

FAMILY COURT OF NOVA SCOTIA

Citation: *D.M. v. C.F.*, 2017 NSFC 16

Date: 2017-06-23

Docket: FPICMCA-099103

FPICMCA-057129

Registry: Pictou

Between:

D.M. Applicant

v.

C.F. Respondent

v.

C.F. Applicant

v.

S.B. Respondent

Editorial Note: Identifying Information has been removed from this electronic version of the judgment.

Judge: The Honourable Judge Timothy G. Daley

Heard: January 18, 19 and 20, 2017 in Pictou, Nova Scotia

Written Decision: July 4, 2017

Counsel: Shawn MacLaughlin, for the Applicant, D.M.
William F. Meehan, for the Respondent, C.F.

Introduction

[1] This case is solely and exclusively about what is in the best interests of two children, K.D.F.M. (“K.M.”) who is seven years old and K.J.F. (“K.F.”) who is currently ten years old.

[2] C.F. is the biological mother of these two children. C.D.M., who goes by D.M., is the biological father of K.M. S.B. is the biological father of K.F. Because of this, there are two applications before the court, one concerning each child, and those proceedings have been heard together.

Positions of the Parties

[3] The positions of the parties are clear. C.F. seeks sole custody of both children and supervised access to D.M., such access subject to him completing a mental health assessment and parental capacity assessment. She also seeks child support for both children and costs.

[4] D.M. seeks joint custody of the children in a shared parenting arrangement. He does not seek child support based on the low incomes of both parties. He does he seek costs.

Interim *Ex-Parte* Order

[5] In her first affidavit filed with her application in this matter, C.F. said that D.M. had been verbally abusive to her in the relationship. He threatened to harm himself and her and he was physically violent toward her and the child, K.F.

[6] She also said that D.M. was mentally unstable for various reasons set out in her affidavit. She claimed he had been arrested under the *Adult Protection Act* and admitted to hospital. She withheld the children from D.M. due to concerns for his mental health, increasingly irrational thoughts and history of domestic violence.

[7] As a result of this evidence, which I will detail further in this decision, I granted an interim *ex-parte* order of sole custody to C.F. with no access to D.M. At subsequent appearances, this order was amended to permit supervised access for D.M. with the children through the Supervised Access and Exchange Program (SAEP) offered by the Department of Justice at the local Wellness Centre in New Glasgow. Further supervised access outside the SAEP was permitted under a Varied Interim Order. That access has remained in place to this day.

Voir Dire on Standing for D.M.

[8] At the commencement of the proceeding, a *voir dire* was held to address an application by D.M. seeking standing respecting the child K.F. so that he could apply for custody of and access with K.F. After hearing evidence on that issue, I granted standing to D.M. after which the evidence in the main hearing began. The evidence from that *voir dire* was admitted into the main hearing.

[9] Having made that determination, I will refer to D.M. as K.F.'s father and parent for convenience throughout this decision.

Voir Dire on Grandparents' Access

[10] An application was also filed by the paternal grandparents of K.F., F.B. and J.P.B., seeking access with K.F. They and K.F.'s father, S.B., filed affidavits in support of the paternal grandparent's plan. To address that issue, I conducted a *voir dire* within the main hearing to avoid further legal proceedings. After hearing the evidence, I determined that there would be no access for the paternal grandparents, largely because they have had no real relationship with K.F. to this point and, given the challenges regarding the separation of C.F. and D.M., it would not be in K.F.'s best interest to introduce him to a father and grandparents he has never known. The application was therefore dismissed.

The Evidence

Summary

[11] The parties were in a common-law relationship from approximately September 2007 until they separated on May 20 or 22 of 2015. While they were together, K.M. was born.

[12] C.F. said that D.M. suffers from what she believes to be a mental illness, is mentally unstable, has a history of domestic violence toward her and the children and it would not be appropriate for him to have unsupervised access with the children until his emotional or psychological issues are properly dealt with. She said this will require a psychological assessment and a parental capacity assessment to properly inform the court regarding best interests of the children. She says that she and D.M. do not communicate well, there is no trust between

them and they are therefore unable to co-parent at this time. She said this is the reason she is seeking sole custody and supervised access for D.M..

[13] D.M. said that his relationship with C.F. was indeed conflictual when they were together and he admits to certain behaviors that were inappropriate. He denies, however, many of the allegations of violent or aggressive behavior. He says that since the separation and subsequent marriage to M.M., he has experienced a significant positive change in his life and no longer exhibits the behaviors that were present at times during his relationship with C.F. He says that his relationship with each child is strong and had been so during the relationship. He said that the children have struggled in the care of C.F. since an interim sole custody order was put in place the matter. He said that it is in the children's best interests that there be a shared parenting arrangement.

Valerie MacIsaac

[14] V.M. is the mother of D.M. She provided evidence by way of an affidavit and *viva voce* testimony at the hearing.

[15] She said that she has a great relationship with D.M. and that he lives approximately a 10-minute walk from her home. She says that she sees him several times per week.

[16] She described D.M. as an incredibly responsible and loving parent to K.M., K.F. and C.F.'s other child, C.F.S. who is currently 15 years old.

[17] She went on to say that, from approximately sometime in 2011 to the summer of 2015, D.M. was not himself. While he remained polite and well mannered, she could tell from her observations of his actions and their conversations that he was not enjoying his life.

[18] For example, she said that on several occasions D.M. told her that he was not happy in his relationship with C.F. but was torn about leaving because he would no longer be living with the children. He described, during those conversations, that C.F. was absent from the home for three or four days at a time and he was left with all the responsibility of looking after the children.

[19] V.M. went on to say that she has noticed a significant improvement in D.M. since the end of his relationship with C.F. in May 2015. She said she has observed that his entire outlook on life has changed for the better and he has return to his old

self. He now smiles and makes jokes and helps her more than he had in the previous few years.

[20] She also said that, based on her observations while visiting the home of D.M. and C.F. once or twice a week, D.M. was very good with the children. She said the same of D.M. since the end of the relationship.

[21] Her opportunity to observe D.M. with the children since the separation arises because he brings the children to her home. She says that it is obvious the children love him very much and he loves them.

[22] V.M. says she has maintained some relationship with C.F. since the separation although it was a closer relationship when C.F. and D.M. were still together.

[23] In cross-examination, V.M. repeated her description of D.M. before separation and said that, based on her observation, he was never aggressive, though he appeared to be depressed and unhappy.

M.M.

[24] M.M. is the wife of D.M. and provided evidence by way of an affidavit and *viva voce* testimony at the hearing.

[25] She said that she has two children of her own, R., who is ten years old, and D., who is around one year old. She said she met D.M. in 2013 when she moved into an apartment below his brother's. They had brief chats when he would visit his brother.

[26] She said that once D.M. ended his relationship with C.F. in May 2015, he moved in with his brother and they began to have more conversations. When D.M. had K.M. and K.F. with him they would speak while outside, watching the children play. She also chatted with him over Facebook.

[27] Eventually D.M. could no longer live with his brother because of space constraints with the children and she offered have them live with her. Her two-bedroom apartment was somewhat larger and they could make it work for some time.

[28] She said that shortly after D.M. moved in with her she was put off work due to her pregnancy with her son, D.. She describes D.M. as being very helpful to her, doing housework, chores, running errands and otherwise supporting her and her children.

[29] M.M. said that D.M. took care of R. when she was out for doctors' appointments and that R. quickly began to look up to D.M.. She explained that R.'s biological father was not very involved and D.M. stepped in as a father figure.

[30] Near the end of September 2015 D.M. and M.M. decided they needed a larger apartment and moved to their present address in New Glasgow. After that move, D.M. began taking K.M. and K.F. six days per month, including every Thursday and the last weekend of each month. He also took C.F.S. on occasion.

[31] M.M. described D.M. as making efforts to make the visits fun for the children including playing games, watching movies, going to the theatre and playing in the yard or going to the park once the weather was warmer.

[32] She said that after she observed D.M. with his children and his behaviors as father figure with her daughter R. and son D., they began dating.

[33] M.M. witnessed difficult conversations between C.F. and D.M. including one in April 2016 in which C.F. and D.M. discussed shared custody and who would receive the Child Tax Benefit. C.F. was yelling at D.M. on the telephone, saying she would not pay him to be a father and that their home was quite messy. M.M. replied through Facebook to C.F. on these issues.

[34] There were other difficult and challenging communications involving C.F., D.M. and sometimes M.M. To that point, however, C.F. and M.M. could maintain a civil relationship when the children were at the door or on other occasions when they saw one another. All that changed on June 9, 2016.

[35] M.M. stated that on that date K.M. and K.F. came for a visit and were tired and cranky. When asked what time they had gone to bed, they replied that the mother let them stay up late as they wanted to. Unfortunately, M.M. sent two articles through Facebook to C.F. about sleep for young children. She acknowledged that this was immature and she should not have done it. C.F. replied by cell phone and the conversation did not go well. M.M. described being unable to get a word in during the call, C.F. talking over her and hanging up on

her. She said that during the call C.F. called her several rude names and made other rude comments to her.

[36] It is relevant that the application by C.F. was filed on June 17, 2016, eight days after this conversation.

[37] M.M. said that D.M. missed two access visits throughout that time. The first was when the children were with him and he was notified that his sister had passed away. C.F. came to pick up the children. The second was when a birthday party in memory of his deceased sister was planned with the family.

[38] M.M. said that K.M. and K.F. get along very well with her and her daughter and son. K.M. and K.F. consider them to be their stepbrother and stepsister. They have even begun referring to M.M. as "mom" though she explained to them that she is their stepmother.

[39] She said that K.F. is generally well-behaved when he is with them. She described an incident when he wondered what it would be like to kill someone and that he had dreams about killing people. She and D.M. were quite concerned and spoke to K.F. about this. Their concern was that it may be coming from violent video games which he may have been exposed to the home of C.F.'s friend.

[40] On other occasions K.F. said to them that if his mother were to pass away M.M. would be his mother. He has also used very offensive language in their home and she claims it would not come from them.

[41] She says K.M. is well-behaved for the most part but he does not want to leave when it is time to return to his mother's care and it is a struggle to get him out the door.

[42] M.M. said that, based on all her observations, including D.M.'s interaction with her own children, she has no concerns about his parenting and supports his application.

J.M.

[43] J.M. is the mother of M.M. and she provided her evidence by way of an affidavit and *viva voce* testimony at the hearing.

[44] J.M. said she has known D.M. since July 2015 when he and her daughter moved in together. She has visited with them on average 2 to 3 times per week and during those times D.M. is always respectful and well mannered.

[45] She said that she has observed D.M. with K.F. and K.M. as well as with her daughter's children on several occasions. She said that he is a caring and loving father and stepfather and she has no concerns with his parenting.

[46] She also said that D.M. stepped in as a father figure to C.F.S. She explains that C.F.S.'s biological father has no relationship with her.

