roles added to returning tensions within the relationship. One altercation between them saw a verbal argument initiated by Ms. A erupt into objects flying. Ms. A threw a pillow at Mr. S and he hit her with a vacuum cleaner hose.

[47] There were serious naming issues for the children. Ultimately, Mr. S prevailed in his choice of names: an ancient Greek Warrior King for their first born and a revered Greek Scholar for their second son – although with a compromise of the Scholar's name being a middle name. Mr. S's own childhood had been tragically fractured, and he testified at Trial that he was determined that his sons be inspired to achieve their best possible life.

[48] It soon became apparent to Ms. A that fatherhood had honed her husband into the role of an archaic patriarch: which she experienced as emotional abuse. I do not doubt the intensity of her experience. A number of service providers who testified at Trial also found Mr. S to be haughty and condescending.

[49] The evidence, as a whole, paints a picture of a fifty-year-old first-time father with a low stress tolerance for the demands of an infant and the chaos of an active toddler. In his testimony at Trial, Mr. S openly acknowledged his inappropriate behaviour prior to separation and his regret in having verbally abused his spouse and for having been inappropriately harsh when disciplining their oldest son.

[50] Ms. A tearfully recounted being made fully responsible for the care of the children, sleeping with them while he slept in the spare room so that he would not be disturbed at night, being left behind while her husband continued his work and social life, and being expected to keep a perfect home in his absence. She visibly struggled to stay on a timeline as all the affronts, from the time that they had met in 2006 to the date of Trial, coalesced into a potent narrative of abuse and abandonment.

[51] So dominant was her narrative that, even without the benefit of cross examination or the contrasting evidence of Mr. S, one could see the distortions emerging. A push became a kick, inappropriate discipline became an attack and running downstairs to grab a boiling kettle while L was sitting up in a baby bath in sight of Ms. A was related as a near drowning.

[52] Ms. A's narrative expanded to include a particularly cruel disdain for the children's paternal grandmother. Ms. A forbade her from kissing her grandson. When Mr. S's mother defiantly snuck in a kiss on L's head while they were visiting at her home, Ms. A declared their immediate departure. At Trial, Ms. A pointed to the tension in the car ride home as proof of Mr. S's anger management issues.

[53] By the start of 2016, Ms. A was pregnant with A and looking to end a marriage that she experienced as abusive and isolating. She began journaling, talking to friends, taking pictures, and surreptitiously recording Mr. S on her phone. She involved her

brothers, who jointly own a Brampton home about 15 minutes away, and who would race over on every call from their sister, often refusing to leave. Their increasing attendances at the home escalated tensions and frustrated Mr. S who considered their marital discord to be private, and up to them to solve as a couple.

[54] Tensions with the A family peaked when Mr. S discovered the oldest brother, CA, in L's bed, shirtless. Enraged, Mr. S demanded that L not be left alone with any of Ms. A's brothers, only with Ms. A or her mother, or his mother. Equally enraged, Ms. A dismissed his allegation and defended her brothers' right to come to their house as she pleased.

[55] At Trial, neither parent could recall a happy moment in the last year of their marriage. They were in a downward spiral. In hindsight, that was the year during which counselling might have saved this family years of heartache and what I anticipate to have been over a million dollars in legal fees. In the absence of that assistance, Ms. A's view of her relationship with Mr. S locked at its lowest point and, as will be demonstrated later within these reasons, her fears and sense of victimization have never healed. To the contrary, over the last five years her fears have disproportionately evolved and been woven into escalating fabrications that have been projected onto her young sons and exercised through their rejection of their father.

Separation July 19, 2016

[56] The marriage ended abruptly on July 19, 2016. Mr. S was removed from the home on four charges of assault, one arising from an alleged assault on L and the other three involving Ms. A. The initial call to the police came from the mother's massage therapist after she attended for an appointment.

[57] The July 19, 2016 criminal charges were informed by the following allegations made by the mother in a police interview conducted at her brothers' home. The reader is invited to compare these allegations to those later made in the family law litigation.

1. On July 18, 2016, Mr. S struck L's hand after he spilled juice on the counter, leaving a red mark and causing L to urinate. Mr. S also threw L on the bed;

2. On July 9, 2016, Mr. S pushed Ms. A into the fridge because he was upset that she allegedly did not communicate which food should be thrown out;

3. In 2013, Mr. S struck Ms. A across the back with a plastic piece from a vacuum cleaner during an argument after she threw a pillow at him; and

4. In 2013, Mr. S choked Ms. A with both hands after she confronted him about his mother kissing L when she had asked her not to.

[58] As a final note to the end of the marriage, Ms. A was due to receive a personal injury settlement of $375,000 in July of 2016. It was learned during Trial that full and final releases had been signed on April 6, 2016 arising from a June 2009 claim on an August 2008 injury to Ms. A in which her parents and brothers held *Family Law Act* claims. Net settlement monies of $243,702.00 were paid to Ms. A just after the date of separation.

[59] L and A did not see their father for the next 13 months. From July 19, 2016 to August 25, 2017 they had absolutely no contact with their father.

Early Litigation Period

Start of this Family Law Application and Answer

[60] The terms of recognizance on which Mr. S was released prohibited contact with Ms. A or their sons absent a Family Court Order. Mr. S retained counsel who began writing to Ms. A's counsel asking for a consent Order for access to L and A, who at the time of his arrest were 33 months and 4 months old respectively. Ms. A either did not respond to an inquiry, equivocated or refused outright.

[61] By November 2016, Mr. S had exhausted his settlement efforts and he issued this Application. Ms. A answered with allegations of violence that took Mr. S by surprise.

Her Form 35.1 Parenting Affidavit sworn November 3, 2016 had a full page dedicated to the violence that Ms. A listed as relevant to the parenting issues.

[62] I reproduce below the allegations in her Parenting Affidavit not for the truth of them, but to demonstrate over the course of these reasons the escalation in historic allegations. For example, Ms. A testified at Trial that during the marriage she lived in fear of “The Rules” that her husband pronounced. Much of her direct testimony and all of her cross examination disproved there being any “Rules.” She claimed marital sexual abuse but testified that the couple did not have intimate relations after L was born, but for one time. She claimed financial abuse for which there was no basis whatsoever.

[63] The allegations in the mother’s parenting affidavit are that the father would:

> Strike L and laugh
> Kick L if blocking the television
> Kicked him so hard caused a bruise
> Push face into yogurt
> Threatened to rub face in urine like a dog if he peed on the floor and he did so one more than one occasion
> Used fear to control them all
> Yell and swear at L and use the F word
> Call L stupid, a bad boy, worse than an animal, didn’t like him, retarded and annoying, would not have any friends – admitted some
> Laughed when kicked an ottoman out from under him
> Calls PA nasty, fucking embarrassment and not decent in front of children
> Muzzled L by grabbing his face, yelled at kids to stop crying
> Playing rough with L
> Violently pushed from behind resulting in a large raised lump which he then tried to keep secret from PA
> Father yelled at A and smothered his cried with a pillow, left bite marks on his bum
> Increased after A born
> On a trip to Greece threatened to kill her and get away with it in Greece. Kill children to enjoy vacation.
> July 9, 2016 Mr. S violently pushed Ms. A in the kitchen, causing a large bruise.

> July 18, 2016 Ms. S enraged that Ms. A's family been in the home and banned her from leaving the house or taking the children to her parents' farm. In a rage at bedtime, struck L so hard that he peed on the floor. Mr. S threw L onto the bed, injuring L's knee.

[64] An early case conference was held on November 2, 2016 and a motion for access was permitted, but due to a delay in receiving a bail variation the first contested motion dealt with access to information. On April 18, 2017 costs of $4,000 were ordered against the mother for unreasonably refusing the father access to medical information for the boys following a motion of that day.

Acquittal on the Criminal Charges

[65] The Trial of the four criminal charges was heard on June 6 and 7, 2017. Mr. S was acquitted of all charges.

Agreement to a Section 30 Assessment and Supervised Access

[66] Following the acquittal, a settlement conference was held on July 7, 2017. There was no longer any prohibition on Mr. S seeing the children, but Ms. A continued to resist and claim that he was a danger to the children. To get things moving, Mr. S agreed at the conference to a Section 30 Assessment and a schedule of supervised access. The agreements were incorporated into a court Order of that day. Because of the summer holiday period, it took some time to engage and schedule the supervised access.

The Baptism

[67] Meanwhile, in the weeks between the parties' July 7, 2017 consent to supervised access and when access began on August 26, 2017, the entire A family was arranging to surreptitiously baptize 16-month-old A without the knowledge of the S family. A baptism in the Greek Orthodox faith is a significant event that holds great meaning to both the A and the S families.

[68] JA made the application for A's baptism in his name at a different church than where the parents attended. He and CA took part in the ceremony which named them as

A's joint godfathers despite Mr. S' concerns about his sons' safety around CA. JA made no efforts to insure that his godson's father, paternal grandmother or uncle knew about the ceremony.

[69] To this day, Ms. A takes no responsibility for excluding A's father from the baptism, nor does she acknowledge it as having been in any manner inappropriate. In her view, A's family did attend: her parents, her brothers, her one brother's girlfriend, she, and L. She left it to her brother PA to invite the father, and I did not find his evidence at Trial respecting his voicemail invitations to Mr. S to be credible. All communications between the families at the time were by text or email or through counsel.

[70] The baptism was later the subject of comment by the section 30 assessor, Mr. Hurwitz. He raised the incident with Ms. A as an example in which, moving forward, there would need to be improved consultation. Ms. A confirmed that she had planned the baptism without telling the father and she expressed no concern with having done so. Mr. Hurwitz noted her complete lack of empathy for Mr. S's genuine distress at being excluded from such an important life cycle event.

The Brothers

[71] The A family, primarily the two younger brothers – who, unless challenged to provide first names were referred to throughout the Trial as "the brothers" – have played major roles throughout this proceeding. One of them has always been present at the majority of access exchanges. Each testified as to his concerns with the father and professed a need to keep his nephews safe. Neither uncle demonstrated any insight into the nature of this dispute, or the emotional harm caused to the boys from his constant hovering. The mother testified that each has paid $200,000 for her litigation fees.

Supervised Access

[72] After a number of revisions, the parents signed a Supervised Access Service Agreement with Families in Transition (FIT): the father on August 23, 2017 and the mother on Saturday August 26, 2017, the first day of what was to become regular parenting time every Wednesday and Saturday. Part of the delay was occasioned by the mother's

concerns that the paternal grandmother and uncle need not be present during the visits. The agreement specifically provided at paragraph 23 that “neither parent or their agent will audio or video record any part of the exchange or visit.”

[73] The first supervised access visit was for one hour on Saturday, August 26, 2017. The visit went very well. L was not at all resistant. A, who had only been four months old the last time he saw his father was a bit hesitant at the beginning. Mr. S had brought a suitcase of food and toys and was very well prepared. Both children engaged with their father and enjoyed themselves.

[74] The Saturday and Wednesday one-hour visits continued to September 23, 2017 when they were expanded to two hours a week, and then to three hours a week on October 21, 2017. These initial visits were supervised by the owner of FIT, Deborah Connerty. Once the visits were established, she handed off the supervision to two other FIT supervisors who conducted and recorded the visits in the same manner: by taking notes on their phones which were downloaded onto FIT forms, formatted and edited, signed, then released to the parents.

[75] I will not reflect all the supervised access notes which were received over eight days at Trial with evidence-in-chief and cross examination of five of the eleven supervisors who provided notes. Instead, I here summarize the elements that were consistent throughout the period of supervised access, and as necessary I will later set out certain noted incidents that inform my decision, as they arise in the chronology.

[76] The consistencies that permeate all the supervised access visits are:

1. Ms. A, usually driven by one of her brothers, was routinely late to the visits. Sometimes she would give notice, and about a quarter of the times that she was late, she agreed to extend the visit.

2. During the Family in Transition period of access from August 26, 2017 to August 6, 2019 there were a total of 131 visits. Of these visits, the mother did not attend 37 and was late for 49. There were never any make up visits offered.

3. Mr. S was always early for the visit, well prepared with activities, toys, books, food and snacks for the children.

4. Until the end of 2018, L almost always showed some initial resistance to transitioning. As time progressed, L became increasingly physical in his resistance to leaving the car, kicking and screaming and occasionally biting his mother. Sometimes Ms. A would ask the supervisor what to do. Ms. A would always insist that L's resistance be reflected in the notes.

5. Neither Ms. A nor her brothers would ever remove L from the car despite the fact that he was four and then five years of age when he was showing resistance. Instead, Ms. A would talk to L while her brother looked on.

6. No matter how difficult the transition, once in his father's care and out of sight of their mother, Mr. S was successful in calming L through distraction and engagement. The notes demonstrate Mr. S's increasing skill at managing L's strong emotions and frustrations.

7. A was never resistant to a visit and was always the first out of the car, toddling, then later running to meet his Dad.

8. The boys enjoyed outdoor physical play, endless activities including building Lego, games and selecting from a large selection of purchased and homemade food.

9. Father and sons were observed to laugh together and to be genuinely affectionate with one another and with their paternal grandmother whom they called Yaya.

10. From time to time Mr. S needed to correct L who could be stubborn or engage in unsafe play. He was observed to use good parenting skills and was always able to resolve the situation.

11. There was never a safety concern observed in almost 200 visits.

12. The notes are full of joyful moments: the boys wrestling with their father, dancing to Greek music, playing in a backyard pool, riding bikes, reading books, snacking, decorating, and eating cake.

13. The supervisors who testified at Trial all reported successful, child-centered visits and gave each visit a 9, or a 10 out of 10 score.

14. Ms. A or her brother was always on time for the pick-up.

[77] L missed only five visits during this period of August 26, 2017 to March 9, 2018: three for which Ms. stated that four-year-old L did not want to attend, and two in which both boys missed their parenting time because Ms. A cancelled the attendance. One of the supervised visits was attended by the section 30 assessor so that he could make personal observations.

[78] As L's transitions became more dramatic, both parents breached the agreement not to record. Mr. S was seen to put his hand out the door while holding his phone. It was learned at Trial that Ms. A had her car camera on.

The Start of L Believing that he is Not Safe with his Father

[79] At the end of the third visit of September 6, 2017, in front of his mother, L told Ms. Connerty that his "father had not hit him this visit." Ms. A repeated the statement in front of L and asked Ms. Connerty to add this to her notes. Ms. Connerty never observed L being hit by his father.

[80] On September 13, 2017, L was noted as telling his father that he did not love him. Mr. S answered with, "that's okay, you will later." This type of statement consistently occurred thereafter, and the supervisor always noted an appropriate answer from Mr. S in which he acknowledged a hurtful statement without reacting, and then confirmed his love for L.

[81] On the October 4, 2017 visit, L told the supervisor that "Mommy says that Baba [Greek for father] hit us."

[82] Ms. A's brother John was in the car on October 11, 2017. Eighteen-month-old A is noted as saying "Daddy not a nice guy" and with that out of the way, A reached up for his Dad and hugged him.

Mother's Attack on the Supervised Access Notes

[83] Access supervision notes for over 200 supervised access visits were tendered during this Trial. The FIT supervisors and later the Brayden supervisors all took notes on their cellphone during the access periods, then later in the day transposed their notes directly onto their agency's forms, edited and formatted them and then sent the notes to the owner of their respective agency for release to the parties. Some supervisors kept their original notes while other did not. In the Brayden process there was a second editing by a member of the Brayden Staff.

