IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *B.T.R. v. U.A.*,
2014 BCSC 1012

Date: 20140606
Docket: E111424
Registry: Vancouver

Between:

B.T.R.

Claimant

And:

U.A.

Respondent

Before: The Honourable Mr. Justice D.M. Masuhara

Reasons for Judgment

Counsel for Claimant:	C. Linde
Counsel for the Claimant: (December 19-20, 2013 and January 27-28, 2014)	G. Sherman
Counsel for Respondent:	S.G. Label
Place and Date of Trial:	Vancouver, B.C. October 29-31, 2012 November 1-2, 5-9, 26-30, 2012 June 17-21, 2013 June 24-28, 2013 July 8-12, 2013 September 30, 2013 October 1-4, 2013 December 19-20, 2013 January 27-28, 2014 April 14-16, 2014
Place and Date of Judgment:	Vancouver, B.C. June 6, 2014

Introduction

[1] In this high conflict family case, the parties contested issues relating to guardianship and custody over the two children of the marriage, child A and child T who are respectively 15 and 9 years old. Finances are also in dispute.

[2] The parties were together close to 23 years. The parties began to cohabit in 1988, married in September 1992 and separated in September 2010.

[3] The father, B.T.R., throughout the trial sought primary residence, sole guardianship and sole custody of the two girls with U.A. having access to child T on alternating weekends. He maintained that the mother was in essence paranoid and has a host of personality defects which prevent her from sharing in the parenting of the children. In final argument, B.T.R. adopted the recommendations in s. 15 report on shared parenting.

[4] The mother, U.A., seeks an order that the parties share custody and guardianship over the two children and that the child T reside primarily with her. It is her position that she has been the victim of counsellors who have been unfairly biased against her and has been unfairly characterized by Dr. England, the writer of the s. 15 report, as being among other things paranoid and enmeshed with the child T. She also asserted that B.T.R. had alienated child A from her.

[5] Each party seeks a divorce.

[6] Child A is a gifted classical musician but unfortunately has stopped studies in this area. She was home schooled for several years. She is currently enrolled in an international baccalaureate program at a secondary school in Vancouver and is doing well academically. She resides with the father and his fiancée Ms. H in Burnaby.

[7] Child T resides with her mother in West Vancouver in the former family home and is enrolled in a French immersion program in West Vancouver. She has attended this school since kindergarten. Child T is very social, has a wide group of friends, and is involved in extra-curricular activities in West Vancouver. There have

been reports of some behavioural issues at school. Child T stays with her father on alternating weekends.

[8] Both children are fluent in English and German.

[9] The s. 15 report recommends, among other things, that both children be primarily resident with their father.

[10] During the trial, U.A. acknowledged child A's wish to reside with her father and agreed that child A should remain primarily resident with him. U.A. indicated that efforts to re-establish a relationship between mother and daughter would have to be undertaken after the trial.

[11] The witnesses who appeared in B.T.R.'s case were: B.T.R.; Ms. H; Dr. Linseisen, a friend; and Dr. England, clinical psychologist and writer of the s. 15 report.

[12] The witnesses who appeared in U.A.'s case were: U.A.; Dr. Blancato, the child A's counsellor; Dr. Charalambidis, the child T's counsellor; S. Hine, counsellor at North Shore Family Services; N. Gregoire, Crown counsel and a friend; Dr. Fourchalk, doctor of natural medicine, registered psychologist, and a friend; R. Vetrici, a friend; Mr. Dehoney, a friend; Dr. G. Ley, psychologist and writer of a critique of Dr. England's s. 15 report; and E. Moffitt, registered clinical counsellor and U.A.'s therapist.

[13] The agreed statement of facts of T. Solkowski, a clinical social worker with North Shore Family Services, was also entered into evidence.

[14] The estimate of trial days was seriously underestimated by counsel. Originally, the trial was scheduled for 10 days. In total this trial took 42 days over a period of more than one year. Ms. Label during the trial volunteered that she was U.A.'s seventh lawyer.

[15] Complicating features that became evident at trial included: poor relations between the parents; poor relations between U.A. and the children's counsellors;

confusion on the part of the counsellors on how to deal with court applications; hostility between the counsellors and U.A.'s counsel; the secret recording by U.A. of a meeting she had with the two counsellors; and the calling of Dr. Ley as an expert, who had in this litigation been retained for a significant period as a "consultant" to assist the mother in preparing for the s. 15 report and who also wrote a critique of Dr. England's s. 15 report.

