**COURT FILE NO.:** 99-FP-246860FIS
**DATE:** 20090327

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

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|---|---|---|
| **B E T W E E N:** | ) | |
| A.G.L. | ) | *Harold Niman / Donna Wowk*, for the Applicant |
| Applicant | ) | |
| **- and -** | ) | |
| K.B.D. | ) | *Charles Amissah-Ocran*, for the Respondent |
| Respondent | ) | |
| | ) | **HEARD:** October 14, 16, 17, 20, 23, 24; November 3, 5, 7, 10, 24, 25, 26, 27, 28; December 10, 2008; January 16, 2009 |

**McWatt J.**

## CONTINUED REASONS FOR JUDGMENT

[1] This is the second half of my judgment in this matter. The first half was released on January 16, 2009 and dealt with the issue of custody and access. This portion of my reasons deals with the remaining issue - whether the Respondent, K.B.D., is in contempt of five court orders of this court spanning the years 2000 to 2008.

[2] Any findings of fact I have already made in the first part of the reasons for judgment in this matter apply to this part of my reasons as well.

**The Facts**

II **CONTEMPT OF COURT**

*(i) Order of Justice Benotto dated March 13, 2000*

[3] On March 13, 2000, Justice Benotto implemented, by her order, the parenting plan recommended by Dr. Barbara Fidler for the parties set out in Dr. Fidler's letters of November 26 and 29, 1999. Justice Benotto also ordered, pursuant to Dr. Fidler's recommendation, that, the Respondent attend for counseling to address the issues contained in her Assessment Report.

[4] Justice Benotto wrote the following in her March 13, 2000 endorsement:

> **Parenting Issues**
>
> In the short life of this action, the parties have been before the Court on numerous occasions. I am at least the sixth judge to make an Order. The majority of the problems revolve around the parenting issues.
>
> Dr. Fidler was appointed by the Court to conduct an assessment. She spent many hours with the parties and the children. Her report extensively analyses the family dynamics, articulates the serious concerns she has about the mother and makes specific recommendations.
>
> Dr. Fidler outlines significant psychological problems on the part of the wife. These problems are having a direct effect on the children. In addition, she states that the wife has demonstrated "significant difficulty complying with Court Orders" and a "notable disregard for authority." This is reflected in the number of motions before the court to require compliance with Orders and agreements. Indeed, as recently as February 10, the parties signed a consent, compliance with which is already in issue.
>
> Dr. Fidler states that the children are at "substantial risk" as a result of the mother's conduct. She gives examples of the effects of her conduct on D., the oldest child and recommends therapy for her. She also recommends therapy for the wife. The wife refuses to acknowledge the effect of her behaviour on the children.
>
> I am concerned that each day that goes by creates more and more risk that these children will be further alienated from their father and consequently permanently harmed. A remedy cannot wait until trial.
>
> I therefore order:
>
> 1. The recommendations of Dr. Fidler with respect to the parenting plan will be implemented by the parties. The parenting plan, including overnights with the

father, will be incorporated into my Order. I recognize that this is an expansion from the consent signed by the parties on February 10. However, I am firmly of the view that these children require maximum time with their father immediately.

2. The wife is to submit to counseling (as outlined by Dr. Fidler) to address the issues contained in the assessment report. It is mandatory that this commence immediately for two reasons: to address the ongoing risk to the children and to assist the trial judge.

3. The father is to arrange for counseling for D. to start as soon as possible. He will be entitled to take D. to her appointments whether or not the appointments fall within his parenting time. While I urge him to consult with the mother on all issues concerning D., in the event of disagreement, he will have the final decision making on this issue. He is to keep the wife informed of all matters in this regard and the wife is entitled to information directly from the counselor. I urge her to be involved in this process and to co-operate with her husband for the child's benefit.

4. As long as the mother complies with the terms of this order, there will be no change in the primary residence of the children.

[5] The evidence of A.G.L. was that, aside from a very brief period after the order was made, the Respondent stopped complying with Justice Benotto's order. Even though Justice Benotto warned, in paragraph 4(d) of the order, that the children's primary residence might be changed if the Respondent did not comply with her order, the Respondent flagrantly disobeyed it.

