Jackson v. Jackson, 2017 NWTSC 54 S-1-DV-2016-104503

 IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

 BETWEEN:

 KAYLEE-JO JACKSON

 Petitioner

 - and -

 DANIEL JACKSON

 Respondent

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 Transcript of the Oral Decision delivered by The Honourable

 Justice S. H. Smallwood, sitting in Yellowknife, in the

 Northwest Territories, on the 28th day of July, 2017.

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 APPEARANCES:

 Ms. J. Brunet: Counsel for the Petitioner

 Mr. P. Parker: Counsel for the Respondent

 Ms. B. McIlmoyle: Counsel for the Children

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 1 THE COURT: This is an application by the

 2 Respondent, Daniel Jackson, to vary the Interim

 3 Order of February 2nd, 2017, which set out the

 4 Respondent's interim access to the children of

 5 the marriage.

 6 The Respondent is seeking to increase his

 7 access with the children pending the trial of

 8 this matter. The Petitioner, Kaylee-Jo Jackson,

 9 is opposed to the variation. The issues of child

 10 support and spousal support were also addressed

 11 at the hearing.

 12

 13 Background

 14 The parties were married in 2009 and have

 15 three children together: A.R., who is seven;

 16 B.R., who is four; and C.R.J., who is three.

 17 The parties lived in Edmonton, Alberta,

 18 while the Respondent was employed by the Canadian

 19 Armed Forces. They moved to Hay River, Northwest

 20 Territories, in 2012. The Respondent left the

 21 military and began working for De Beers at the

 22 Snap Lake mine site. He has since been relocated

 23 to the Gahcho Kué mine site. He works a

 24 two-weeks-in-two-weeks-out rotation.

 25 The Petitioner was employed while the

 26 parties were together, working for the Hay River

 27 Health Authority. She is currently unemployed.

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 1 The parties separated around November 14th,

 2 2016. The Respondent left the family home and

 3 has rented an apartment in Hay River. The

 4 Petitioner and the children remained in the

 5 family home.

 6 On November 29th, 2016, the Petitioner

 7 relocated the children to Edmonton, Alberta,

 8 without the Respondent's consent. The Petitioner

 9 filed for divorce on November 29th, 2016, seeking

 10 custody of the children. The Respondent filed an

 11 Answer and Counter-Petition on November 30th,

 12 2016, seeking joint, shared custody of the

 13 children. The Respondent also filed a Notice of

 14 Motion seeking the return of the children to

 15 Hay River.

 16 On December 20th, 2016, Justice Shaner

 17 ordered the return of the children to Hay River

 18 no later than December 29th, 2016. The terms of

 19 the decision provided that if the Petitioner

 20 returned the children to Hay River and she

 21 returned with them, that they would be in her

 22 interim day-to-day care until further order of

 23 the Court or other agreement of the parties. If

 24 the Petitioner decided not to return to Hay River

 25 with the children, the children would then be in

 26 the day-to-day care of the Respondent. Access

 27 was also addressed in the decision. The party

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 1 who did not have day-to-day care would have

 2 reasonable in-person, Skype, FaceTime, or

 3 telephone access with the children.

 4 The Petitioner returned to Hay River with

 5 the children on December 29th, 2016.

 6 A further Interim Order was made on January

 7 12th, 2017, which provided specific interim

 8 access to the Respondent. By that time, the

 9 Respondent had been charged with assaulting the

 10 Petitioner, apparently for incidents which had

 11 occurred prior to their separation. The

 12 Respondent was subject, at that time, to an

 13 undertaking which prohibited contact between the

 14 parties, except through a third party for the

 15 purposes of arranging access to the children.

 16 In addition to specifying access, the

 17 Interim Order also provided for a third party to

 18 facilitate access. A further Interim Order was

 19 made on February 2nd, 2017. This Order, which is

 20 currently in place, dealt with access. It

 21 provided that the Respondent would have access

 22 with the children during the two-week periods

 23 where he was in Hay River from Friday at 4 p.m.

 24 to Sunday at 7 p.m., that he would have access

 25 with B. and C. on Tuesdays and Thursdays from

 26 12:30 to 6:30 p.m. and with A. from after school

 27 to 6:30 p.m. on Tuesdays and Thursdays. There

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 1 has been to date no Order made regarding custody

 2 of the children.