[16] Unusual events at trial included: child A appearing in the courtroom during the trial wishing to observe the proceedings and address the court; and Ms. Label inviting a prospective client to see her cross-examination one of the children's counsellors, even though I had earlier cleared the courtroom and permitted only the parties to observe the examination of the other child's counsellor. The prospective client and other non-parties were excluded from the courtroom due to the sensitive nature of the evidence.

[17] These Reasons deal only with the primary issue in this litigation, the children. The financial issues will be addressed in separate reasons for judgment.

[18] While this action was commenced prior to the *Family Law Act*, S.B.C. 2011, c. 25 (the "*FLA*") coming into effect, its provisions relating to parenting apply.

Background

[19] The parties are each 48 years old. U.A. had an active youth participating regularly in activities that included skiing, tennis, competitive swimming, yoga, judo and music. She has continued with her interest in music which has included performing with a chamber group. B.T.R. had some extra-curricular interests in his youth but was less active. The parties met in 1987 while attending university in Germany. They were studying physics. They began to co-habit around 1988. They both received their masters degrees and then moved to Alaska for doctoral studies in 1992. They married in September 1992, shortly after their arrival there.

[20] Upon obtaining their doctorates in geophysics, they returned to Germany in 1997. There, B.T.R. worked in the aerospace industry. U.A. did not work as she

was pregnant with child A. After the birth, U.A. decided to pursue an international MBA degree in Paris. She left child A in the care of her mother during her year of studies. She obtained this degree in 1999 or early 2000. She found work as an IT business consultant which required considerable travel and ambitiously pursued it. However, her job came to an end as a result of a downturn in the economy.

[21] The parties moved to Canada in 2002 and lived initially in Ottawa but B.T.R. was offered a job as an analyst with a company in British Columbia. The family moved to the Lower Mainland. He continues to be employed at the same company. U.A. obtained a part-time job at that company working 2½ days per week during 2005-2006.

[22] B.T.R.'s income for the past three years has been:

2010	$119,412
2011	$132,464
2012	$126,972

[23] In September 2002 they purchased the family home in West Vancouver for $505,000. It has four bedrooms and includes a self-contained suite. Significant renovations were made to the family home. B.T.R. put in considerable time and efforts in this regard. U.A. continues to reside in this home with child T and has more recently taken in homestay students for income.

[24] Since moving to Canada, B.T.R. was the primary income earner. U.A. was the primary caregiver of the children. It is apparent that this was the established arrangement between the parties. U.A. had the occasional assistance of a nanny. B.T.R. stated the nanny help was much more; however, given his focus on work and U.A.'s detailed evidence of the nannies and her homemaker role, I prefer the evidence of U.A. on this point. U.A. was responsible for schooling matters for the children and also for organizing and attending the various program activities for the children, including their significant involvement in music, particularly violin studies for child A. Child T's activities include martial arts, music lessons, violin, choir, and yoga. U.A. also managed the finances for the family. B.T.R. had little knowledge of

the details of the family finances, particularly the banking documents which showed significant funds sent from U.A.'s parents. I prefer U.A.'s evidence on the finances of this family.

[25] In 2006, U.A. decided to pursue naturopathic medicine. She enrolled in a naturopathic medicine school and embarked on a five-year program. Obtaining a designation would allow her to work and supplement family income. B.T.R. supported this initiative. Medicine has been a long time area of interest for U.A. Prior to pursuing her studies in physics, she had taken university studies in medicine for one year. Her training to date has led to her becoming a homeopath and doctor of natural medicine (DNM). With a further year of study at the naturopathic medicine school she would be able to become a naturopathic doctor (ND). However, during closing submissions I was advised by counsel that the opportunity to obtain an ND designation was no longer open to U.A. U.A. at present is making efforts to start a practice. Upon establishing a practice, she indicated she could earn an annual income in the range of $40,000 to $50,000.

[26] B.T.R. in addition to working as an analyst is an adjunct professor in geology. In February 2010 he met Ms. H, a student in the same faculty. A romantic involvement began in the spring of 2010. She had been in a marriage of 10 years but ended it once her relationship with B.T.R. developed. Ms. H is currently 36 years old and working on obtaining her master's degree.