[6] During the relevant period covered by this order, the Respondent allowed only 2 overnight visits of the children with the Applicant and then discontinued any overnight access by the children to their father at all. In fact, the court had ordered that A.G.L. be allowed one overnight visit with the two older children, D. and J., Saturday to Sunday to be increased after a "stabilization period" to a mid-week overnight and an entire weekend.

[7] Ms. D. called the Applicant constantly during the second overnight to inquire about how the children were doing. After she picked the children up from the Applicant's home after the visit, she never returned them to him for access.

[8] The Respondent allowed some of the day visits contemplated by the order, but only if she was present. This was also true of any drives to school the Applicant provided for his daughter D. The Respondent insisted on accompanying the child on the drive and would not let her be alone with her father.

[9] The only evidence from the Respondent in this trial about access ordered by Justice Benotto and whether she complied with it is that she could not recall what access she allowed A.L.

[10] Also, as I have already stated, there is no evidence in this trial that the Respondent attended for any counseling as ordered by Justice Benotto.

[11] In his affidavit of June 17, 2007, the Applicant explained why he did not pursue the Respondent regarding her breach of Justice Benotto's order. I accept his evidence as to what transpired between this order and the next order in 2006 by Justice Horkins.

> Shortly after the motions in the spring of 2000, the Respondent also unilaterally decided to move from downtown [...] to [...]. She allowed the children a total of 2 overnight visits with me, but then refused to consider any further overnights.
>
> Given the young ages and vulnerability of the children, I feared escalating matters if I continued to take the Respondent back to court to demand my court-ordered parenting time. I did not believe at that time that it was in the best interests of our young daughters to take them from their mother, despite her conduct. I was also concerned about how the Respondent would react if, as a result of her contempt, I asked to enforce Justice Benotto's Order and have the children reside with me. I did not want to place the children at any greater risk. I made several attempts to have the Respondent attend counseling sessions and even made appointments, but she refused to attend. We did meet with our Pastor once, but the Respondent continually disparaged me and then walked out. I hoped that, given time away from the adversarial court process, the Respondent would feel less threatened and allow the children increased time with me. As a result of my reluctance to return the matter to court I did not push for a trial in September, 2000 or for the Respondent's financial disclosure, as ordered. The interim orders, including spousal support, have remained in place.
>
> In approximately December, 2001 I purchased a home in the same area as the Respondent in [...] and scheduled my work as a surgeon at [...] Hospital in downtown [...] to accommodate my court-ordered parenting time. This move has resulted in me spending approximately 1.5 to 2 hours per day in travel time. Despite my move to be closer to the children, each time I asked the Respondent if the children could be with me without her being present, I was given excuses. During my parenting time with the children the Respondent insisted on being present. She continually claimed that our young children did not wish to spend any time with me. One time J. stated to me: *"I can't come here anymore. Momma says if I do, I should pack my bags and never come back."*
>
> By 2002 the Respondent had made it clear that if the children were to have any relationship with me, she had to set the rules. During my court-ordered times on Tuesdays and Thursdays, I drove the children (with her) to and from school. The Respondent allowed me to "babysit" them in my van in parking lots waiting for her while she did shopping, or she would delegate me to do shopping and run errands for her. This was the only way I could hope to have some contact with my young children, so I took what was offered. Occasionally I was allowed to

take the children (so long as the Respondent was included) to church on Sundays, or take everyone to a movie, or out to dinner. I was allowed, on only two occasions, to personally assist the children with their homework. Many times the Respondent would call me to ask me for help with the children's homework, but she never allowed me to speak with the children during these times. Our youngest child K. was allowed to come to my home for short periods of time initially, but the only specific times the girls visited my home in [...] were Easter and Christmas day, with their mother, to get their presents.

In 2003, without any consultation with me, the Respondent purchased another home even further away and moved the children from their Catholic school into a public school. I joined that school council.

By the end of 2003 the Respondent was preventing me from speaking with the children when I called and I no longer received telephone calls from my children. I continued to call the children every Monday, Wednesday and Friday according to our court-ordered parenting plan to say goodnight but at best, was only able to leave a message. In fact, I called nearly every night at 6 p.m. as I had very little contact with the children.

In 2004, aside from being allowed to drive them to and from school 2 days a week (15 minutes each day), per our court-ordered parenting plan, the Respondent allowed me only a few hours on Saturday and one hour on Sunday at church with them, when she and children would on occasion sit separately from me. The Respondent was always present during these times. She often directed angry outbursts at me in front of the children.

