Court File No.: 22661
DATE:2007 08 10

O N T A R I O

S U P E R I O R C O U R T O F J U S T I C E

B E T W E E N:	)	
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S.P.	)	M. WALZ for the Applicant
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Applicant	)	
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- and -	)	
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P.B.D.	)	E. GAREAU for the Respondent
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Respondent	)	
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	)	**HEARD:** August 8, 2007

WHALEN, J. (ORALLY):

[1] The parties married in May 1996 and separated in March 2004. They have two children, J.S.D. ("J.S.D."), born […], 2000, and T.P. ("T.P."), born […], 2003. This is an application by the husband for variation of the existing interim custody and access order in respect of the children, with the result that he would be awarded interim custody of both children with access to the wife, or alternatively expanded access to the children.

[2] Some background is in order. By consent order of July 19, 2004 the parties were awarded joint custody of the children, with primary care to be with the wife. The husband was to enjoy interim access to J.S.D. two days every other week, including overnight after the first visit; and to T.P. the same two days from 11 A.M. to 2 P.M.

[3] The husband was not to consume alcohol during or 24 hours before access, and P.B.D. and S.P. were not to be present during access. Each party was to have telephone access any day the children were with the other parent, but limited to between 9:00 and 9:30 A.M.

[4] Soon after this order was granted, the husband complained of persistent denial of access by the wife. The wife denied it. They both claim to have documented the events in question. In any event, the matter returned to the court at the husband's instance and by order of August 25, 2004 the order of July 19, 2004 was reconfirmed with access to recommence on August 26, 2004.

[5] Unfortunately, the access did not proceed smoothly or with regularity. The husband complained that he was denied and unable even to speak to the children by phone. He was occasionally able to have time with the children, but increasingly he was met with complaints that J.S.D. did not want to visit him, although he maintained that when he did have access there were no problems and the child enjoyed herself. Eventually she did tell her father that she did not want to visit him.

[6] The wife denied interfering with access until July 2005, when she admitted to terminating it because on a visit around that time she perceived that the husband had consumed alcohol and permitted P.B.D. to be present, all in breach of the July 19, 2004 order. The wife's belief was on information from J.S.D., who had just turned 5. She also denied interfering with telephone access, but alleged that the husband called often for the sole purpose of harassing her or that his calls were outside the half hour time frame of the order.

[7] The wife agreed that access became a problem, primarily with respect to J.S.D., commencing in the summer of 2005. However, the real problem was that J.S.D. was refusing to participate. The wife said that at first J.S.D. wanted to reduce access to one day biweekly, then she didn't want it at all. The wife professed frustration with the child's position, because she said she could not understand the basis for the refusal. However, when the child finally mustered the courage to tell her that she did not want access, the mother concluded that the child had only expressed herself "after considering and wanting it for a long time for her own good reasons" (ref. Paragraph 14, wife's factum of June 20, 2006). The wife said that she was persuaded over time that the child's views "were straight from her heart." The mother stated that she suggested to J.S.D. that she express her wishes to the father, which the child eventually did, and also confided them to her counsellor, Ms. Howell-Gibson.

[8] The mother said J.S.D. also complained of being unable to telephone her during access and being afraid of her father when he found her out; she complained her father made "mean" faces at her, and that he wouldn't let her wear clothes from home. Her

anxieties were eventually expressed to counsellors at a local family counselling facility. The wife alleges that the child is afraid of the father because of witnessing an act of domestic violence he committed against her in December 2004. She claims that another assault was committed against his current partner on April 1, 2006. This raises questions in her mind about the husband's ability to control his temper and his propensity to use physical force when he is angry – all of which raises questions about the children's physical and emotional safety if in the husband's care.

[9] The matter came before me on June 23, 2006, where I heard all of the complaints the parties had against each other, some small, but many very serious, scandalous and of course greatly polarized and opposed. The wife alleged that the husband was an alcoholic, an abuser of she and women in his other relationships, including his present partner, as I have said. She accused him and members of his family of bad character and criminal behaviour. She suggested that he could not care for the children properly because of his history, character and predisposition. She referred to criminal charges in the husband's past, including a mischief conviction as a teenager, sexual assault charges in Ottawa, drinking offences and assault charges, including the December 2004 assault on her, and for which the husband entered a plea of "true" under Section 810 of the Criminal Code. Her affidavits filed are replete with damning allegations and opinions about the husband, his antecedents, behaviour as an adult before, during and since they cohabited, and how he has conducted himself toward the wife and manifested his interest in the children. I can only give the flavour of her concerns in these brief reasons.