 3 The criminal matters were scheduled for

 4 trial earlier this week, on July 25th, in

 5 Hay River, and I am advised that the Respondent

 6 was found not guilty.

 7 A trial in the divorce has been scheduled

 8 for October 2nd, 2017, in Hay River. Among other

 9 things, custody of the children will be in issue

 10 at the trial, as will mobility as the Petitioner

 11 desires to move to Edmonton with the children.

 12

 13 Law

 14 Section 16 of the Divorce Act deals with

 15 custody and access. It permits this Court to

 16 make an Interim Order for custody and access.

 17 Section 16(8) of the Divorce Act requires the

 18 Court to take into consideration the best

 19 interests of the children as determined by

 20 reference to their condition, means, needs, and

 21 other circumstances.

 22 The Court is also required, pursuant to

 23 Section 16(10) of the Divorce Act, to give effect

 24 to the principle that a child should have as much

 25 contact with each parent as is consistent with

 26 the best interests of the children and, also, to

 27 take into account the willingness of each parent

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 1 to facilitate contact.

 2 In making Interim Orders, the focus is often

 3 on preserving the status quo pending a final

 4 determination on the issues of custody and

 5 access. The status quo is not necessarily the

 6 current situation or the situation that has

 7 developed following a party's separation.

 8 Unilateral actions by a party cannot serve to

 9 create a status quo. The courts often instead

 10 look to the historical status quo, the situation

 11 that existed during the parties' relationship and

 12 not one created by the separation.

 13 As stated in Kalaserk v. Nelson, 2005 NWTSC

 14 4, at paragraph 3, the test on an interim

 15 application is what temporary living arrangements

 16 are the least disruptive, most supportive, and

 17 most protective for the children.

 18 The purpose of the Interim Order is to

 19 provide a reasonably acceptable solution to the

 20 issue of custody until trial, and stability for

 21 the children is a focal point: Hamilton v.

 22 Hessdorfer, 2012 NWTSC 45.

 23 Where there is an interim custody order in

 24 place, courts are reluctant to vary them,

 25 preferring that matters proceed to trial.

 26 Lafferty v. Larocque, 2013 NWTSC 10, at paragraph

 27 24. An Interim Order can be varied provided

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 1 there has been a change in circumstances.

 2 I have carefully considered whether the

 3 arrangements currently in place should continue

 4 pending the trial of this matter, given that the

 5 trial is scheduled to occur in a couple of

 6 months, in October 2017, or whether there should

 7 be some adjustment made to the present

 8 arrangements. There are only a couple of months

 9 until the trial, and the Court could leave these

 10 arrangements in place until then when the issues

 11 of custody and access will be determined.

 12 However, I have, with some hesitation, decided

 13 that there should be some adjustment to the

 14 current access arrangements and I have decided

 15 this for several reasons. First, in this case,

 16 no interim custody order has been made. The

 17 decision of Justice Shaner ordered the return of

 18 the children from Alberta and provided for

 19 day-to-day care of the children once they were

 20 returned to the Northwest Territories. The Court

 21 made no determination regarding custody, interim

 22 or otherwise.

 23 Given the recent separation of the parties

 24 and the unilateral removal of the children from

 25 the jurisdiction by the Petitioner, it is likely

 26 that the Court's focus was on the return of the

 27 children and their short-term living arrangements

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 1 rather than determining interim custody or access

 2 based on the limited information before the Court

 3 at that time.

 4 The further Orders of this Court addressed

 5 access in the weeks following the children's

 6 return from Alberta. The issue of custody or

 7 long-term access was never specifically addressed

 8 by the Court. As this matter has continued to

 9 proceed to trial - currently scheduled, as I

 10 said, in October - what was a short-term

 11 arrangement has become one that has been in place

 12 for months now with a couple of months still to

 13 go before the trial.

 14 Secondly, the interim arrangements and the

 15 situation between the parties has caused some

 16 disruption. This is a high-conflict situation

 17 and the parties' relationship has been volatile,

 18 with allegations of physical and emotional abuse

 19 as well as allegations regarding alcohol abuse.