[27] During the marriage B.T.R. would come home and discuss with U.A. his work at the school as well as a student, Ms. H. He spoke of her as having a sad and difficult background including that Ms. H's parents were drug addicts and that Ms. H had been abused as a child by her father. At trial the evidence confirmed that Ms. H's parents had a history of drug and alcohol abuse. Her father has entered into "detox" treatment several times and is currently on a methadone program. Ms. H reported instances of physical and verbal abuse at the hands of her father. She had received counselling on a regular basis for several years during high school.

[28] The parties ceased intimacy about two years before separation. B.T.R. moved into the self-contained suite in the family home in June 2010 and remained there until he left the home in September 2010. B.T.R. had been spending nights with Ms. H on an intermittent basis prior to this date. B.T.R. says he was locked out of his suite by U.A. which led to him staying permanently with Ms. H. U.A. disputes the assertion that she locked B.T.R. out of the suite. She says the locks were changed at a later date. In any event, B.T.R. and Ms. H have lived together since. They reside in a small suite in the lower floor of Ms. H's parents' home which is located in Burnaby. The children's bedroom can only be accessed by going through the bedroom of B.T.R. and Ms. H.

[29] At the time of separation, the children remained primarily resident with their mother.

[30] In January 2011, U.A. took a leave of absence from her studies due to the stress from the breakdown in the family.

[31] In September 2011, child A left her mother to live with her father. She was in Grade 9 and was transported by her father to her mother's home to be home-schooled each day. In 2012, the child A entered the international baccalaureate program at a Vancouver secondary school.

[32] On December 3, 2011, U.A. filed an application which included a request for an order that the children receive counselling to deal with the separation of their parents. She proposed Dr. Blancato. U.A. had earlier consulted Dr. Blancato. B.T.R. opposed this appointment. On December 6, 2011, Master Scarth appointed Dr. Blancato as counselor for the children of the marriage. Dr. Blancato assigned the younger child T to her colleague Dr. Charalambidis for counselling and Dr. Blancato took on child A.

[33] U.A., also in December 2011, began receiving counselling with Ms. Moffitt, a registered clinical counsellor who employs music in her therapy.

[34] On February 2, 2012, B.T.R. filed an application that a custody and access report be prepared pursuant to s. 15 of the *Family Relations Act*, R.S.B.C. 1996, c. 128 (the "*FRA*"). Dr. England was one of two names suggested and the one appointed. Dr. England began her work in March 2012 and her report was delivered to counsel by letter dated August 24, 2012.

[35] On February 17, 2012, a hearing was conducted before Master Tokarek. He ordered among other things that the parties on an interim basis would be joint guardians of the children. His order provided that B.T.R. on an interim basis would have sole decision making in the event the parties could not reach agreement on major decisions within a reasonable time frame.

[36] U.A. sought, on the advice of her then-counsel, "consultation" services from Dr. Ley, a psychologist, regarding the nature and process of s. 15 reports. In essence, Dr. Ley stated that his role was to help U.A. prepare for the s. 15 assessment. Following the issuance of the report by Dr. England, further "consultations" including testing of U.A. was conducted by Dr. Ley in furtherance of a critique he was asked by U.A. to prepare. Dr. Fourchalk, U.A.'s friend, attended with her to meet with Dr. Ley for one of those meetings. Dr. Ley's report indicates that in total he met with U.A. on 11 occasions, which in total amounted to 18.5 hours. The vast majority of the meetings being prior to the s. 15 report.

[37] Prior to the continuation of the trial in June 2013, Ms. Label on behalf of U.A. sought an appearance to deal with counselling for child A. In the hearing, Ms. Label advised that during the interim period, relations between child A and U.A. had normalized, that visits had become regular, and that the visits had become quite happy. This picture was shattered by an email sent by child A to her mother on May 24, 2013. It reads as follows:

> Dear Mother,
>
> I appreciate your email but I do not feel that you have fully understood what has been going on for me these past months.
>
> As you remember, I took a break from visiting your home a while back in the winter. The time period around this break, leading up to and following my return to the normal schedule was marked by heavy conflict, leaving me