[84] Although Ms. A was able to acknowledge at Trial that sometimes the children had fun during their time with their father, she could not speak to any lasting value of the visits, nor any benefits to the children. She ignored positive parenting techniques employed by Mr. S and outright dismissed any reports that the children responded in kind to their father's displays of affection. She attributed any positive aspects of the visits to Mr. A providing them with "toys and treats." She took issue with the access supervisors' observance of court orders, processes and outcomes believing that they must have missed or deliberately ignored the father's abuse of the boys.

[85] Ms. A's distrust of the supervised access notes as a proxy for her distrust of the father's parenting time permeated the whole of the Trial. Significant Trial time was spent on the supervised access notes.

[86] Ms. A's allegation of bias primarily arise from three incidents: a post visit observation that one of the supervisors, Lou Samonas, departed Mr. S's home with leftover homemade soup (and possibly on another occasion, cake). Mr. Samonas testified that he did accept the gift of soup from the paternal grandmother because he felt that it would have been rude to do otherwise, but that it did not affect his judgment in making notes. He testified that it was his nature to be friendly in order to diffuse the tensions around visits.

[87] Second, Ms. A observed Mr. S greet Mr. Samonas him at the door with a hug, wishing him well on his traditional Greek Name Day. Mr. Samonas acknowledged the gesture which he took to be a friendly greeting. He took nothing else from it.

[88] Third, Ms. A accused Ms. Willer, a Brayden Supervisor in early 2020, with being biased because she accepted a necessary ride from Mr. S back to the school where she had left her car during a supervised community visit. Ms. Willer was clear and child focused in her testimony. She related that she stayed in her role as a supervisor throughout. She reported that at the time of drop offs, Ms. A took an angry and accusatory tone with her and was aggressive enough that on one occasion, she had to get her supervisor involved.

[89] Ms. A's made a claim of incompetence against one of the FIT supervisors and in breach of the agreement not to record, Ms. A's brother PA hired a private investigator to film the supervisor because he believed that she was playing on her phone instead of supervising. Ms. A, and PA later showed the video to the CAS. When cross examined, PA admitted that it had not occurred to him to simply ask Ms. Reside why she was on her phone so much. Had he done so; he would have learned that she was taking notes on the phone. PA testified that he was just making sure that his nephews were safe, and he echoed his sister's belief that the notes could not be accurate because they reflected positive visits with the father.

[90] Ms. A's concern that none of the supervised access notes can be trusted is anchored in her certainty that it is not possible that L and A are safe in their father's care or that they enjoy their time with him.

[91] At Trial, Ms. A seized upon a discovery that some of the supervisor's original notes did not exactly match the official versions later released. Nothing came of this lengthy inquiry. One note by Mr. Samonas was changed in that "Dad asked [L] if mama tells him dad hit him. L didn't respond" was replaced with: "Dad asked [L] if mama tells him dad hit him. He said she has told him dad hit him like last week when he told dad that mom showed him the pictures telling him the bruises were from dad hitting him."

[92] Original notes made by Ms. Willer of Brayden Services from January 21, 2020 to March 9, 2020 turned out to have edited for brevity before being released. In the note of January 21, 2020, the sentence “L and his father exchanged hugs and Father indicated that he loved L but L didn’t respond” was replaced with “L and his father exchanged hugs and Father said that he loved L”. In the note of January 27, 2020, the sentence “Father was in the principal’s office going through L’s OSR” was replaced with “Father was in the principal’s office”.

[93] Some of Ms. Willer’s original notes disclose heartbreaking additional detail. The January 27, 2020 original note stating that “L attempted to cover his head with his hood from his sweatshirt. Father redirected him. L then turned away from his father. Father shared a story about how L got his name and to be brave. L again indicated that he was not going with his father” was replaced with “L attempted to cover his head with his hood from his sweatshirt. Father shared a story about how L got his name and to be brave.”

[94] Consistent with the notes of all the other supervised visits, no safety concerns were ever noted in the edited notes which were also replete with positive, child focused parenting and father-sons attachment. I do not find any of the discrepancies in the supervised access notes to be remotely sufficient to dislodge the overall trustworthiness of the access supervision notes.

The Section 30 Assessment

[95] The Section 30 Assessment jointly agreed to on July 2017 was conducted over the fall of 2017, with a final Report released March 9, 2018. The Report begins by setting out its purpose: to assess the “adequacy of each parent’s childcare capabilities commensurate with their children’s needs, to identify why there is a high level of conflict between the parents and to develop ways to de-escalate this conflict”.

[96] In conducting his assessment, Mr. Hurwitz accepted without reservation that Ms. A’s experience of the marriage was that of a victim of domestic violence and, he acknowledged that she demonstrated fear of Mr. S. He also observed that she was

unable to see anything beyond that history, that she saw little benefit to the children being attached to their father and that she had trouble looking to the future.

[97] Despite the purpose of an assessment having been fully explained to her, Ms. A asked Mr. Hurwitz at her first appointment why she was even there. She was often late and disorganized for appointments and she indicated at an early stage that she preferred that there be no access. If she had to allow access, it was her intention that it be supervised. She refused any suggestion of consulting with Mr. S on parenting decisions.

[98] In his assessment of Mr. S, Mr. Hurwitz saw no evidence that he was dangerous, or could not move forward with Ms. A to develop a healthy parenting plan for the children. The father was at all times cooperative, open and respectful. Mr. Hurwitz noted at the time of the assessment that, “both children saw their father as a source of comfort, showed security in being able to go to him” and that he saw “nothing worrisome about the dynamic between the kids and their father.” He formed this conclusion despite having received venomous letters from both JA and PA that attacked the father and the paternal grandmother.

[99] Mr. Hurwitz’s report is extensive and comprehensive. It establishes the context for what he identifies as a “very complicated, extremely high conflict situation” that is driven by a lack of parental trust. In March of 2018, the report should have been the blueprint for a final resolution of the parenting issues. The father was prepared to accept the section 30 assessor’s recommendations that the mother have sole responsibility for decision making provided that the concurrent step-up parenting plan recommendations be accepted by the mother.

[100] At Trial, Ms. A’s counsel focused his cross examination of Mr. Hurwitz on whether he had fully appreciated Mr. S’s abuse of Ms. A during the marriage and his weakness as a caregiver. Mr. S’s counsel focused his cross examination on the psychological testing done by Dr. Holloway in the course of the assessment and how it informed, or did not inform, the recommendations in the report. Both counsels sparred over Ms. A’s ongoing attempts, contrary to a prior agreement, to provide Mr Hurwitz with copies of her surreptitious cell phone recordings of Mr. S taken during the marriage.

[101] As an aside, I give no purchase to Ms. A's counsel's assertion that the pages missing in the electronic Trial Record copy of Mr. Hurwitz 187-page report was deliberate or indicative of Mr. S's campaign of "information management." The missing pages were only brought to Mr. S's counsel's attention during Trial and they were quickly rectified. Throughout this Trial I have had the whole of the original (paper) report available to me in the court file.

[102] Lost in the cross examinations and bickering at Trial were two *critical* paragraphs concerning L found at page 85:

> L is a 4-year-old boy who has observed the majority of the parental conflict pre-separation. He has exhibited a range of significant behavioural problems pertaining to wetting, aggression and swearing. Some of these behaviours have been manifestations of his environment and according to Ms. A, what he witnessed between his parents (swearing), while other behaviours have been a function of his emotional and behavioural response to stress within the home environment with his parents. L has a very close relationship with his mother and, I believe, he has been able to pick up on her angst at him resuming contact with his father. It is believed that the initial resistance to having contact with his father could also be related to him having minimal contact from July 2016 – August 2017. Currently, he does exhibit some minor resistance to attending visits, but he transfers easily from Ms. A to Mr. S and settled easily into the visits with his father. Due to these behavioural issues and concerns, L is in need of treatment.
>
> I am also concerned about the nature of his attachment to each parent, for different reasons. His relationship with his mother is such that he is picking up on her anxiety about the visits and this is increasing his difficulty transitioning to parenting time with his father. In addition, since he has had limited time with his father, as the amount of parenting time increases with Mr. S, his father will be entrusted with taking on greater parenting challenges which will include managing L's behaviour and setting limits and consequences for misbehaviours. Consequently, there will be an adjustment for both L and Mr. S in developing this aspect of their relationship.

[103] These paragraphs inform Mr. Hurwitz's parenting plan recommendations which I summarize as follows, but for points 3 and 4, which I reproduce exactly, given their importance:

1. That there be a therapeutic, step-up approach to increasing the father's parenting time in accordance with the children's developmental needs and age.

2. That Ms. A have sole custody and that she consult with Mr. S on all major issues to make timely decisions in the best interests of the children.

3. That Ms. A attend counselling for issues pertaining to managing her anxiety pertaining to the increased contact that the children will have with their father. She would benefit from a cognitive, behavioural (CBT) approach. In addition, the focus of this counselling should include how she can provide messages of support and reassurance to the children that they will be safe in their father's care.

4. That Mr. S continue to attend counselling for dealing with stress and his ability to manage his impulses when under stress. This counselling should include how he manages stress in his parenting relationship with Ms. A.

5. That both parents attend the Wait, Watch and Wonder program offered through Sick Kids Community Mental Health Program or a similar program and that overnight parenting start within a month of Mr. S finishing the program.

6. That supervised access visits end immediately.

7. To promote trust, that Mr. S never leave the children unattended with his mother and that Ms. A never leaves the children unattended with her brother, CA.

8. That either parent can request an updated assessment, or should the parenting not improve, that the court consider an updated assessment.

[104] The recommendations further set out the principles underpinning the plan: parental communication, the sharing of information and the making of day-to-day decisions by the parent in whose care the children are at the time. It also recommends the use of a parenting coordinator and sets out a specific, week by week phased schedule for a step-up parenting plan, including holiday and summer schedules, travel, and contingency planning.

[105] Mr. Hurwitz's recommendations deserved an extensive treatment. Instead, Ms. A wholly rejected the assessor's views before the written report was even released. Following the section 30 disclosure meeting on February 14, 2018, she informed Mr. S through counsel that she would not accept the recommendations. Three years later, she holds the same view. In her closing submissions, she writes that "[h]is report was flawed in several ways and is now largely stale dated."

Psychological Testing by Dr. Holloway

[106] Dr. Holloway conducted psychological testing of each parent in the course of the section 30 assessment. His testing discovered no concerns that would impact Mr. S's parenting but revealed that Ms. A's scores on the MMPI-2 were consistent with a diagnosis of borderline and histrionic personality disorder. Dr. Holloway's evidence provides a clinical basis for a finding that, absent therapeutic intervention, Ms. A is and will remain unable to support any relationship between her sons and their father.

[107] The testing of Ms. A revealed uneven and limited empathy, distrust of others, projection and narcissistic defenses, amplified by significant psychological disarray when under stress. Dr. Holloway writes, "[c]onsidering her potential for self-centered interactions as compared to others' centered reactions, if feeling stressed, she could pursue her self-interests in urgent or even dramatic ways, even more strongly than average for a child custody litigation sample. Her general potential for anti-social behaviour appears to be somewhat above average."

[108] Most relevant to this decision, Dr. Holloway identifies Ms. A as having an "unresolved attachment" also referred to as "disorganized or dysregulated attachment", meaning that she is not able to maintain regulatory processes to manage pain and fear.

Absent treatment, a person with an unresolved attachment cannot mourn or resolve losses from the past. Moreover, such a person lacks remorse, or even empathy for the pain caused to others when protecting oneself.

[109] Ms. A's emotional reasoning is, in effect, locked into a cycle of perceived trauma. She remains forever triggered by, and aggressive and punitive to any person whom she associates with a painful experience. In these circumstances, anything associated with Mr. S, such as her children having a positive relationship with him is perceived by her as a trauma from which she must protect herself.

[110] I found Dr. Holloway's testing results for Ms. A to be wholly consistent with the evidence at Trial. Ms. A insists that even five years into this litigation and after eight days of testimony at Trial, she and her sons have yet to be fully heard. She is hopeful that in time, the boys will finally be able to fully express their fear of their father and they will no longer be forced to see him. Near the end of her lengthy cross examination, I observed Ms. A to look off in the distance and relate that access was just too hard and that her contact with the father had to end.

Father's 2018 Motion to Increase Parenting Time and to End Supervised Access

[111] In May 2018 Mr. S served a motion to put into effect Mr. Hurwitz's recommendations to end supervised access and increase parenting time.

[112] Ms. A successfully argued that she should be first permitted to cross examine the father and Mr. Hurwitz, so the return date for the motion was adjourned to June 19, 2018. It was then further pushed back to August 10, 2018 when Ms. A thwarted the father's examination by insisting that her brother be present. The motion was not reached on August 10, 2018 and was rescheduled to September 14, 2018.

No Hugs and Kisses, or Birthday Parties or Wrestling

[113] Meanwhile the parenting situation was deteriorating. For the first time, on July 21, 2018, the boys came into their father's home and L announced, "no hugs and kisses." Mr. S did not initially respond, and the visit proceeded in the ordinary course. The supervisor gave the visit a 10/10.

[114] The following Saturday, July 28, 2018, L again declared upon arrival, “no hugs or kisses.” Mr. S asked if he could give him a handshake instead. L carefully considered the suggestion and nodded. Father and son shook hands. Later in the visit they hugged, and Ms. S and his mother engaged in the usual departure ritual of hugs and kisses before the boys headed out the door to their mother and uncle.

[115] No hugs and kisses became a mantra that summer. At some point, Mr. S questioned L as to its origin and L reported that his mother had told him that. In her cross examination, Ms. A confirmed that she gave the boys that direction. She explained that she was teaching them to have control and privacy over their bodies.

[116] In 2019 the prohibition on hugs and kisses was expanded to include eating cake and wrestling. The boys’ paternal grandmother loves to make cakes and A loves to decorate them. Every Saturday there was a cake ready for A whether or not there was something to celebrate, and they usually found some occasion to inspire the decorating. Father and son would also wrestle and play on the ground together. Three-year-old A advised his father on July 21, 2019 that he was no longer allowed to have any more parties with cake, and he was no longer allowed to wrestle.

Allegations Prior to the Motion Date

[117] As the September 14, 2018 motion approached, Ms. A reported to the Peel CAS that Mr. S had assaulted L. A family service worker who is no longer at the Society investigated the allegation and verified physical harm caused by Mr. S pushing L into a pool. The pool in question was a child’s small plastic pool in which the water would be no more than a foot deep. The Worker spoke only to Ms. A and to L, and not to the access supervisor who testified at Trial that no such push occurred. Mr. S was never interviewed. I do not accept the Society’s verification of harm regarding the water pool. Vanessa Wood, the primary Peel CAS worker called at Trial could add nothing further to the incident other than to emphasize that the worker is no longer with the Society.

[118] On September 11, 2018, three days before the motion to end supervised access, Ms. A made several allegations to the CAS that Mr. S had physically and sexually abused L, including that Mr. S had masturbated L at the age of 18 months. This was the

mother's first allegation of sexual abuse. She also claimed that the paternal uncle and the paternal grandmother had assaulted L.