 20 The criminal charges resulted in the

 21 Respondent having to enter into an undertaking

 22 which limited contact between the parties. It is

 23 apparent that the parties have had difficulties

 24 in communicating and have different parenting

 25 styles, and the addition of the undertaking,

 26 while necessary in the circumstances, added an

 27 additional challenge to the communication between

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 1 the parties. This is something that has been

 2 acknowledged by both the Petitioner and the

 3 Respondent, that their communication has not been

 4 good and that there is room for improvement.

 5 Both feel that there can be improvement and they

 6 believe that their communication can get better.

 7 In addition, both parties testified about

 8 wanting to reduce the number of transitions for

 9 the children so that they are not going back and

 10 forth between the parties as frequently. They

 11 both acknowledge that this has been difficult for

 12 the children and that their communication

 13 difficulties have also posed a challenge.

 14 The Petitioner, in her evidence, spoke of

 15 wanting to adjust the access regime to provide

 16 the Respondent with longer access on the weekend

 17 and one access day during the week in order to

 18 streamline access. The Petitioner testified

 19 about wanting things to be smoother for the

 20 children and for the children's time with the

 21 Respondent to be a little more consecutive. The

 22 children are young, seven, four, and three, and

 23 the two months until trial is a significant

 24 period of time for a child. The goal of reducing

 25 disruption to their lives and attempting to

 26 streamline access, even in the short term pending

 27 trial, is in their best interests.

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 1 Evidence

 2 Daniel Jackson, Kaylee-Jo Jackson, Trudy

 3 Hiebert, and Nicole Klause, testified at the

 4 hearing. I do not intend to review the parties'

 5 evidence in detail and will refer to it only

 6 insofar as it relates to the issues on this

 7 application.

 8 Daniel Jackson and Kaylee-Jo Jackson

 9 testified extensively about their relationship

 10 and their parenting of their children. The

 11 parties' evidence differed significantly in

 12 several aspects. It is apparent from the

 13 evidence the parties' relationship was a

 14 high-conflict one. There were allegations of

 15 arguments, physical violence, emotional abuse,

 16 alcohol abuse, and poor parenting. The parties

 17 did not agree on the extent of their parental

 18 role while they were still together.

 19 Turning to the issue of violence, both

 20 parties testified about incidents involving

 21 violence. Some of these incidents form the basis

 22 of the criminal charges that Daniel Jackson was

 23 facing.

 24 Whether the Respondent had assaulted the

 25 Petitioner and was criminally responsible has

 26 been decided by the Territorial Court in a trial

 27 and the Respondent has been found not guilty.

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 1 However, it is apparent that there were incidents

 2 of violence between the parties. The

 3 relationship between the parties was a volatile

 4 one, and now that the parties have separated, the

 5 no-contact provision in the undertaking had the

 6 benefit of prohibiting contact between the

 7 parties and hopefully put them in a situation

 8 where they had to learn to communicate and

 9 interact with each other in a more appropriate

 10 manner. In my view, limited communication

 11 between the parties should continue until the

 12 trial at least.

 13 My focus on this application is on the

 14 interim parenting of the children and not on

 15 determining who might have been responsible for

 16 various incidents during the relationship.

 17 It appears that the children may have

 18 witnessed acts of violence while the parties were

 19 together, and it is not healthy or appropriate

 20 for a child to witness family violence. That the

 21 parties are now separate and their contact is

 22 limited is an opportunity for each parent to

 23 focus on their relationship with the children.

 24 Looking at the alcohol use by the

 25 Respondent. The Respondent acknowledged that he

 26 drank but testified that he did not abuse

 27 alcohol, that he drank around four drinks twice a

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 1 week, and he testified that his consumption of

 2 alcohol was one of the things that he and the

 3 Petitioner regularly fought about during their

 4 relationship. His evidence was that the

 5 Petitioner felt he had a problem with alcohol,

 6 and he testified that he quit drinking as a

 7 result of this for a period of about six months

 8 prior to the parties' separation.

 9 The Petitioner testified that the Respondent

 10 had a problem with alcohol and that when he was

 11 home from work (his two-week periods that he was

 12 out) that he would often be drunk. She described

 13 the times when he was drinking as being

 14 horrifying and that he could be physically and

 15 verbally abusive during these times. Other times

 16 things would be fine; he could be loving.