When the Respondent became pregnant with our first child D., I was shocked to be falsely accused by her mother of raping the Respondent. In addition, once prior to separation and twice while living separate and apart in my home, the Respondent assaulted me in front of the children and each time called the police claiming she had been assaulted by me. The police left each time and no charges were ever laid. The Respondent falsely accused me after separation of sexual molestation of my daughter, and of obtaining sexual gratification from being around my children. I was not allowed to attend the library with the girls as the Respondent falsely accused me of doing something to J. while at the library. These false allegations were most upsetting to me, as I had done nothing to deserve them. The assessor, Dr. Fidler, investigated the Respondent's allegations about my conduct with the children and found no justification for any of them.

In September, 2004, against my and the children's objections, the Respondent again changed the children's school, removing them from the local Public School back to their previous Catholic school which was then out of their local school district. I offered several suggestions to allow the children to remain in their

school but my suggestions were rejected by the Respondent. This was to be the 5th school that our eldest child had attended.

By the fall of 2004 all three children were again attending the Catholic school. I joined that school council, and have remained very active in it. In 2006 I was approached by Council members to be Chairperson and I currently hold that position. I have continued on the school council as this has become the one way to know what is happening with the children's activities. I also meet regularly with my children's teachers. The Respondent provided me with less information about the children's progress or activities at school.

Once I made it possible for the Respondent to drive the children to school herself, she alleged I would be psychologically damaging the children if I continued to drive them to school on my two days of the week. She advised me that the children's school marks would drop if I drove them without her present. She stated that she would be speaking to the principal about this, however I am not aware that she ever did. Despite her objections I continued to drive them (with her) on my court-ordered days, but at times (when she was angry with me and would not allow me into the van) I had to follow behind in my own vehicle to ensure an opportunity for the children to have some small contact with me. Upon arriving at school the Respondent ensured that children never walked with me, but always well ahead with her. I understood that the children found it necessary to do as their mother directed.

By the spring of 2005, aside from being driven to school and short times on the weekend, the only other opportunity the children had to spend time with me was when the Respondent decided I should take her and children on vacations. I took them on trips to Hawaii, Disneyland, Las Vegas to see Celine Dion, Stowe Vermont, Halifax, and Arizona. Other trips were planned to New York, Quebec City, Manatoulin Island, and Niagara Falls that were ultimately cancelled by the Respondent, usually at the last minute. I paid for all these trips, including losing costs on cancelled trips.

I later discovered that in the summer of 2005, without discussion or notification to me, the Respondent had placed her home up for sale. I was advised of this by the Respondent's next-door neighbour. Our middle daughter was extremely upset over the prospect of moving schools again. On the last day of school in June, 2006 her teacher found J. crying as she thought she would not be returning in the fall. The Respondent was apparently offered her asking price, but ultimately decided not to sell at that time as she felt she could get more money. To the best of my knowledge, the Respondent's house remains listed for sale. When Justice Horkins asked her at the Case Conference why she planned to move even further away from Toronto she replied that "J. had allergies".

If I pushed to have the children spend more time with me, the Respondent retaliated by treating me worse in front of the children. I privately voiced concerns regarding this to the Respondent. She acknowledged the worsening behaviour now of all three children toward me, but refused to see that this had anything to do with her. The Respondent stated only that I should spend more "quality time" with the children, all the while making it impossible for me to do so. My family was also cut off from any contact with my children. Whenever they tried to arrange visits or contact of any kind, they were given excuses.

**Circumstances of Most Recent Contempt by Respondent:**

The Respondent has allowed me no direct contact with the children since the spring of 2006, despite every effort on my part to ensure I maintain contact with them. She made it clear she was punishing me as a result of her last-minute decision to take the children to St. Lucia for the 2006 March Break and my refusal to sign my consent to her hastily prepared and significantly erroneous passport applications for the children. The Respondent went so far as to try to use my daughter J. to get me to sign the passport applications. I advised the Respondent that I did not believe it was appropriate to sign erroneous passport applications. I was also not comfortable allowing the Respondent to take the children out of the country, given her previous behaviours regarding the children.