[119] On September 12, 2018, L was interviewed by Peel Police who indicated that there was insufficient evidence for any charges. In the Society's notes it is recorded that the investigating officer felt that the mother had coached the child.

Motion heard September 14, 2018 before Justice Tzimas and Aftermath

[120] The parties placed voluminous records before Justice Tzimas and in reasons released October 18, 2018 she concluded that the implementation of some of the Report's recommendations could not wait until Trial. She set out a series of tasks to be completed and questions to be answered, including questions of the assessor,[2] and she returned the matter before her for a further hearing on November 22, 2018.

[121] Meanwhile, from November 1 to 23, 2018, the Toronto police were investigating a misogynistic email purportedly tweeted by Mr. S to the editor of NOW magazine's personal account, tagged to the Bank to whom Mr. S was contracted. The email was a fake and the NOW magazine editor retracted the Tweet. The email had information that only Ms. A would know. The Toronto police issued a warning to Ms. A.

[122] On November 22, 2018, Justice Tzimas released her decision which provided for ongoing, expanded supervised access to the father, to be transitioned to unsupervised community visits at a local library from 5:45 to 7:45 p.m. on Wednesday, November 28 and December 5, 2018. The parties were to then return to court on December 12, 2018 to review the success of the visits at which point Justice Tzimas would consider Christmas access and an ongoing, normalized parenting schedule.

[123] Ms. A was not pleased with the lifting of supervision. On November 23, 2018, she called the CAS and stated her concerns with unsupervised access and Mr. S's past violent behaviour. She served a 14B motion that required Justice Tzimas to issue a

[2] Mr. Hurwitz ultimately declined to answer the further questions due to personal circumstances at the time of the request.

November 30, 2018 endorsement confirming that the community visits were not to be supervised.

[124] L was not brought to the December 5, 2018 visit. Only A attended, driven by PA, who stayed in the library building, monitoring the visit.

[125] On December 6, 2018, the day after the second unsupervised visit, Ms. A again reported physical and sexual abuse of the children to the Peel CAS. She repeated the earlier allegation that Mr. S had masturbated L at the age of 18 months. Ms. A added to her complaint an allegation that Mr. S had got naked and invited L to come to bed with him. (I note that this allegation mirrors Mr. S's pre-separation allegation concerning Ms. A's brother CA.) A CAS family service worker, Ms. Osei visited the mother's home on December 7, 2018 and again, none of the mother's allegations were verified.

[126] On December 12, 2018, Justice Tzimas ordered that weekly unsupervised community access would continue until further court Order, and she provided for Christmas access at the paternal grandmother's home. The matter was to return before her on January 11, 2019 to consider whether an updated assessment was necessary as per one of the Report's recommendations, and what family counselling options might be available.

[127] That same evening, Ms. A again spoke to Ms. Osei, expressing concern with an unsupervised Christmas visit, citing physical abuse of the children by both the paternal grandmother and Mr. S.

[128] On December 12 and 15th, both boys attended the library for community access. PA again attended, monitoring the visit. On December 19, 2018, five-year-old L was not brought to the visit.

[129] On December 20, 2018, two days before the scheduled Christmas access, Ms. A again called the CAS to make two false allegations: that Mr. S masturbated A on the unsupervised visit of December 15, 2018 and that he bruised A during the visit of December 19, 2018. She did not tell Ms. Osei that the paternal grandmother was with the father on both visits. The next day, a Friday, Ms. Osei's supervisor, Ms. Huggins,

contacted Ms. A and told her not to take the boys to their December 22nd and December 24th visit until the CAS could investigate.

[130] Not learned until the CAS notes were obtained, the investigation was completed by the morning of Monday, December 24, 2018 and no abuse was verified. Although the December 22 visit had already been missed, Ms. A was cleared to take the children for their Christmas visit later that day. She did not. The children had no Christmas access with their paternal family in 2018.L was also held back on the scheduled visits of January 2, 2019 and January 9, 2019.

[131] When the parties returned to Court on January 11, 2019, Justice Tzimas was disappointed to learn that her carefully crafted Christmas schedule had not proceeded. She gave leave for the father's motion for a finding of contempt against both Ms. A and the Peel CAS. The motion was scheduled for March 25, 2019. Ms. A maintained that the children were at risk in the father's care and that the Peel CAS had concerns with the children being unsupervised in the father's care.

[132] Justice Tzimas reinstated the supervised access schedule not to protect the children from the father, but to make certain that the visits occurred. She cautioned Ms. A that "should there ultimately be a finding of the Court that the concerns that resulted in the suspension of the community access were unfounded, that [it] may impact future considerations regarding future custody and access arrangements." She gave a corollary caution to Mr. S should the concerns be founded.

[133] Thus began a post Section 30 Assessment pattern of the mother sabotaging court Orders and efforts to normalize the father's parenting time despite the clearest of warnings from the judiciary.

[134] And despite the access again being supervised, L did not attend *any* of the Saturday access days with his father after January 12, 2019, but for March 31, 2019 (see below) and on July 6, 2019. On the March 31, 2019 visit, L took one and a half hours to transition to his father's care but once away from his mother, he had a wonderful time. On July 6, 2019, L chose to attend the visit stating at its onset that he would not come the

week after. The visit was successful and after, L was recorded as saying twice, “best day ever.” The supervisor testified that the visit was “full of joy and happiness.”

The Father’s Motion for a Finding of Contempt

[135] On March 25, 2018, Mr. S sought a finding that Ms. A was in contempt of Justice Tzimas’s Order of November 2, 2018 as a result of 11 missed access visits from December 5, 2018 to February 24, 2019.

[136] After a full day hearing on March 25th, 2019, Justice Shaw ordered on consent that Mr. A would have access on Saturday, March 31, 2019 at 11:00 a.m. to 4:00 p.m. at his Toronto home as make up time for the December 24th, 2019 visit. The balance of the motion was adjourned to April 8, 2019. The motion for a finding of contempt against Peel CAS was resolved by way of a fine payable by the Society.

[137] On April 8, 2019, at the request of the mother’s counsel, Justice Shaw further adjourned the contempt motion to May 21, 2019 for cross examination on the affidavits. The motion was again adjourned to July 5, 2018 when it appeared that the parties were making progress on a parenting schedule. After a further adjournment to November 18, 2019 the contempt motion was adjourned on consent to the Trial which was, at that time, set for six weeks hence during the January 2020 sittings. By November 19, 2019, L had also missed all his parenting time with his father but for the visits of March 31, 2019 and July 6, 2019.

[138] As these reasons set out, the Trial did not proceed until May 2021. Mr. S continues to seek a finding of contempt. Ms. A asks that the motion for contempt be dismissed.

[139] On a motion for civil contempt, the moving party must prove contempt beyond a reasonable doubt. It is not necessary to demonstrate that the contemnor intended to disobey the order, only that there is proof beyond a reasonable doubt of an intentional act or omission that is in breach of an Order.

[140] The purpose of the civil contempt power is to uphold the dignity and respect for the court process. The contempt remedy is “a mechanism designed to emphasize that court orders must not be ignored or disobeyed,” *Jackson v. Jackson* 2016 ONSC 3466.

[141] In the case of *Carey v. Laiken* 2015 SCC 17, the Supreme Court of Canada held that to meet the test for civil contempt, the following three elements must be established:

1. The order states clearly and unequivocally what should or should not have been done;

2. the party alleged to be in contempt has actual knowledge of the order; and

3. the party alleged to be in contempt must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.

[142] Great caution and restraint should be exercised when considering contempt motions in family law. It is not to be used routinely and is an enforcement power of last rather than first resort. Specifically, a contempt order should not be granted where other adequate remedies are available such as a variation or enforcement of the access order; and at all times, the best interests of the children is the “paramount consideration,” see *Hefkey and Hefkey* 2013 ONCA 44 *and Ruffolo v. David* 2018 ONCA 385.

[143] Justice Tzimas’ November 2, 2018 Order was clear and unequivocal. The Order specifically invited an emergency motion should there be complications in implementing the terms of her Order. With a full record now before me, specifically, the evidence of the parents, and the CAS records, I am satisfied beyond a reasonable doubt that Ms. A made a false complaint to the CAS to justify a breach of the November 2, 2018 Order, and that she then continued to breach the Order even after the CAS removed any reason not to make the children available. I find that she deliberately breached the Order to achieve a counter purpose: to stop the boys having holiday time with their father and his family.

[144] For some of the visits, Ms. A argues that the children, particularly L refused to attend access. It is well settled that once a court has determined that access is in the child's best interests, a parent cannot leave the decision to comply with the access order up to the child. Ontario courts have consistently held that a parent has some positive obligation to ensure that a child who allegedly resists contact with the access parent complies with the access order, see *Godard v. Godard*, 2015 ONCA 568 at para. 28 and, more recently, *Bors v. Bors*, 2021 ONCA 513.

[145] I make a finding that Ms. A was in contempt of the November 2, 2018 Order.

The First Attempt at Reunification Therapy Undermined

[146] A few weeks after the March 25, 2018 motion for contempt, Justice Tzimas was appointed as the Case Management Judge. During an April 25, 2019 teleconference she learned that L continued to resist seeing his father, and so she set out the next steps in the proceeding: a full conference on May 6, 2018, a combined Settlement and Trial Management Conference in September, and Trial in January 2020.

[147] But when the matter came into court on May 6, 2019, Justice Tzimas was advised by counsels that a resolution was back on track: the parties had agreed to jointly retain Tina Hinsperger to provide reunification counselling for now five-and-a-half-year-old L and his father. It was a welcome, optimistic step forward and, in the hope of "charting a new path", Justice Tzimas agreed to counsel's proposal to further adjourn the contempt motion to July 5, 2019 while maintaining a placement for the Trial on the January 2020 Trial sittings.

[148] Unknown to the Court, and while purporting to support reunification counselling, Ms. A was again meeting with the Peel CAS in her efforts to terminate access.

[149] Vanessa Woods is a Peel CAS family service worker who took carriage of the S/A file on April 1, 2019. She made a home visit to Ms. A on Wednesday, April 3, 2019 and, in the course of the attendance, she asked the mother about the Sunday, March 31 supervised access visit. Ms. A made no allegations of harm during that visit but nine days later, she reported that Mr. S had caused physical harm to L at the beginning of the

March 31st visit by pulling him out of his mother's car. Ms. Woods investigated the mother's allegations that April 2019, including her report of bruising to L's arm. The CAS did not verify any physical harm.

[150] Ms. Woods' April 12, 2019 note sets out the interview with Ms. A in which she alleged the physical abuse. She is also recorded as advising Ms. Woods that she would no longer force L to attend access and that ultimately, she wanted the father to have no access to his oldest son. Ms. A was prepared to allow Mr. S to see their second son, but only if supervised. Ms. Woods advised Ms. A to follow the court Order and to support L's transitions to his father's care. She was to note on this occasion and subsequent occasions Ms. A's inability to provide L with forceful parenting direction.

[151] Ms. Woods again met with the mother on May 9, 2019, three days after the conference at which the parents agreed to reunification therapy. In the course of their discussions, Ms. Woods inquired about L's school attendance. Ms. A would not give her consent to speak to the school and assured Ms. Woods that everything at school was fine. It was learned much later that L had missed 31 days of school.

[152] Ms. Hinsperger began her intake process for reunification therapy within days of the mother's meeting with CAS. Ms. A provided Ms. Hinsperger with a detailed history of physical and verbal abuse of she and L by Mr. S. Ms. A expressed her anxiety about the father having any alone time with either child and she insisted to Ms. Hinsperger that the father needed counselling and therapy prior to any unsupervised access. In his meeting with Ms. Hinsperger, Mr. S was primarily concerned with L's refusal of any parenting time. He set out his concerns that Ms. A was engaging in alienating behaviour. He acknowledged that the spousal relationship was highly conflictual.

[153] Ms. Hinsperger then scheduled two meetings with L: one on May 23, 2019 and a second for June 3, 2019. On each occasion, L was brought to the meeting by his mother. The private child interviews were about 30 minutes each and, just prior to the second interview, Ms. A informed Ms. Hinsperger that the Peel CAS had again become involved. She did not provide any details.

[154] Unknown at the time, Ms. A made a report to the CAS on May 27, 2019 that Mr. S had fellated A at the May 18, 2019 supervised access visit. At the same time that Ms. A appeared to be working with Ms. Hinsperger, Ms. Woods was investigating this most recent claim of sexual abuse. Her interviews of Ms. A's physician, who saw A shortly after the alleged incident, and the adults present during the visit: the access supervisor, Mr. S. and his brother PS persuaded her that there was no basis for the allegation. The Peel CAS closed their investigation subject to the required attendance at SCAN.

[155] On May 28, 2019, Ms. Heshmati, the mother's counsellor, contacted Ms. Woods to press her concerns about L and the emotional distress being caused to him by his father. Ms. Heshmati testified at Trial that she had never met L or Mr. S. She received all her information form the mother, and was not aware that as of May 28, 2019, L had only been in his father's care twice that year: January 12 and March 31, 2019.

[156] The SCAN interview took place on June 14, 2019. Ms. A drove A and L to CYAC in Toronto and the children were interviewed by Detective Babin. Neither L nor A disclosed any abuse or inappropriate touching. L told Detective Babin that his mother told him about what happened to A and that "mommy doesn't like dad." Ms. Woods followed up with SCAN and was told that the investigation was negative for abuse. Detective Babin shared his concern with Ms. Woods that A might have been coached by Ms. A. and he reported that the mother had negative conversations about the father in front of the children.

[157] Oblivious to the CAS investigation, Ms. Hinsperger made her preliminary report to the court by letter dated June 19, 2019, as had been requested by Justice Tzimas. She wrote that, in both meetings with L,

> L spoke negatively about his father, describing him as a "wolf to us", mentioning that his father lies and hits him. L stated that, when he attended visits, he would be fed "junk food" such as chocolate milk, cookies and candy. He stated that he no longer attends visits and was adamant that he did not want to see his father, expressing a fear that his father may hurt him. There were several attempts to engage L in providing some positive information with respect to his father, but L continued to speak negatively about his father lying and hitting him as well as mentioning that his father

> had gone to jail for “hitting.” Attempts to explore other ways that L may be able to engage with his father were also met with significant resistance.

[158] At Trial, Ms. Hinsperger described L as a “precocious youngster who was quite talkative.” But despite her best efforts to engage him, L could say nothing positive about his father during either of the two interviews, using the phrase “wolf to us” a number of times. When asked why he called his father a “wolf,” L answered that his mother used that word. He also said that his mother told him that his father lied and hit him, and that his father had gone to jail for hitting him. When asked to draw a picture of his family, L omitted his father and when prompted to do so, he refused to draw him in.

[159] At Trial, Ms. Hinsperger expanded upon the next paragraph of her June 19, 2019 letter in which she explained that L’s strong negative emotions towards his father were quite surprising for a child of his age. L was “adamant that he did not want to see his father, expressing a fear that he may hurt him.” She testified that the extent of L’s negative views of his father were clinically significant, and were more consistent with an aligned child of 8-12 years of age, although she had seen it in children as young as 6.