 17 It appears, upon review of the evidence, the

 18 Respondent has minimized to an extent the amount

 19 of alcohol that he consumed during the

 20 relationship. He acknowledged in

 21 cross-examination that there had been occasions

 22 where he had drunk to excess. For example, to

 23 the point of being denied boarding on a plane.

 24 Trudy Hiebert also testified about an

 25 occasion where she was present and the Respondent

 26 appeared intoxicated. She described him as

 27 looking drunk, that he was stumbling, loud,

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 1 argumentative, and aggressive. So there is some

 2 evidence that the Respondent has drunk to excess

 3 during the relationship between the parties.

 4 On this application, my concern, as I have

 5 said, my focus, is on the interim parenting of

 6 the children and not assigning blame for the

 7 various incidents which may have occurred during

 8 the parties' relationship. To that end, I am

 9 concerned about the Respondent's consumption of

 10 alcohol while the children are in his care. The

 11 provision that he not consume alcohol while he is

 12 caring for the children will remain in place, so

 13 that provision is that the Respondent shall not

 14 consume alcohol or be under the influence of

 15 alcohol when any of the children are in his care.

 16 The other provision that will also continue will

 17 be the one that is when any of the children are

 18 in the care of the Respondent, the Respondent

 19 shall not allow any of his friends or family

 20 members to have contact with the children if any

 21 of those friends or family members are under the

 22 influence of drugs or alcohol.

 23 Turning to parenting prior to separation.

 24 The parties testified about the role that each

 25 played in parenting prior to the separation and

 26 the parties' evidence differed in this regard.

 27 In the years prior to the parties'

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 1 separation, they had a nanny and both parties

 2 were employed. The parties agreed that while

 3 they employed the nanny, that the nanny was

 4 primarily responsible for taking care of the

 5 children's needs on a daily basis. Each party

 6 played a role in parenting the children. The

 7 Respondent has been working on

 8 two-week-in-two-week-out rotation for several

 9 years now. The Petitioner's evidence was that

 10 while the Respondent was working, that she and

 11 the nanny were responsible for the care of the

 12 children and with the nanny doing many of the

 13 day-to-day tasks for the children. When the

 14 Respondent was home, it appears that the parties

 15 and the nanny cared for the children. The

 16 parties disagree about who did more for the

 17 children, each saying that they took on more

 18 responsibility when it came to caring for the

 19 children than the other parent.

 20 Overall, I find that both parties

 21 participated in caring for the children when the

 22 Respondent was home. The Petitioner's role in

 23 their lives has been more constant and continuous

 24 given the Respondent's work schedule. I am not

 25 sure that it matters for the purposes of this

 26 application the exact extent of each party's

 27 involvement.

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 1 The parties both agree that the Respondent

 2 should have access to the children for a period

 3 of days, including overnight visits. At this

 4 point, the focus is on ensuring that the parties

 5 are able to maximize their contact with the

 6 children while maintaining stability and

 7 minimizing disruption.

 8 Turning to communication. The parties agree

 9 that the Respondent was on an undertaking which

 10 prohibited his contact with the Petitioner except

 11 through a third party for purposes of

 12 facilitating access. He was on this undertaking

 13 for several months. And both parties testified

 14 regarding their communication since the

 15 separation. It is apparent that there has been

 16 communication between the parties that is

 17 otherwise than contemplated under the

 18 undertaking. The Respondent has communicated

 19 through the third party to the Petitioner about

 20 issues other than access, such as things having

 21 to do with the house. Similarly, the Petitioner

 22 has frequently directly contacted the Respondent

 23 about the children or other issues, and she has

 24 done that through electronic means. But the

 25 Respondent has not replied.

 26 Communicating about the issues which arise

 27 in a divorce can be challenging, particularly

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 1 when one party is prohibited from contacting the

 2 other. At this point, given the issues which

 3 exist between the parties, I think that they

 4 should continue to communicate through a third

 5 party even though the undertaking is not in

 6 effect. This issue can be revisited at trial and

 7 it can be determined then whether direct

 8 communication should occur, whether it is through

 9 email or text or in person or by telephone. That

 10 is an issue that can be determined at trial

 11 seeing how the communication between the parties

 12 occurs over the next two months.

 13 Parenting since separation. The parents

 14 have been parenting pursuant to the Orders made

 15 in December and February for several months now.