> feeling troubled and broken. The last thing I wanted was more fighting. I just wanted peace and no more tension and I did not care how I got there and whether or not I was standing up for my needs and rights.
>
> I made the conscious decision to avoid any tricky conversation topics and keep my own personal plans, homework or peer-related to a minimum. I did my best to participate with enthusiasm in activities that we planned and do everything possible to ensure that our weekends together were free of strain. For a while, this worked well but as it continued over the past months, I started to feel more and more emotionally drained and exhausted. I have been effectively tip-toeing around and suppressing conflict which is certainly not a solution to fixing our relationship and took a heavy toll on me emotionally.
>
> I am sorry to have deceived you in this but I hope you understand how this acted as a defense mechanism for me. I am willing to work through issues in joint counseling with you, as was suggested in the winter. I would really like you to see however that more than anything at the moment I need continued counseling for myself and I need Dr. Blancato to speak with the joint counselor before the first session takes place.
>
> Wish you all the best,
>
> [Child A]
>
> P.S.: If you are still interested in buying tickets for my school play, let me know and I can bring two on Sunday when you pick [child T] up from WF.

[38] During the course of the hearing I sought to obtain the views of child A. Ms. Label was opposed to the court interviewing the child directly. She advised that J.P. Boyd was available to provide such a report. On June 6, 2013 he met with child A for 40 minutes. She gave Mr. Boyd permission to relay her thoughts and comments in his report. His report is dated June 7, 2013 and was filed with the court on June 11, 2013.

[39] The following passages from Mr. Boyd's report are informative:

> [Child A] and I reviewed the email…and she agreed it is an email she had sent to her mother.
>
> [Child A] explained the context of the email by telling me that she had been seeing her mother every second weekend, except for a break during the winter when she stopped these visits. [Child A] said that the visits had been difficult for her. She said that the "heavy conflict" and "fighting" mentioned in the fifth and sixth lines of her email referred to conflict between herself and her mother.
>
> [Child A] said that when she decided to start seeing her mother again after the break, she felt that she had two choices, "either I keep trying to have her hear my needs" or "I ignore the conflict" because "when my mum's happy everyone's happy." She said that her mother does not actually hear her

> when she is discussing her needs and views, that her mother "chalked everything up to the fact that my dad was influencing me" - which she said was not true - and that she felt that her emotions were "instantly invalidated" by her mother. She said that this frustrated her because "I still had to go back there, and I got tired of repeating the same thing over and over again," and the fighting was "pointless" as she wasn't getting anywhere.
>
> As a result, [child A] said, "I picked option two," to "keep my mouth shut and keep a smile on my face." [Child A] said that this was what she meant when, in her email, she wrote:
>
> > "The last thing I wanted was more fighting. I just wanted peace and no more tension and I did not care how I got there and whether or not I was standing up for my needs and rights."
>
> However, [child A] said that as a result of her decision "mom thought that I was back to normal" and that everything was fine when, from her point of view, it was not. [Child A] said that suppressing her feelings and maintaining a "happy face" was exhausting and took more out her than she had anticipated. [Child A] said that this is what she was speaking of when, in her email, she wrote:
>
> > "For a while, this worked well but as it continued over the past months, I started to feel more and more emotionally drained and exhausted. I have been effectively tip-toeing around and suppressing conflict which…took a heavy toll on me emotionally."
>
> [Child A] told me that the email accurately represented her feelings at the time of its writing and that it continues to accurately represent her feelings.
>
> * * *
>
> [Child A] said that she remains willing to go to joint counselling with her mother, and would try a counsellor recommended by Dr. Blancato. She said that she would prefer a counsellor with whom her mother has not spoken to privately, and that she would like Dr. Blancato to talk to the counsellor first.

[40] Mr. Boyd also significantly commented:

> I encourage [father] and [mother] to avoid criticizing [child A] for expressing her views to me, and to refrain from pressing her for more information about, or an explanation of, her statements to me.

[41] Upon resumption of trial and following Mr. Boyd's report, I sought further clarification of the position of U.A. I was advised by counsel that she was not seeking a custody or access order over child A. Counsel advised that child A was now 15 years old and that U.A. would allow things to go their natural course in terms of re-establishing contact. This was a realistic view of the circumstances.