[160] Ms. Hinsperger described L’s negative views as not so much representative of abuse but demonstrative of a desperate need to avoid parental conflict. She explained that even children who are abused will want to have time with a maltreating parent. L’s rejection of his father was more consistent with a significant alignment with the mother to avoid adult conflict.

[161] Ms. Hinsperger elaborated that, if a child is precocious or sensitive, he will more acutely register the stress and anxiety flowing from parental conflict and seek to avoid it by aligning with one parent and avoiding the other parent. Specifically, she wrote that “[t]ypically, children who are most vulnerable to being impacted by [parental] conflict have a highly sensitive temperament, have difficulty with change and are usually between the ages of eight and twelve years of age.”

[162] She set out in her report some strategies, such as providing L with a transitional object during access exchanges and transferring at neutral locations such as a school. But ultimately, she concluded, reunification counselling could not succeed with the current

level of parental conflict, which was causing L a high degree of anxiety. The parental conflict had to be lessened for there to be any realistic potential for L to engage with his father. She declined further involvement at this time, labelling reunification counselling as "premature."

[163] Ms. Hinsperger recommended that before reunification counselling be attempted, that the parents engage in a program that would "assist them in learning how to support L with respect to these visits" and she suggested that L be assessed for any developmental issues in order to rule out other causes for his high state of anxiety. She closed her report with a reminder that children "tend to do much better emotionally when they are able to have a relationship with both parents."

[164] It is fair to say that none of Ms. Hinsperger's concerns for L or her recommendations were at the time, or have since then been appreciated by Ms. A. She called Ms. Hinsperger to give testimony within her case at Trial for a singular purpose: to confirm that L did not want to see his father in May of 2019. In her closing submissions, Ms. A gives no treatment to Ms. Hinsperger's June 19, 2019 letter, but to reference the report as confirming that L continued to be afraid of his father and that he refused parenting time in "an adamant and often violent manner."

[165] I found Ms. Hinsperger's involvement to have been highly probative for three reasons. First, she identifies L as being aligned and sensitive to parental conflict rather than showing signs of abuse. This accords with Mr. Hurwitz's observations and the subsequent work of Dr. Murphy and Wendy MacKenzie.

[166] Second, Ms. Hinsperger provides uncontroverted evidence of the source of that alignment: the mother. Ms. Hinsperger's evidence demonstrates that Ms. A not only painted her sons' father as a "wolf to us" but she lied to the boys about their father going to jail for hitting. This lie is profoundly significant. It establishes a credible basis for L's resistance and refusal to have contact with his father, irrespective of what Ms. A is heard to say by the access supervisors when she is encouraging him to get out of his car seat.

[167] What child would want to go to a father who has gone to jail for hitting him? This basis for L's resistance and refusal is far more probable than exposure to domestic violence when he was under 33 months of age, after not seeing his father for over a year. This basis – a terrible lie – is evidence of Ms. A deliberately causing emotional distress to her sons in order to avoid having contact with her former spouse.

[168] Third, the interweaving of Ms. Hinsperger's involvement and another false allegation of sexual abuse to the CAS demonstrates the mother's bad faith conduct. At the same time that she purported to support reunification therapy, she was engaging the CAS in a manner designed to terminate access.

L's Resistance and Refusal to Transition to His Father Continues

[169] A significant pattern of resistance and refusal to transition to the father's care emerged over the course of 2019. Both boys would arrive in their mother's car, almost always driven by their uncle JA, with their Mom in the passenger seat. A would happily exit and enter his Dad's house. L would refuse to go and as the year progressed, he would refuse with greater force and drama. L would yell, scream, threaten to punch his Mom and, on a number of occasions, L did punch his mother. Once he tricked her into leaning towards his car seat and he bit her. Ms. A appeared helpless to change L's behaviour.

[170] Neither Ms. A nor her brother ever made any pretense of forcing five-year-old L to follow his brother. Ms. A never pulled him out of his car seat. This was in breach of a consent court Order that the mother do "everything in her power, including removing L out of the car, to facilitate L's access time with his Dad. Instead, mother and uncle pointed to L's behaviour as a justified rejection of the father that should be respected. Uncle JA rarely even got out of the car. He would sit in the driver's seat and watch. Once JA commented to the access supervisor that Mr. S was abusive, and "people forget that."

[171] Mr. S tried to engage L on every drop off. He would talk to him about what he and A would be doing, what food he had and he would ask him questions. On a good day, L would say "hi-bye" to his Dad. Most days he ignored his father or screamed that he

would not go. Sometimes L would say that he was going to the park or a toy store instead. At no time was he consequenced by his mother or his uncle.

[172] On June 15, 2019, Brayden Supervision Services were retained by the parents, replacing FIT services. In all, nine Brayden supervisors monitored and reported on visits from June 15, 2019 to March 12, 2020 when their services were released by the second reunification counsellor.

[173] The Brayden notes record observations consistent with those documented by FIT. A was comfortable, affectionate, and well settled in his relationship with his father, who was always organized and child focused. Ms. A continued to be routinely late, she did not encourage L to get out of the car or try to pick him up. More frequently, there was no attempt to have L attend and the mother just told the supervisor that L did not want to come, then she drove away.

[174] On June 29, 2019 Mr. S suggested that PA – who had started to come on all the visits – help Ms. A take L out of the car. In front of the children, Mr. A answered “We don’t get directions from you [Mr. S] thank you. You won’t tell my brother what to do.” L was then observed to hit his mother and further refused to leave the car. The visit proceeded with A alone.

[175] By July, L was starting to tell his brother that he shouldn’t go either. In October, L asked A if he wanted to go to “the fun place” instead of to the house with their father. Nonetheless, A continued to attend every Saturday. Some days he was initially resistant, but he always attended, and he had wonderful, uneventful supervised visits with his father, his Yaya and sometimes, his paternal uncle. There were no safety concerns noted by the access supervisors, although earlier set out, A was now insisting that he could not have any more birthday parties (i.e. cake decorating) or wrestle with his father.

[176] In a typical exchange, this one being recorded on August 11, 2019, A would tell his father that “Mommy called Daddy a bad guy.” Mr. S would answer, “what do you think?” A then replied, “I think you are a good guy” and the visit would carry on. Sometimes A would be mean to his father and say that he hated him, and that he was not part of the

family. Once he called him a fucker, but his affect did not change. Mr. S would respond neutrally, often with a question and the visit would carry on.

[177] On a number of occasions, the access supervision notes record that A shared that L was mean to him and his mom, and that sometimes L hit him.

[178] CAS notes for the same period disclose that the mother was continuing to attempt to engage them in her quest to terminate Mr. S's parenting. The Society was contacted June 24, 2019 by an individual allied to Ms. A who reported that L had been slapped at the prior access visit. The complaint was unverified because at that time, L had not engaged in a visit since March 31, 2019.

[179] A CAS note dated August 15, 2019 records a call from Ms. Polsinelli, a psychotherapist who did not testify at Trial and was unknown to the father up to the time of receiving the CAS notes. She reported to the CAS that L was being physically and sexually abused by his father and was suffering from PTSD and anxiety. The report was wholly based on information given to the psychotherapist by Ms. A. It was dismissed by the CAS for the same reason as the prior complaint, although by that time there had been one more visit on July 6, 2019.

[180] Justice Tzimas continued to work with the parents over a number of court attendances that summer to effect Ms. Hinsperger's recommendations and to progress the parenting. She remained concerned with the extent of the parental conflict. In her July 10, 2019 endorsement, she reminded the parties of the goals of the case management sessions which was to find ways to overcome L's resistance to access and to move towards unsupervised access. She also noted that:

> The parties' interaction with CAS remains confusing and contradictory. This is very troubling. While I take some comfort from the observation that a Child Protection Application has not been commenced, there are ongoing interactions.
>
> As a first step, it makes good sense for both parties to obtain the Peel CAS records. I am encouraged that counsel for both parties have agreed to request those records I have asked counsel to communicate with Peel CAS to obtain the precise working for an Order to release the Peel CAS records. As soon as they have CAS's consent and provide me with the precise wording, I will issue the formal Order.

[181] Despite the most active of case management processes, the parties could not agree on the next steps. The mother's counsel, Mr. Kania kept suggesting that more time was needed and that the next steps should not be rushed. At the attendance of July 25, 2019, Justice Tzimas declared that "enough was enough with strategies that have taken on the character of hurry-up and wait" and in accordance with Ms. Hinsperger's recommendations she ordered that Dr. Walker-Kennedy conduct a developmental assessment, and that L be taken to his pediatrician, Dr. Ramchatesingh for a wellness check. Costs were ordered against Ms. A in the amount of $3,000.

Developmental Assessment of L

[182] L attended for a developmental assessment on July 26, 2019 and October 9, 2019 with Dr. Susan Walker-Kennedy. Her November 10, 2019 report cleared L for reunification counselling as she found no developmental issues. In fact, L tested in the 95th percentile of IQ with particular strengths in spatial skills and processing speed. Dr. Walker-Kennedy observed him to be friendly and chatty with good eye contact. He was "bright, friendly and engaging."

[183] Dr. Walker-Kennedy did note that, when asked to draw a picture of his family, L did not include his father because "his father was bad because he hit his mother and him," adding "his father went to jail when he was 3 years old and he somehow got out because he told the police he would not be bad anymore but he lied." He later stated that he is "scared of his father because he hit him" and that there was nothing his father could do to make him less worried.

[184] L coloured a butterfly black to describe his father and said he was a "bad dad." L asked to take his picture home with him to show his brother and mother.

[185] Within her report, I noted a number of continuing themes as expressed by each parent within their self-reporting questionnaires for L's assessment. The mother's self-reporting was extensive and in hindsight, it sheds further light on her escalating trauma responses to the children's ongoing contact with their father. The reader is reminded that throughout this period the visits remained supervised and only A was attending.

The mother reported that:

- the father was emotionally, physically, financially and sexually abusive to her during the marriage and was unsupportive during her pregnancy and delivery
- since the access visits started, L has always shown signs of distress
- L has always been a picky eater, that he loses control when angry and that he sleeps with her. Sometimes he wets his bed, hits other children, threatens to hurt other and has toileting accidents.
- The mother associates all his negative traits are related to the access visits.
- L was afraid of the father throughout the marriage and L had been "physically, sexually and emotionally abused by the father" and witnessed domestic violence
- the father had been uninvolved in L's care during the marriage
- the father had told her during the marriage that he had an elaborate plan to murder her and L
- "L suffers from a high level of anxiety, particularly when he has an access visit scheduled with his father. She believes he has experienced trauma resulting in him being anxious and suffering post-traumatic stress disorder. She shared that she believes his pediatrician has diagnosed L with anxiety and PTSD also from trauma. His mother believes these access visits are the only source of anxiety for L ad when the visits are stopped, his behaviour improves. His mother indicated that he experiences sudden explosive angry reactions driving to the drop off locations from the stress of seeing his father and afterwards, he often suffers from nightmares as well as incidents of defecating or urinating on the floor following the visits. Mother reports providing incentives to help L attend the visits and she believes she has been supportive of him to engage with the father."
- L will become angry and hide, take off his clothes to not go, refuse to get dressed and would throw his boot at her once they reached the location of the visit.
- L would defecate or urinate on the floor before leaving the house as well as after the visit.
- the access visits stopped in November 2018 because of L's reaction to an unsupervised visit. His refusal to attend in January was instigated by L and not by her (the mother.)

The Father reported that

- he was an integral part of L's delivery and was supportive to the mother, denying an abusive treatment of the mother or of L.

> - his relationship with L was close and loving and L was meeting all his developmental milestones up.
> - he believes that L is anxious leading up to visits because of his mother's behaviour and lack of support for the visit.
> - he agrees that transitions are difficult for L but once he is with him, he is able to be calm within minutes and enjoys his time with him and extended family. He shows no signs of fear in his care.
> - L is a happy, loving, playful and bright child. He enjoys dancing and wrestling, loves to learn new things, is inquisitive and an excellent builder.
> - L is afraid of displeasing his mother and has a strong fear of failure
> The father agreed that L is easily upset, is often a picky eater, sometimes loses control and hits other children and can act without thinking.

[186] In her closing submissions, Ms. A gave short shrift to Ms. Walker-Kennedy's report, citing it only as additional evidence that L is afraid of his father and resists parenting time.

Lead Up to the Second Attempt at Reunification Therapy

[187] On December 5, 2019, following a series of comprehensive Settlement and Trial Management Conferences on the path to a January 2020 Trial, the parents agreed to a Parenting Schedule for L and A. The Schedule consisted of two phases and was to be reviewed on January 17 and 31, 2020. The resulting consent was incorporated into a court Order that also provided for reunification therapy. The therapy was to begin immediately and pending that assistance, L was to have supervised parenting time with his father with a pick-up at his school, and A's unsupervised visits were to continue in the community, to be transitioned to Mr. S's home. The Schedule specifically provided for Christmas and New Years' access.

[188] Mr. A picked up L from his school on December 9 and 16, 2019 for one on one visits with a Brayden supervisor. Each visit went really well after an initial warm-up period, as did A's separate visits. It appeared that the conflict was finally in remission and the parties were well situated to resolve the balance of issues through a therapeutic process. The matter was taken off the January 2020 Trial list.

[189] Meanwhile, unknown to the father or the Court, the mother was again entreating the CAS to act protectively and terminate access. CAS notes indicate that on

December 17, 2019 – the day after a very successful visit – the mother and her counsellor, Ms. Heshmati of the HEAL Network and others met with the Peel CAS to advocate for a transfer of the CAS file to the CAS Domestic Violence Unit. The CAS declined.

Another Disastrous Christmas

[190] December 23, 2019 was planned as the S family Christmas. The house was decorated, and Mr. S was ready with gifts and special food for the boys. When Ms. A arrived with the boys, she took the unusual step of parking some distance down the street from Mr. S's home. A protracted, public and painful attempt to transition the children ensued. Throughout the 2.5 hours over which this drama unfolded, Ms. A could be seen talking on her cell phone. She told the access supervisor that she was talking to her counsellor who was helping her protect the children.

[191] The identity of the counsellor to whom she was speaking was identified at Trial as Ms. Heshmati. The mother called her as her witness to support her view that forcing L to attend access was causing him harm. What was learned, was that Ms. Heshmati had been given no accurate information and none of the assessments, reports, or court Orders. Instead, she had been shown one page of a court document and told by the mother that L had PTSD. On the mother's information alone, Ms. Heshmati assumed that L and A were victims of domestic violence and she provided the mother with literature and programming to assist the children accordingly. Over time, the mother drew Ms. Heshmati into the conflict so effectively that she became her voluntary advocate, not only fighting her case for a CAS Domestic Unit transfer, but coaching her through access exchanges that Ms. Heshmati thought were being forced upon L by access supervisors that worked for Mr. S. Ms. A never told her that the supervisors were jointly retained on consent and were operating under court Order.

[192] On December 23, 2019, the access supervisor worked hard to help the boys exit the car and walk down the street to their father's home. The mother argued with her and warned the supervisor not to be telling her what was in the Court Order because "I know what is in the court Order." When Mr. S approached the car to help remove the children, Ms. A began to scream "do not touch my car and don't get near the car, I will

call the police if you touch my car" and then turned to the supervisor to declare that she was afraid of him.