As outlined above, although the children's previous contact with me had been limited in the past, I did have at least some direct contact with them on a regular basis. Once the Respondent ended all direct contact in the spring of 2006 I consulted my family law lawyer, Judith Huddart, and on her advice attempted to obtain the Respondent's agreement to an up-dated assessment of the needs of the children. When the Respondent did not reply, I felt I had no alternative but to bring the matter back to court if the children were to have any future contact at all with me.

(ii) *Order of Justice Horkins dated July 21, 2006*

[12] The Applicant brought a motion for access to the children on July 21, 2006. A temporary order was made by Justice Horkins at a case conference granting specific access between the children and the Applicant. The Respondent consented to the order.

[13] That order set out the following access provisions in paragraph 1:

The Applicant's interim parenting times with the 3 children, D., born [...], J., born [...] and K., born [...], shall be as follows:

(a) Tuesday and Thursday evenings:

July 25th to August 1st – from 4:00 to 5:00 p.m.
August 8th to August 31st – from 4:00 to 6:00 p.m.

(b) Saturdays:

July 29th from approximately 3:00 to 5:00 p.m.
August 18th to September 2nd – from 1:00 to 6:00 p.m.

The Applicant shall pick up and return the children to the Respondent's home. Either party must notify the other as soon as possible by telephone of any required change to the above schedule.

[14] The Respondent did not allow any of the access ordered by Justice Horkins. Her evidence at trial was that she did not prevent the children from attending the access. It was the children who did not wish to be with their father. At the time the order was made, D. was 11 years old, J. was 8 years old and K. was 6 years old.

(iii) *Order of Justice Czutrin dated August 21, 2007*

[15] The Applicant was granted telephone access to his children every Monday, Wednesday and Friday at 6:00 p.m. A.L. placed a call to the Applicant's residence the day after the order was made on August 22, 2007 and every day set out for this telephone access thereafter.

[16] He would routinely let the phone ring twelve to thirteen times. After a number of rings, the phone would go dead. On one occasion during Thanksgiving on October 8, 2007, the phone gave a busy signal continually.

[17] The Respondent did not answer her phone on August 22, 2007 nor any day following except for August 24, August 27, 29 and September 7, 2007.

[18] On August 24, 2007, the Applicant was allowed to speak to K., briefly. On the other three dates, the Respondent declined to put the children on the phone, insisting that they did not wish to speak to him.

[19] On six occasions during the period of August 21 to October 11, 2007, the Applicant was allowed to speak to one or two of the three girls.

[20] From October 19, 2007 to April 4, 2008, the Respondent denied telephone access to the children by the Applicant on a consistent basis amounting to twenty times. She simply did not answer her phone when ordered to do so to allow the Applicant to speak to his children.

(iv) *Order of Justice Frank dated March 4, 2008*

[21] On yet another occasion, Ms. D. consented to an order of this court in relation to access by the Applicant to the children. On March 4, 2008, Justice Frank ordered an increase in overnight access between K., J. and their father every Friday at 4:15 p.m. to Sunday at 3:00 p.m.

[22] The facts related to this period are set out in paragraphs [70] and [71] of the Reasons for Judgment released January 16, 2009. Briefly, after producing the children on March 7, 2008, Ms. D. called the police to attend at the Applicant's home. She took K. and J. home that night.

[23] Thereafter, she did not produce them or she attended at the Applicant's home with the children where the children would refuse to go with the Applicant on a visit.

[24] As of April 5, 2008, the Applicant agreed to return to daytime access only to appease his children. They spent time with him on that day. The access did not take place, however, on April 12 and April 25, 2008. If the access did take place, the delivery of the children was usually accomplished in the presence of the police. On September 12, 2008, A.L. saw his youngest child K., but J. refused to stay with him. On September 26, 2008, both K. and J. refused the access visit. Thereafter and up to the trial commencing October 14, 2008, the Applicant has not had the court-ordered access to his children.

(v) *Order of Justice Czutrin dated June 25, 2008*

[25] Justice Czutrin's order of June 25, 2008 dealt with the summer access. The Respondent consented to his order as well.

[26] The facts related to this period have been set out in my January 16, 2009 judgment at page 16, paragraph [71].

[27] In summary, on June 27, 2008, the police attended the Applicant's home and advised him that his two girls did not wish to attend the access visit. On July 8, 2008, K. did not attend the visit, but J. did. However, she soon asked to go home and eventually did leave that very day.