[10] The husband denied the thrust of the wife's allegations. He admitted to a conviction for mischief as a teenager, for which he has been pardoned. He pointed out that he had not been convicted of the other offences alleged, although he had faced charges that were withdrawn or resulted in acquittal - or in one case a "hung" jury. He vehemently denied the alleged assault against the wife, but admitted to the peace bond disposition, which he said he accepted only because he could not afford the cost of a trial. That incident arose in the context of an argument between the parties in the course of an access exchange.

He and his current partner denied there had been domestic violence in their relationship. Ms. R.G. provided an affidavit to that effect with a report describing a post partum anxiety condition that manifested itself in the behaviour on April 1, 2006 and on other occasions. With treatment and time, she maintained the condition had abated.

The husband portrayed the wife as harassing him and making baseless complaints both to police and the Children's Aid Society, all of which he said was documented. He alleged that the wife and her mother were determined to cut him out of the

children's lives and that the wife was actively engaged in a campaign of parental alienation. His version of events was very different than the wife's as he described her efforts to frustrate access and demesne him in the community.

[11] In the motion before me on June 23, 2006, the husband sought redress to the problems he was encountering with access. I ordered that the husband have supervised access: to J.S.D. at the local supervised access facility for two hours once a week, and; to T.P. from 10 A.M. to 7 P.M. one day a week on his day off, with delivery and return of the child to be at the access facility.

[12] I also acceded to the husband's request for assessment by Dr. Andrew Hepburn as follows, namely that:

> "...the parties and children submit to assessment, including psychological testing as deemed necessary and appropriate by Dr. Hepburn. Dr. Hepburn is to be provided with copies of all pleadings and relevant documents produced in this action. He is requested to explore J.S.D.'s anxiety and report on its nature, causes and treatment, including the possibility of the presence of parental alienation. He is requested to assess the personalities and other relevant characteristics of the parties with a view to the allegations on each side, the parties' parenting abilities and an appropriate plan of custody and access in the best interests of the children. The parties are directed to provide Dr. Hepburn with access to the children's counsellors and teachers so that he may consult with them. He is requested to recommend such therapy or treatment of the children or parties as would advance a healthy relationship between the children and both parties.

[13] There was no dispute over Dr. Hepburn being appointed, and as I recall, both parties welcomed the assessment process. The husband's counsel had apparently spoken with Dr. Hepburn before the return of the motion seeking his appointment. This was so he could know whether Dr. Hepburn would be available for the assignment, the cost of assessment and some idea of time-frame. I accept that such exploratory enquiry was entirely appropriate and necessary. Dr. Hepburn indicated he would do the assessment, but would not commence until September 2006 because of impending holidays and some other outstanding commitments. He also advised that he had no previous knowledge of the dispute or relationship with either party.

[14] The supervised access commenced on August 13, 2006, the delay presumably because of the time it took to issue the order and make arrangements with the access facility. T.P. often appeared in an upset state, not wanting to see his father, but the centre's staff was generally able to cajole or persuade him to go with his father. On several occasions the wife objected to access, once, for example, because she perceived the husband did not have an appropriate car seat, and on another occasion because she had heard that the husband had been out drinking the night before – i.e.

within 24 hours of the visit. Centre staff refuted these objections because the husband showed no sign of alcohol consumption and he satisfied them that the child car seat met government standards. On at least one occasion, access to T.P. was terminated by the centre because the child persisted in refusing to see his father. Most of the time, he eventually co-operated, and on his return he was usually very happy and looking forward to the next visit. Over time, the access to T.P. has gotten easier. In the result, the husband has been able to see T.P. regularly, even to the present, on the basis of my June 23, 2006 order.

[15] On the other hand, the order for supervised access to J.S.D. has failed. The access centre's records indicate that the husband was able to visit with J.S.D. on August 18, 2006, although she arrived at the visit opposed to seeing him, crying and clinging to her mother. Significantly, however, at the conclusion of the visit, she appeared happy and acknowledged that she had had a good time. Thereafter, the child refused to participate. She would show up in an extremely agitated state – crying, clinging to her mother, even screaming in opposition. Under these circumstances and being unable to calm or persuade J.S.D., the centre terminated the visit. This continued consistently until October 13, 2006 when the centre cancelled its participation in J.S.D.'s access supervision. The husband has had no access to J.S.D. since at least August 18, 2006.

[16] J.S.D.'s opposition and extreme emotional reaction was also documented by her counsellors, who seemed to support a cessation of access. In my view, the child's reasons for refusing access were never very specific, and often when expressed, seemed rather trivial, although her counsellors seemed convinced that her fears were real and based on concerns about communicating with her father, fear for personal safety, a complaint about sexualized play initiated by Ms. R.G.'s daughter, who is several years older than J.S.D. and other vague relational issues. The Children's Aid Society was called to investigate, but there is no evidence they found anything of concern in the husband's home. The mother has reported that the child's anxiety has resulted in her wetting her bed, biting her nails, experiencing stomach aches and fits of sobbing to the point of inducing sweats and shakiness. She says these problems have stopped with the cessation of access.