 16 There have been some issues, some involving

 17 communication. There have been challenges in

 18 trying to coordinate exchanges, ensuring that the

 19 children have the proper clothing, that clothing

 20 is returned. There is a concern that the

 21 Respondent has taken the children to school late.

 22 Overall, I do not find that these incidents are

 23 significant. They do not raise concerns with

 24 respect to parenting. These issues often occur

 25 when parties split and there are challenges in

 26 parenting in two separate households. Parenting

 27 styles differ and no parent is perfect.

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 1 Within this, I have seen some signs of

 2 progress. The parties have been able to agree on

 3 some things, like additional access without the

 4 Court's involvement, and it is hoped that this

 5 will continue.

 6 The Petitioner described an injury which

 7 occurred to B. while in the Respondent's care.

 8 The Respondent denied that anything like that had

 9 occurred. No additional evidence was presented

 10 regarding this injury. I cannot say what

 11 occurred with respect to B., but if he was

 12 injured, that is a serious concern, and I want to

 13 make it clear that the children must be properly

 14 supervised and not left unattended while they are

 15 in the Respondent's care. B. and C. are four and

 16 three years old and need to have proper

 17 supervision and are to be monitored at all times.

 18 Injuries that may occur while in a parent's care

 19 should be explained to the other parent. This is

 20 to ensure that the other parent is aware of what

 21 occurred and so that they can monitor the injury

 22 in case follow-up is required. Failing to

 23 communicate this type of information will only

 24 increase the tension and discord between the

 25 parties.

 26 So turning to the decision. The parties

 27 agree that there should be joint custody, so

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 1 there will be an Interim Order for joint custody.

 2 The children will be in the day-to-day care

 3 of Mrs. Jackson subject to the following access.

 4 In the two-week period when Mr. Jackson is in

 5 Hay River, he will have the children as follows -

 6 and, in saying this, I have tried to take into

 7 account the concerns that have been expressed

 8 regarding the disruption to the children,

 9 minimizing transitions. So the access will be as

 10 follows:

 11 Mr. Jackson will have the children each

 12 Friday at 8 a.m. until Tuesday at 8 a.m. When

 13 school begins, Mr. Jackson will have access to A.

 14 when school lets out on Friday and he will be

 15 responsible for dropping her off for school on

 16 Tuesday morning, and he will also be responsible

 17 for providing lunch and whatever else is

 18 necessary for her to attend school on that day.

 19 The parties will continue to communicate

 20 through the third party for all purposes.

 21 Whether that party is Christine Ferguson, which

 22 has been suggested, and it sounds from the

 23 evidence that person is agreeable, so whether it

 24 is Christine Ferguson or another mutually

 25 agreed-upon third party, all communication will

 26 occur through that third party. This will be in

 27 place pending the trial date, and that, as I

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 1 said, can be revisited at the trial.

 2 With respect to alcohol use, the Respondent

 3 shall not consume alcohol or be under the

 4 influence of alcohol when any of the children are

 5 in his care, and when any of the children are in

 6 the care of the Respondent, the Respondent shall

 7 not allow any of his friends or family members to

 8 have contact with the children if any of those

 9 friends or family members are under the influence

 10 of drugs or alcohol.

 11 Turning to the other issues: spousal

 12 support and child support. The Petitioner is

 13 seeking interim spousal support. She was

 14 employed during the relationship but left her job

 15 when she moved to Edmonton with the children.

 16 She had secured a job in Edmonton, one that is

 17 apparently being held for her. Since her return

 18 to Hay River, she attempted to get her job back

 19 with the Hay River Health Authority, but she was

 20 not successful in doing so. The Petitioner

 21 testified that she had applied for another job

 22 but was not successful. It does not appear that

 23 she has made other attempts to obtain employment.

 24 During her testimony, the Petitioner questioned

 25 whether any employment she obtained would

 26 outweigh the child care costs she would also

 27 occur and also testified regarding the difficulty

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 1 in obtaining child care in Hay River.

 2 The Respondent has been paying most of the

 3 household bills since the parties separated,

 4 paying the mortgage on the family home as well as

 5 for other debts accumulated by the parties.

 6 Reviewing the financial statements of both

 7 parties, it is apparent that their financial

 8 circumstances are strained. There is very little

 9 discretionary money available to them, they have

 10 a significant amount of debt, and maintaining

 11 separate households since the separation has

 12 increased the financial strain.