**The Law**

[28] Disobeying the terms of a custody or access order is civil in nature and amenable to writs of attachment or committal pursuant to civil rules of court (*R. v. Rupert* (1974), 16 R.F.L. 325 (Ont. Prov. Ct.) 332. A civil contempt can become criminal contempt when there has been a deliberate, persistent and unlawful disobedience of a specific order (*Stupple v. Quinn* (1990), 30 R.F.L. (3d) 197 (B.C.C.A.)].

[29] Civil contempt is a quasi-criminal matter and the allegations against Ms. D. must be proved beyond a reasonable doubt (*Fisher v. Fisher* (2003), 2003 CarswellOnt 1170 (S.C.J.)]. The burden of proof rests on the party alleging the contempt (*Brown v. Bezanson* (2002), 27 R.F.L. (5th) 1 (Sask. Q.B.)].

[30] In order to find that Ms. D. is in contempt of court, I must satisfy myself, in relation to each of the alleged breaches, of the following things:

1. That the relevant order was clear and unambiguous;

2. The fact of the order's existence was within the knowledge of the Respondent at the time of the alleged breach;

3. That the Respondent intentionally did, or failed to do, anything that was in contravention of the Order [*Einstoss v. Starkman* (2002), 2002 CarsellOnt 4435 (S.C.J.); additional reasons at (2003), 37 R.F.L. (5th) 77 (Ont S.C.J.); affirmed (2003), 2003 CarswellOnt 3234 (C.A.) at par. 8)];

4. That the Respondent was given proper notice of the terms of the order [*Brown v. Bezanson* (2002), 27 R.F.L. (5th) 1 (Sask. Q.C.); *Follows v. Follows*, [1998] O.J. No. 3652 (C.A.) at par. 3].

[31] In *Brooks v. Vander Muelen* [(1999)], (sub nom. *Brooks v. Brooks*) 141 Man. R. (2d) 25 (Q.B.)], the following comments were made about contempt:

> An individual need not be found in breach of a specific term in a court order. It is sufficient if the actions are "designed to obstruct the course of justice by thwarting or attempting to thwart a court order". Evidence of contempt in family matters should be "clear and unequivocal". Restraint is appropriate in making such findings. If a custodial parent can show that she acted at all times in the best interests of the child and not with the intention of disobeying the court's order out of self interest, the courts have been reluctant to make findings of contempt even if custodial parents can be said to be acting only out of spite and hostility.
>
> The standard of proof is that a breach be proved beyond a reasonable doubt. The standard of intention is knowledge of the reasons for the order and contravention of the order. Direct intention to disobey the order is not required. Wilful disregard is sufficient. "Wilful" is intended to exclude only casual, accidental or unintentional acts of disobedience.

[32] Rules 60.05 and 60.11 of the *Rules of Civil Procedure* gives this court the jurisdiction to hear a Contempt proceeding.

[33] Rule 60.05 states:

> 60.05 An order requiring a person to do an act, other than the payment of money, or to abstain from doing an act, may be enforced against the person refusing or neglecting to obey the order by contempt order under Rule 60.11.

The relevant portions of Rule 60.11 are as follows:

> 60.11(1) A contempt order to enforce an order requiring a person to do an act ... may be obtained only on motion to a judge in the proceeding in which the order to be enforced was made.

> (2) The notice of motion shall be served personally on the person against whom a contempt order is sought ... unless the court orders otherwise.
>
> (3) An affidavit in support of a motion for a contempt order may contain statements of the deponent's information and belief only with respect to facts that are not contentious, and the source of the information and the fact of the belief shall be specified in the affidavit.

[34] There are broad penalty powers given to the court under Rule 60.11(5). That section provides the following:

> 60.11(5) In disposing of a motion under sub-rule 1, the judge may make such an order as is just, and where a finding of contempt is made, the judge may order that the person in contempt,
>
> (a) be imprisoned for such period and on such terms as are just;
>
> (b) be imprisoned if he or she fails to comply with a term of the order;
>
> (c) pay a fine;
>
> (d) do or refrain from doing an act;
>
> (e) pay such costs as are just; and
>
> (f) comply with any other order that he judge considers necessary,
>
> and may grant leave to issue a writ of sequestration under Rule 60.09 against the person's property.