[47] J.M. said that she has a great relationship with K.M. and K.F. and treats them as her grandchildren. She is sad that she has not been able to see them since the beginning of these proceedings.

[48] She said it is clear to her that D.M. loves K.M. and K.F. and they love him very much. She describes all of them being together, K.F. telling funny stories and chatting about Pokémon with K.M. sitting on her lap during some of those visits.

[49] She also said that on two separate occasions she drove D.M. and K.M. to C.F.'s home to drop K.M. off after a visit. K.M. showed some resistance going to his mother's home and this might take up to ten minutes as D.M. tried to persuade K.M. to stay at his mother's residence. She could hear K.M. crying after they left.

[50] She supported D.M.'s application for joint custody in a shared parenting arrangement for K.M. and K.F. and she offered to support him and her daughter by providing childcare as required.

[51] In cross-examination, J.M. admitted that she did not see any of the Department of Community Services records and was not aware of much of the background of D.M..

D.M.

[52] D.M. provided his evidence by way of three affidavits and his *viva voce* testimony at the hearing.

[53] He is 39 years old. He is the biological father of K.M. and the stepfather of K.F. He confirmed that C.F. has another child, C.F.S., who at the time of the hearing was 14 years old.

[54] He said that C.F. and he began a relationship in September 2007. K.F. was approximately five months old at the time and K.F.'s biological father had not had a relationship with him. Therefore, D.M. said he had become a father figure to K.F.

[55] He said that C.F.S. was five years old when the relationship began and her biological father lives in the local area and only saw her a couple days per month.

[56] He said that he and C.F. separated on May 22, 2015. Therefore, the relationship lasted approximately 8 1/2 years.

[57] D.M. said he suffers from osteogenesis imperfecta, known as “brittle bone disease”, has broken over one hundred bones during his lifetime, and had several surgeries for the placement of pins, wires and plates in his body. He says the disease can affect his eyes, his hearing and his ligaments and there is no treatment. He says he cannot work due to this condition and it is for this reason he is on social assistance.

[58] Respecting his relationship with C.F. prior to the separation, he did admit that later in the relationship they began arguing and the relationship was bad between them. He said that when C.F. left the home, he could have some peaceful time without the arguments. He does not deny that finances were very difficult during the relationship.

[59] D.M. went on to say that C.F. attended the Community College while he stayed at home to look after K.F., an infant at the time, but that she quit after only a month.

[60] D.M. said that three years into the relationship with C.F., she became a Girl Guide leader and was out of the house twice a week as well as taking part in numerous trips. Two years later she became District manager, adding to her time away, including trips to Halifax. He said he encouraged her to get out of the house and was proud of her Girl Guide activities which lasted 3 to 4 years. He said that during that time he looked after K.F. alone. He said that C.F. left Girl Guides when C.F.S. completed her program with the group.

[61] He said that C.F. then began work with an organization known as Anonymous. He characterized this organization as antigovernment and that it is connected with international networks of activists. He says during the last two

years of the relationship the organization took most C.F.'s time, she ignored the children and him and focused on her activities with that group. He also says that she left the home to play cards, go for drives with her friends and visit her mother or sister to swim in their pools.

[62] D.M. admitted that he did not want to be out in the community to the extent that C.F. did. He denied that he has an issue being around people and explains that he was at every extended family meal with her and the children approximately four to five times each year and sets out various other examples of activities in which he participated with the children and C.F.. His evidence was that he was participating with family, coaching C.F.S.'s soccer team and was involved with lots of visiting and family time.

[63] D.M. said that he has been on social assistance disability benefits for the past nine years and had never been put through work programs based on his medical condition.

[64] He disagreed with the evidence of C.F. that he refused to work, that he claimed to be disabled yet worked odd jobs, like yardwork and maintenance, digging and tilling gardens and shoveling snow.

[65] He admitted that he can do some things. When he needs to exert himself, and perform manual labor, his recovery can take days. He gave examples of being able to push a lawnmower once a week and shoveling the driveway in the winter when C.F. refused to do so due to her own medical circumstance.

[66] He said he never encouraged C.F. to get a job because he knew she suffered from a cyst on her spine which flares up from time to time. She too was not put through a work program by the Department of Community Services until later in their relationship.

[67] He said that shoveling in the backyard garden took an average of three weeks to make three rows. Following each day of digging it was difficult for him to move. He admitted to running a tiller on one occasion and the next day he could hardly move. He stacked wood three times for friends and family, he could only do it for a couple of hours and then could do nothing for a few days.

[68] He denied the allegation that he pursued the Canada Pension Plan disability pension. He asked for the disability tax credit but he says he is not eligible.

[69] D.M. also denied the various allegations made against him with respect to domestic violence including verbal violence and physical violence against C.F. and K.F. He did admit to saying inappropriate things to C.F. after the separation in May 2015 and admitted that it was immature of him.

[70] Specifically, he admitted to saying that she would be "slutting around down there" when they were together and she applied to St. Francis Xavier University. He says this occurred during a discussion after their separation regarding shared parenting of the children which she refused to consider.

[71] It was in that conversation, and many others, the parties discussed the Child Tax Benefit, now known as the Canada Child Benefit. He said that C.F. told him that she could not survive without it and he said that he would be entitled to a portion of it if there was a shared parenting arrangement. He says she screamed at him on another occasion that "I'm not paying you to be a father".

[72] He said that he was the disciplinarian in the family and that C.F. wouldn't assist him. He said the children perceived him as the "bad guy" and C.F. as the "good guy". For example, when K.F. screamed at him during timeout that he didn't want him as a father, wanted him dead, hated him and so on, C.F. refused to come out of the bedroom to assist.

[73] He recalled on one occasion picking up K.F. and carrying him to enforce a timeout. He had to do this several times. He says on this occasion that he and K.F. are yelling at each other, he was yelling down the hall for C.F. to come and help. She did come out this time and she looked at him as though she was going to become physical with him, as she had done on several past occasions. He says that when she was about two feet away from him she put her arm back to hit him, he stepped out of the way and she fell into the kitchen table. He says K.F. observed this and thought that D.M. had tripped her. He tried to explain what had happened and felt badly that all of this took place in front of the child. He said this was not the first time she had been physical with him but it was the first time in front of any of the children.

[74] He denied ever hitting K.F. and was as careful as he could be. He did admit yelling at the children on several occasions and said he is embarrassed at the type of father he was then.

[75] He said on another occasion they were sitting in bed and C.F. backhanded him so hard in the chest that she left marks on him for days.

[76] To the suggestion that C.F. left the home many times, he agreed this was largely true. He says that any time he attempted to leave, C.F. blocked the doorway as he approached her, that she would push him to the wall or back onto the bed. She then said that if he ever left her, he would never see the children again. He said that he lived in constant fear that C.F. would take the children and not let him see them.

[77] D.M. agreed that it was a bad relationship for several years and he ended it by leaving the home. He moved in with his brother. He began to see the children. He said he felt such a sense of relief in ending the relationship and relief that he was being able to see the children.

[78] He denies ever threatening C.F. in any way during the relationship but he does admit that he has looked for her on several occasions.

[79] Repeatedly throughout his evidence he admitted to bad behavior in his relationship with C.F. and took responsibility for this. He did admit that he often said inappropriate things in response to a threat from C.F. that the children would never see him again.

[80] He denied chasing C.F. with a knife and threatening to kill her but he does recall one evening when she left with the children and he yelled from the door that he would kill himself if he couldn't be with the children. He admitted to saying similar words several times during the relationship. He said that he was hurting, that he was depressed and that he felt his life was a mess.

[81] To the allegation that he grabbed a car seat from C.F. as she tried to leave the home, he admitted that this is true. He said she was trying leave again, saying to him that he would never see them. In response, he grabbed the car seat so she could not take the baby. He denied ever saying anything about starving the baby and eventually he gave C.F. the car seat, she left, yet returned a couple of days later.

[82] He admitted to sending her angry messages during that time when she was out of the home with the children and denied ever asking for money from her or anyone else.

[83] He denied that he was the reason that few people came to visit the home. He said that C.F. refused visits from family and friends because of the state of disarray

of the house. She would run outside and sit in the car with visitors to chat so they could not see the state of the home. He said he enjoyed the company of her family and attended events and camping trips with them.

[84] Regarding the involvement of the Department of Community Services, also known as the agency, and child protection concerns, D.M. agreed that workers visited the home on several occasions. He denied some of the specifics of the timing of some visits and what was discussed, including the suggestion that he threatened to kill agency Casework Supervisor, Harvey Bate.

[85] He said the first visit from agency workers was quickly resolved through a conversation. He said that the second visit took place about two years later when a worker attended at their home asking about C.F.S. and her home schooling. When the worker asked to enter the home both he and C.F. said that there was no reason to come in and C.F. stepped in front of the doorway and blocked it. He said that he and C.F. argued with the worker for a few minutes and she left.

[86] He said that he called the agency and spoke to Harvey Bate. He said things quickly escalated and he admitted to being loud and aggressive. He said he is ashamed of the way he spoke to Mr. Bate on the phone.

[87] On another occasion, he admitted that he was escorted from the Aberdeen Hospital. He said C.F. was ill, they were left in the back halls for hours and he was asking for service to move along quicker. He made inappropriate comments to someone and he was asked to leave with security. Again, he said his behavior was inexcusable and said this is another example of how different he is today. He said he would approach the situation quite differently now.

[88] Ultimately, the agency closed its file. He said that Harvey Bate came to the home one morning when he was asleep. When D.M. awoke, C.F. told him that Mr. Bate had been there and that the case was closed. He did not see Mr. Bate on that occasion. He denied being angry at that time.

[89] He said that he had been loud and aggressive on the telephone with department workers on many occasions. He did not offer an excuse but said that it was always around issues such as moving expenses, a washer for the family or food vouchers. He further said that since the end of his relationship with C.F. he has a good rapport with the department and agency.

[90] As to C.F.'s allegation that he plotted against his own family, strangers and anyone else he felt had done him wrong, he denied this. He did admit that when it came to the welfare of his family, he was sometimes loud and aggressive but all of that has changed since the end of this relationship.

[91] Respecting allegations that his beliefs include astral projection, that we are descendants of an alien race, conspiracy theories that government is keeping disease cures away from people, is try to kill the disabled and similar beliefs, D.M. denied believing any of this.

[92] He said that around 2012 he began meditating to relieve stress and said that meditation can lead a person to a peaceful sense, sometimes called astral projection. He said he stopped meditating after being mocked by C.F.

[93] He said that C.F. was constantly verbally assaulting him by calling him various demeaning names, suggesting that he would never amount to anything, that he was a loser and always will be, that he was a terrible father and she made other demeaning comments.

[94] Regarding the issue of aliens, he explained she saw a show on CNN about genetic descendants, specifically those with blue eyes and blond hair, and he said that he jokingly suggested that maybe he came from another planet as he has these characteristics.