 13 In the circumstances, I am not prepared to

 14 order spousal support on an interim basis. That

 15 issue can be fully explored at trial.

 16 With respect to child support. There has

 17 been no child support ordered to date. Child

 18 support is the right of the children and should

 19 be paid. It should be the priority in this

 20 situation to provide for the support of the

 21 children. And as I have said, I am aware that

 22 the parties' financial situation is a tight one.

 23 They have significant debt and the Respondent

 24 has, to his credit, being paying most of the

 25 expenses related to the matrimonial home since

 26 the separation. He has paid the mortgage, he has

 27 paid the vehicle payment, as well as other

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 1 expenses, including paying on debt that the

 2 parties accumulated during the marriage.

 3 However, in my view, there should also be a child

 4 support order.

 5 Based upon the Respondent's 2015 Notice of

 6 Assessment, his income was $115,698.

 7 Mr. Jackson's evidence regarding his 2016 income

 8 was that it was $121,433. Using the 2016 income,

 9 child support for three children, according to

 10 the tables for the Northwest Territories, is

 11 $2,096 per month.

 12 Looking at the Respondent's financial

 13 circumstances, I am aware that imposing this

 14 amount of child support will be a financial

 15 burden and it may be that he could establish a

 16 case for undue hardship in these circumstances.

 17 I am also mindful that the trial is only a

 18 couple of months away and I expect that the

 19 financial issues will be dealt with during the

 20 trial, including the division of matrimonial

 21 assets and debt. Therefore, I am making an

 22 Interim Order that the Respondent pay child

 23 support for the months of August, September, and

 24 October, on the 1st of each month, in the amount

 25 of $1200. It may be at trial that the trial

 26 judge will make a retroactive order for child

 27 support and adjust this amount, but, in the

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 1 interim, there should be some support for the

 2 children that is paid pending the trial.

 3 Thank you, counsel. Is there anything else

 4 to address?

 5 MR. PARKER: Thank you, Your Honour. The

 6 only question I have is regarding contact between

 7 the parties. Recently, the undertaking was

 8 revised to allow the parties to have contact in

 9 the case of mediation or any other kind of ADR

 10 and that was done with myself, Ms. Brunet, and

 11 the prosecutor. I was wondering if we could have

 12 a similar provision. I just want to understand

 13 the third-party contact. Are you saying they

 14 should not have any contact except for through

 15 the third party?

 16 THE COURT: Well, that is one of the

 17 issues, that is what I have said in the decision,

 18 but I was also, in coming to this decision,

 19 concerned about what had happened to the

 20 undertaking. And listening to both parties

 21 testify, they both seemed to be interested in

 22 moving towards having communication. But I guess

 23 my concern was whether -- what sort of

 24 incremental steps should be taken. So at this

 25 point what I have said is that it should be

 26 through a third party for all purposes, but I am

 27 open to hearing from counsel, you know, what you

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 1 think is reasonable, because I do not want to

 2 push -- open it up, wide open and have issues

 3 arise. So I would like, if it is agreeable, to

 4 have something that is incremental that will

 5 improve their communication.

 6 MR. PARKER: My suggestion would be that --

 7 I think the Court suggested Christine Jackson as

 8 a third party.

 9 THE COURT: Is it Christine Jackson or

 10 Ferguson?

 11 MR. PARKER: I'm not --

 12 THE COURT: Because I notice in the

 13 transcript she had been referred to in both ways.

 14 So I am not --

 15 MR. PARKER: Maybe we can confirm with one

 16 of the parties.

 17 THE COURT: Okay. Can someone confirm

 18 whether it is Christine Ferguson or Christine

 19 Jackson.

 20 MS. BRUNET: It's Christine Ferguson.

 21 THE COURT: Okay.

 22 MR. PARKER: Thank you. So my suggestion

 23 would be that that Order be -- the third party be

 24 Christine Jackson or another --

 25 THE COURT: Christine Ferguson.

 26 MR. PARKER: Ferguson. Pardon me. Or

 27 another third party mutually agreeable by the

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 1 parties. And then an additional sub-condition

 2 there that the parties may have contact for the

 3 purposes of mediation or any kind of -- or any

 4 other type of alternative dispute resolution.