[17] The husband and wife are both well educated. Unfortunately, both work for Canada Customs and Immigration in Sault Ste. Marie and their dispute seems to have overflowed into the workplace. This has undoubtedly increased the distrust and bitterness between them. The husband has qualified for a superintendent's position after special training requiring his absence at times from the community. This dispute may threaten his advancement as work colleagues are drawn into taking sides.

[18] The husband has been involved in a common law relationship with R.G for several years. Ms. R.G. has been teaching grade 3 and 4 for about 5 years. She has a 10 year old daughter, M., by a prior relationship. The couple have a child of their own, B., who is now about 18 months old.

[19] Dr. Hepburn submitted a 38 page report to the court on January 26, 2007. Before summarizing his conclusions, let me briefly address Dr. Hepburn's qualifications and experience. He is a registered clinical psychologist who has practised continuously in Ontario since 1965. He completed his doctorate at the University of Minnesota and has taught at the university level for over 30 years. He was employed for a time by the local public board of education and has been active in developing and directing mental health services for children in Algoma, including within the criminal law setting. He has served as Executive Director and Director of Clinical Services for Children's Mental Health Algoma (subsequently renamed Algoma Child and Youth Services), the community's lead mental health service for children. Dr. Hepburn has completed many parenting capacity assessments and child clinical evaluations for the local Children's Aid Society and similar services in other parts of Canada and the United States. From personal experience as a judge and lawyer, I am aware of Dr. Hepburn's having appeared before many courts on assessments similar to the one ordered here. He has vast experience in problems relating to children and families, and I am quite satisfied that he was well up to his assignment in this case, both on a practical and professional level.

[20] Dr. Hepburn read all of the substantial affidavits, reports and other documents filed in this case. Those documents are listed in his report and occupy five and a half pages in reduced font. He clearly understood the competing positions, allegations, counter-allegations and sad history of the parties' dispute and the difficulties encountered with custody and access. He then interviewed the parties, Ms. R.G., the maternal grandmother and J.S.D.. He observed T.P. in the husband's home with the husband, Ms. R.G., M. and B.. He observed the wife in her home with J.S.D. and T.P.. It was not possible, of course, to observe J.S.D. with her father because by the time of the assessment, access to her had ceased and her reaction was a major part of the problem. Dr. Hepburn also administered the Second Edition of the Minnesota Multiphasic Personality Inventory test on the husband and wife for reasons explained in the report.

[21] Dr. Hepburn described his observations in considerable detail, complete with impressions along the way. He found the husband co-operative and fairly open. On the other hand, he found the wife much less co-operative when she finally understood that his role was as an independent assessor rather than as a treater of the husband's perceived shortcomings. She became difficult to reach and communicate with, and she

would cancel and reschedule appointments with the result that the assessment process was delayed. Dr. Hepburn found the wife generally controlling and manipulative.

[22] When he observed the children in the wife's home, J.S.D. exhibited control over her mother and surroundings. However, he was satisfied that the home was well-kept and there were no concerns about the children's physical well being in that setting. Dr. Hepburn was similarly satisfied with the husband's home and that it was a safe and appropriate setting for children. T.P.'s interaction with the adults and other children in the home was spontaneous, easy and normal.

[23] The office visit with J.S.D. was difficult. She presented nearly five minutes of hysterics approaching a full-fledged temper tantrum at the suggestion of meeting with Dr. Hepburn alone. She clung to her mother who was unable to direct the child's behaviour. Dr. Hepburn's impression was that J.S.D. was putting on a show "for a one-woman audience – her mother". She was eventually persuaded to participate in the interview while her mother sat in an adjoining waiting room separated from the interview space by glass doors. Once the wife was out of sight, the child's behaviour changed completely and she interacted with the assessor normally and with ease. As Dr. Hepburn observed: "She appeared comfortable, responded to questions and smiled and laughed appropriately". She did not ask to see her mother or direct her attention toward the waiting room.

[24] J.S.D.'s only reasons to Dr. Hepburn for refusing access were that her father had made "mad" faces at her and would not let her wear her own clothes. Even if these apparently small complaints were corrected, she said she would not visit her father again. She had apparently never considered how her father might feel by her refusals, but allowed that he was probably sad. J.S.D. admitted that she had enjoyed visits, particularly at the father's cottage, and that she missed Ms. R.G., M. and B.. She admitted that she sometimes loves her father.