[95] He does admit to being a bit of a conspiracy theorist during the relationship and that C.F. was as well. He said they both made posts on Facebook about this but he said he no longer looks at these sites. He said he used this conspiracy theory mindset to keep occupied while depressed and in a bad relationship.

[96] D.M. denied that he ever used the word "plot" but in conversations with C.F. about others but admits he did say things such as, "I'll get this guy or that guy," and that he will mess someone up. He said he is a different person now, ashamed of himself for thinking and speaking in such a manner in the past and that he would not do so today.

[97] He denied speaking with K.F. regarding antigovernment ideas and suggests that if K.F. believes any of this he would have heard it from discussions between C.F. and D.M.

[98] He confirmed that he had read an article regarding the government attempting to kill disabled people during that time but said he no longer believes this and does not read this information anymore. Regarding cures for diseases, he said that he believes he spoke to the children saying that someday technology can be so advanced that a pill might cure all diseases.

[99] On the other hand, he said C.F. is still involved in antigovernment conspiracy theories and activities, including with Anonymous. He said that C.F. is involved in some positive activities through this group, such as supporting the homeless.

[100] C.F. said that after she left in May 2015, D.M. was hostile and aggressive, threatening and called her repeatedly. To these and other allegations made following the separation, D.M. said he is the one who left. He said he vaguely recalls in a conversation with her after separation that he said he was going to kill himself. He is vague in his recollection because he was intoxicated at the time. He said he rarely drinks and was quite impaired.

[101] To the allegation that on this evening he was arrested under *Adult Protection Act* and admitted to hospital, he said the police came to the residence, asked what was going on and he explained. They requested he attend at the hospital and he agreed. They took him, he was examined by a physician and then driven home by police. He said he told C.F. all of this in a subsequent phone call. He said none of it had to do with the *Adult Protection Act* and the assessment lasted a brief three minutes. He said he was never admitted to hospital and did not need to be signed out. He said that he apologized to C.F. in a subsequent call that evening.

[102] His evidence is supported by the records of the Aberdeen Hospital regarding D.M. which were entered into evidence by consent. The only evidence of his attendance at a hospital in a similar fashion to that described by Courtney was reflected in a record of January 8, 2015 when he was brought to the hospital by the New Glasgow Police, but released shortly thereafter. The record indicates he was brought because he was upset after learning that C.F. was having an online relationship with another man. C.F. agreed that this was the incident to which she referred in her affidavit.

[103] He said that initially C.F. begged him to come home, this eventually ceased and the relationship deteriorated. He told her that he wanted shared parenting for K.F. and K.M. He said he never demanded any money from C.F. He did retain counsel and he determined he would not pursue shared parenting as notice would

have to be given to K.F.'s biological father. D.M. believed the father to have some mental health issues and he decided it was not an appropriate time to seek that remedy as this might also result in K.F. finding out more about his biological father which may not be good for him.

[104] The evidence is replete with the suggestion that D.M. was motivated to seek shared parenting solely so he could obtain a share of the Canada Child Benefit. He maintained that C.F. told him repeatedly that she cannot survive without the full amount of that benefit. He said he could not afford to take the children and could not have them in a shared parenting arrangement without a share of that benefit.

[105] He said that his lawyer drafted an agreement which included that C.F. would have the children 14 days per month, that she would send a small amount of the Child Tax Benefit to him, he recalled \$400 per month, and that this was less than he might be otherwise entitled to. He said he needed that amount of money to help care for the children.

[106] He said C.F.'s response to the offer was rage, that she screamed and yelled at him to, "Get a job, loser," and repeated that she would never, "pay you to be a father." He instructed counsel to lower the offer to \$300 and the response was the same.

[107] He ultimately left his brother's apartment and moved in with, his now-wife, M.M. He continued to have access with K.M. and K.F. although living quarters in the apartment were tight.

[108] He said C.F. was evicted from public housing where she was residing at the time, their two dogs were taken away by the SPCA and the eviction was due to dog feces and urine being in the home.

[109] He admitted there was a two-week gap in his access with the children and said this was because he was making changes to his disability claim which held up his benefit payments. He was not prepared to have M.M. subsidize his parenting costs and until his disability claims were revised, he did not have the children with him. Once he had things straightened out, he began exercising access again was only allowed to have them once per week. At that time, he was going to the food bank and the Salvation Army for assistance.

[110] Ultimately, he and his future wife decided to move and found a home in New Glasgow. They moved in 2015. This was a larger residence and he began to

have the children every Thursday and the last week of each month. He said that M.M. welcomed the children into the home and they began to call her "mom".

[111] To the allegation that he was not supportive of using programs to help K.M. at school, he denied this. As is set out elsewhere in this decision, K.M. was struggling with inappropriate and violent behavior at school for some time. He had been suspended numerous times. D.M. explained that he called the school board to discuss what could be done. He denied saying that K.M. should be pulled from school but said that he wasn't sure if he should go back to school in his circumstances.

[112] D.M. confirmed that K.M. also has osteogenesis imperfecta. He said K.M. was pushing children, punching them and he and the school board was concerned that it was only a matter of time before a child would strike back, causing K.M. to be seriously injured. He said he had no difficulty with anyone visiting regarding the program and had no concerns regarding the state of his home.

[113] He said that K.M. was recommended to return to school by the board but only if C.F. sat with him two hours per day, three days per week for class. That never happened. He said that C.F.'s suggestion that she was unable to participate because the required criminal record check could not be done in time rings false as the board would not have suggested she do so if there was insufficient time to complete the check.

[114] D.M. said that there was another significant event which occurred in early June 2015. C.F. called him, crying, saying her mother been taken to the ICU in Halifax. She said she had to go to Halifax and asked him to take the children. He said this was two days after he had taken the boys for two extra days because C.F. had friends flying in and she wanted to spend time with them.

[115] D.M. said he explained to C.F. that with M.M. being on maternity leave, two adults in one house, a 10-year-old and a baby to provide for, there was no way to he could take the children again until the following access time. He said that C.F. snapped at that point, became aggressive and vulgar, yelling at him and telling him that she would make them pay for this.

[116] Attached to one of D.M.'s affidavits are copies of texts between himself and C.F. respecting this request. These texts do not reflect well on either of the parents. They do confirm D.M.'s explanation of why he did not take the children. The conversation, however, quickly devolved into an argument about finances, the

Canada Child Benefit and motives to seek parenting time for each. There were threats regarding legal proceedings and insults exchanged by both.

[117] He said throughout that week there was a lot of argument on Facebook with C.F. and phone calls from her. He said that Thursday, June 9, 2016, was the last time that he saw the boys prior to C.F. filing her application before the court. It was on this occasion that the children came to his care, exhausted and grumpy and when asked, explained that their mother let them stay up late and do as they wanted.

[118] As described elsewhere in the evidence, M.M. sent the message and articles on Facebook to C.F. about the importance of rest for children and the subsequent reaction by C.F. was described in the evidence of M.M.

[119] D.M. became involved in an exchange with C.F. on Facebook, including making two comments about calling the police about drugs and alcohol. He said these comments were stupid and immature. He said things deteriorated quickly thereafter resulting in the application by C.F. on June 17, 2016.

[120] During these exchanges, D.M. denied he ever threatened to keep the children and that he would not return them to their mother's care.

[121] He said that when he was with C.F. he was not always the best father but he did spend a lot of time with the children playing games, camping and other activities. He admitted that he did not hug K.F. or tell him that he loved him.

[122] He said that since the separation, all that has changed for the better. He said that he has grown closer with K.F. and K.M. and that they express that they miss him very much. He said they called him multiple times a day telling them how much they love and miss him. He hugs K.F. every time they see one another.

[123] As noted earlier, D.M. admitted to yelling and screaming at the children when he was with C.F. but said he no longer does so. He said his home with M.M. is loving and K.M. and K.F. thrive in that environment.

[124] He said that K.F. and K.M. get along very well with M.M.'s children, R. and D. The current conditions of access prevent the children from seeing one another and this has caused harm to the boys.

[125] M.M. described the wedding plans including K.F. being the best man and Rayna being the man of honor and that K.F. was very excited about this. He said K.F. and K.M. refer to R. and D. as their stepsister and stepbrother.

[126] Despite their difficult financial circumstances, D.M. said his time with the children has been very active and fulfilling. They are involved in a lot of low cost activities which he explained in detail in his affidavit.

[127] Respecting behaviors, he said K.F. exhibits good behavior with him and he has only had four timeouts in 10 months without incident. K.F. is very helpful around the home.

[128] As noted elsewhere in this decision, D.M. said that K.F. has expressed some disturbing comments including that he would like to kill someone and that he has dreams of killing people. When they spoke to him they developed a concern that he was exposed to violent video games at the home of C.F.'s friend. He said C.F. confirmed this to him.

[129] Not only was this concerning for the possible connection to video games, D.M. was concerned because K.F.'s biological father is known to have mental health issues. He said he called C.F. to tell her what had been said, she agreed, because of the father's mental health issues, that K.F. should be seen by his doctor just to be sure. He said this never happened.

[130] He said that when he pursued this with C.F. in several telephone calls, they usually ended with C.F. screaming at him that she has it under control and not to worry. One of the last conversations on this issue took place through Facebook on June 16, 2016 and again the conversation did not end well. The next day she filed the application with the court.

[131] D.M. said that K.F. has many behavioral issues at school including hitting, cursing and general bad behavior. He said C.F. was not informing him of this and he found out about these issues when he went to school to talk to K.M.'s teacher and the vice principal. He said both children and C.F.S. had begun a downward slide in school after the separation. He was informed all three have attendance problems as well as behavioral issues.

[132] There is some support for this in the records of the Chignecto-Central Regional School Board which were admitted into evidence by consent. The records confirm that, between October 22, 2015 and October 19, 2016, there were

18 incidents of unacceptable behavior by K.F. in the school. This was during the period of separation and while he was in the primary care C.F. As a result, K.F. was suspended for half a day on two occasions, and suspended for full day on four occasions. His behavior included physical violence, threats, bad language, disrespectful behavior and other similar behaviors.

[133] The records also confirm that on January 26, 2016, the school attempted to reach C.F. regarding a death threat made by K.F. to another student. They were unable to reach her. Several other attempts were likewise unsuccessful. C.F.'s evidence was that she was not working during that time and the school should have been able to reach her.

[134] Regarding K.M., the records show that was physically aggressive with teachers, other staff and students, that he was noncompliant, was using unacceptable language and was swearing and using inappropriate words and was demonstrating anxiety during transitions and entering the classroom.

[135] The records indicate 15 incidents of acceptable behavior by K.M. between September 9, 2016 and November 1, 2016. This resulted in six in-school suspensions and to out of school suspensions. During this time K.M. was in the primary care C.F. and the only access time D.M. had with him was through the SAEP and telephone access.