[35] There have been numerous cases decided in Ontario which are relevant to this case. They are summarized as follows:

> In *Thomas v. Pearcy* (1993), 48 R.F.L. (3d) 407 (Ont. Gen. Div.), where the six-year-old child's reluctance to visit the father resulted from the manipulations of the mother, who, despite agreeing to access on alternate weekends, had sown the seed of discontent in the child's mind and had demonstrated the lengths to which she would go to sour the relationship between the father and child by advising the child to tell the father that he was not to touch her from the neck down, even though she professed no concern about abuse by the father, the court had no option but to cite the mother for contempt. The matter of sanctions was put over until a later date. In the meantime, the mother was to have the opportunity to purge her contempt by complying with the terms of an earlier order.
>
> In *Wood v. Miller* (1993), 45 R.F.L. (3d) 244 (Ont. U.F.C.), the court found that the mother was the person primarily responsible for the child's reluctance to see

his father. As the custodial parent, she had the power and responsibility to influence the child's perception of access and she had abused her role in this regard. The mother did not encourage access nor did she willingly pursue counseling and/or an assessment recommended in 1988, although the child's hesitancy about access pointed to a need for those services. In 1991, the mother was found in contempt of a 1988 access order, but the matter was then adjourned to allow the assessment to proceed as well as to allow the mother to purge her contempt by reinstating regular access in terms of the 1988 order until the matter returned to court.

In *Campbell v. Campbell* (1994), 1994 CarswellOnt 4468 (Gen Div.), the court found that the mother had willfully deprived the father of access to which he was entitled for a specific weekend and two consecutive weeks in the summer. In denying access, the mother could not shelter behind what she stated to be the wishes of the children, who ranged in age from nine to five. The court had no difficulty in finding beyond a reasonable doubt that the mother was in contempt.

In *Kassay v. Kassay* (2000), 2000 CarswellOnt 3262, 11 R.F.L. (5th) 308 (S.C.J.), where the wife sent a handwritten letter by facsimile transmission to the husband nine minutes before the access visit was to commence advising him that she would not be delivering the child, the court granted the husband's motion for a finding of contempt against the wife for willfully breaching the order regarding access. Her alleged concern that the husband would flee the country with the child fell far short of the clear and compelling excuse required to justify a serious act of violating court orders. There was no rational basis for the wife to fear that the husband would flee with the child. A multiplicity of wrongdoing was not a pre-condition to a finding of contempt. The wife was a first time contemnor and her contempt consisted of a single incident.

In *C. (A.J.) v. G. (A.)* (2001), 158 Man. R. (2d) 192 (Q.B.); affirmed 2002 CarswellMan 159, 2002 MBCA 45 (C.A.), the mother was found in contempt for her failure to comply with the terms of an interim order granting the father supervised access to his two children for a period of one hour per week. The terms of the order were clear, and the mother was fully aware of its terms. Rather than attempting to stay or appeal the order, the court found that the mother chose to willfully disobey the order on a continuous and persistent basis by denying the children all access to their father.

In *Einstoss v. Starlonan* (2002), 2002 CarswellOnt 4435 (S.C.J.); additional reasons at (2003), 37 R.F.L. (5th) 77 (Ont. S.C.J.); affirmed (2003), 2003 CarswellOnt 3234 (C.A.), the original access order provided the father with access and subsequent orders specified that access was to be initiated and concluded at the mother's home. The mother, however, had criminal court orders that prohibited her from communicating with the father either directly or indirectly. Rather than seeking to vary the terms of the court orders, the mother

> decided unilaterally to change the location for pick up and drop off from her home to other venues. The court rejected the mother's arguments that she was complying with the spirit of the orders, stating that she had one option, namely, to obey the court orders. She knowingly and willfully chose not to do so. The court was satisfied beyond a reasonable doubt that the mother was in contempt of the court orders given that the orders in question were clear and unambiguous in their language and intention, that the mother knew of the orders throughout, and, in fact, had been personally instrumental in settling the orders. The court found the mother had willfully and repeatedly knowingly breached the terms of the orders. The Court of Appeal, in dismissing the mother's appeal, held that it saw no basis for interfering with the finding of contempt given that it was essentially based on the credibility of the parties.