[25] Dr. Hepburn's conclusions were without qualification. They are among the strongest I have ever experienced in my legal and judicial career, which has involved substantial family law practice. He concluded:

> "What we have here is a multifaceted, severe, malicious, self-serving, deliberate campaign of parental alienation, a desperate and misguided attempt by a naive mother to keep her children to herself, regardless of the consequences to them. Based on all the information I have at this time I have no reason to believe Mr. P.B.D. is a sociopath or alcoholic [as the mother had specifically alleged to him]. There is absolutely no reason from any safety or other perspective he should not enjoy unsupervised access to T.P. and J.S.D.. I realize he feels depressed and that he has difficulty trusting others but perhaps these emotions are not so surprising given the

barriers that have been put up to prevent him from spending time with his own children."

[26] As for the parties themselves, Dr. Hepburn concluded:

> "Compared with Ms. S.P., during the present assessment Mr. P.B.D. presented as by far the more believable, reasonable, honest, insightful and caring parent. I believe he has a genuine desire to know and to co-parent the two children he shares with S.P.. Frankly, I found her attempts to denigrate, demonize and excoriate this man distasteful and reflective either of a very limited understanding of basic principles of child development or a total lack of concern for the emotional well-being of the children. She is using them as pawns, weapons if you like, in what she views as the ultimate battle to discredit and destroy Mr. P.B.D. for whatever wrongs, real or imagined, she believes he inflicted on her."

[27] With respect to the MMPI – II testing, he found the husband's scores valid and normal, but scoring high on the paranoia scale, indicating feelings of being misunderstood, unfairly treated by others and lonely. As mentioned, Dr. Hepburn believed there was situational justification for such feelings. With respect to alcohol abuse, Dr. Hepburn observed that the husband's "McAndrew Alcoholism Scale – Revised" scores did not support the wife's alcohol abuse hypothesis and indeed the scores were inconsistent with that suggestion.

[28] On the other hand, Dr. Hepburn could not draw any inferences from the wife's test because of poor validity scores. Her test results scored high on the "Lie Scale", not necessarily indicating prevarication as much as presentation of "fake good". Dr. Hepburn observed that validity scores such as the wife's often indicated "unsophisticated individuals, often somewhat 'holier than thou' who try to present themselves to others in everyday life situations as moral, honest, sincere, etc."

[29] As for resolution, Dr. Hepburn did not present many or detailed options. In this regard he concluded:

> "Under these circumstances, the courts will have to decide what remedies are available to set right the harm that has been done to this man and these children. The possibilities would seem to range from aggressive mediation, through police enforcement of existing custody/access agreements, to changing the primary care-giver from Ms. S.P. to Mr. P.B.D.. I suspect at this point the only resolution that has any chance of being effective will be one imposed by the judicial system."

[30] "Parental alienation" is a term often referred to in reported cases and legal articles, but it is not a term that has received a great deal of attention in legal definition. It has been discussed in two Ontario cases that I am aware of. Firstly, in *R.*

v. K.C., [2002] O.J. No. 3162 at paragraph 35 and Appendix "A", which was a criminal case with family law overtones. Sheppard J. (in *obiter*) approvingly offered a definition articulated by Dr. Richard A. Gardner, one of the continent's leading experts on the subject, who had testified as an expert in numerous Ontario cases and written widely about it:

> The parental alienation syndrome (PAS) is a childhood disorder that arises almost exclusively in the context of child-custody disputes. Its primary manifestation is the child's campaign of denigration against a parent, a campaign that has no justification. It results from the combination of a programming (brainwashing) parent's indoctrinations and the child's own contributions to the vilification of the target parent. When true parental abuse and/or neglect is present, the child's animosity may be justified and so the parental alienation syndrome explanation for the child's hostility is not applicable.

[31] This is the definition generally accepted in the psychology community, and I accept it as the meaning likely ascribed by Dr. Hepburn in our case.

[32] In *C.S. v. M.S.*, [2007] O.J. No. 878 at paragraph 92, Perkins J. described parental alienation as follows:

> Children who are subject to the parental alienation syndrome (I will call them PAS children) are very powerful in their views of the non-alienating parent. The views are almost exclusively negative, to the point that the parent is demonized and seen as evil. […] PAS children feel empowered and are rewarded for attacking the other parents and feel no remorse or shame for doing so. […] PAS children have a knee jerk, reflexive response to support the alienator against the targeted parent, often on the basis of minimal evidence or justification. PAS children broaden their attacks to encompass members of the other parent's extended family. [,,,] PAS children are recruited by the alienating parent and alienated siblings to the alienating parent's cause. […] With PAS children, you cannot be sure who you are listening to – is it the child, is it the alienating parent, or is it Court Watch [an advocacy group supporting the father]?