[136] From the evidence of principal Alison Wilson and teachers Jennifer Archibald and Mark Hale was helpful. They all advised K.M. and K.F. were now doing better in school. Alison Wilson discussed the service put in place, especially for K.M., including Early Intervention, School Plus and others. This was with the participation and cooperation of C.F. D.M. said he would also support and participate in such programming and support.

[137] D.M. said that he was not kept informed regarding the children circumstances at school, did not receive report cards despite requesting them and otherwise was isolated from what was occurring. Until he was granted standing, of course, had no legal right to information regarding K.F. He therefore did not request any records regarding K.F. from the school. Moreover, from the time the interim *ex-parte* order was put in place granting sole custody to C.F., D.M. would be unable to obtain any information directly from the school.

[138] D.M. did admit that the children were late getting to school on occasion when in his care but for the most part he said he got them to school on time. He

maintained that shared parenting would ensure his input regarding school activities, performance and discipline issues.

[139] D.M. said that he is particularly close with K.M. This was especially so when C.F. was away for up to five and six days at a time. He said K.M. never left his side and in fact he allowed K.M. to sleep in bed with him. He believes K.M.'s behavioral issues are in part due to his lack of contact with D...

[140] D.M. also expressed concerns because K.M. has a club foot and requires particular footwear which he said C.F. is not supplying. He said his attempts to communicate with her about this were unsuccessful.

[141] He also alleges both children have no underwear and when, at Christmas of 2015, C.F. provided some he said K.M. was very proud to have underwear and showed them to D.M. There is some confirmation of this in the school records that the children attended school without underwear on at least one occasion.

[142] D.M. said that C.F. has failed to make or keep appropriate appointments, particularly for K.M. respecting his hearing and eyes. He said these are serious concerns related to his osteogenesis imperfecta and, while not life-threatening, do speak to C.F.'s ability to address the children's needs.

[143] He said that while in C.F.'s care, K.M. has suffered three significant accidents. He tripped over clothing and fell down the stairs, fracturing his skull. He tripped again on the stairs and was taken to the emergency room by his mother but he said she did not stay as she heard there was to be a long wait. He also broke his wrist on another occasion. He had concerns that C.F. may be unable to properly address the circumstances given K.M.'s medical condition.

[144] He said that when K.M. arrived for access on one occasion, he was suffering from a serious eye infection that he noticed when he came home from school one day. M.M. took him to the walk-in clinic. He said that C.F. was given the prescriptions for drops and an antibiotic and that these would be reimbursed by the Department of Community Services on presentation of receipts. Despite this, he said C.F. only obtained the antibiotic and not the eyedrops.

[145] D.M. said that C.F.S.'s behaviors changed from being joyful to withdrawn after the separation. He said this may be normal for a teenager but he is also concerned because her school attendance is poor.

[146] As an example of his concern, he said the C.F. called one day to ask if he could take the two boys for two weeks and she would give money to assist with food. She said she was going to take C.F.S. out of school for two weeks, travel to Alberta and help with the cleanup from the forest fires.

[147] He describes C.F.S. cutting herself while he was living with her and C.F. D.M. was concerned that C.F.S. was smoking marijuana and her behavior was strange. When he discussed this with C.F., he said that she agreed and was concerned about marijuana and possibly shoplifting behaviors. On one occasion, he could smell marijuana on C.F.S. when she returned after walking with a friend to the store around Christmas of 2015.

[148] After discussing things with C.F.S. and laying down ground rules, including that she would be grounded when she came to his home for further visits, she never returned to his home. While he understood that C.F.S. is not his child and he has no rights of access with her, he said is concerned about her and what it said about C.F.'s parenting of the two boys.

[149] D.M. said that when the order was amended to permit additional access time under the supervision of E.F., C.F.'s grandmother, including two daytime visits per week of up to eight hours per visit, he did exercise such access. He said, however, that E.F. was an inappropriate supervisor at times.

[150] D.M. describes returning from a visit to the park with the children, when they arrived, K.M. began to cry uncontrollably and said he didn't want his father to leave. This went on for approximately five or more minutes. E.F. became very frustrated and began screaming that she could not take this. That was the last supervised access visit with E.F. This took place in late August 2016.

[151] He thereafter refused to participate in supervised access with E.F. He did not want to put the children or E.F. through a similar stressful situation. He was also concerned that E.F. was insisting the access take place in her home and he felt very uncomfortable there given the relationship with C.F. He was worried about being confronted by family members in that home.

[152] D.M. discussed his access through the SAEP. The records from that program were entered into evidence by consent and contain reports from the access supervisors respecting the interaction between D.M. and the children as well as any conversation or activities in which they engaged. All these recordings were admitted for the proof of the truth of their contents and where they record the

interaction between the father and children, I accept them as such. Where they record the statements of the children, I admitted that evidence though I do not necessarily accept that what the children said accurately described what occurred outside of the SAEP.

[153] In the SAEP records of November 2, 2016 K.F. told his father that both he and K.M. had missed school that day, they missed their drive and hadn't had anything to eat for supper. The visit took place between 6:30 and 7:30 PM.

[154] During several visits, including that one on November 2, 2016, K.M. ran to his mother at the end of the visit and whined that he missed D.M. to which C.F. replied that she knew this. There are various recordings of affectionate touching, hugs and behaviors by both children toward D.M.

[155] The notes record that K.M. wanted more hugs from his father and that he hugged M.M. and her daughter when he saw them at some visits when they arrived to pick up D.M.

[156] During the November 2, 2016 visit the supervisor noted that she could see K.M.'s bottom and asked him if he had underwear on. He replied that he did not. When asked why, he said nothing. This is consistent with the evidence of D.M., who said that, when the children were in his home for access, they usually did not arrive in underwear.

[157] On October 26, 2016 K.F. again said that they'd had no supper that day. In the same visit, K.F. was noted to be talking about killing his baby and now it's dead. This was when he was playing with a baby doll. This is consistent with the evidence of D.M. regarding comments made by K.F. describing thoughts and dreams of violence.

[158] There are various references in those records of comments the children made regarding poor behavior in school, suspensions and other problems that they experienced. This is consistent with the records from the school.

[159] Noted in the records as well is the use of foul language by K.M. on several occasions and a threat by K.M. to D.M. that he was going to kill him.

[160] Overall, the records of the SAEP are positive, describing appropriate and affectionate interactions between D.M. and both children. Other than some of the

reports by the children about matters outside of the program, there were no critical incidents identified nor any concerns regarding D.M.'s parenting.

[161] D.M. was granted reasonable telephone access with K.M. and K.F. on July 29, 2016. Since then C.F. had her phone disconnected and he has only had a few telephone contacts since then. Prior to it being disconnected, D.M. said that the boys had called him four to five times on some days.

[162] D.M. said that C.F. should be aware that the Department of Community Services might provide money for a telephone given that she has a child with a significant disability. This was the case when he and C.F. lived together regarding his own and K.M.'s disabilities.

[163] D.M. was permitted to record the calls under the order of July 29, 2016 and said that when he calls and C.F. picks up, he hears her say to K.M., "You don't have to talk to daddy if you don't want to," or, "Just tell him that you are busy." On several occasions, he has called and was told by C.F. that she would have K.M. and K.F. call back. This rarely occurred. No transcripts or recordings were introduced into evidence.

[164] Given the late filing of a second affidavit of C.F.'s sworn January 11, 2017 and filed the same date, I permitted counsel for D.M. to elicit direct evidence from him in response to the allegations made in that affidavit.

[165] C.F. said that a threat was made by D.M. towards Dr. Logan and the staff at the IWK Hospital, school staff, Early Intervention staff, Harvey Bate and others at the agency.

[166] C.F. also alleges that D.M. threatened to kill Harvey Bate and threatened to kill her should she attempt to leave him and take the children. She said that D.M. brandished a knife at her to back up the threat towards her. She said that on another occasion he struck K.F. in the face in anger after screaming at him.

[167] C.F. again alleged that D.M. is not totally disabled from work and he refused to look for work. She said that when he is desperate for money, he does odd jobs and yard work, maintenance, gardening work or shoveling for cash and he does not use the funds to benefit the family. She said various doctors refused to sign any confirmation that D.M. is totally disabled.

[168] In response, D.M. said, with respect to the allegation that he assaulted Dr. Logan, he was at the hospital for six hours. He was upset and spoke to a nurse about his frustration. Five minutes later he apologized and denied assaulting anyone. He later met with Dr. Logan and has met with Dr. Logan since. He attended all, except two, appointments relating to K.M.'s clubfoot. There were approximately 35 meetings in total and since the first incident he describes above, he said there were no incidents or concerns.

[169] To the allegation that he was aggressive, threatening toward C.F. and the children, he denied all of this except those admissions he made earlier with respect to C.F.

[170] To allegations that he was threatening toward anyone at the school, he denied this, though he does admit that he was aggressive at times. Similarly, he denied any threats to Early Intervention staff but does admit to aggressive behavior. His answer respecting Harvey Bate is the same; he was aggressive but not threatening.

[171] He denied any threats of suicide or that he is motivated by a share of the Canada Child Benefit. In fact, he denied any allegation respecting him demanding money from C.F. Similarly, he denied that he or his wife refused to take the children unless they were paid by C.F. at any time.

[172] In cross-examination, he admitted that he would be seeking a share of the Canada Child Benefit if he was awarded shared custody of the children.

[173] Respecting his disability, he repeated his evidence that he was on a provincial disability benefit. He admitted, as he had done before, that he was involved with some yard work and plowing but it affected him for days afterwards. He said that during his relationship he used all his disability money for family expenses to support the children.

[174] He agreed that his wife was pregnant and on social assistance benefits and that she relies on this. He agreed that the Canada Child Benefit was a source of friction between him and C.F. He agreed that she maintained she needed this benefit to support the children.

[175] He confirmed that they separated in May 2015 and that he did not file any application though he did go to Family Court to do so. He did not complete the

application at that time. He filed his application in response to the application filed by C.F.

[176] D.M.'s evidence was that he had an income of approximately \$10,000 in 2016 and had no other source of income.

[177] When asked about medical records before the Court by consent of the parties and a questionnaire where he responded to the inquiry, "Do you have thoughts of suicide?" he replied, "Yes," he explained that this was when he was together with C.F. and he had since removed the stress from his life. He was no longer thinking of suicide, he is not receiving counselling and has felt well.

[178] He admitted that during the relationship he did yell and scream that he couldn't take it anymore. He had threatened suicide during that time and the children were somewhere in the house, though he was unsure if they heard what he said.

[179] When asked by the court regarding the allegation he had been aggressive and threatening to the 4Plus program board, he explained that he had met with them and admitted to being somewhat aggressive regarding K.M. One board member suggested that K.M. would wind up in the "country club in Thorburn," a reference to the local correctional facility, and he replied that board member should stop saying such things.

[180] To the allegation that he had jumped out of a vehicle while it was moving, he denied this. He said that if he had done so he would have been severely injured given his medical condition. He does recall asking for the vehicle to be stopped so he that he could exit.