 5 There's been some discussion recently, Your

 6 Honour, since the hearing in June, that the

 7 parties may want to have those discussions prior

 8 to trial, if not just to narrow some of the

 9 issues and maybe to streamline some of the

 10 communication issues that Your Honour has been

 11 talking about in today's decision. So that would

 12 be just kind of a sub-clause just so they

 13 wouldn't have to come back to Court to amend this

 14 Order for the parties to have contact for the

 15 purposes of mediation.

 16 THE COURT: Okay. Thank you. Ms. Brunet.

 17 MS. BRUNET: Your Honour, I had trouble

 18 hearing everything that Mr. Parker said. I

 19 understand that he's suggesting that the third

 20 party remain in place for the pick up and drop

 21 off, which is consistent with your direction, and

 22 also -- but that they have face-to-face contact

 23 for the purposes of alternate dispute resolution.

 24 THE COURT: Yes. What I understand

 25 Mr. Parker to be saying is -- so the Order that I

 26 have made that the parties are only to

 27 communicate with Christine Ferguson or another

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 1 third party for things like the children or if

 2 there are issues with the house, essentially

 3 day-to-day things, but that they can have contact

 4 for the purposes of pursuing mediation or

 5 alternate dispute resolution.

 6 MS. BRUNET: Yes, Your Honour. In

 7 addition, I had suggested to Mr. Parker, and we

 8 haven't fully explored this, but the possibility

 9 of putting in place the Family Wizard Program.

 10 I'm not sure if you're familiar with it, but it's

 11 a program actually designed for divorcing

 12 families so that those sort of day-to-day

 13 logistical items that need to be discussed can be

 14 done through more of a neutral platform, and that

 15 would help, perhaps, to alleviate the burden of a

 16 third party having to continually pass messages

 17 back and forth or to always have it through

 18 counsel.

 19 THE COURT: Okay. Is that an electronic

 20 -- like an app or a program?

 21 MS. BRUNET: Yes. Essentially, it's like a

 22 -- yeah, program that is set up and actually can

 23 involve counsel having access to the

 24 communications as well.

 25 THE COURT: Okay. Thank you.

 26 Mr. Parker, do you have any comments?

 27 MR. PARKER: My only comment -- yes. I'm

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 1 going to speak a little louder. Ms. Brunet has

 2 suggested this platform, and I've taken a look at

 3 it, my client is aware of it. There are some

 4 issues with his ongoing, consistent access to his

 5 device while he's at the mine site, so it may not

 6 work perfectly or be able to be ruled out, but

 7 there could be a general order simply saying if

 8 the parties agree, they can have further access

 9 for the purposes of, of -- maybe it's not even

 10 (indiscernible). Further access through an

 11 electronic platform that they agree to. Just

 12 something general that permits them to use that

 13 kind of tool. Like I said, there may be some

 14 difficulties. We're looking into how it could be

 15 implemented from Mr. Jackson's end. But a term

 16 in the Order that permits the parties to do that

 17 without being in contempt of any court order

 18 would be useful, I think.

 19 THE COURT: Thank you. Ms. McIlmoyle, do

 20 you have anything to add?

 21 MS. MCILMOYLE: Thank you, Your Honour. I

 22 have had clients work with the Family Wizard in

 23 the past and there have been some concerns that

 24 if one of the parties doesn't respond right away,

 25 then the other one will be upset that their

 26 communication isn't being considered. So there

 27 are glitches in the program, but I do think that

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 1 it's a good program as long as they both stay on

 2 top of things and respond and let each other know

 3 what's going on every day.

 4 THE COURT: Okay. All right. Thank you.

 5 So, the communication through the third

 6 party. So the parties will communicate through a

 7 third party, whether it is Christine Ferguson or

 8 some other mutually agreed-upon third party.

 9 There will be an exception that they may have

 10 contact with each other for the purposes of

 11 pursuing mediation or alternate dispute

 12 resolution, and, if the parties agree, they can

 13 have further contact through a mutually

 14 agreed-upon electronic platform.

 15 Does that address, then, the communication?

 16 MR. PARKER: Yes. Thank you.

 17 THE COURT: Ms. Brunet? Hello.

 18 Ms. Brunet?

 19 MS. BRUNET: Yes, Your Honour, that sounds

 20 -- that sounds good. I did have one other

 21 question with respect to finances. The order for

 22 child support, is that in addition to

 23 (indiscernible).