[42] More recently, child A has sought to re-establish a relationship with her mother and expressed a desire to commence joint counselling. Her mother has stated that she is prepared to do so but stipulates that a meeting between the two is required before commencing it.

[43] It is my hope that the two will reconnect once the storm from the family breakdown begins to calm.

[44] U.A. and B.T.R. have completed the SystematicTraining for Effecting Parenting course recommended by Dr. England.

[45] Following the testimony of Dr. Charalambidis, the question whether she should continue as counsellor for the child T. Given the evidence, I determined that the relationship should not continue.

[46] During the final days of closing argument, I was advised that the son of B.T.R. and Ms. H was born in March 2014.

Section 15 Report

[47] Pursuant to s. 15 of the *FRA*, a joint expert report was prepared by Dr. England and is dated August 24, 2012.

[48] Dr. England conducted psychological testing and interviewed the parents and Ms. H. Two key tests were administered to the parents: the MMPI-2 and Personality Assessment Inventory ("PAI"). She reviewed an extensive Ministry of Children and Family Development file of this family. She interviewed six collateral sources and reviewed affidavits filed in this proceeding as well as other documents.

[49] In the report, Dr. England recommends that:

(a) the children should be primarily parented by their father;

(b) that guardianship be joint;

(c) the father have sole custody and make the final decisions regarding schooling, extra curricular activities, medical care, etc.;

(d) the schooling and extracurricular activities of the children be in the same geographic area;

(e) access for U.A. be as follows:

(i) U.A. has the children from Monday afternoon until Tuesday morning;

(ii) B.T.R. has the children from Tuesday afternoon until Friday morning;

(iii) U.A. has the children from Friday afternoon until Monday morning;

(iv) B.T.R. has the children from Monday afternoon until the following Monday morning - at which point the cycle restarts with U.A. having the children on the Monday afternoon.

[50] With respect to holidays, Dr. England recommends that special single event days (e.g., Mother's Day, Father's Day, and parent birthdays) be assigned to the respective parent, other single event days (e.g., Halloween and children's birthdays) be alternated, and longer holidays (e.g. Christmas, Spring Break) be either divided and shared, or alternated as the parents see fit. During the summer it is recommended that both parents have more extended time with the children to allow for vacations.

Critique of s. 15 Report

[51] Dr. Ley in preparing his critique of Dr. England's report held several "consultation" meetings with U.A., reviewed documents he was provided such as affidavits, orders, and other court-related records. He was also provided Dr. England's raw data from the psychological tests she conducted, and the notes of her interviews and observations with the parents and children. Other than U.A. he did not interview anyone.

[52] Dr. Ley states that his critique largely focuses on the methods, procedures, and processes that were employed by Dr. England for her report. Dr. Ley opines that Dr. England "may have made a serious error in her scoring of the MMPI-2 she had the parties complete which would render her interpretations inaccurate." Dr. Ley also was critical of Dr. England of not adequately inquiring during her interview of U.A. of the "problem areas" that were suggested in the MMPI-2 and PAI results of U.A. Dr. Ley was critical of the lack of procedures which underpinned Dr. England's conclusions and foundations.

[53] During the course of Dr. England's testimony, she was questioned about Dr. Ley's critique. It was Dr. England's view that given his engagement by U.A. for litigation purposes, Dr. Ley had breached the BC College of Psychologists' Code of Conduct (the "*Code*"). She referenced at least two sections. She stated that s. 5.10 of the *Code* restricted taking on a role where objectively of the psychologist would reasonably be expected to be impaired by a prior relationship; and s. 11.24 which requires a registrant to avoid performing multiple and potentially conflicting roles.

[54] In terms of methodology, Dr. England strongly asserted that Dr. Ley was selective in the information he provided. She stated that "Dr. Ley cherry-picked to produce a certain result", namely, to show that U.A. had a normal profile. Moreover, she noted that Dr. Ley had not only opined on methodology but opined on matters beyond a review such as his statement that child A was "substantially alienated from her mother."

[55] Whether Dr. Ley has or has not breached any professional standard is for his professional body to decide. The requirements of this Court operate independently over experts appearing before it. One of the key requirements is an acknowledgement of the expert that they are doing so to assist the court and is not to be an advocate for any party per Rule 13-2 of the *Family Rules*.