[181] He denied that he ever slapped either child in the face or otherwise threatened them. He similarly denied any physical assaults or attempts to assault C.F.

[182] Respecting the allegation that he yelled and screamed at the children, he had already admitted this but explained further that during the first three years of his relationship with C.F. he was a new father figure and was unsure of his role. He learned his behavior from C.F. as she yelled at the children. From years four to six of the relationship he began yelling as well. He admitted that he was too loud and that there was too much yelling from both himself and C.F.

[183] He admitted to yelling at K.F. and K.F. yelling at him from about the fourth to the seventh year of the relationship but said that he also employed timeout and talking to K.F. to try to resolve issues.

Harvey Bate

[184] Harvey Bate, Casework Supervisor for the agency, provided evidence in the matter. He has been employed for 28 years with the agency and has spent 14 years as a Casework Supervisor. He testified that he knows the parties and children from contact through the agency.

[185] He confirmed that the two collections of material from the Department of Community Services presented in evidence were business records and they were admitted into evidence by consent.

[186] Harvey Bate confirmed that there were five referrals to the agency respecting C.F. and D.M. The children were never apprehended and there were never any court proceedings initiated. All five referrals were closed.

[187] He said that he met D.M. for the first time in 2008 at his home in Sylvester. This interaction was not recorded in the records before the court. He said the last time he saw him was in 2010.

[188] Harvey Bate was clear in his evidence that D.M. never threatened to harm or to kill him.

[189] Harvey Bate did confirm that D.M. was aggressive, in being loud, confrontational and coming toward him at times. He never felt concerned enough to call the police. He described D.M. as particularly aggressive in 2008. On that occasion, he left the property after speaking to D.M. as he felt uncomfortable. He also described D.M. as cooperative at times.

[190] Harvey Bate said D.M. calmed down at a later point and could speak with him in an appropriate fashion.

[191] Harvey Bate also confirmed that on June 16, 2016, a day before she filed this application, C.F. made a referral to the agency. He confirmed that on June 17, 2016 D.M. made a referral as well. Neither referral was investigated.

[192] In cross-examination Harvey Bate testified that in 2008 during his conversations with him, D.M. described the government as bad, being against him and was trying to take away his pension. He also said he felt intimidated on the first visit, left as described above but never felt uncomfortable thereafter.

[193] Harvey Bate did agree that D.M. was vulgar on the phone with him and swore at him. This was admitted by D.M. in his evidence.

[194] Respecting an incident at C.F.'s residence on [...] Street in New Glasgow, Harvey Bate said he was in the company of another worker and he was invited in but she was told to remain outside. There was no physical confrontation nor was a door slammed. He was unable to say if D.M. was present in the home at the time.

Allison McNeil-Wilson

[195] Allison McNeil-Wilson, the principal of New Glasgow Academy, provided evidence in the matter. Because no affidavit or will say statement was filed and notice of calling the witness was made at an extremely late date, I limited the evidence of her and the two teachers, Jennifer Archibald and Mark Hale, to the children's current academic and behavioral issues at school. As noted earlier, the records from the Chignecto-Central Regional School Board for the children were admitted into evidence by consent.

[196] Allison McNeil-Wilson testified that K.M. is in grade primary and K.F. is in grade four.

[197] During the school year of September 2016 to June 2017, K.F.'s attendance was good and he was doing well. She describes him as kind, compassionate and working hard as an average student. He was receiving support to address math and writing deficiencies and that his behavior was currently great and that it had come a long way from what it was.

[198] Regarding K.M., his circumstance was more complex. He had severe behavioral problems the year prior and the school was working with C.F. on these. He was receiving Early Intervention assistance and other services, including Four Plus, to support him.

[199] From September through the fall he exhibited emotional outbursts, was noncompliant, violent and causing problems for the other students. Comparing September to January, he was a totally different child. She described that he was

no longer a problem, is extremely bright and is performing well beyond average expectations in reading and math.

[200] She described the plan for assisting him was formulated in August when the school met with C.F. They had monthly meetings since then and the plan remains in place today with modifications. Services have reduced over time. She said that in 17 years of education she had never seen such a drastic improvement in a child's behavior.

Jennifer Archibald

[201] Jennifer Archibald is the teacher in the P1 split class and K.M. is one of her students. She described him as very bright and above average in language, writing and math.

[202] She similarly describes a rough start to his behavior but that he had adjusted. She described him having no behavioral issues since the first part of November 2016.

Mark Hale

[203] Mark Hale is a Grade 4 teacher and has K.F. as a student. He describes K.F. as happy and liking school, being social and helpful. He is an average student.

[204] He described that from September 2016 to the date of the hearing, K.F.'s behavior had improved and he was satisfied with that.

A.E.

[205] A.E. provided evidence by way of an affidavit and *viva voce* testimony at the hearing. She said she is 24 years old and has known D.M. for over three years. She is in a relationship with his brother, C.M. and they have been living together for three years.

[206] During that time, she said she has observed D.M. with both children, as well as C.F.S., on numerous occasions. She had seen them together at the home of her mother, V.M., at her own residence and at the residence of M.M. Her observation is that D.M. is a wonderful and loving father and puts his children's needs first. She and D.M. discuss the children and their needs including their schooling, health

and mental well-being. Many of these conversations took place after D.M. and C.F. separated.

[207] A.E. said that she was asked by D.M. to provide supervision for his access with the children. She eventually spoke to C.F. about this and during the conversation said that C.F. wanted those visits supervised saying, "It is not that I feel he is going to harm the children" but was concerned he might say something inappropriate. She said she spent many hours with D.M. and the children and noted he is always cautious about anything he said around them and has never heard anything inappropriate.

[208] In cross-examination, she testified that she had never seen D.M. be short, mad or aggressive with the children or swear at them. She had heard him raise his voice with them.

C.F.

[209] C.F. provided evidence by way of two affidavits and her *viva voce* testimony at the hearing. In her first affidavit, sworn June 17, 2016 and filed on the same day as her application in the matter, she described being in an approximate nine-year relationship with D.M. beginning in the fall of 2007 and ending in May 2016.

[210] She said that initially the relationship was fine, they moved in together and about three years later things became difficult.

[211] She said D.M. never had a job during the relationship and didn't want her to work outside the home. At first, she believed it was because he didn't think it made economic sense but then realized that he wanted to control her by keeping her in the home. She said it appeared fine for her to clean homes for extra money but not to find a job where she would be interacting with people. Whenever she suggested working or going to school or suggested he do the same, he became hostile, aggressive and it would lead to an explosive argument.

[212] She described their finances being a nightmare while they were on social assistance. Family was always pitching in to help and that every day was a struggle with her making efforts to figure out a way to purchase the next meal, borrowing food from family or going to the food bank.

[213] She said that, though D.M. claimed he was unable to work because of a disability, she believed it was untrue. She said he did odd jobs like yardwork and

maintenance, digging and tilling gardens and shoveling snow when there was no money for things he wanted. She said he described that he, "didn't want to have someone telling me what to do because I can't stand people". She said he maintained benefits through the Department of Community Services by claiming he could not find a doctor when in fact his own doctor refused to confirm his disability and he could not find any physician to do so for him.

[214] She said that K.M. was born with disabilities. She described the first years as being very overwhelming for the family, living in a home that was unsafe until they finally moved to a safe home elsewhere in New Glasgow. K.M.'s treatments were underway and things began to settle. She began to talk about work or school for each of them and began applying for jobs. This upset D.M. including when she applied to university and was accepted. She said when the letter of confirmation arrived D.M. was furious and said, "If you plan on going down there every day to slut around, you're not going".

[215] C.F. said at this point she decided to leave D.M. but had to figure out how and when. She said she's left several times in the last four years, taking the children to her grandmother's, mother's or sister's homes for a few days until D.M.'s threats of suicide or threats of harming her became too much and she returned. She did so to avoid putting the children through a separation.

[216] She said that following an especially explosive fight in 2010, D.M. grabbed a knife from the kitchen and ran through her their yard screaming that he was going to kill himself if she left him and that he would kill her if she left with the children.

[217] She said that when K.M. was an infant and nursing, she tried to leave, D.M. grabbed the car seat from her and refused to give the baby back. He threatened self-harm through starvation if she left. She said he'd told her on numerous occasions that he will hunt her down and kill her and destroy her life if she ever took the children from him. She said this was done face-to-face, through messages and over the phone.

[218] She described D.M. as always aggressive and hostile toward her and the children but only violent toward her or the children once or twice. She said there was an incident when he hit K.F. in the face after chasing him down the hall at the end of their relationship. D.M. claimed this to be an accident, she confronted him and pushed him out of the way and into a wall, away from K.F. He swung at her and hit her jaw. She took the children and left that day.

[219] She said D.M. was always physical with K.F., never hitting but grabbing him roughly, sometimes leaving marks on his arms and shoulders. This caused many fights between them. She described him as very controlling, saying that he sent messages on Facebook to her family in the first year of the relationship, informing them that if they were not going to give money to them and support them financially, they needed to go away. She said no one in his or her family could visit without calling first and if they arrived unannounced he would turn them away. None of this was corroborated by her family.

[220] She described visits from the Department of Community Services on a few occasions. The first time, D.M. refused to let the workers in the home, was aggressive and vulgar with them and they returned with Harvey Bate, Casework Supervisor. She said that D.M. refused to let Harvey Bate in to the home and threatened to kill him if he returned.

[221] She describes another incident when they moved to Westville and Harvey Bate came to their home to follow up with the family. D.M. was sleeping and she describes sneaking Harvey Bate into the home to let him see C.F.S. and K.F. K.M. has not been born at that time. After Harvey Bate left, D.M. awoke and was very angry when he realized what it happened.

[222] She maintained in her affidavit that there were numerous records on file with the Department of Community Services, schools and the Aberdeen Hospital describing D.M. as being aggressive, vulgar, hostile and making threats to anyone who disagreed with him. She noted he was removed from the Aberdeen Hospital by security on one occasion because he complained the emergency room staff were not fast enough for him.

[223] She said that she heard D.M. plot against his own family and strangers or anyone else he felt wronged by during the final few years of their relationship. She said he began to get involved with astral projection, claiming he could give himself an out of body experience. He claimed to be a descendant of an alien race and that's why he felt he was not of this world. He hated government and law enforcement and his attitude worsened over time. He claimed the government was trying to kill everyone, that they had a pill to cure all diseases but wouldn't give it to people. He claimed police were conspiring with government get rid of people who are disabled. She claimed that he said these things to her, family members and school staff. He tried to convince her to flee with him and the children when the Department of Community Services became involved.

[224] After separating in May 2015, C.F. said D.M. was hostile and aggressive, repeated the same threats as before and called repeatedly for days and she refused to speak with him. One night he called screaming and crying that he had slit his wrists and was stabbing himself. She called the police to go to the home. She said the police arrested him under *Adult Protection Act* and admitted him to hospital.