[33] The governing statutory law is clear and well-known on questions of custody and access. I will not reproduce or discuss the applicable provisions at length, especially given the time constraints of this matter, which I consider require urgent intervention. The court draws its authority in this case from *The Children's Law Reform Act* R.S.O. 1990, Chapter C.12 as amended (the C.L.R.A.). Under Section 29, the court may only vary an order for custody or access where there has been a material change in circumstances that affects or is likely to affect the best interests of the child. Section 24(1) requires that custody and access be determined in the best interests of the child and Section 24(2) lists a number of matters the court must consider in determining the child's needs and circumstances pertinent to a determination of best

interests. I will not read the section here, but I assure the parties that I have reviewed it in reaching a decision. I am also aware that under Section 24(3), past conduct is to be considered only in a context of violence and abuse as dealt with in Section 24(4) or where the court is satisfied such past conduct is otherwise relevant to the person's ability to act as a parent. In assessing a person's ability to act as a parent, Section 24(4) requires the court to consider whether the person has at any time committed violence or abuse against his or her spouse, a parent of a child in issue, a member of his or her household, or a child.

[34] I was referred to several reported decisions as to what to do in cases of parental alienation: *Tremblay v. Tremblay* (1987), 10 R.F.L. (3d) 166 (Alta Q.B.) and *Reeves v. Reeves* [2001] O.J. No. 308 (Ont. S.C.J.). In *Reeves* (supra) at paragraphs 22, 23 and 24 Mossip J. quoted paragraphs 9, 15 and 16 of *Tremblay* (supra) with approval.

> 9. I start with the premise that a parent has the right to see his or her children and is only to be deprived of that right if he or she has abused or neglected the children. Likewise, and more important, a child has a right to the love, care and guidance of a parent. To be denied that right by the other parent without sufficient justification, such as abuse or neglect, is, in itself, a form of child abuse.
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> 15. The court should not automatically change custody if the custodial parent refuses access or otherwise interferes with the development of a normal parent and child relationship between the non-custodial parent and the child of the marriage. However, where the parent refuses access, serious questions are raised about the fitness of that person as a parent. The refusal to grant access after it is ordered is a change in circumstances sufficient to satisfy s.17(5) of the Act.
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> 16. In deciding questions of custody one needs to take into account the best interest of the child. It is in the children's best interests to live with the parent who is prepared to be co-operative with respect to access in cases where both parents can equally well look after the children or, even if there is a divergence in parenting skills, as long as the co-operative parent is fit to look after the children.

[35] I agree with those statements. Accordingly, parental alienation being established, there is basis for varying the current custody and access award, provided it is in the best interests of the children.

[36] In *Reeves* (supra), Mossip J. concluded that the father had conducted a campaign of parental alienation in respect of 13 and 16 year old sons who had not seen their mother for many months, did not want to see her, and were experiencing emotional trauma as a result of the pressures upon them. I agree with her observations at paragraph 38 of her decision:

> Based on a significant number of studies and case law in this area, any support or encouragement by one parent that the children not have a relationship with the other parent simply demonstrates the irresponsibility of the parent who has the children and demonstrates

> that parent's inability to act in the best interests of their children. Children do not always want to go to school or want to go to the dentist's or doctor's. It is the responsibility of good parents to manage their children's health and safety issues without necessarily the consent or joy of their children. A healthy relationship with both parents is a health and safety issue that good parents ensure takes place.

[37] Justice Mossip went on to order that custody be changed from father to mother and she required the father's and paternal grandmother's access to be supervised. She ordered on-going counseling for the children and recommended the father seek counseling too. She also imposed numerous other terms.

[38] The mother disagrees strongly with Dr. Hepburn's report and alleges that he did not treat her equally or follow the court's direction because he did not speak to teachers, consult with J.S.D.'s counselors, conduct tests on the children, or suggest a treatment plan. She took the position that she expected his involvement to be an "intervention" rather than just an "assessment". Since the report, she has sought other professional involvement to support her goals of treatment and counter Dr. Hepburn's observations and conclusions. She proposes that the children continue to receive counseling in her care, with J.S.D. not seeing the father until a professional says she is ready and how it should occur.

[39] For example, she has obtained a letter from child psychiatrist, Dr. T.P.M. Ulzen, to whom she was referred by one of J.S.D.'s counselors. The doctor confirms that the child exhibited fear and anxiety whenever the subject of her father came up. He reported that whenever he asked about her father, she "clammed up, became very frightened and regressed into her mother's lap". The mother was clearly present during the child's examination, and indeed the doctor reported that the mother provided some history to him separately about the father's being charged with sexual exploitation of two 14 year old girls in Ottawa and where there was a hung jury but the father lost his job anyway even after an arbitration attempt. Dr. Ulzen then concluded that there was little indication that the child's revulsion of her father was being instigated by the mother. He concluded that the child's response "is so visceral that it seems to be rooted directly in her relationship with her father and may be related to a traumatic event that may have occurred or a feared traumatic event she anticipates." He recommends a "truly independent evaluation of the child ordered by the court but not by the two parties".