[56] In this case, Dr. Ley states he is not an advocate, his involvement with U.A. from the early stages of this litigation was for 'psychological consultation'. The service provided was to prepare U.A. for her assessment in a s. 15 report and not

therapy. Dr. Ley testified that a large part of the 18.5 hours over 11 appointments he spent with U.A. was in preparing her for the assessment. The balance was for preparing a critique. I find no merit to Dr. Ley's justification that because he was only retained as a consultant by U.A. as opposed to a therapist to U.A. that this makes him impartial. I note the submission by Mr. Linde that Dr. Ley's notes are suggestive that therapy may well have taken place, which further brings into question his role. In any event, it makes no substantive difference whether he was doing so as a "consultant" or as a therapist. U.A. was his client and he was assisting her directly in advancing her interests in this litigation. The inescapable perception is that Dr. Ley in recognizing that this client U.A. had fared poorly in the s. 15 assessment, despite the significant hours he spent preparing her, took further steps to advance his client's interest by discrediting the s. 15 report through producing a critique report and appearing as an expert. The practice of tendering a critique as well as having the writer appear as an expert after having been retained as a "consultant" to prepare a party for a parenting assessment is inappropriate. There is no semblance of independence. It is surprising that Ms. Label put Dr. Ley forward in these circumstances.

[57] I am also left to wonder how much of Dr. Ley's "consulting" affected the scores of U.A. on the MMPI-2 and PAI. I am informed by counsel that retaining professionals to prepare litigants for s. 15 reports (now s. 211 under the *FLA*) is an aspect of some family law practitioners. This is a concern which may have to be addressed by the professionals who administer and analyze these test instruments.

[58] My concerns regarding the critique are furthered by the testimony of Dr. Fourchalk. She has been a friend of U.A. for many years. She holds a PhD. in psychology and was a registered psychologist for 20 years. Dr. Fourchalk is also a former PhD student of Dr. Ley. Dr. Fourchalk in cross-examination stated that she, U.A., and Dr. Ley together reviewed the entirety of Dr. England's report and specifically the psychometrics. There is evidence that emails between Dr. Fourchalk and Dr. Ley was exchanged in relation to this litigation. The emails were not produced at trial. Dr. Ley did not note Dr. Fourchalk as U.A. assisting him in his

critique of the report and was dismissive of Dr. Fourchalk's testimony of her involvement. Interestingly, Ms. Label attempted to discredit the testimony of Dr. Fourchalk, in final argument. Regardless, Dr. Fourchalk was involved in a meeting with Dr. Ley and had subsequent communication with him; the conflicting evidence regarding her involvement only furthers the questions surrounding the critique.

[59] In light of the above concerns, I have given limited weight to Dr. Ley's evidence by other witnesses, except to the extent aspects of it were acknowledged and/or accepted by other witnesses.

[60] I will now address first the legal principles relating to parenting.

Principles

[61] The only consideration in regard to guardianship, parenting and access in relation to a child is the best interests of the child.

[62] The *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.), s. 16(8) states that in terms of custody access and residence of a child "the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child". Subsection 9 states that:

> In making an order under this section, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of a child.

[63] Subsection 10 states that in making an order regarding custody and access that the "court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child…".

[64] In determining the best interests of the child, the *FLA* enumerates several factors to be considered; namely:

> (a) the child's health and emotional well-being;

(b) the child's views, unless it would be inappropriate to consider them;

(c) the nature and strength of the relationships between the child and significant persons in the child's life;

(d) the history of the child's care;

(e) the child's need for stability, given the child's age and stage of development;

(f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;

(g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;

(h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;

(i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;

(j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

[65] Section 38 of the *FLA* states:

For the purposes of section 37(2)(g) and (h) *[best interests of child]*, a court must consider all of the following:

(a) the nature and seriousness of the family violence;

(b) how recently the family violence occurred;

(c) the frequency of the family violence;

(d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;

(e) whether the family violence was directed toward the child;

(f) whether the child was exposed to family violence that was not directed toward the child;

(g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;

(h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;

(i) any other relevant matter.

Findings regarding the Children

[66] The parents are highly educated. They love and care for their children and the children love their parents. Unfortunately, this love has not been enough to bridge the difficulties that exist between the parties. Given the background that I have outlined above as well as what follows below, I find that the best interests of child T are served through the parents sharing equally in the parenting of child T. I also find that it is in the best interests of child T to remain in her current school. Child A will reside primarily with B.T.R., conceded by U.A.