[225] She said when he realized that she was not returning to the relationship he began demanding one half of the child tax credit. She refused as she would not have money to support the children. He then refused to take the children for some time. He eventually began to take them one day a week for a few hours. He again stopped taking them and demanded money.

[226] She stated he eventually began taking the children again, on Thursdays after school and the last week of each month and again made threats to keep the children and seek full custody so he could have the child tax benefit. She said these visits with D.M. were disruptive to the children's schooling as noted by their teachers.

[227] She and D.M. engaged in several meetings with the school and anytime he was present he became hostile and aggressive, refusing any supports from the school, demanding K.M. be removed rather than allowing Early Intervention to provide resources to the children because that would mean workers would have to enter his home.

[228] She said in the last few weeks prior to making her application on June 17, 2016, D.M. had become increasingly irrational, sending messages to her on Facebook which were complete fabrications of things that were alleged to have happened or misrepresenting what had happened in the past. She alleged he threatened to call the police and tell them that she gives drugs and alcohol to the children and that she made threats to him in phone calls. She said these are just a few examples of what he said and did.

[229] It was based on this affidavit that I granted an interim *ex parte* order of sole custody to C.F. and no access to D.M. That interim order has been modified several times since.

[230] In her second affidavit, sworn January 11, 2017 she made further allegations. I note this affidavit was permitted to be entered although it was filed well beyond the filing date required by the court. In doing so, I permitted counsel for D.M. to call evidence in direct to respond to the affidavit.

[231] In this affidavit, C.F. made many of the same allegations she made in her first. She said that D.M. was bullying and aggressive, including threatening Dr. Logan and the staff at the IWK Hospital, staff and school, Early Intervention as well as Harvey Bate and others at the Department of Community Services. She said this interfered with the children's medical and counselling treatments.

[232] She said that specifically, D.M. threatened to kill Harvey Bate and herself should she attempt to leave him and take the children. On this occasion, she said that he brandished a knife from the kitchen to back up his threat to her.

[233] She said that on another occasion he struck K.F. in the face after screaming at the child. This appears to be the same allegation made in her first affidavit.

[234] She maintained that, when D.M. had access with the children one day a week and the last weekend of each month for a period of about five months, he demanded money for those days and subsequently both he and his partner M.M. refused to take the children unless they were paid for each day. She said that on occasion she did pay D.M. to see him maintain contact with the children.

[235] In cross-examination, C.F. confirmed that K.M. has osteogenesis perfecta and had a club foot which is not corrected. Respecting his foot, she confirmed all treatments were at the IWK and the last treatment was in 2015. With respect to his bone condition, no treatment is required though there is consultation with his family doctor and the IWK. Otherwise, K.M. and K.F. are in good health.

[236] Respecting the SAEP note of November 2, 2016 in which K.M. said that he misses his father and C.F. is said to have acknowledged this, she confirmed it happened on more than one occasion and maintained that it was occurring less frequently now.

[237] When asked about discussing improper things with the children, such as the involvement of the court, as reflected in the SAEP notes of October 19, 2016, she explained that this may be due to the end of access and the *ex parte* order when she explained to K.F. that the judge had stepped in to make a decision. She said this was her only discussion with K.F. about the legal proceedings.

[238] With respect to the reports from access supervisors that K.M. was well-behaved until about five minutes prior to leaving, she agreed this occurred on many occasions and was a common event because K.M. doesn't like change.

[239] Respecting K.F.'s comments in the SAEP notes dated January 4, 2017 that he was soon going to visit the dad's house, C.F. said the K.F. frequently asked about this but that she didn't discuss it with him.

[240] When asked about the fact that the school and Early Intervention reported that they had tried to reach her many times and had no success, C.F. said that both had the wrong telephone number for her.

[241] When asked about K.M.'s violent and serious behavioral issues, she agreed these existed before and for about eight months after separation. She confirmed D.M. was not part of the decision to remove K.M. from Four Plus program and that K.M. did not return to the program in 2016. She claimed she had no time to meet the requirements set out that she pass background checks before school ended that year.

[242] She was asked about her allegation that when agency workers attended at the home on the first occasion, she stated that D.M. refused to let the workers in the home, was aggressive and vulgar and they returned with Harvey Bate, whom D.M. also refused to let in and threatened to kill if he returned. She was referred to the evidence of Harvey Bate and the records of the agency. She admitted it was she who asked the worker to wait outside and she was worried that D.M. would wake up and flip out. She agreed that on May 13 of 2014, she and D.M. cooperated with the agency when it was investigating the referral.

[243] Respecting the referral to the agency and July 7, 2015 regarding the living conditions at the home, she explained that she and D.M. had been evicted from their original home and were living there. She said that D.M. lived there last, that she left on May 20 or 22, 2015 as he refused to leave the home. She was only back to pack her belongings.

[244] She confirmed from the same records that the incident of October 27, 2007 when she expressed concern and fear, it was fear of S.B., not D.M.

[245] When asked about the affidavit of J.M. in which J.M. testified that she drove K.M. to drop him off at C.F.'s home on two occasions and it was difficult to get him to go into the house, that he was fussy coming and going, and that K.M. was crying to go with his father, C.F. agreed.

[246] Respecting the evidence of V.M., C.F. confirmed that she was at their home frequently in the first half of the relationship but only for birthdays in the second half.

[247] C.F. denied asking V.M. to try to persuade D.M. to have another baby with her. She does agree that she discussed such a prospect with D.M. in the last year of the relationship.

[248] When questioned about the testimony of M.M., C.F. said that there were no problems up to June 9, 2016 and they were civil with one another. She held M.M.'s baby and when D.M.'s sister died, M.M. cooperated in giving her a memento of his sister. She also agreed she took M.M.'s daughter to see Christmas lights in 2015.

[249] When asked about the incident on June 9, 2016, C.F. said that M.M. sent her articles regarding sleep and children. She called D.M. and M.M. answered. She admitted to calling her a bitch and told her not to call or message her again. She said she was at the hospital at the time with her mother who was very ill in intensive care. They argued and she found this very stressful. She admitted there was another name she possibly called M.M. at the time.

[250] C.F. agreed that in her affidavit of June 17, 2016 she said in error that D.M. swung and hit her in the jaw and she intended to correct this misstatement. She confused this with another incident. C.F. denied that she ever struck D.M.

[251] When asked about an incident from December 19, 2015 when she and D.M. were discussing in texts the admission by C.F.S. that she had smoked marijuana, C.F. admitted that C.F.S. told her that a friend, S., who C.F. met online, purchased alcohol for her. S. was someone she's known for four years online and met in person when he stayed in her home for about 2 1/2 weeks prior to the incident. While she was in Halifax at a funeral she discovered that S. had allowed C.F.S. and some of her friends to drink and smoke weed. When this occurred, she contacted D.M. to discuss it as he is C.F.S.'s father figure.

[252] C.F. went on to confirm that there were multiple communications between her and D.M., she sought help in making decisions for the children including discussing the introduction of K.F. to his biological father. There was also communication between them, she confirmed, discussing concerns raised by D.M. about K.F. speaking about his dreams of killing someone.

[253] She agreed there were text communications between the parties in which they adjusted their schedules from time to time, she offered access to D.M. up to and including May 2015. They continued to discuss concerns such as K.F.'s use of foul language.

[254] She also confirmed texts between her and D.M. discussing the fact that K.F. claimed to want to come to live with D.M., C.F. was frustrated with K.F.'s bad behavior, provided him with multiple timeouts until she finally told him to pack his stuff to go to D.M.'s. This upset K.F. very much. She said this occurred on only one occasion.

[255] She confirmed that she and D.M. exchanged texts as late as March 5, 2016 discussing changing the access arrangement to an extra weekend each month for D.M. rather than adding more access days during the week.

[256] The communication continued with respect to the children, including texts on March 29, 2016, C.F. was asking for D.M.'s input regarding her decision to pull K.M. out of school, indicating that he may be back in school in September 2016.

[257] In other texts in early May 2016 she discussed K.M. and the Four Plus program. She expressed concern that she might not complete the criminal record check required before the end of the school year so she could attend classes with him.

[258] She confirmed that on May 10, 2016 she requested D.M. to have the children for extra time and he agreed. On May 23, 2016, she agreed that she requested D.M. have the children a day early and keep them a day later than the original access time planned.

[259] When asked about the allegation that D.M. had been aggressive and threatening in the meeting in May 2016 with the Four Plus board, she confirmed that one member of the board referred to her child winding up in the "country club in Thorburn", meaning the jail. She confirmed that both she and D.M. told that the board member not to repeat that comment.

Applicable Law

Maintenance and Custody Act

[260] The governing legislation in this circumstance is the *Maintenance and Custody Act* 1989 RSNS c.160 as amended. The beginning point in any analysis under that Act is Section 18 (5) which directs that

In any proceeding under this act concerning the care and custody or access and visiting privileges in relation to a child, the court shall give paramount consideration to the best interests of the child.

[261] Section 18 (8) further directs that

In making an order concerning the care and custody or access and visiting privileges in relation to a child, the court shall give effect to the principle that a child should have as much contact with each parent as is consistent with the best interests of the child.

[262] In determining what I should consider in assessing what is in K.F.'s and K.M.'s best interests, Section 18 (6) sets out some of the relevant considerations to be considered, though this list is not exhaustive. The relevant considerations under this subsection include the following:

- (a) the child's physical, emotional, social and educational needs, including the child's need for stability and safety, taking into account the child's age and stage of development;
- (b) each parent's... willingness to support the development and maintenance of the child's relationship with the other parent...;
- (c) the history of care for the child...;
- (d) the plans proposed for the child's care and upbringing...;
- ...
- (g) the nature, strength and stability of the relationship between the child and each parent...;
- (h) the nature, strength and stability of the relationship between the child and each... grandparent and other significant person in the child's life;
- (i) the ability of each parent... to communicate and cooperate on issues affecting the child;

[263] In this matter, there are allegations of family violence and as a result, I must consider section 18(6)(j) as follows:

the impact of any family violence, abuse or intimidation, regardless of whether the child has been directly exposed, including any impact on

(i) the ability of the person causing the family violence, abuse or intimidation to care for and meet the needs of the child, and

(ii) the appropriateness of an arrangement that would require co-operation on issues affecting the child, including whether requiring such co-operation would threaten the safety or security of the child or of any other person.