[193] When the supervisor tried to encourage L to leave the car, she noted him saying, "he tried to make my mom look bad. He actually is the bad guy. Let me tell you, he told my Mom that he loved her, but he punched her in the face." L started crying.

[194] Mr. S gave the mother and the boys some space. In an effort to try and get the boys to come to the house for Christmas, he went to his home, and then returned to the parked car with the boys' presents. Ms. A refused the gifts and told him to give the presents to the supervisor, which Mr. S did. The supervisor gave the children their Christmas gifts. Both children were crying and distraught.

[195] At the two-hour mark, the police attended. They were shown the court Order and they attempted to assist. Ultimately, L resisted getting out of the car, but A did attend the Christmas visit for the time remaining as set out in the Order. Ms. A would not agree to extend the time, citing another engagement. Neither did the balance of L's Christmas Break visits occur; and he did not see his father again until he was back in school, where he could be picked up away from the sight of his mother.

[196] That particular Christmas scene was so dreadful that, in a letter dated December 30, 2019, Brayden terminated their involvement. They wrote that the mother was not supporting a safe transition for the children. Brayden only agreed to resume services in January on the condition that Ms. A not attend any further exchanges.

Joint Retainer of Reunification Counsellor

[197] The mother's counsel, Mr. Kania, proposed in early January 2020 that the parties not return to Ms. Hinsperger, but instead, retain Wendy MacKenzie to conduct reunification counselling. The father agreed, and on January 8, 2020, counsels contacted Ms. MacKenzie, a well-known and respected clinician to work out the terms of her retainer. A number of drafts were exchanged.

[198] Despite the terrible Christmas, the January access visits went reasonably well. But for L's usual resistance at the start of a visit, the school pickups were working for L, and A continued to enjoy his unsupervised visits at Mr. S's home. By the end of January 2020, it seemed as if the boys' relationship with their father was, more or less, back on track.

[199] On February 5, 2020, Ms. A's father died and she suspended access, citing a need to be at the family farm. Access did not resume until Saturday, February 22, 2020. Although L did not attend that visit, A spent the day with his father just as he had throughout January.

[200] The *very next day*, on Sunday, February 23, 2020, at a time in which a yearlong build up to Trial was on hold because both parents had agreed to reunification therapy with a therapist that Ms. A had chosen; the mother once again called the Peel CAS to falsely report that Mr. S had sexually abused A during the prior day's visit.

The Most Serious False Allegations to Date

[201] Ms. A took A to the Peel Regional Police the evening of February 23, 2020. Officer Lovell interviewed A and did not refer the matter on to SCAN because he concluded that the mother was coaching A. Undaunted, Ms. A took A to six different medical professionals over the next five days, alleging to each that A had disclosed to her that Mr. S had put his finger in his bum.

[202] On February 28, 2020 a Peel CAS family service worker conducted a home visit and obtained a full report from Ms. A regarding her recital of events from her brother's pick up of A from access on Saturday, February 22nd to her police attendance that evening. Ms. A reported that when she changed A's clothes after the access visit, he had told her that his Dad had played with his bum and kissed him on the mouth. She also reported that when she was getting him ready for bed, A said that his bum hurt, and when Ms. A asked "where?" A had replied "inside."

[203] After interviewing Ms. A, the worker conducted a privacy meeting with only A and L present. A was almost 4 years old. L was six years old.

[204] L spoke first and said that he wanted the worker to talk with A, “and if he says he doesn’t have anything to talk about, then he’s lying. He has two things to talk about.”

[205] The worker then asked what A wanted to talk about, and L answered. L said that said his dad put his finger in A’s bum and put his mouth on A’s penis. A then said “yeah, he put his finger in my bum.” The worker asked L how he knew, and he said his brother told him and his mom. L went on to say that he hates his “bad dad”. When the worker asked L why his dad was bad, he answered that one time he tried to trick him with Lego to come inside [his house] and he pulled his wrist and slapped him across the face. L could not remember when that happened. A said that he didn’t like his dad and that he didn’t want to talk anymore. L added that his visit with dad was cancelled yesterday because of the weather.

[206] At the conclusion of the privacy interview, the CAS notes indicate that Ms. A questioned the worker as to why the Society was not taking action to stop further access due to safety concerns.

[207] The Society completed their investigation of the allegation. They interviewed the many medical professionals to whom Ms. A had taken A, and they spoke to Mr. S and the other adults who were in the home during the February 22, 2020 visit. The Peel CAS did not verify the allegation of sexual abuse, noting that:

1. A made no disclosure of sexual harm to the Peel Police Special Victim’s Unit and the PCAS after hours worker.

2. A made no disclosure to the hospital emergency department.

3. A’s disclosure to the family doctor only came after being asked multiple times, “What did you tell mommy?

4. When interviewed by the Peel CAS worker, A only made a disclosure after direction to do so by his brother

5. In each incident of questioning, A either made no disclosure or made a disclosure after leading or prompting questions. At no time did he made a

spontaneous disclosure. At no time was he able to provide context to the allegation.

[208] The Peel CAS did not verify sexual harm, but it did verify emotional harm due to adult conflict. The Society closed its investigation and despite the verification of emotional harm, and the now lengthy history of unfounded allegations of physical and emotional abuse by the mother, they did not take any protection steps.

[209] In her evidence in chief at Trial, Ms. A spoke at length about this period between February 22, 2020 and February 28, 2020. I found her narrative to be markedly disordered and constructed. She reframed the privacy interview as if she was present while stating that she was not. She testified that it was A who told the worker about the abuse first and that L confirmed it. She denied urging the worker to end the father's access, instead suggesting that putting a finger in the bum may have been something that Mr. S did to relieve A's constipation.

[210] Ms. A was pressed in cross examination as to why she would propose unsupervised alternative weekend access as a final Order at trial if the father was a sexual predator. At this point in her evidence, she became increasingly evasive, equivocating her answer between constipation being a reasonable explanation for A's disclosure and asserting that she "didn't believe, or not believe it." In her written closing submissions, she insists that she "did not make the sexual abuse allegation against [Mr. S]; she was simply reporting what she had heard from [A]."

[211] All in all, Ms. A was largely ambivalent about the whole affair. She displayed no awareness of the jeopardy in which she had placed Mr. S, the emotional harm caused to her almost four year old son by taking him to the police and then to six different medical professionals, or the emotional harm caused to her six-year-old son by causing him to report sexual abuse of his younger brother by their father; or the confusion that must have been caused to both boys when regular access to their father was then resumed as if nothing had happened.

[212] I find that the only credible explanation for the mother's actions in February of 2020 is that she was once again trying to find a way to permanently end access while appearing to be supportive of court Orders intended to restore and promote the boys' relationship with their father.

Mother's Misrepresentation of Dr. Vincent Murphy's Psycho-Educational Assessment

[213] During this same period of early 2020, on a referral from the children's pediatrician, Dr. Ramchatesingh, Dr. Murphy conducted a psycho-educational assessment of L. He did so on the basis that Dr. Ramchatesingh had concluded that L was suffering from post-traumatic stress disorder and anxiety; but Dr. Ramchatesingh had never conducted a trauma assessment on either of her patients. The pediatrician had simply accepted the mother's conclusion of PTSD and anxiety and repackaged it to Dr. Murphy as her medical opinion.

[214] L attended four sessions with Dr. Vincent Murphy on January 24, February 1, 4 and 25, 2020. In conducting his assessment, he had the benefit of both Dr. Walker-Kennedy and Ms. Hinsperger's reports and in his letter report dated April 30, 2020 Dr. Murphy confirmed that L had "repeated things almost verbatim from what was told to Ms. Hinsperger, including that his father had gone to jail for hitting him when he was young." Dr. Murphy found it very unlikely that L would remember what he was repeating, for example, having been thrown into a crib when he was a baby. At the same time, Dr. Murphy acknowledged that L's fear was real.

[215] Dr. Murphy agreed that there was evidence of an anxiety disorder and PTSD but he declined making that diagnosis. In his final paragraph he writes:

> *By almost every metric of healthy child development, L. is a six-year-old boy with strong verbal skills, exceptional learning potential and a great future. When engaged in play, when talking about his interests, or when dealing with cognitive challenges, he is poised, confident and happy. He loses this the moment he has to consider his family situation. He becomes stressed, hypervigilant and morose. While counselling might allow L a place to vent his emotions born of his untenable situation, it cannot affect*

> *meaningful change in his condition as this is being dictated by factors outside his control.*

[216] Ms. A has since misinterpreted Dr. Murphy's report as proof that L suffers from PTSD anxiety as a result of exposure to domestic violence. She has cited Dr. Murphy as her authority for the diagnosis of PTSD to every professional with whom she has since engaged. What Dr. Murphy's report does demonstrate – which is consistent with the observations of Mr. Hurwitz and Ms. Hinsperger – is that L's issues actually result from exposure to adult conflict.

[217] Dr. Murphy's April 30, 2020 report was sent to the referral physician, Dr. Ramchatesingh, who appeared in her testimony to not have read it. She was unapologetic for having formed an initial view of PTSD on only the mother's information and having never confirmed which parent had custody/decision-making for the boys.

[218] Until counsel and the court became involved, Dr. Ramchatesingh denied the father access to the boys' medical information. Her notes produced at Trial demonstrated that almost none of her time was spent administering to L and A. The mother would obtain appointments on the premise of a childhood illness, then spent the whole of the session talking about her stressors and claims of abuse of the boys by their father.

Delay and then Interruption of Reunification Therapy: Covid

[219] Meanwhile, Mr. S had signed the agreed format for Ms. MacKenzie's retainer on February 26, 2020, but, the process was now stalled pending Ms. A's signature, which did not happen until March 13, 2020. At the same time as she signed the retainer, she breached the agreed, court Ordered parenting agreement by not bringing either child for access during the March Break. No makeup time was offered.

[220] On Saturday, March 21, 2020, all access stopped. Ms. A's brother PA texted Mr. S that the children would not be delivered because they were not well. When Mr. S offered to care for them, PA clarified the message to state that the children would not be attending access until Covid was over.

[221] I will not detail this period of time. The events are well set out in a series of court attendances during which Mr. S desperately tried to reverse Ms. A's wrongful termination of parenting time under cover of Covid. Instead, I will summarize the relevant events:

1. By way of Mr. S's emergency motion, Justice Tzimas invited proposals for ongoing access during Covid. Mr. S responded immediately. Ms. A did not.

2. When the schools closed, Ms. A moved the children to her mother's farm south of Owen Sound.

3. In May 2020 Ms. A attempted to have three different physicians issue a letter stating that A had asthma. It was clearly demonstrated at Trial that A did not receive a diagnosis of asthma that placed him at risk for exposure to Covid.

4. It was a very long road back to any regular pattern of access. On June 1, 2020 Justice Lemay ordered the parties to return to reunification therapy, provided for virtual access to L and in person access for A on Saturdays with a transfer at the Orangeville Police Station.

5. The terms of that decision were confirmed following a hearing on June 5, 2020 at which Ms. A tendered evidence from Private Investigators purporting to show Mr. S not following Covid protocols. Her brother PA had paid for investigators to follow Mr. S in Brampton even though the A family had moved the children to Grey County.

6. Many of the Orangeville Police Station access transfers did not go well. One video placed into evidence at Trial showed police assistance being necessary to transfer A to the father's car. Ms. A's brother can be observed hovering around the car door, placing himself between A and his father.

7. Many of the video access calls went badly. Mr. S would be prepared with online activities, only to find himself staring at an empty screen.

8. Justice LeMay asked for updates from Ms. MacKenzie which were later received by letters dated July 6 and July 20, 2020. In his last involvement on July 28, 2020, Justice LeMay ordered that the parties follow the therapeutic access plan presented by Ms. MacKenzie as it changes from time to time, as if it were a court Order.

The Reunification Process Begins to Work

[222] In early June 2020, Ms. MacKenzie conducted an intake meeting that included an Intimate Partner Violence history. The mother provided her detailed history and expressed wonderment that there should be any access at all. She insisted that if access must go ahead, that it move slowly. Mr. S wanted things to move very quickly and he blamed the mother for the break in his relationship with the boys. He wanted to make up for lost time.

[223] Ms. MacKenzie explained to both parents that it was usual for a favoured parent to want the reunification process to move slowly, and for a rejected parent to want the process to move quickly. She was firm with both parents that each had played a role in the conflict and that progress would be at the children's pace. She explained that reunification therapy is not evaluative. It focusses on the children's feelings and what is necessary to move them forward to a safe and healthy, independent relationship with each parent, protected from their parents' conflictual relationship. Success would depend on each parent "doing the work" of improving their own parenting, and for the mother, accepting that her relationship to Mr. S was separate from that of the boys.

[224] Ms. MacKenzie began her work by assessing parenting styles. She observed that the father had a traditional authoritative approach to parenting and that the mother had a permissive style. She related at Trial that when she discussed the father's parenting style with him, Mr. S accepted that it would not work with the children, particularly L. She reported that over the next few months the father learned and employed new and more effective parenting techniques. He took responsibility for poor parenting decisions in the past. He regularly self-reported and asked for guidance.

[225] In contrast, Ms. MacKenzie related in her evidence that throughout her involvement, the mother avoided discussions about her style of parenting and resisted any changes, even when her parenting was clearly ineffective. Ms. MacKenzie was unable to develop the mother's insight because she never took responsibility for how her parenting had contributed to the children's misbehaviour, or their resistance and refusal to transition to their father's care.

[226] Ms. MacKenzie first met the children on June 15, 2020. At Trial, she testified that L presented as high energy, abrasive, difficult to engage and argumentative. Neither child appeared to know why they were there. L presented as wanting to take care of his mother, but he was also disrespectful to her, and occasionally mean. He called his mother by her first name, at one point saying "[Ms. A] okay we are done with this, not talking to her." A was quieter and took his cues from his brother. It was apparent to Ms. MacKenzie that L had behavioral and conduct issues. She did not observe the mother taking an active role in managing either child's behaviour.

[227] On Tuesday, June 30, 2020, the children had parenting time with their father at Ms. MacKenzie's office for the first time in months. The visit was excellent. Mr. S was amply prepared with snacks and games and the boys displayed no hesitancy in embracing and playing with their father despite their long absence. L hugged his father and accepted a kiss on the head. When L swore, he accepted his father's correction.

[228] Immediately after the visit, Ms. A texted Ms. MacKenzie with her concerns about the visit. The counsellor replied that it had gone well and there was no cause for concern.

[229] The mother expressing concern after a successful visit was soon to become a familiar pattern. Whenever the father's parenting time increased, Ms. A would regress, repeat her abuse statements and advocate for access slowing down, or even stopping for a period. In response, Ms. MacKenzie would briefly acknowledge the mother's feelings and assure her that the children were safe with the father. On a number of occasions, Ms. MacKenzie went a step further and explained to the mother that she should not assume that the children were experiencing her discomfort. The children had a *different*

relationship with their father that was on their timeline, and given their ages, “time was of the essence.” While a parent can choose to forever avoid a former spouse, it is not appropriate for a child to never again see a parent. Ms. MacKenzie explained to the mother that *if* the children were voicing concerns as she reported, they needed to be supported in their relationship with their father and taught skills to cope with their complicated feelings, not withdrawn from them.