[40] With respect, Dr. Ulzen's report seems to underline Dr. Hepburn's conclusions and observations. First of all, Dr. Hepburn's report was court ordered and independent. Secondly, the psychiatrist's opinion seems based on reactions observed in the presence of the mother and on the basis of the mother's information and history. This is the problem with the other counsellors' reports too. The mother presented her version of the history and factual background, and the child came to the counselors

under the mother's influence and control. I do not fault the professionals. They have to accept the facts where they are given, and in most cases it might be a safe approach. They must also treat their patient with sympathy and support. However, in this case, the usual treatment paradigm is not probably safe, reliable or effective given the control and projection issues identified and observed by Dr. Hepburn.

[41] I am not about to tell Dr. Hepburn how to conduct an assessment. I am well satisfied that he knows his business. My order was clear that an assessment was ordered, not intervention. I requested availability to teachers and counselors, but I did not require Dr. Hepburn to speak to them. My concern was that he have the widest pool of information from which to draw. I did not require him to do assessments of the children, or for that matter, of the adults, although I left it open for him to do so as he deemed necessary. Dr. Hepburn was not engaged to conduct treatment. He was directed to investigate and report *to the court*. He has done so. He is a recognized and highly regarded expert. Although I may disregard his report and recommendations, I should not do so without good reason. I can find no reason to reject his observations and conclusions.

[42] As for treating the parties equally, it must be remembered that the most serious allegations and those that were presented as a barrier to access were in respect of the father. I would have expected the father to have undergone very close scrutiny by the assessor and that this might take more time. I am also cognizant of Dr. Hepburn's report that the mother was not very co-operative in arranging interviews, so it would not surprise me that she would not want to spend a great deal of time with Dr. Hepburn. I do not perceive any inequality of attention on the assessor's part.

[43] I am confident that Dr. Hepburn is able to determine where formal testing is necessary and what kind. I would not expect him to conduct tests unless they were necessary and likely to advance the assessment process. I conclude that he was able to assess the children's emotional states from observation and oral communication, which is what he did. He was confident in his observations and conclusions as to J.S.D.'s emotional state and the source of her anxiety.

[44] Parental alienation syndrome in a court setting is not a new experience for Dr. Hepburn, and if intervention does not offer hope of resolution or improvement, by my experience he is not afraid to recommend so. In the case of *D.S. v. S.T.S.* [1997] O.J. No. 406 before me, he recommended against any change in custody or further counseling intervention because it would not likely produce any change in the child's entrenched views, given the time that had passed, the results of extensive professional intervention and counseling already undertaken, and the campaign that had been waged against the father.

[45] I therefore accept Dr. Hepburn's conclusions that the children (particularly J.S.D.) are the victims of parental alienation on the part of the mother against the father. I fear that the counseling administered to date may have had the unfortunate effect of entrenching and legitimizing the child's views in her own mind. While I do not question that the mother is sincere in her beliefs about the father and his effectiveness as a parent, I conclude that she has projected those beliefs onto her children, J.S.D. in particular, with result that they have been afraid to be with their father. On this basis, I conclude that there is jurisdiction to vary the existing order for custody and access.

[46] The mother's counsel urged me to permit further assessment and treatment to better define the problem and devise an effective treatment. He urged that a finding on a matter as complex as parental alienation should await trial, where complete evidence could be explored and tested in respect of the people involved in the case, especially counselors, Dr. Hepburn and any other professionals that may become involved. While I acknowledge the fuller airing and testing that is available through the trial process, I conclude that I would be remiss and not acting in the best interests of the children in the interim if I was convinced they were suffering emotional harm that might worsen or remain unresolved for a lengthy period of time. I am convinced that parental alienation is afoot in this case and that steps must be taken before it is too late, as happened in *D.S. v. S.T.S.* (supra).

[47] I am convinced that the mother does not really want the father to have access to the children. Otherwise, there would be no purpose to her continued parading of the scandalous allegations she apparently continues to make to friends, colleagues and professionals. Indeed, on the one hand she professes a wish that access be facilitated and occur, while on the other she complains at length about the husband's deficiencies as a person and parent.

[48] It is also significant that the husband has held good and responsible employment in an area where good standing with the law is important. He has very successfully undergone extensive training in his work and has good opportunity for advancement. I doubt he could perform so well if he was an alcoholic or even a regular abuser of alcohol. I am satisfied that Dr. Hepburn has explored all these issues in sufficient depth, including through psychological testing.

[49] My earlier order was made not as an endorsement or as a denunciation of either party or their positions. Rather, it was made on the basis of balancing risks of harm to the children, encouraging gentle re-introduction of father and children in the face of wildly opposed positions on the facts, but all in the best interest of the children.