[264] Family violence is defined in Section 2(da) as follows:

“family violence, abuse or intimidation” means deliberate and purposeful violence, abuse or intimidation perpetrated by a person against another member of that person’s family in a single act or a series of acts forming a pattern of abuse, and includes

(i) causing or attempting to cause physical or sexual abuse, including forced confinement or deprivation of the necessities of life, or

(ii) causing or attempting to cause psychological or emotional abuse that constitutes a pattern of coercive or controlling behaviour including, but not limited to,

(A) engaging in intimidation, harassment or threats, including threats to harm a family member, other persons, pets or property,

(B) placing unreasonable restrictions on, or preventing the exercise of, a family member’s financial or personal autonomy,

(C) stalking, or

(D) intentionally damaging property,

but does not include acts of self-protection or protection of another person;

[265] There are other factors listed in this subsection, such as reference to cultural, linguistic, religious and spiritual upbringing, heritage and the views and preferences of the child, all of which I find inapplicable in this circumstance and I will not consider them.

Case Law

[266] The analysis of K.F.'s and K.M.'s best interests, however, does not end with the factors set out under Section 18 of the Act. I must also look to what other courts have said in relation to the determination of a child's best interest. The leading decision in Nova Scotia respecting that analysis is *Foley v. Foley*, 1993 CanLII 3400 (NSSC), a decision of Goodfellow J. I note that this decision predates amendments to the Act which set out the factors contained in section 18 (6) and I find that the so-called "Foley factors" have been largely subsumed by those amendments. That said, *Foley* supra remains a helpful analysis of the test of best interests. The following are a list of those factors which are relevant to this case:

...

In determining the best interests and welfare of a child the court must consider all the relevant factors. The diversity that flows from human nature is such that any attempt to compile an exhaustive list of factors that could be relevant is virtually impossible.

Nevertheless, there has emerged a number of areas of parenting that bear consideration in most cases including in no particular order the following:

1. Statutory direction ...;
2. Physical environment;
3. Discipline;
4. Role model;
- ...
8. Time availability of a parent for a child;
- ...
11. The emotional support to assist in a child developing self esteem and confidence;
12. The financial contribution to the welfare of a child.
13. The support of an extended family, uncles, aunts, grandparents, etcetera;
14. The willingness of a parent to facilitate contact with the other parent. This is a recognition of the child's entitlement to access to parents and each parent's obligation to promote and encourage access to the other parent. ...;
15. The interim and long range plan for the welfare of the children.
16. The financial consequences of custody. Frequently the financial reality is the child must remain in the home or, perhaps alternate accommodations provided by a member of the extended family. Any other alternative requiring two residence expenses will often adversely and severely impact on the ability to adequately meet the child's reasonable needs; and

17. Any other relevant factors.

The duty of the court in any custody application is to consider all of the relevant factors so as to answer the question.

With whom would the best interest and welfare of the child be most likely achieved?

The weight to be attached to any particular factor would vary from case to case as each factor must be considered in relation to all the other factors that are relevant in a particular case.

Nevertheless, some of the factors generally do not carry too much, if any, weight. For example, number 12, the financial contribution to the child. In many cases one parent is the vital bread winner, without which the welfare of the child would be severely limited. However, in making this important financial contribution that parent may be required to work long hours or be absent for long periods, such as a member of the Merchant Navy, so that as important as the financial contribution is to the welfare of that child, there would not likely be any real appreciation of such until long after the maturity of the child makes the question of custody mute.

On the other hand, underlying many of the other relevant factors is the parent making herself or, himself available to the child. The act of being there is often crucial to the development and welfare of the child.

Analysis

[267] This case is not about which of these parents love the children more. It is quite clear from all the evidence that both C.F. and D.M. love K.M. and K.F. very much and each wants what is best for the children. While they certainly have different views of what is in the children's best interests, this is not a competition about love but rather an assessment of all the evidence in determining what parenting arrangement will serve the needs and best interests of the children.

[268] Each of the parties brings strengths to their parenting of the children. I find the evidence is clear that C.F. has a strong relationship and bond with both of her children and, though some of her behaviors leave much to be desired and will be discussed later in this decision, she generally provides a positive role model for them. This is particularly so since separation and demonstrated in the work that she has done, for example, with Early Intervention and the school respecting K.M.'s behavioral problems. She is to be commended for that work and this, among other evidence, makes clear commitment to addressing the needs of the children.

[269] Likewise, I find that D.M. is a devoted and loving father to both children and, despite many of the missteps he made both during the relationship and after it ended, I accept that his behavior has changed for the better. I find that he was, with certain obvious exceptions, a positive role model for the children during the relationship. I find further that, since the end of the relationship, he has made significant changes in his behaviors, communication and ability to improve that modelling for the children and to focus on their best interests.

[270] There was much evidence from C.F. respecting alleged behaviors of D.M. both during the relationship and after it ended which would suggest significant mental health problems and that he would otherwise not be an appropriate person to be regularly parenting the children. For example, her allegations respecting his belief in alien ancestry, astral projection, violent behaviors within the home, bullying, intimidating and threatening behavior towards the agency workers, Early Intervention staff, Four Plus board members and school staff would be, if accurate, a great concern to this Court.

[271] In fact, many of these allegations, made in her first affidavit, gave rise to the interim *ex-parte* order of sole custody and suspension of access for D.M. The allegations are so serious that I was persuaded that there was no other way to ensure the safety of the children in the short term other than by the extraordinary remedy of an *ex-parte* order.

[272] That said, it is first important to note that D.M. has accepted responsibility for many of these allegations and behaviors, explaining that they were the result of living in an extremely unhappy and stressful relationship with C.F. He has disavowed those beliefs, statements and behaviors. This applies to conspiracy theories regarding government, his belief that disabled people were being targeted, his belief that others, including government, were out to get him and other similar beliefs expressed. In acknowledging and disavowing these, he certainly made admissions against his own interest and, in assessing the evidence, I accept his evidence in this regard.

[273] Respecting certain of the other allegations made by C.F. respecting D.M., including that he had threatened the life of Harvey Bate, was threatening towards IWK staff including Dr. Logan, that he had been aggressive and threatening towards Early Intervention staff and the board of the Four Plus program, her credibility is seriously challenged. For example, Harvey Bate said that D.M. never threatened his life on any occasion. Moreover, he testified that, while D.M.'s

behavior was aggressive on occasion and once he did leave the property out of concern, thereafter he was able to communicate effectively with him.

[274] There is no evidence in the agency records to reflect that D.M. had threatened Harvey Bate or anyone else at any time during their interactions. This was an allegation made and repeated by C.F. in the both of her affidavits and in her *viva voce* testimony before this Court.

[275] As well, there is no evidence in the medical records introduced in this matter that D.M. had threatened Dr. Logan or any staff at the IWK and no evidence was called to corroborate this allegation.

[276] The records of Early Intervention do not reveal any threats as alleged by C.F. and in fact the records seem to reflect quite the opposite.

[277] Turning back to the agency, C.F. alleged that on one occasion, when workers came to her home, it was D.M. who blocked the entry of a worker into the home. She later admitted, under cross-examination, that the records of the agency reflected that it was she who blocked the entry, not D.M., and she admitted to this.

[278] As another example of the credibility challenge for C.F., she alleged that during one period, D.M. and M.M. would only take the children if they were paid to do so. On review of the various text communications between C.F. and D.M., I find there is no evidence of this. There are times when D.M. noted that having the children in his care was costly and if he were to do so for extended periods or in a shared parenting arrangement, he would require a portion of the Canada Child Benefit. I find there is nothing concerning about that view. It is trite to say that parenting a child has a financial cost and I find that D.M. was merely expressing the same concern regarding family finances as C.F. was when discussing parenting arrangements and the possibility of shared parenting.

[279] Credibility of witnesses is often a crucial element in determining what evidence to accept or reject and this matter is no exception. The parties gave evidence which, at times, was consistent but at other times, was extremely inconsistent on many crucial issues. Thus, an assessment of their credibility is required.

[280] In assessing credibility, the decision of *Baker-Warren v. Denault*, 2009 NSSC 59, a decision of Forgeron J., is very helpful to the analysis when she wrote in part as follows:

18 For the benefit of the parties, I will review some of the factors which I have considered when making credibility determinations. It is important to note, however, that credibility assessment is not a science. It is not always possible to "articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events:" *R. v. Gagnon* 2006 SCC 17, para. 20. I further note that "assessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization:" *R. v. R.E.M.* 2008 SCC 51, para. 49.

19 With these caveats in mind, the following are some of the factors which were balanced when the court assessed credibility:

- a) What were the inconsistencies and weaknesses in the witness' evidence, which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony, and the documentary evidence, and the testimony of other witnesses: *Re: Novak Estate*, 2008 NSSC 283 (S.C.);
- b) Did the witness have an interest in the outcome or was he/she personally connected to either party;
- c) Did the witness have a motive to deceive;
- d) Did the witness have the ability to observe the factual matters about which he/she testified;
- e) Did the witness have a sufficient power of recollection to provide the court with an accurate account;
- f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions: *Faryna v. Chorney* [1952] 2 D.L.R. 354;
- g) Was there an internal consistency and logical flow to the evidence;
- h) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant, or biased; and
- i) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?

20 I have placed little weight on the demeanor of the witnesses because demeanor is often not a good indicator of credibility: *R v. Norman*, (1993) 16 O.R. (3d) 295 (C.A.) at para. 55. In addition, I have also adopted the following rule, succinctly paraphrased by Warner J. in *Re: Novak Estate, supra*, at para 37:

There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence. (See *R. v. D.R.*, [1996] 2 S.C.R. 291 at 93 and *R. v. J.H.*, [2005] O.J. No. 39, *supra*).

21 Ultimately, I have considered the totality of the evidence in making credibility determinations. I have thoroughly reviewed the *viva voce* and documentary evidence in conjunction with the submissions of counsel, and the applicable legislation and case law.

[281] In assessing the parents' credibility, I consider the inconsistencies between the evidence on many material facts provided by C.F. as compared to the evidence of various witnesses including Harvey Bate, the records of the agency, Early Intervention, the school, and medical records.

[282] Moreover, the evidence of D.M. was, in large part, consistent with the evidence of many other witnesses including Harvey Bate and the documentary evidence.

[283] I also take into consideration that D.M. made many admissions against his own interest. In fact, he admitted to many of the behaviors during the relationship alleged by C.F. I found his *viva voce* evidence to be straightforward and persuasive.

[284] In light of these considerations, I find that where their evidence disagrees, I accept the evidence of D.M. and the evidence provided through the various business records referred to herein over the evidence of C... In particular, I find the C.F., at best, exaggerated the behaviors of D.M. during and after the relationship and in doing so, she sought to gain an advantage in the form of the interim *ex-parte* order and subsequent amended interim orders to the disadvantage of D.M. and the children.

[285] What is also clear to me from the evidence is that the parties had a good history of communication respecting the best interests of the children notwithstanding the many conflicts they have experienced both during the relationship and after its end. This is best demonstrated by the many text messages introduced into evidence. C.F. reached out many times to discuss with D.M. issues concerning the children including the children's behaviors at school, medical issues and related topics. They communicated well respecting parenting time, adjusting or agreeing to add to parenting time for D.M. to account for various personal and

medical issues of the parties and the children. All of this demonstrates that their ability to communicate and cooperate respecting the children's best interests has remained intact.