[230] The boys saw their father again at the office on Thursday, July 2, 2020 and a home visit was conducted on Saturday, July 4, 2020. On July 13, 2020 the children had another successful visit with their father despite the mother initially refusing to let A go. L told Ms. MacKenzie that his mother prefers that he have a supervisor on the visits, and he shared that he could not go on overnights with his father because he could not bring his mother, with whom he sleeps.

[231] From that date forward, a series of twice-weekly father-son visits occurred at Ms. MacKenzie’s office or under her supervision. The visits went very well. Ms. MacKenzie observed the same activities that can be seen throughout the access supervisor’s notes of the previous three years: playing, hugging, dancing, eating, reading, and laughing. But despite the positive reports, Ms. A would not move from her view that the boys were at risk in their father’s care.

The Mother Engages a Personal Therapist in July 2020 as a Foil to Ms. MacKenzie

[232] As the reunification counselling moved forward and the father’s parenting time progressed, Ms. A engaged a new personal therapist, Ms. Land. She told Ms. Land that L had been diagnosed with PTSD as a result of the father’s abuse, that Ms. MacKenzie was forcing the children to transition against their will, and that L and A were experiencing acute trauma as a result of the forced contact.

[233] As she had done with Ms. Heshmati, the mother did not show her new therapist any of the prior assessments, the reports, or the court Orders. She did not tell Ms. Land that she had agreed to the reunification therapy with a therapist that her counsel had selected. She did not give Ms. Land and Ms. MacKenzie consent to speak to one another.

[234] Ms. Land, who described herself at Trial as a child trauma specialist shifted her role from therapist to advocate. Without ever having met the father or the children, and without speaking to Ms. MacKenzie or taking steps to be informed of the reunification process, she concluded that Ms. MacKenzie was acting unprofessionally. At Trial, Ms. Land proudly related how she had refused a call from Ms. MacKenzie when, after learning that the mother was seeing a personal therapist, Ms. MacKenzie had reached out to her.

[235] Ms. Land proved to be a very useful ally for the mother. From July 2020 to Trial, Ms. A received valuable coaching from Ms. Land on how to support the children in resisting or avoiding access exchanges that the mother described to her as traumatic, (or that she had caused to be traumatic) and ultimately on resisting the reunification process. Ms. Land went so far as to check on Ms. MacKenzie's professional credentials and to advocate for her removal.

[236] All of this became known at Trial when Ms. A called Ms. Land to testify on the harm being caused to the children by forcing them to attend access. At first, Ms. Land was quite certain of her position, even making the surprising assertion that Ms. A was by far the superior parent, and that the boys were more like her in temperament. But her certainty dissolved in cross examination as she learned the scope of this action and the information that she had not been provided, and for which she had never made inquiries. Perhaps the experience will inform her future practice.

The Summer of 2020: Progression to Overnights

[237] The father's parenting time was going so well that Ms. MacKenzie cancelled the access supervision and started planning for overnights. But anytime that an overnight was proposed, Ms. A would return to her mantra of concerns that the children were scared of their father. No information could shift her view.

[238] More importantly, the mother was unable to demonstrate any empathy for the conflictual situation in which she placed the children – who were enjoying their time with their father. Ms. MacKenzie brought this dilemma to the mother's attention and

encouraged her to model compassion and to allow the children to see another perspective of their father – to no avail. Ms. A's preoccupation could not be refocused.

[239] In contrast, Ms. MacKenzie related the father's improvements as a parent over the summer and into the fall of 2020. In addition to being organized and child centered, he became more effective at gently correcting the children's behaviour and setting boundaries. On one occasion L was at the park and heading for the edge of a cliff. Mr. S intervened, got down to eye level and explained why L had to stop. L answered, "I am going to stab you." Mr. S redirected him and stopped the behaviour. Sometimes the father slipped into sarcasm to direct the boys and he would be immediately directed by Ms. MacKenzie to use more appropriate language.

[240] During the same period, Ms. MacKenzie observed that the mother continued to be late for visits and that she was often disorganized. Only when Ms. MacKenzie imposed consequences for the mother's lateness did it reduce from an average of 45 minutes to 5-10 minutes. The mother consistently asked for things to slow down and reported that the children were not adjusting well to any increases in contact with their father, contrary to Ms. MacKenzie's observations.

June 29, 2020 – L Follows the Babysitter with a Knife

[241] The mother's babysitter, Ms. Chmielewska was a former employee of JA who had been interviewed and hired by Ms. A in March 2017 to look after the children for up to three times a week. The hours were in addition to her full-time job as an educational assistant, and she loved being around L and A. She has never met Mr. S.

[242] Ms. A beamed with approval during Trial as Ms. Chmielewska detailed her employer's excellent parenting and described Ms. A, L and A as "a great trio." I also observed her smiling when Ms. Chmielewska described the mother's gentle efforts to encourage L and A to attend access.

[243] In cross examination, Ms. Chmielewska confirmed that the mother had talked to her in considerable detail about the father's abuse. She acknowledged that she had made two reports to the CAS that were supported by Ms. A. She was aware that A had

made a claim of sexual abuse against his father, and she stated that she had been shown an access exchange video by the mother. She had also been told that L had PTSD. It was learned during her evidence that Ms. A had also told her that Mr. S had been caught naked in bed with the children.

[244] On the afternoon of June 29, 2020, Ms. Chmielewska was babysitting the boys while Ms. A attended to a telephone meeting upstairs. The boys were in the living room. L showed his babysitter a picture with the words “Fuck Papa, Go To Hell.” Ms. Chmielewska commented to L that she did not like the picture and L quickly escalated. He yelled at her that he did not want her there and that he was the “man of the house.” Ms. Chmielewska walked away to give L some space, but he followed her, then broke away to go to the kitchen and get a large kitchen knife from a stand on the counter.

[245] Six-year-old L walked towards Ms. Chmielewska brandishing the knife. He edged closer, holding the knife, repeating that he was the “man of the house.” The babysitter moved backwards as she motioned A to stay away. She kept talking to L until she was able to get the knife away from him. She then ran into the kitchen to secure the rest of the knives and to call for the mother.

[246] Ms. A came down the stairs, quite surprised at the scene. She reprimanded L that he should not do that to “someone who is our friend.” The mother did not discipline L in any manner or express any shock or fear. To this day, the event does not appear to cause her any great concern.

[247] The babysitter made a quick exit from the home and immediately called the CAS. The incident had lasted about 20 minutes and Ms. Chmielewska reported that L could have hurt himself or his brother as well as her. She admitted in cross examination that she had been frightened.

[248] The babysitter also reported to the CAS in that July 29, 2020 call that the mother did not know how to control L, and that something similar had happened before. She had seen L play-stabbing his mother in 2017 when they were opening a delivery box, stating that his father used to do this; but to her knowledge, L had never taken an actual

knife before. She told the CAS that the mother needed support and that L had been diagnosed with PTSD.

[249] The CAS did not follow up with Ms. Chmielewska. Unknown to the babysitter at the time, Ms. A downplayed the whole incident to the CAS and disagreed with her recital of events. Ms. A blamed the whole affair on Mr. S, because L was to meet with him at Ms. MacKenzie's office later that day. Ms. A never told the children's pediatrician, or any other physician to whom she took L that he had brandished a knife.

[250] In their follow-up to the incident, a July 1, 2020 Peel CAS note states that the Society asked the mother to secure the knives from L but she declined saying that there was no point; "L was taught by his father at the age of 2 to climb the cupboards and the fridge." The Peel CAS closed the report with a rating of 53BL: inability to parent effectively. A parenting course was recommended.

Additional Discoveries During Ms. Chmielewska's Evidence

Projections of Fear Prior to Father's Access Starting on August 26, 2017

[251] Ms. Chmielewska testified that when she first started with the family, L was having nightmares about his father and a Big Bad Wolf taking them away. L would tell his babysitter that he saw black things and black shadows in the night – which the mother told her were caused by increased contact with the father. This evidence stood out for me because Ms. Chmielewska started with the family in March 2017 and L did not begin seeing his father until August 26, 2017; suggesting that the mother was frightening L with the prospect of his father returning long before any parenting time began.

L is Hitting and Punching

[252] In her evidence in chief, Ms. Chmielewska related that L would speak repeatedly of his father as "a bad man," or a "mean, bad man" or a "liar," and that the father had hurt A: all of which was said in front of A. The mother would never correct L when he said these things or redirect L.

[253] Ms. Chmielewska testified that before a visit with his father, L often became irritable, erratic, and angry, and he would hit and punch his brother, his Mom and even his Uncles. Sometimes he was violent days after a visit and the mother would not correct the behaviours, but simply attribute them to contact with the father.

L's Inability to Separate from his Mother

[254] Ms. Chmielewska also spoke about L's inability to separate from his mother and that he would become frustrated if he did not know where she was or when she was coming back. It had been a real challenge for her to care for L if the mother left the home, especially in the first year of her employment. On one occasion, L was so upset by his mother leaving the house that he had kicked the front window, shattering it.

Murder Pictures on the Wall

[255] In her re-examination, Ms. Chmielewska was asked to clarify her evidence about L becoming more aggressive prior to access visits. She gave an example: L would draw pictures, such as a man holding a knife and hurting two children "like a murder scene going on." Some pictures included guns. Ms. Chmielewska testified that she did not see the pictures being drawn, but that they would be on the kitchen table or taped up on the walls for long periods of time.

[256] The mother's therapist, Ms. Land, who as stated earlier, specializes in children's trauma testified at Trial that she was also told by the mother that L was having nightmares of the father. Ms. Land counselled Ms. A to have L draw a picture of his nightmare and then to rip up the picture. In that way, L could assert control over his nightmares and hopefully, over time, the nightmares would stop.

[257] But instead of ripping up the pictures of his terrifying, violent nightmares caused by what his mother was telling him, Ms. Chmielewska's evidence demonstrates that Ms. A

was posting the pictures on the wall. Every day, L and A would see picture(s) of their father killing them.[3]

[258] Although the mother clearly overinvolved Ms. Chmielewska in the conflict, I do not discount any of her evidence at Trial. Ms. Chmielewska was honest, forthright, and genuine in her concern for the children. I am satisfied that she would have had no basis for understanding her role as an ally. And it was her honesty that led to the Court (and the father) accidently learning something that would have otherwise stayed hidden: the mother was posting L's violent pictures on the walls of the home where they would stay for long periods of time.

[259] It was only after reviewing Ms. Chmielewska's evidence that I was able to make sense of an October 3, 2019 CAS note buried in their file of a call from Ms. Polsinelli reporting that L had been drawing pictures of a father killing a mother and a bad man hurting the children. She also reported that one of the pictures was drawn on an actual wall at the mother's home.

CAS Worker Removed at Mother's Request

[260] Ms. A was quite angry with the 53BL rating that resulted from the babysitter's call to the CAS. She fought for its removal and a change in worker, declaring that she would no longer work with Ms. Woods. Ms. A was shockingly successful. Both the rating and Ms. Woods were removed from her file. In a September 10, 2020 Peel CAS summary note, Ms. A is recorded as complaining that the CAS had botched their investigation of the children being sexually abused by their father and had failed to transfer her file to the Domestic Violence Team.

[261] This effectively ended the involvement of the Peel CAS, as later allegations were made to the Toronto CAS. Throughout, Ms. Woods had never seen Mr. S act inappropriately at any parenting visits or transitions. She had, however, recorded in her

[3] Upon learning this, an immediate Order was issued that required the mother to take down any violent pictures drawn by L.

notes that L stated on a number of occasions that his mother did not want him to go on visits and would not force him.

No Child Protection Application Ever issued

[262] In the course of their involvement, the Peel CAS received multiple unverified allegations of physical abuse; multiple false allegations of sexual abuse; and a report of a six-year-old brandishing a knife at a babysitter in the presence of his younger brother. No protection Application was ever issued.

[263] Because no protection Application was ever issued, the Superior Court of Justice carried on its work without contemporaneous knowledge of these events. If an Application had been issued, it would have stayed the parenting claims in the civil proceeding and transformed the litigation focus to the emotional harm being caused to L and A due to exposure to adult conflict and the harm, or risk of physical harm being caused to A by L.

[264] The father only learned the full extent of the events upon receipt of the CAS notes, as much as two years after their occurrence. The reunification counsellor was unaware of the extent of the CAS involvement at the time of her engagement. The Court only learned about L's allegation of sexual abuse, and the knife incident at Trial, respectively two years and one year after their occurrence.

Reunification Counselling Succeeds

[265] On Sunday, August 9, 2020, A started overnight visits with his father. The overnights progressed to weekends from Saturday to Monday morning. L continued to refuse overnights but did attend during the day on Saturday and Sunday. Things were going relatively smoothly but for August 22, 2020, when Ms. A did not take the children to a visit because she claimed that a fire had destroyed the children's car seats.

[266] Because the children were doing so well in their father's care, Ms. MacKenzie again progressed the parenting schedule for September and October, providing for two mid-week visits with both children, alternate Friday to Sundays for A, matching up with alternative Saturdays without an overnight for L. With respect to this period,

Ms. MacKenzie testified that the children made huge gains with respect to the ease in which they transitioned to their father's care.

[267] However, at the same time, it was becoming increasingly challenging to communicate with Ms. A. She would not book access times in accordance with the schedule and she rarely returned phone calls. Ms. A disagreed with this view and testified that it was Ms. MacKenzie who was difficult to reach. After reviewing the communications during this period, I do not find the mother's assertions credible.

[268] In Ms. MacKenzie's letter to the Court of October 15, 2020, she reported that the father continued to take coaching advice and that he was consistently improving as a parent of two very challenging boys. It was the mother who still needed "to do the work" of improving her parenting skills. The letter sets out that

> "Ms. A strongly feels that the children have endured trauma and are at risk. This fear, and sense of risk, is clearly picked up on by the children and adds to their insecurity with moving forward with access. The children are aligned with Ms. A and they easily pick up on her worry and they worry about her. Both children have issues with separation from their mother, and strategies need to be developed….
>
> In addition, Ms. A will need to make some changes in her interactions with the children to alter the power dynamic between her and the children; reduce their dislike of leaving their mother's side; and to support the children's independence; allowing them to freely be able to separate from her. Part of this work includes development of firm limits for the children, in Ms. A's home that can be replicated with Mr. S. in addition, reduction and the end of breastfeeding with the children, which she has identified, is utilized to soothe the children. Alternative methods should be explored so that they can be supported in both homes.
>
> I have attempted to bring an in-home support person into the process to assist with this structuring of limited and routines. Ms. A did not appear receptive to this as she felt the issues are with Mr. S. Mr. S is willing to use any resources put forward.

[269] Ms. A never accepted the in-home help recommended by Ms. MacKenzie in her October 15, 2020 letter to the Court and, to date, she has never done the work of helping the children separate from her. Instead, she continued with a course of personal

counselling which, as set out above, was wholly misinformed and directed to an ulterior purpose: supporting the children to *not* transition to their father's care.

[270] In November 2020, L started coming with his younger brother A on Saturday overnight visits. Throughout, Mr. S was observed to work well with third party professionals, to take direction, self-report and self-correct. The children enjoyed their time with him and were fully engaged. The boys played, ate well, read books on a wide range of subjects, including how to manage their feelings and they were openly affectionate with their father and their paternal grandmother.