[36] More recently, in 2005, T. Wolder J. in *Starzycka v. Wronski*, [2005] O.J. No. 5569 ordered custody of the parties' son transferred to the father due to the mother's deliberate and willful poisoning of the child's mind, her denial of access to the child by the father for almost two years and her refusal to co-operate with the Office of the Children's Lawyer. Custody was transferred to the father as a consequence of the mother's contempt and to facilitate an investigation by the OCL.

[37] In *B.K. v. A.P.* [2006] O.J. No. 2251, L.L. Gauthier J. found that the wife was in contempt of court for not returning the children to their father pursuant to the terms of the court ordered access. He wrote:

> "... with respect to the events of October 19, it was her responsibility to ensure that the children were ready to return on time. It was also her responsibility as a parent to make the transition as easy as possible. She did not do so."

[38] In his reasons, Justice Gauthier also quoted Chadwick J. in *Fenato v. Fenato* [1991] O.J. No. 3546 (Ont. S.C.J.) as follows:

> I find it hard to understand how a custodial parent cannot control or direct an 11-year old child unless the parent is not making a sincere effort to do so.

[39] In *Cooper v. Cooper*, [2004] O.J. No. 5096 Justice Snowie of the Ontario Superior Court found that the mother of the parties' three children sabotaged telephone access between her children and their father. The mother testified that she had made the daughters available for telephone contact but she "did not force the phone to the children's ears". The mother also testified that the children were not interested in having contact with their father. Justice Snowie concluded, however, that the children had no opportunity to make this decision by themselves, having been emotionally alienated from their father from, perhaps, before separation. Justice Snowie fined the mother $10,000 for her contempt.

[40] In *Mondry v. Mondry*, [2005] O.J. No. 2655, Justice Snowie once again found that the mother of the parties' year-year-old child blatantly alienated the child from the father. She had lied and misled the courts in Ontario and Québec. The child was put in the sole custody of the

father to ensure a relationship with both parents. She was ordered to pay costs on a substantial indemnity basis and fined $5,000 for her contempt.

[41] In 2007, Quinn J. discussed the issue of what steps a custodial parent should be expected to take to ensure that the provisions of an access order take place. In *Gerenia v. Harb* [2007] O.J. No. 305, at paragraph 44, he wrote:

> Mr. Wilson argues that our law does not require a parent, who wishes to avoid a contempt citation, to physically force a child to go on an access visit. I respectfully disagree with that argument as a general legal principle. Whether a child should be physically forced by the custodial parent to go on an access visit depends upon the facts of the case. Certainly, the force used should not be such as to cause physical harm to the child. And, although the specter of emotional harm is far more problematic, a custodial parent would be advised to ensure that the evidence supports such a risk before declining to physically force the child to abide by an access order for that reason. Undoubtedly, there are many tasks that a child, when asked may find unpleasant to perform. But ask we must and perform they must. A child who refused to go on an access visit should be treated by the custodial parent the same as a child who refused to go to school or otherwise misbehaves. The job of a parent is to parent".

**Analysis**

[42] The Applicant asks that the Respondent pay monetary penalties for her contempts.

[43] The Respondent took no issue with three of the four questions which the case law in contempt cases requires be answered. She did not dispute that the orders were clear and unambiguous. In fact, I find they were very clear and contained no ambiguities whatsoever. The Respondent took no issue with the fact that she was aware of the orders during the time of the alleged breaches. She was. And, finally, the Respondent does not challenge the fact that she was given proper notice of the terms of the orders. She was given such notice.

[44] Ms. D's defence to the contempt allegations is that she did not intentionally do, or fail to do, anything that was in contravention of the orders. She maintained, throughout her testimony, that it was the children who refused to go to the access sessions with their father, therefore she should not be blamed nor held responsible for any contempt for their actions.

[45] I have already commented on the Respondent's credibility in the first part of these reasons. To those comments, I only add that her actions towards the children alienated them from their father. Her actions became clear in 1999 through Dr. Fidler's report. In 2007, once the children began spending time with their father and were investigated by the OCL, Ms. D's success in alienating the three children and disregarding the court ordered access was obvious to all.

[46] The Respondent came to this court time and time again and consented to the orders in question. Once she left this building, she ignored the orders believing that she could escape

scrutiny. While she was being watched and supervised by the OCL or Bartemaeus, there was some compliance with the orders; but as soon as any agency's back was turned because they had no further involvement with the family, Ms. D. did as she pleased. She intentionally kept the three children from their father.