[67] My assessment is that each parent has strengths and weaknesses that in sum do not lead me to conclude that either is sufficiently superior to the other to justify an imbalance in the custody and guardianship of child T. U.A. does not contest child A residing primarily with her father, accordingly there is no need to address that point.

[68] As noted earlier, U.A. has until more recently been the primary caregiver for the children. She has been the person responsible for enrolling the children in programs and exposing and nurturing interest and skills in various areas. It is apparent that U.A. has played a stronger and larger role in direct-parenting child T. The child has greater connection in her friendships, activities and schooling in West Vancouver. B.T.R. until more recently had a secondary role in parenting. While he supported the children's activities, he remained remote leaving U.A. in charge of arranging the social aspects of the children's lives, attending their activities, conversing with instructors and ensuring the children practised their music. In addition, it is apparent that U.A. attended to the responsibilities of managing the household. Until more recently, there was a strong bond between both children and their mother. The bond with child T remains so. It is conceded by B.T.R. that he remained away from home, for a good part of the time, selecting work projects which required travel and time away from the home as well as long hours at the office because of the unhappiness in the marriage. He was not a regular attender of the children's music recitals. On many occasions he would be late in transporting the children to school causing the children to be late for class. In terms of being a

primary parent B.T.R. has not described plans for child T. I also note his recent new responsibilities, as father to a newborn son which affect the circumstances.

[69] I find as accurate the observation by Dr. England in her report that:

> both parents present with their own combinations of strengths and weaknesses. Most notably, both parents are highly educated individuals with diverse interests, who foster accomplishment in their children. Clearly they love their children and want the best for them, and in their respective ways, have embraced the various responsibilities associated with having a family and providing for their children. At the same time, certain difficulties they have faced in their marriage are carrying over to parenting, and has made it difficult for them to come to an agreement with respect to the children. While both parents present as strong in terms of intellectual development, they both impress has having impoverished psychological insight.

[70] I note during her appearance Dr. England attributed imperfect parenting to each parent.

[71] The various scores from the psychological testing administered by Dr. England's evidence elevated/negative scores on various scales which supports my overall view that notwithstanding their accomplishments, both parents have deficiencies.

[72] Where I part from Dr. England's report is in respect to her recommendation that the child T be primarily parented by B.T.R. Her recommendation is based upon the findings that there is a disparity in the psychological adjustment of the parties. Dr. England says that U.A. has paranoid traits; an unhealthy preoccupation with sexuality; and is seriously enmeshed with child T. Dr. England also opined that though she found no evidence of concern in the psychological testing, U.A. may at some point experience a major depression.

[73] I found Dr. England's evidence helpful; however, having the benefit of a greater breadth of evidence including the opportunity to observe and hear the parties and witnesses over the course of a very long trial, I am unable to place the weight she has on her findings which have led to her recommendation. Though I also observed deficiencies in U.A. which I discuss below; the disparity between the

parties in my respectful view is not so great as to have an imbalance in parenting for child T.

[74] In regard to depression, Dr. England conceded that this was only a speculative statement and was made only of a concern for U.A. It is not clear how much weight she placed on this factor, but I attribute little in terms of my determination.

[75] Moving to the question of enmeshment between U.A. and the child T.

[76] Enmeshment is complex. There is no test for enmeshment. It is agreed by Dr. England that the behaviour of the enmeshed child would largely be one of child behaving so as to please the parent who the child is said to be enmeshed. She agreed that the enmeshed child is likely to feel overly responsible for her parent's negative emotional state such as sadness or anger, believes that she, the child has caused the unhappiness, and the child expresses guilt as a result. The child would lose her identity to the parent.

[77] The basis for her finding included:

(a) reference in the MCFD file that the child T is scared of her mother, that the mother hits the child. The mother's denials of having done so.

(b) the inconsistency and lack of follow through in setting boundaries for the child T by U.A. and her statement that she feels overwhelmed parenting child T.

(c) child T internalizing a negative view of herself as evidenced by the child describing herself to Dr. England she was "annoying".

(d) U.A.'s statement that in the context of unhappiness in the marriage that: "knowing my needs would never get met, I gradually turned my attention from him [B.T.R.] to the children.