[50] I accept Dr. Hepburn's conclusion that while there are allegations of serious domestic violence that merit scrutiny, they must be considered with great care,

understanding that they may part of the alienation strategy. The Ottawa incidents did not result in convictions, and the wife married, cohabited with the husband and bore his children in the years since those allegations, all the while aware of them. I do not think the wife is suggesting that the children are in danger of sexual abuse by the husband.

[51] The allegation of assault against Ms. R.G. seems frail given the health worker's report of post partum difficulties, which supports Ms. R.G.'s contention that there was no assault and that the condition has stabilized.

[52] There is no doubt the husband entered into a peace bond in respect of a charge alleging assault on the wife. However, it appears that the charge arose in the context of an argument between the parties during an access exchange. The peace bond could reasonably have been a compromise by Crown and the husband for separate valid reasons. The matter will bear scrutiny at trial. Nevertheless, accepting that it may have been a traumatic event for the child (which the child has not expressed), it must be dealt with by the child, the parents and the professionals with a view to moving on and without becoming involved in the issue of blame. As an incident on its own, it is not a good reason to forever remove a parent from the child's life or unreasonable delaying contact.

[53] The wife alleged at least one other assault on her during cohabitation but said she had not reported it to police or her mother, although she has always been very close to her mother.

[54] I am aware of the allegations of violence, but am also aware that they must be regarded with caution and a degree of skepticism. I accept that Dr. Hepburn gave the question ample consideration. I also accept his conclusion that the husband does not pose an emotional or physical threat to the children and that his home is a safe and nurturing environment. I note that T.P. has not faced any danger or threat during the access that has continued for over a year now, and that he generally looks forward to contact with his father and is happy with it.

[55] With respect to the children's views and preferences, where they can be ascertained, the difficulty in an alienation case is determining who (as Perkins J. questioned) is really speaking through the child's words, and whose views the child is really presenting. If I accept that there has been parental alienation in this case, as I do, then the child's preferences are not her own, but are those of her mother or other maternal family as she has been convinced. Accepting the wife's depiction of the child expressing her wish not to see her father after long soul-searching, this means the child was 5 years old when she finally expressed herself, after pondering it as a 4 year old. I am very skeptical.

I also infer from Dr. Hepburn's observations that J.S.D.'s oppositional views and preferences may not be very deep given her expression of them in her interview alone with Dr. Hepburn. She may present very differently and without anxiety if her mother is not nearby or directly involved.

[56] The alienation identified by Dr. Hepburn reflects negatively on the mother's ability to provide for her children. She has failed to manage their health and safety needs, as Mossip J. characterized it in *Reeves* (supra). She has had ample opportunity to adjust and to do so, but has been unable. On the other hand, the father is willing to co-operate and is sensitive to the emotional issues.

[57] I conclude that the present situation cannot continue if the children are to have any chance of enjoying a relatively normal family life as children, or develop into productive and reasonably well-adjusted adults. I realize that placing J.S.D. with the husband may involve considerable upset and pain in the short run, but the effort is in the long term best interests of the children's emotional development.

[58] The husband asks for interim custody of T.P.. He was less aggressive in claiming interim custody of J.S.D. because her fears may be so rooted. He indicated he would be prepared to take interim care of J.S.D. and that he and Ms. R.G. can manage it. I agree that it would not be an easy road to hoe. However, I am reluctant to separate J.S.D. and T.P.. This would be another large change in their already emotionally burdened lives. Besides, T.P.'s presence and example in developing and enjoying a relationship with the father may be instructive and reassuring to J.S.D..

[59] It is true that Dr. Hepburn did not present a counseling or other plan of treatment. However, I take from his report that the problem has progressed to a level where such intervention is not likely to produce resolution. His opinion is that only court intervention can be effective. We are probably at a "last ditch" stage even now. He produced options of court intervention, but I think he was telling me clearly, although perhaps subtly, that a change of primary care may be the only effective solution. Police enforcement of orders would not have a settling effect if relied on other than in exceptional circumstances. That is not a realistic solution, and I am sure it was offered in that sense. Also, I am not sure what would constitute "aggressive mediation" or where it could be obtained. I conclude that Dr. Hepburn sees court-forced change in primary care as the only option bearing some chance of restoring the father/daughter relationship and assuring development of the father/son relationship. I agree.

[60] However, I believe that the mother is an intelligent person and I cannot believe she would purposely harm her children or stand in the way of their long term emotional development. I do not want to separate her from her children for any great length of time or limit her relationship with them. I hope she can be persuaded to re-

examine her view of the situation as far as it concerns the children. I know she will not agree with my conclusions and that she will undoubtedly feel very hurt, bitter and wronged. However, I urge her to reconsider and work toward validating the relationship of both children with their father.