[286] Unfortunately, there were several issues that I find exacerbated their ability to co-parent and lead to a crisis manifested by the application in this matter. First, there was the ongoing discussion respecting money. There is no doubt that before the relationship ended, this family was in a financial bind, trying to parent two children with social assistance incomes that were clearly insufficient. Put simply, poverty affected their relationship as parents. I find that each was doing their best to work cooperatively but there is no question whatsoever the financial pressures were significant reason for the ultimate demise of the relationship.

[287] In that environment, is not surprising that each of the parents suffered a great deal of stress and consequential pressure on their mental health. In the case of D.M., the evidence is clear, he spiraled into a world of conspiracy theories, social isolation and struggle. Unfortunately, he and C.F. became a toxic combination. This included the parents yelling and screaming at each other in front of the children, D.M. threatening self-harm, C.F. demeaning him verbally and incidents of physical aggression and between them.

[288] C.F. also felt her own pressures parenting the children with someone that she no longer trusted and the relationship came to an end.

[289] After separation, further issues arose to exacerbate their relationship. D.M. continued to seek shared parenting and a share of the Canada Child Benefit which clearly causes anxiety for C.F. Her communication on this issue was, at times, demeaning and extreme. Even the most benign conversations could devolve into ad hominem attacks by each of them and instead of trying to listen, they were merely attacking without thought.

[290] To this was added the communication by M.M. respecting the children and their sleep which triggered a disproportionate reaction from C.F. This spiraled quickly to an unproductive and inappropriate conversation between C.F. and D.M.

[291] I also find the C.F., now facing a world as a single parent, struggled. K.M.'s medical conditions alone would stress any parent the best of times. His behaviors at school, which put him at risk of serious physical injury, added to that stress. Moreover, the behaviors of both K.M. and K.F. deteriorated during the relationship and deteriorated further for many months after separation. To her credit, C.F.

worked with the school and its programs to successfully alleviate those behaviors but this environment was clearly part of the reason that she wasn't able to effectively communicate on certain issues with D.M.

[292] This included her failure to keep D.M. informed and involved in the decisions and consultations respecting the children's behavior and K.M.'s health. This is most notable respecting K.M.'s osteogenesis imperfecta, a condition he shares with his father. No doubt it would be preferable to keep D.M. fully involved in that medical discussion given his own history. I find that this was not taken into consideration appropriately by C.F. in the context of the maelstrom of issues she and D.M. were facing and their inability to effectively communicate on these and other issues.

[293] There is also the issue of domestic violence. I find that the evidence is clear that there was domestic violence in the home before separation. There were incidents of aggressive and violent behavior between the parents and at least one time between D.M. and K.F. While there are explanations for what occurred on each occasion that are inconsistent between the parties, I find that physical violence did occur on a few occasions. Certainly, there was emotional violence, in the form of yelling and screaming in front of the children and K.F. yelling at his father from time to time. This was ongoing in the last few years of the relationship.

[294] I further find that these behaviors, along with the dysfunctional relationship and communication between the parents, the ongoing financial stress and all related issues that led to the separation, had a deleterious effect on the children.

[295] I am not, however, prepared to single out one of the parties as more responsible than the other. Each of the parents bear equal responsibility for what happened during the relationship and their failure to address the issue of domestic violence in an appropriate and healthy manner. Most importantly, they failed, repeatedly, to isolate the children from the violence and the resulting consequences and each is responsible for the effect on the children.

[296] It is further clear to me that the various problematic behaviors exhibited by both children in school and elsewhere in their lives until many months after separation are a direct result of the behaviors of their parents. These children were young, physically and emotionally defenseless and utterly dependent on their parents to protect them and model good behavior. There are many times during the relationship and after that the parents failed in this responsibility and I find that all

of the behavioral problems exhibited by the children are a direct result of that failure.

[297] On the other hand, the future is hopeful for these children. I find that D.M. has changed in his views, attitudes and behavior since separation. I accept that this is largely the result of the fact that he and C.F. are no longer together in a toxic relationship. He is now remarried, seems happy and well-adjusted and there is little evidence before me that, since separation, he has exhibited any of the concerning behaviors described that were manifest prior to separation.

[298] I also accept the C.F. has done her very best to parent these children since separation despite the difficult circumstances she faced. She has managed, with help, to address the behavioral issues of the children in school and otherwise and continues to manage the medical circumstances of K.M. well.

[299] In short, each of these parents has much to offer the children. I find that the damaging impact on the children was the result of the toxic relationship between C.F. and D.M. while cohabitating and this has been largely alleviated by the separation. I therefore find it is appropriate that both parents be significantly involved in the lives of the children going forward and that this will benefit the children in maintaining that relationship with each.

[300] With respect to child support, I find that both parents have incomes that are below the minimum required to pay such support under the Guidelines. I find that D.M. is disabled from working based on a medical disability and I make that finding based on his evidence concerning the nature of his medical condition and the form of benefits he receives from the Department of Community Services. I do not find C.F. to be credible in her evidence on this issue.

Decision

[301] I find that the best interests of K.M. and K.F. will be served by an order of joint custody. The parents have some history of effective communication despite their disagreements. Once this litigation is at an end, I believe they will be able to once again communicate effectively.

[302] I further find that the best interests of the children will be best served by C.F. having primary care of the children and D.M. having significant and regular parenting time with them. Now that the parents are separated and the children's behaviors have moderated in school and home, I believe that it is important that

they have significant time with each parent. The evidence is that they are close with each parent and will benefit from time with each. D.M. admits he must improve his relationship with K.F. K.M. and D.M. already share a medical condition and a close relationship. This should be supported.

[303] This arrangement will provide C.F. with time with the children and time away from parenting them directly which will enable her to refresh and be stronger as a mother for them.

[304] I am concerned about whether C.F. will support the relationship between the children and D.M. She obtained an interim *ex-parte* order using exaggerated or inaccurate evidence. She maintained throughout the process that, for example, D.M. threatened to kill Harvey Bate yet the evidence is clear that this was not true. She insisted that the father's access must be supervised and maintains that position today. I find that, in order to ensure that the children have a full relationship with D.M., a structured parenting arrangement is in their best interests.

[305] I find that there is no evidence before me to suggest that an assessment of D.M. is required. I am satisfied that the concerning behaviors proven were temporal in nature and I am further satisfied that he can parent the children safely and effectively at this time. I am also satisfied that supervision is not required. He is a new relationship which appears stable and appropriate. M.M. will be an integral part of his parenting time and I am comfortable that she will help ensure that the children's parenting time with D.M. is appropriate and positive.

[306] The particulars of the order will be as follows:

[307] C.F. and D.M. shall have joint custody of K.M. and K.F. C.F. shall have primary care of the children.

[308] D.M. shall have parenting time with the children every second weekend from Friday until Monday morning, commencing this Friday, on the following terms;

During the school year, he shall pick the children up after school or have them travel by bus after school to his home on Fridays and he shall take them to school or put them on the bus to school on Monday mornings. If there is a statutory holiday or school in-service day on Friday or Monday of his parenting time weekend, his parenting time shall be expanded to include

that day or those days, starting on Thursday and/or ending on Tuesday morning.

When the children are not in school, D.M. shall pick up the children at the home of C.F. on Fridays at 3:00 p.m. and return them to C.F.'s home on Monday at 9:00 a.m. The provisions respecting expansion of parenting time for statutory holidays shall apply.

[309] Each parent will keep the other fully informed of any major matters concerning the children. Each parent shall have full access to any information and service providers, including doctors, teachers, schools, therapist or programs workers who are involved with the children and concerning their health, education and general well-being. The parents shall discuss and arrive at joint decisions on such issues and neither parent shall have sole decision-making authority unless otherwise agreed between them.

[310] Each parent shall be entitled to authorize emergency medical care for the children while they are in that parent's care and shall, as soon as possible, notify the other parent of such emergency and any decisions made.

[311] Each parent shall keep the other informed of any medical or other appointments for the children and each shall be entitled to attend any such appointments.

[312] The parents shall discuss and agree upon any extracurricular activities for the child and each parent shall be entitled to attend any such activities as well as any school activities including concerts or other school events.

[313] It is recommended, but not ordered, that the parents immediately subscribe to and use Our Family Wizard or similar service as their primary means of scheduling and communications.

[314] All communication between the parents and anyone else in care of the children shall be conducted in a polite, respectful and business-like manner.

[315] The parents are prohibited from making any negative or derogatory comments about the other parent or that parent's family or from discussing this litigation while the children are in that parent's care. The parents have an obligation to take all reasonable steps to ensure no one else make such comments

while that parent has care of the children and if such person will not cease such comments, the parent shall either have the person leave the vicinity of the children or remove the children from that vicinity.

[316] The children shall be entitled to speak with the parent who does not have care of them once per day at 7:00 p.m. unless otherwise agreed to by the parents.

[317] Parenting time for the following special times shall apply unless otherwise agreed to by the parties and, where applicable, the normal access schedule shall be suspended:

Christmas – One parent shall have the children from the last day of school for the Christmas school break until 2:00 p.m. on Christmas Day and the other parent shall have the children from 2:00 p.m. on Christmas Day until the children return to school. In odd numbered years, the mother shall have the children for the first part of Christmas school break and the father shall have the children for the second half. This schedule shall rotate each year.

School Spring Break – There shall be no special access with the children during the school spring break and the normal access schedule shall apply.

Children's and Parent's Birthdays - There shall be no special access with the children during the children's or the parent's birthdays and the normal access schedule shall apply.

Easter - One parent shall have the children from after school on Easter Thursday until 2:00 p.m. on Easter Sunday and the other parent shall have the children from 2:00 p.m. on Easter Sunday until the children return to school. In odd numbered years, the mother shall have the children for the first part of Easter and the father shall have the children for the second half. This schedule shall rotate each year;

Summer School Break – Each parent shall be entitled to two non-consecutive weeks of block vacation time with the children each year during the summer school break on the following terms;

For the summer of 2017, D.M. shall have the children for one week commencing the third full week of July and for one week commencing the third full week of August and C.F. shall have the children for one week

commencing the fourth week of July and for one week commencing the fourth week of August;

Commencing in 2018 and continuing each year thereafter, the parents shall notify each other by text or email by May 1st each year of their preferred vacation weeks and, if there is no conflict in those dates, those schedules shall apply. If there is a conflict in those dates, in odd numbered years C.F.'s schedule shall have priority and D.M. shall choose other times. In even numbered years D.M.'s schedule shall have priority and C.F. shall choose other times.

[318] I have considered the income of D.M. and I decline to order child support in this matter.

[319] There will be an order terminating access for D.M. through the SAEP.

[320] I decline to order costs in this matter. I do so acknowledging the findings made including the credibility findings as well as the financial and parenting circumstances of the parties.

[321] Counsel for D.M. shall draw the orders.

Daley, J.