[47] Her defence that it was the children who did not wish to see their father was contradicted by the children themselves during their exposure to the OCL. Even D., when interviewed by the OCL, could not explain why she did not want to be with her father. On September 26, 2008, K. advised the OCL that she loved both of her parents and wanted to see both of them. Yet, within a few hours of her expressed desire to see her father, she refused to get out of her mother's car for a scheduled visit with A.L. There is really only one explanation for the children's attitudes. It is their mother's consistent negative influence on them from their early childhood about A.L. and her persistence at excluding him from his children's lives.

[48] Not only did Ms. D. not ensure that the children attended for access visits, she intentionally prevented the access in the many ways I have outlined throughout my earlier and this set of reasons.

[49] Not only do I not believe her evidence about why she denied access to the children by A.L., but her evidence does not leave me with a reasonable doubt, nor any doubt, that she willfully committed contempt in relation to all five court orders in question. The evidence of her contempts is overwhelming.

[50] I am absolutely sure that she intended all of the breaches alleged for her own interests. The evidence is clear and unequivocal. Her actions in this regard were not in the best interest of the children.

[51] The applicant asks that the Respondent pay a penalty to him for the acts of contempt. It is clear and regrettable, from all of the evidence in the trial, that A.L. made too many visits to this court as a direct result of Ms. D's denial of his access rights. His request is reasonable as a result.

[52] There shall be an order as follows:

[53] The Respondent is found in contempt of Paragraphs 4(a) and (b) of the Order of Justice Benotto dated March 13, 2000, and is also found in contempt of Paragraph 1 of the Order of Justice Horkins dated July 21, 2006. The Respondent shall:

(a) Pay to the Applicant, as a penalty, the sum of $5,000.00 payable within 30 days in relation to Justice Benotto's Order;

(b) Pay to the Applicant his costs incurred between June 5, 2006 and August 14, 2007, the date on the notice of contempt motion, exclusive of the costs of the motion, fixed in the amount of $15,000 and payable within 60 days in relation to Justice Horkins' Order.

[54] The Respondent is found in contempt of Paragraph 6 of the Order of Justice Czutrin dated August 21, 2007. The Respondent shall pay, as a penalty to the Applicant, the sum of $5,000.00 payable within 30 days.

[55] The Respondent is found in contempt of Paragraph 1 of the Order of Justice Frank dated March 4, 2008. The Respondent shall pay, as a penalty to the Applicant, the sum of $5,000.00 payable within 30 days.

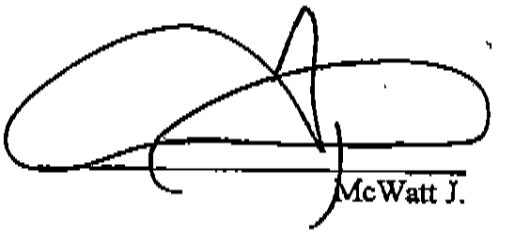
[56] The Respondent is found in contempt of Paragraph 1 of the Order of Justice Czutrin dated June 25, 2008. The Respondent shall pay, as a penalty to the Applicant, the sum of $5,000.00, payable within 30 days.

[57] The issue of costs can be settled by the parties consenting to an amount to be paid by the Respondent, Ms. D., to the Applicant, A.L. If the parties cannot agree on the issue, and Ms. D. is still self represented, then I invite the parties to send me any written submissions they have and book two hours of court time before me to make oral submissions on the matter.

[58] The Applicant has until Tuesday, April 14, 2009 to submit any written materials, which shall not be longer than 10 pages in length, excluding any bills of costs.

[59] The Respondent has until May 4, 2009 to submit written materials in response to the Applicant's submissions. The Respondent's submissions on costs must be no longer than 10 pages, excluding any bills of costs.

[60] The two hour oral hearing can be scheduled for any of the following dates: May 6, 7, 8, 11, 13, 14, 19, 20, 21, 23, 2009.



McWatt J.

**Released:** March 27, 2009

**COURT FILE NO.:** 99-FP-246860FIS
**DATE:** 20090327

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

A.G.L.

Applicant

**- and -**

K.B.D.

Respondent

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**CONTINUED REASONS FOR JUDGMENT**

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McWatt, J.

Released: March 27, 2009