[61] For all these reasons, I order that:

1. All previous orders of custody and access be varied by rescinding them;

2. The children shall be in the interim joint custody of the parties until further order of the court;

3. Upon the conclusion of this hearing the children shall be placed immediately in primary care of the husband until September 13, 2007 and the motion shall be adjourned to motions court on that date for review;

4. While the children are in the primary care of the husband, the wife shall have interim supervised access to the children one day each week for up to two hours on each occasion at the local access facility, but beginning no sooner than 10 days from the date of this order;

5. There shall be no telephone access to the children until August 20, 2007 and then only by one call to the children together placed by the wife between 6:30 and 7:00 P.M. every other day for up to one half hour per call. The parties may arrange another schedule by mutual written agreement to their mutual convenience. The children shall be available without exception or excuse for each telephone call on the dates provided. The parties shall keep each other informed of their respective telephone numbers;

6. The husband shall advise the wife of any medical emergencies involving the children and of any medical treatment prescribed or performed by a physician or dentist in the ordinary course of daily family life. The husband is not to change the children's medical and dental caregivers, and the wife is to inform him of who those caregivers are;

7. The husband is not to remove the children from the District of Algoma except by written agreement or court order and he is not to change the schools where the wife planned or arranged that the children would attend in the fall of 2007;

8. All orders for child support shall be suspended pending further order of the court;

9. A settlement conference is dispensed with and the trial co-ordinator is requested to schedule a trial management conference and trial date on an expedited basis, with the trial to commence no later than the month of January 2008;

[62] I would like to make some comment on my order. Firstly, it is my hope and intention that J.S.D. will accept and adjust to the restoration of a relationship with the husband and his family. The limiting of the wife's access is intended to provide an opportunity for that to occur without the child feeling the direct or indirect influence of the wife or her family. It is my hope that the child will learn by experience that she can have a nurturing parental relationship with her father.

[63] The children will be in the husband's care when the school year resumes. This will make it clear to the school authorities that the husband is a full parent and a very important person in the lives of these children. The husband might consider delivering a copy of these reasons to the children's school. I am confident that the husband and Ms. R.G. (who is a primary school teacher) can deal appropriately the recommencement of the school year.

[64] It is my concern that this order be implemented sympathetically to the children, keeping in mind the change that it represents. I hope the parties can co-operate in that regard. During submissions, counsel seemed to think this would not be a problem. However, I would suggest that the husband inform the Children's Aid Society of the order made today, provide it with a copy of Dr. Hepburn's Report and seek assistance in facilitating a smooth transition in care. If there is any doubt about a smooth transition, I would urge the parties to involve the CAS immediately after court this morning to assist in that regard. In any event, I strongly urge the Society to monitor the children's care in the father's home on a regular basis and report any concerns immediately to the parties' counsel who should be identified to the CAS.

[65] If all goes well, I would expect that the children might be returned to the primary care of the wife with reasonable generous access, including overnight and a fair share of holidays and special occasions, being granted to the husband. I perceived that the husband does not want to tear the children from the wife on a permanent basis and that he recognizes their attachment to her. The restoration of joint custody on an interim basis is not intended to signal anything more than that the parties are both parents of these children and that both are able to provide care. In any event, I do not regard my present order setting or contemplating a permanent situation beyond the purposes of the reintroduction and adjustment expressed. Nor do I consider myself seized with the review of this matter in September, if that occurs. It is a matter that another judge should be able to deal with on an interim basis, just like any other interim situation.

[66] The parties are encouraged to involve the children and themselves, individually or as may be recommended, in a counseling or therapy programme. Counseling for the children, especially J.S.D., should involve input from each parent. It is preferable that a new caregiver be assigned to any existing counseling programme given the findings and related concerns related to the parental alienation issue. The counseling agencies

should be provided with a copy of my order and these Reasons, together with a copy of Dr. Hepburn's report.

[67] It is my hope that the wife's supervised access ordered here may be expanded into a more normalized situation, or her care of the children restored, if appropriate, upon review of this order. However, her ability to support the children in this period of adjustment, to reassure them and allow them to re-establish or expand their relationship with their father will be critical to such review. I am certain that access facility staff will monitor and record each visit in the usual thorough manner that was done when the husband's access was supervised.

[68] Finally, I don't see a settlement conference assisting in this case, other than to delay a trial, which should be held as soon as possible. Settlement may be explored at a trial management conference, and if the parties believe that the court can expedite resolution of the dispute in any way short of trial, counsel may seek a case conference for that purpose, as often occurs in this jurisdiction anyway. The parties should start preparing for a trial management meeting and trial now.

Released: August 10, 2007

Justice W.L. Whalen

COURT FILE NO.: 22661
DATE: 2007 08 10

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

S.P.

APPLICANT

- and –

P.B.D.

RESPONDENT

REASONS FOR DECISION

Released: 2007-08-10