[271] The plan was again progressed in December 2020. A detailed schedule was put in place for the month which included make-up time for prior missed visits and a full week with the father from December 28, 2020 to January 3, 2021. The exchange on December 28th was to take place at Ms. MacKenzie's office.

[272] Late on December 27, 2020, Ms. A sent an email stating that the children were sick and ought not to attend the seven-day holiday visit. Mr. S assured Ms. A in an email that if the children were sick, he would take care of them. (They were not sick.) It was touch and go, but ultimately the children were brought to the exchange and they had a wonderful, full holiday week with their father and paternal family. The first one. Ms. S prepared for the next parenting progression of a modified 3-3-2-2 schedule with overnights during the week.

[273] Reunification Counselling had worked! Against overwhelming odds, L and A were transitioning between their mother's home and their father's home as would any kids in a normative two-home family.

The Final Sabotage String

Unilateral Enrolment in Kindergarten

[274] In the first week of January 2021 and without any consultation, Ms. A enrolled A in kindergarten and advised that A could no longer be with his father mid-week because he was in school. Ms. MacKenzie countered by saying that because kindergarten was

on-line, A could attend school while at his father's residence so the regular schedule would continue.

Move to Owen Sound

[275] On January 27, 2021, Ms. A's counsel announced in a letter of that date that Ms. A was taking a job in Owen Sound and intended to move there with the children. A flurry of conferences followed. Relocation was to be a primary issue for this Trial. And then it was abandoned on the first day of Trial.

More False Allegations of Physical Abuse

[276] From Toronto CAS notes dated February 1, 2021, Ms. Vendetti, the school social worker contacted CAS to report an allegation by L that he was hit by his father during the last visit and that he was having nose bleeds and headaches. The allegation was transferred to the Toronto CAS because it was proposed to have occurred at Mr. S's residence in Toronto during his parenting time.

[277] In Toronto CAS notes dated February 8, 2021, it is recorded that Ms. Vendetti, again contacted the Toronto CAS to report a second allegation by L that he was hit by his father during a transition out of a vehicle. Ms. Vendetti spoke to L by Zoom about the incident and L admitted that he had kicked and tried to punch his father in the groin and that his father had pushed him away before he could kick him again.

[278] In February 2021, the Toronto CAS investigated a further allegation of physical abuse by the father against L as expressed by Ms. A. On February 26, 2021, the CAS issued a report that the allegation of physical harm was not verified, noting a physician collateral who confirmed that "disclosures of child abuse and stressors related to access are expressed by mother and not from the children directly."

[279] That same month, the Toronto CAS verified 3.1.C, being risk of harm resulting from child's exposure to ongoing post separation caregiver conflict. The alleged victim was A. The alleged maltreater was Ms. A. Over the next month, the Toronto CAS became increasingly concerned with the children's exposure to high conflict divorce proceedings

and the impact it was having on their ability to regulate their emotions and to form healthy attachments with both parents.

The Final Efforts at Reunification

[280] Ms. MacKenzie was better aware of the Toronto CAS involvement given their enhanced communication protocols. She spoke to both the worker and Ms. Vendetti and learned not only about the false allegations, but that L was regularly not attending school. Ms. Vendetti testified that L missed 27.5 days in kindergarten and was late 40 times. In grade 1, L missed 20 days and was late 30 times.

[281] After speaking with Ms. MacKenzie, who informed Mr. S about the school issues, it was agreed that Ms. Vendetti would continue to meet with L by zoom to help him with relaxation techniques.

[282] By early March of 2021, Ms. MacKenzie had additional causes for concern. The mother's Owen Sound proposal did not include a realistic plan for the father's parenting time, L's resistance had started up again and was spilling over to A – who had never previously had an issue with access – and the mother was again involving a children's aid society. Meanwhile, the parenting schedule was set to expand during the month of March to:

Week 1 – Tuesday to Thursday overnight with father

Week 2 – Friday to Sunday overnight with father

And then in May 2021 to week-about parenting.

[283] The final setbacks occurred in the second week of March 2021, just before the new schedule could take hold. Both children resisted and would not attend on Wednesday, March 10, 2021. On Thursday, March 11, 2021, L did not transition, and five-year-old A had to be pulled from the car. He was sitting in the driver's seat with his hands on the steering wheel after locking the car from the inside, yelling that his father was trying to take him away. Thanks to Ms. MacKenzie's efforts, on March 13, 2021, both boys transitioned to their father's care, over the wishes of their mother. L spoke up at this

exchange contradicting his mother's statement to the counsellor that he did not want to go with his father. He told Ms. MacKenzie that he did want to go.

[284] Both children again attended on Thursday, March 18th, but this was to be the last home visit for some time. The children resisted transfer on the March 24, 25 and 26th attempts.

[285] Ms. A made another allegation to the Toronto CAS on March 26, 2021 that Mr. S had pulled L's arm, causing bruising. Ms. Cheng of the Toronto CAS was assigned on March 30, 2021 and spoke to Ms. A on April 9, 2021. The mother took the opportunity to speak extensively about herself and the children being victims of domestic abuse and her poor experience to date with child protection societies. She could not answer Ms. Cheng's question about what would make her feel safe. Neither could she describe any situation with Mr. S in which she would feel safe. Ultimately, the Toronto CAS closed its file without any verification of harm because Ms. A refused to make the children available to be interviewed.

[286] On March 30, 2021, Ms. MacKenzie attempted to restart the parenting time by going back to the very first step in her process: an office visit. L was particularly distressed during this visit, asserting to his father that "you hurt me when I was in my mother's belly." Ms. A was discovered to be listening into Ms. MacKenzie's office conversations with the children, which the mother did not deny at Trial. From March 30, 2021 forward, L reverted back to adamant refusals, and now A was actively copying his brother. Although A did go home with his father on April 5, 2021, this was to be his last visit before Trial.

[287] Ms. A did not bring A on April 7, 2021, alleging that A was refusing to attend. Visits were attempted for the balance of April, but the children would resist and not transition, or Ms. A would refuse to bring them. On April 13, 2021, Ms. A again cited illness for failing to bring the children, stating that she and the children had to self-isolate as they were having Covid-like symptoms. She provided no evidence to support this assertion. On Friday, April 30, 2021, there was to be an in-person visit at Ms. MacKenzie's office to celebrate Greek Easter. Mr. S and his mother attended Ms. MacKenzie's office with gifts. The children never arrived.

[288] On April 20, 2021, Ms. MacKenzie issued a 30-day notice of withdrawal of services. Within the letter, she set out her serious concerns with L's behaviour, and she recommends that he be psychologically assessed. She also recommends that the mother accept the services of an in-home parent support worker as set out in her report of October 15, 2020. She writes "[c]urrently both children appear to be empowered and dictating to the adults, versus the parents being able to parent."

Efforts During Trial to Resume Parenting Time

[289] Mr. S asked Ms. Mackenzie to continue to work with them, and in a letter dated April 28, 2021, she agreed subject to Ms. A's approval.

[290] The Trial began on Monday, May 10, 2021 and there were immediate efforts by the court to restart access, supported by counsels' early views that a parenting resolution remained possible.

[291] Without consenting to Ms. MacKenzie's reinvolvement, Ms. A did agree to participate in a park visit on Saturday May 16th. Despite some cheeky behaviour by L, the visit went well enough and another visit occurred on May 24, 2021.

[292] Ms. A was late on May 24, 2021 and L became aggressive with his mother at the end of the father's parenting time. I was struck by the father's correction to L on this occasion and on another mid-Trial visit, reliably recorded and not contested, to "not speak to his mother that way."

[293] During the May 24, 2021 visit, the children agreed to have a longer stay with their father the following week on May 30th. Ms. MacKenzie arranged for a four hour visit at Mr. S's home with the children to be brought by Ms. A. On that day, Ms. MacKenzie was waiting in Mr. S's driveway to ensure that the children transitioned well. Ms. A never arrived. She later claimed that the children would not leave the house.

[294] After that disappointment, nothing was arranged for the next two Saturdays: June 5th and 12th; but June 20th was Father's Day and, with the consent of counsels, I conferenced the issue of Father's Day access. On the Friday afternoon before Father's

Day, we stayed late, and it was agreed that Ms. A would drop the boys off near the petting zoo at Chinguacousy Park in Brampton for an overnight visit from Saturday noon to Sunday at 7 p.m. It was also agreed that neither parent would bring a third person to the exchange.

[295] On Saturday, June 19th, 2021, Ms. A and the boys arrived at the petting zoo on time. The boys spoke to their father and then L ran to an older man that he knew who was coincidently at the enclosure. Mr. S did not know the man who greeted L warmly, and who Ms. A pretended not to know very well. The man was Gordon Sommerville, who is the grandparent of one of L's friends who lives across the road from Ms. A's home.

[296] The parents attempted to transition the children for the next hour, to no avail. Mr. S headed home. The next morning, Father's Day, Ms. A texted Mr. S at 11:26 a.m. to offer another attempt at a transfer at Gage Park. Because Mr. S was already out of the home with his girlfriend and short on time, he brought her with him and she stayed in the car while he walked over to where the mother's car was parked.

[297] Mr. S met Ms. A and the boys at Gage Park. The boys were swearing, making rude gestures to both parents and refusing to leave the vehicle. Ms. A suggested meeting at the Dairy Queen and both parents drove there separately. After a treat, and Mr. S agreeing to L's direction on when he was to be returned home, the children transitioned to their father. L shared with his father that JA had been in a car watching them. The boys travelled with Mr. S to his home for a Father's Day barbecue and were picked up at 7:30 pm.by their mother.

[298] The following week, the parents agreed to an overnight visit on Saturday, June 26th, 2021 to Sunday, June 27th, with the transition to occur at the Dairy Queen. On that Saturday, the children were again initially resistant and Ms. A took them in for a treat. As they came out, Mr. S noticed that Mr. Sommerville was again present, watching him from his vehicle. As Mr. S approached the vehicle and took a picture, Mr. Sommerville, an 81-year-old gentleman, stepped out of his vehicle.

[299] Mr. S, who for the past five years has been a constant target of false allegations and CAS reports, saw an older man approaching him in an agitated state. Meanwhile, Ms. A was passively looking on the situation with anticipation. As she testified at Trial, “she didn’t know what was going to happen!”

[300] Mr. S took the safer course of action and he left the parking lot to avoid any perceived altercation in the final weeks of Trial. He left without saying goodbye to the boys or having any manner in which to do so after the event. All his communications to the boys must pass through the mother.

[301] Ms. A later texted Mr. S with an offer to try again the next day and to meet again at noon at the Dairy Queen. Mr. S declined. The mother took them anyway and L and A sat in the back seat of their mother’s car at the Brampton Dairy Queen parking lot, waiting for their father.

The Last Day of Trial

[302] On the last Trial day of the mother’s case, Mr. S indicated that he would not call a reply case, specifically, that he would not introduce evidence on the post June 20th parenting attempts. At this point in the Trial, we were three weeks past the time allotted and the ongoing commitment was putting Mr. S’s employment at risk.

[303] The next morning, Ms. A sought leave to reopen her case and to give evidence of the June 26th and 27th 2021 events. I allowed her to do so over the objections of father’s counsel, and, after a recess, Ms. A gave evidence, and then she called Mr. Sommerville.

[304] It was a most unbecoming and unfortunate presentation. Mr. Sommerville did not display any understanding of the situation in which he had been placed by Ms. A. He only knew that the boys and their fragile, deserving mother – whom he described in glowing terms as Ms. A smiled with approval – needed protection.

[305] Mr. Sommerville was the most tragic of Ms. A’s many litigation allies. He was well meaning and vulnerable. He knew nothing about the situation other than that Mr. S was a dangerous, horrible man who did not deserve to have children. After hearing his

evidence, I am left with no doubt that Mr. Sommerville attended the Petting Zoo and the Dairy Queen on the mother's invitation after it was agreed that neither party would bring a third person. He was the final watching man in this litigation which has seen Ms. A's brothers at almost every access visit and court attendance, the hiring of private investigators to conduct surveillance on agreed-access supervisors and later, Mr. S personally, and the Trial attendance of her former counsel who monitored the whole of this nine week hearing.

Decision

[306] This is an extreme case of resist and refusal dynamics with a complicated caregiver profile. L and A were only 33 months old and 4 months old at the time of their parents' separation in July 2016. Despite the very best of therapeutic and court interventions, L and A remain unable to spend as much time with each parent as is consistent with their best interests while they are in their mother's primary care.

[307] Within this Trial record there is an abundance of clinical evidence that speaks to the underlying causes of the mother's conduct and why she has been unwilling or unable to separate her feelings towards her former spouse from the children's best interests in having a healthy parent-child bond with each of their two parents. Added to that matrix has been the amplifying role of her brothers and the misuse of a series of professionals. The impact of the resulting conflict on the children has been substantial. They have suffered emotional harm.

[308] As set out in the Court of Appeal decision of *A.M. v. C.H. (supra para. 31)* there are only four options available to me.

[309] I begin by rejecting the option of doing nothing. To leave L and A with their mother is to permanently remove their father from their lives. Even with the benefit of an excellent reunification therapist and agreed court Orders, the children have only been in their father's care nine hours over the past five months. In a post-Trial, July 26, 2021 teleconference with counsels, I was advised that the boys had still not seen their father since the close of evidence on July 9, 2021.

[310] I must also reject the third option of leaving the children in Ms. A's care and ordering that she attend counselling and receive therapeutic assistance. This option has been tried and it has failed. Ms. A's dismissal of the recommendation of the section 30 assessor and her intentional undermining and sabotaging of two reunification processes speak for themselves. Moreover, Ms. A has stated on the record that she is unwilling to return to reunification therapy. She has unjustifiably attacked Ms. MacKenzie's credentials, her process, and her professionalism.

[311] On this record, I find that Ms. MacKenzie's work with the S/A family has been exemplary. The children have benefitted enormously and built a relationship with their father sufficient to support a change in primary care, a change that would not now be necessary had Ms. A accepted her advice and direction. If Ms. MacKenzie could not move Ms. A to a healthy place of support for her sons' relationship with their father, I worry that no professional will be successful in doing so.

[312] Finally, I must also reject the fourth option of providing a neutral, transitional placement for the children with the goal of placing them with the father, or with both parents at a later date. Two child protection societies have chosen not to issue Applications. Neither parent has proposed a third-party interim caregiver or a therapeutic placement.

[313] I am thus left with the only remaining option: to transfer primary care of the boys to their father and to grant him responsibility for decision making. I find that this is a viable option and I make that decision.

[314] Mr. S is a capable, good enough parent. He has accepted his role in the conflict and improved his parenting skills. He has consistently demonstrated a willingness and an ability to meet the children's needs throughout an extraordinary series of personal attacks and setbacks. He will have the support of his mother and girlfriend, but neither is necessary to his parenting plan. He has a stable residence, employment, and a healthy personal routine that he hopes to share with the children. He is playful and affectionate with the boys. He has a school plan and he supports their education. He has

demonstrated appropriate boundaries and is able to correct the boys' negative behaviours.

[315] I am satisfied that Mr. S has the ability to support the boys' relationship with their mother, that he can protect them from the conflict and that, with assistance, he can provide them with emotional and psychological safety in a manner that provides them with independence of thought and relationship.