 24 THE COURT: Sorry. I can't --

 25 MS. BRUNET: (Indiscernible).

 26 THE COURT: Something's happened to the

 27 volume, Ms. Brunet. So you kind of faded out

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 1 there. So I didn't catch what you said. You had

 2 a question about the finances and the $1200?

 3 MS. BRUNET: Sorry, Your Honour. Excuse

 4 me. Can you hear me now?

 5 THE COURT: Yes.

 6 MS. BRUNET: Okay. My question was with

 7 respect to the child support order. Is that in

 8 addition to (indiscernible)?

 9 THE COURT: Again, it has kind of died

 10 out. I think you are asking if it is in addition

 11 to Mr. Jackson continuing to pay what he had been

 12 paying previously.

 13 MS. BRUNET: Yes. Yes, that's --

 14 THE COURT: Yes, it is. It is.

 15 MS. BRUNET: Okay. Thank you.

 16 MR. PARKER: Just to be clear, Ma'am, we're

 17 talking about the carrying cost of the home and

 18 mortgage and --

 19 THE COURT: Yes.

 20 MR. PARKER: -- anything else that he's

 21 been paying. I think that -- if I remember

 22 correctly from the evidence, Mrs. Jackson is

 23 paying things like fuel for the home --

 24 THE COURT: Yes.

 25 MR. PARKER: -- electricity. So we're

 26 talking essentially about the mortgage payments

 27 and the property taxes --

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 1 THE COURT: Yes. The payments that each

 2 party had been making previously, what they

 3 testified to at the hearing, will continue and

 4 the $1200 is in addition. And as I said, I

 5 expect, given that the trial is fairly close,

 6 that the financial issues will be sorted out

 7 then. This is, as I said, an Interim Order to

 8 address the next couple of months.

 9 MR. PARKER: Just so my notes are complete,

 10 it was -- the months were August, September --

 11 THE COURT: And October.

 12 MR. PARKER: Thank you.

 13 THE COURT: Is there anything else,

 14 counsel?

 15 MS. BRUNET: There was one other item.

 16 When you made the -- sorry. The summertime

 17 access starting at -- is it 8 a.m. on Friday?

 18 THE COURT: Yes.

 19 MS. BRUNET: Till 8 a.m. or 8 p.m. on

 20 Tuesday?

 21 THE COURT: Eight a.m. on Tuesday.

 22 MS. BRUNET: Okay.

 23 THE COURT: And I do not know what time --

 24 when school starts, whether it starts at eight or

 25 later, but essentially the Order is contemplated

 26 that once school begins, that Mr. Jackson will be

 27 dropping her off. So even though school starts

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 1 at 8:30, whatever it is, and his access ends at

 2 8, it is expected he will be dropping her off

 3 rather than returning her to Mrs. Jackson only to

 4 have her take her to school, because that just

 5 seems that is --

 6 MR. PARKER: So, pardon me --

 7 MS. BRUNET: Thank you.

 8 MR. PARKER: -- taking the child to school

 9 on Tuesday mornings?

 10 THE COURT: When school starts, yes.

 11 Whether school starts at 8 or 8:30 or later.

 12 Okay?

 13 MR. PARKER: I only have one more query and

 14 that is would you like counsel to draft the

 15 Order?

 16 THE COURT: Yes, please.

 17 MR. PARKER: Would you like the Order dated

 18 today's date or the date of the hearing?

 19 THE COURT: Today's date.

 20 MR. PARKER: Thank you.

 21 THE COURT: All right.

 22 COURT CLERK: And would you like to review

 23 this Order?

 24 THE COURT: Yes. Thank you.

 25 COURT CLERK: Thank you, Your Honour.

 26 THE COURT: Is there anything else,

 27 counsel.

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 1 MR. PARKER: No thank you.

 2 THE COURT: Ms. McIlmoyle?

 3 MS. MCILMOYLE: No.

 4 THE COURT: Ms. Brunet?

 5 MS. BRUNET: That's everything. Thank you.

 6 THE COURT: Thank you, counsel.

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 10 Certified Pursuant to Rule 723

 of the Rules of Court

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 Jane Romanowich, CSR(A)

 14 Court Reporter

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