[316] There is a great deal of recovery work to be done. Dark themes underscore my finding that the boys have suffered emotional harm: one son being caused to falsely report the sexual abuse of his younger brother by their father, a six year old child brandishing a knife at a babysitter in front of his younger brother, and the constant allegations to children aid's societies – requiring numerous interviews of the children – to sabotage consent Orders in the family law litigation.

[317] I am very concerned with L's wellbeing, as voiced by Ms. MacKenzie in her final April 20, 2021 letter to the Court. As the decision-making parent, Mr. S will need to immediately engage counselling and therapeutic services for both sons, and L's care will be centre stage.

[318] I am also concerned for A's safety around his brother, particularly during a time of transition and stress for L. I anticipate that the transfer of care will be resisted by the mother and that it will place additional stress on both boys, who have already – on multiple occasions – been verified by the Peel and the Toronto Children's Aid Societies as being emotionally harmed by adult conflict. I require a copy of these reasons to be sent to both Societies following its release to the parents.

[319] The transfer of care to the father will require a change in school registration, which I find to be in the boys' best interests. The oldest son has had very poor school attendance at his current placement and the present school personnel have been co-opted into this conflict. Many appeared as witnesses at Trial. A fresh start is in order.

[320] The more challenging issue to decide is the mother's parenting time moving forward. In this regard, I have carefully considered Ms. MacKenzie's view that the

mother's conduct has been so damaging that the boys now require at least 120 days in their father's care without any contact with the mother.

[321] I have also considered that in March 2021, the boys' parenting schedule was on the verge of being expanded to split weeks, and was set to transition to alternate weeks in May 2021 (the scheduled start of Trial). But for the mother's final acts of sabotage, the boys would now be starting their fifth month of a shared parenting schedule; a schedule that in my view, has been overdue since receipt of the section 30 assessment in March of 2018.

[322] Parenting schedules must be determined in a child's best interests. They are neither a sanction nor a reward for a parent. The very best outcome for L and A is to first restore their parenting relationship with their father, and then to progress parenting as quickly as possible to a schedule appropriate to their age and stage of development, while minimizing transitions between their parents' homes. An alternating week schedule would best minimize transitions, but in my view, a week is too long for a 5 and 7-year-old to be without the other parent during the school year. A weekly overnight with the other parent would be ideal, as would pickups at school whenever possible, so that the parents rarely come into contact with each other during the school year.

[323] At the same time, I do not wish to be naïve about the mother's ability to accept the terms of this Order, or to support the father's parenting. Since the conclusion of this Trial on July 9, 2021, the father has had no parenting time despite the mother seeking a final Order for alternate weekends, weeknight parenting and summer holiday time. Throughout this Trial, she has openly acknowledged that ongoing non-contact between the boys and their father hurts her parenting claims and yet, the drama around exchanges has continued.

[324] As a result, I will provide for a 90 day period of non-contact to allow the boys time to become established in their father's care and to settle into a therapeutic relationship with a counsellor who can provide support and address their wellness should the mother continue her efforts to undermine the father-sons relationship after the expiry of the 90 days.

[325] If the mother wishes to accelerate her reintroduction to parenting, she may do so with the assistance of a supervising therapist skilled in Family Treatment and Interventions. I provide below for supervised parenting of up to ten hours a week that can begin immediately upon such a professional being retained, fully informed and executing a Rule 20.1 Acknowledgement of Duty of an Expert.

[326] After the initial period of 90 days of no contact, or of supervised parenting time, the mother's parenting time will progress to an alternate weekend, one overnight per week schedule. After a further 90 days, the parenting schedule will step-up to an alternating week schedule with one overnight per week with the other parent.

[327] The purpose of the therapeutic supervision during the initial 90 day period is threefold: to protect L and A from the conflict during the early phase of their transition to their father's care; to help the mother shift her parenting style from passive enmeshment; and to allow her to demonstrate techniques to support the boys to feel physically, emotionally, and psychologically safe and secure in her and the father's care. If the therapeutic supervision is successful, L and A will be able to easily transition between their parents' homes and will feel attached, loved and supported by each parent all the time, even while in the other parent's care.

[328] If the therapeutic supervision is not successful, or the mother chooses not to engage, it will fall to the children's therapist and the father to protect them from the conflict, to teach the boys skills to emotionally separate from their mother and to have independence of thought and relationship; and to sound the alarm should L and A again be at risk of emotional harm. For this reason, the boys' counselling should not be closed until such time as it is therapeutically appropriate to do so.

A Final Note of Caution

[329] A six-month transition from no parenting time to shared parenting is a relatively fast transition on the facts of this case. The transition is predicated on the mother being willing and able to do the work that will allow L and A to feel physically, emotionally, and

psychologically safe and secure in both their father's house and their mother's house; and on the father continuing to be child focused and cooperative.

[330] The transition also assumes that the mother can find suitable housing. For a shared parenting schedule to work, the parents will need to live within a reasonable distance of one another and the children's school. The parents agreed in their May 10, 2021 Minutes of Settlement that the Brampton home is to be sold and the Minutes provide for the distribution of sale proceeds. Costs of this proceeding will have to be paid. The mother's profession may yet take her elsewhere, or ultimately, she may remain unwilling or unable to support the boys' relationship with their father. If any of these issues prove insurmountable, it will constitute a material change in circumstances that will require the Court to reconsider a progression to shared parenting.

[331] I commend the parents for having resolved much of their dispute at the start of Trial and ask that each now pause to consider their next steps. Is the conflict to continue, or is a new path the better choice? The losses that have accumulated over the last five years could not have been imagined in July of 2016; but they may yet be recoverable. I worry that the losses of an ongoing conflict – particularly to the rest of L and A's childhood – will not be.

[332] Final Orders to Issue as follows:

Responsibility for Decision Making

1. Pursuant to section 16.1 of the *Divorce Act* the applicant father shall be responsible for decision-making for L, born […], 2013, and A, born […, 2013.

Therapeutic Professionals, Education, Dentist, Pediatrician, Government Documents and Communication

2. The applicant father shall engage a therapist for the children as soon as possible to support them in their transition to his residence and should he so decide, their new school. The therapist is to work with the children to develop their sense of physical, emotional, and psychological safety, security and well-being.

3. The respondent mother's required consent, if any, to the retainer of a therapist for the children is dispensed. The children's therapy shall be an open process and it shall be in the therapist's discretion as to whether or how the parents are involved in the process.

4. The children's therapy shall be considered a section 7 expense and shall be paid in the proportionate shares set out in the Minutes of Settlement.

5. As the parent responsible for decision-making, the applicant father may change the children's school placement. He is not required to maintain the children at their present school, or to keep any of the children's present service providers, and he may change all medical, psychological, and dental services including the children's present pediatrician.

6. At least three days prior to enrolling or registering a child in school, an activity or engaging a service provider including a physician or a dentist, the applicant father shall propose the engagement to the respondent mother in writing and seek her views on the proposal and if available, any other options. Before making the proposal, he will consider the children's views and preferences if they can be ascertained. The mother shall have three days to respond. The parties are to work towards an agreement, but if they cannot agree, the applicant father shall make the final decision no sooner than the seventh day after his proposal.

7. The parties shall communicate using Our Family Wizard or another agreed, secure communications platform with each party to pay their own fees. Because time is of the essence for 2021 school registration, the parents may exchange emails directly regarding school placement.

8. Each parent may take the children for emergency medical treatment while they are in his or her care and must inform the other parent immediately. But for emergency medical treatment, the respondent mother shall not take the children to any health care provider without first obtaining the father's prior written consent.

9. The children's surnames shall not be changed from "S" and their school registration and any government identification shall be issued in their names as they appear on their original birth certificates.

10. The children's original passports and any government issued identification, including birth certificates and health cards, shall be held by the applicant father. The respondent mother shall be provided with a notarized copy of the children's birth certificate and health card.

11. Each of the parents is entitled to communicate directly with, and to receive information directly from third party professionals involved with the children, about the children's well-being, including in respect of their health and education, or from any other persons who are likely to have such information, and to be given such information by those persons, pursuant to section 16.4 of the *Divorce Act.*

12. Neither the applicant father, nor the respondent mother shall disparage the other parent when communicating with the children or when in their presence, nor shall a parent permit third parties to do so in any manner that might come to a child's attention.

Transfer of Primary Care

13. Primary care of L and A shall be transferred to the applicant father immediately upon the release of these reasons.

14. The children's primary residence with their father shall remain in the Greater Toronto Area and it may not be moved absent both parents' written consent or court Order, pursuant to section 16.2 of the *Divorce Act.*

15. The respondent mother is to pack any items of significance for the boys, or items that they wish to have at their father's residence and will deliver those items to her lawyer's office from where it can be picked up by the applicant father or his designate.

Enforcement of Transfer of Primary Care

16. In the event that L and A are not in their father's care by 11:00 a.m. on Thursday, September 9, 2021, the Peel Regional Police, the Metropolitan Toronto Police, the Ontario Provincial Police, the Royal Canadian Mounted Police and any and all police services or police forces in any jurisdiction in Ontario, and any and all border patrol/control agencies, and the police in the area where the children may be located, are hereby authorized and directed to enforce this Order. Specifically, pursuant to section 36(2) of the *Children's Law Reform Act*, for the purpose of enforcing any of the custody or access provisions of this Order, any police force in an area where the children L and A are located is hereby ordered to locate, apprehend and deliver the children to the applicant or any other party or person authorized by the applicant.

17. For the purposes of locating and apprehending the children, a police officer may enter and search any place where he or she has reasonable and probable grounds to believe that the children may be, with such assistance and such force as is reasonable in the circumstances.

18. The respondent mother shall not remove the children from Ontario, pursuant to s. 37 of the *Children's Law Reform Act*. To give effect to this term, the applicant father may place L and A on the Passport Canada Lookout List.

Non-Removal from the Jurisdiction

19. Neither parent may remove L and A from the Province of Ontario absent further Court Order or written consent.

Termination of Child Support effective September 9, 2021

20. The applicant father's payment of table child support set out in paragraph 3.1 of the May 10, 2021 Minutes of Settlement is terminated effective September 9, 2021.

21. Support Deduction Order to Issue.

The Mother's Parenting Time

First 90 Day Period

22. The respondent mother's parenting time with the children is suspended for 90 days from the day that L and A are transferred to the applicant father's primary care but for:

a. twice weekly Zoom calls for 30 minutes each, to occur on Wednesday and Sunday evenings at 6:30 pm unless the parents agree otherwise. Parties are permitted to record the call; and

b. parenting time of up to ten hours a week that is supervised by a child and family therapist retained by the respondent mother, and who has expertise in Family Treatment and Interventions, and

i. who is given a copy of these reasons and all reports that are referenced in these reasons, including letters to the Court, and

ii. who may be given recordings of the Zoom calls in 21(a) above, and

iii. who executes a Rule 20.1 Acknowledgement of Duty of Expert to be delivered to both parents before service begins, and

iv. who conducts an open process with notes and records available to both parties within seven days of the parenting time.

Second 90 Day Period

23. Upon the expiry of 90 days from the date of transfer, and provided that the respondent mother is not in breach of the terms for the first 90 days, the children shall have the following parenting schedule:

a. For the next 90 days, (being the second 90 day period after the transfer date) the children will be in the mother's care every Wednesday from after school until the return to school Thursday morning; and alternate Fridays from after school until the return to school on Monday morning.

If the Monday morning is a school holiday, such as Family Day, the return day shall be extended to Tuesday morning.

b. This schedule for the second 90-day period shall be suspended for:

i. the school Christmas vacation during which period the applicant father shall have the children from the end of school on December 17th until noon on December 26, 2021. The respondent mother shall have the children from noon on the 26th until the children's return to school on Monday January 3rd, 2021. This schedule shall be reversed annually so that the respondent mother has the children for the first half of the Christmas Break, and the father has the children for the second half of the Christmas Break in even years.

ii. March Break during which period the respondent mother shall have the children from the end of school prior to the March break until the return to school after the March Break on even years. The father shall have the children from the end of school prior to the March break until the return to school after the March Break in odd years.

Week about Parenting Schedule

c. At the conclusion of the second 90-day period, and provided that the respondent mother is not in breach of the terms for the second 90-day period, the children will be in their parents' care for alternating weeks. Unless the parents agree otherwise in writing, the children will transition to the other parent's care after school on Mondays, until the following Monday, to be extended to a Tuesday if Monday is a school holiday.

d. Additionally, the children shall be in that week's nonresidential parent's care from after school every Thursday until return to school on Friday.

If Friday is a school holiday the overnight parenting time for the nonresidential parent shall be from after school on Wednesday until return to school on Thursday.

e. The alternating week schedule, with one overnight each week with the nonresidential parent shall be suspended for:

i. Mother's Day and Father's Day: the children will spend from 10:00 a.m. to 7:00 p.m. with the designated parent.

ii. Summer Vacation: the alternating week schedule shall continue, but the one overnight each week shall be suspended, and transfers will occur on Sunday evening at 7:00 p.m.; but for each parent having a two week consecutive period of care, the dates for which are to be chosen by May 1st of each year, with the applicant father picking first on even years and the respondent mother picking first on odd years.

24. All transfers shall be at the children's school, and if school is not in session, the respondent mother shall pick up the children at the applicant father's home, and the applicant father shall pick up the children at the respondent mother's home, unless otherwise agreed.

Restraining Order

25. For the first 90-day period following the transfer of the children from the respondent mother to the applicant father's care, the respondent mother is hereby prohibited from:

a. Attending within 750 meters of the applicant's home at 30 Frimette Crescent, Toronto, Ontario unless in the company of the therapeutic supervisor.

b. Attending within 750 meters of the children's school.

c. Other than the Zoom calls permitted above, contacting or communicating with the children either directly or indirectly, even if a child contacts her or initiates contact through any means; and

d. Contacting or communicating with the child through third parties, or any electronic or social media accounts purporting to be from a third party.

26. Neither the applicant father nor the respondent mother shall discuss this decision or any other part of this case with the children. The child's questions shall be directed to their therapist.

Copy of this Decision to be Released to the Peel and Toronto Children's Aid Societies

27. A copy of this decision is to be sent by the applicant father to the Peel and the Toronto CAS, to the attention of the family service worker most recently attached to the file, or her supervisor.

Sentence on Contempt Finding and Costs Submissions

[333] The parties may provide submissions on a Sentence for the respondent's Contempt, and for an Order for Costs (inclusive of the contempt motion.) Submissions are not to exceed 14 pages in total, exclusive of linked caselaw, Offers to Settle and Bills of Costs.

[334] The respondent may argue that she has purged her contempt by supporting the children's transition to their father's care, and successfully working with a therapeutic supervisor.

[335] The applicant's submissions shall be due on September 24th, 2021, the respondent's response shall be due on October 12th, 2021 and the applicant's reply shall be due on October 22nd, 2021.

[336] All costs submissions are to be filed with the Court Office. In addition, a copy of those costs submissions are to be sent to my judicial assistant at karen.bunbury@ontario.ca. Both methods of filing are required.

McGee J.

Released: September 9, 2021

CITATION: S. v. A., 2021 ONSC 5976
COURT FILE NO.: FS-16-00223
DATE: 20210909

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

W.S.

Applicant

- and -

P.I.A.

Respondent

REASONS FOR DECISION

McGee J.

Released: September 9, 2021