(e) child T sleeping with her mother.

(f) child T stating that she wanted to be like a baby.

[78] It was Dr. England's view that child T was a caregiver to U.A. and that she was fulfilling U.A.'s emotional needs. It was her view that the enmeshment had started about two years before separation.

[79] Dr. England added at trial that based on a certain drawing by child T, the enmeshment may be the worst that she would probably encounter in her career. This remarkable statement in my view gave me considerable pause. I say remarkable in the context of Dr. England having made no mention of this in her report and that she did not make inquiries of the child in relation to what she had written on the drawings.

[80] Her comment arose during an exchange with Ms. Label regarding several sexual drawings by child T in 2011 and 2012. Dr. England agreed that the drawings "would merit inquiry" but commented in a way which was dismissive of their significance. She stated that she did not make any specific inquiries of the drawings with the child because she was concerned with "over-interviewing" the child and it was her belief that the child had already been interviewed by North Shore Family Services. Her belief was that a "full investigation" had been conducted. Dr. England was wrong. Only when questioned on the drawings, did Dr. England state that the child T's writing on a drawing to her mother that if her mother got a boyfriend the child would kill herself was a serious indicator of enmeshment. This statement with her decision not to make inquiries was not adequately reconciled.

[81] Dr. England also relied upon the information from Dr. Charalambidis in regard to enmeshment. Dr. Charalambidis unfortunately did not stand up well as a witness. I found Dr. Charalambidis' evidence overall weak. At certain critical points she was incapable of responding to questions. Her testimony lacked confidence. The evidence she had regarding enmeshment was limited in my view and was not explored by her with any depth. The evidence of Dr. Charalambidis regarding U.A. and child T must be approached with considerable caution.

[82] It is apparent that as experienced as Dr. Charalambidis and Dr. Blancato are, they were overtaken by the dynamics of this high-conflict family dispute, the complexity of the parties and the involvement of the parties' lawyers. It is clear that the counsellors were drawn out to water which was deeper than what they were prepared for. They lost neutrality. There was obvious tension between the counsellors and Ms. Label. Ms. Label questioning Dr. Blancato's academic credentials in emails was not helpful. The counsellors jointly signed letters containing observations and opinions which gave the appearance they both had direct knowledge of facts about each child and each parent when they did not. Their joint communications to the court assumed facts which were not correct or not current. Their attempts to avoid or refuse service of applications and subpoenas evidenced a lack of understanding of their responsibilities in the legal process. Further, their decision to withdraw counselling services based on ethical professional grounds and then recommencing them was perplexing.

[83] Further, the limited time frame that Dr. England had for observation and interaction with child T and her parents in my respectful view raise doubt about the finding particularly in the context of her "worst" instance characterization. I note that child T also in the same group of drawings wrote to B.T.R. and Ms. H, "I love you more than [my life]". Taken at face value, this could also be as strong an indicator of enmeshment of the children with her father. I also note that the evidence is clear that both parents have had challenges in setting boundaries for the child T. The broader evidence of child T, from witnesses, including the parents, who have known child T for several years, is that child T is an independent, energetic, wilful, self-centered, and free-spirited child who can be prone to the dramatic. I accept this evidence and find that the child's comments regarding her mother and father are reflective of her dramatic nature. I note that independent witnesses did not notice any concerning behaviours between U.A. and child T. Child T sleeping with her mother from time to time was viewed negatively by Dr. England but I note this was a similar experience of witnesses who were mothers that occurred with their own children of a similar age as child T. These mothers considered this to be natural and normal. I prefer that evidence. The lack of any desire by the child T displaying a

need to see or contact her mother at play dates and overnights at classmate's homes as confirmed by witnesses and the more recent evidence where child T spent a period of two weeks with her father without any display of a need or concern for her mother negates the concerns of enmeshment. There was no communication between child T and her mother for the entire period and the child did not seek it. There were no reports of the child displaying behaviours which would evidence enmeshment during this period. Mr. Linde in his final submissions candidly acknowledged this and suggested that the enmeshment has dissipated.

[84] I also have reservations of Dr. England's view that U.A. is living through child T. U.A.'s personal activities, pursuits and achievements as well as the evidence of witnesses clearly contradict this view. The reference to U.A. turning her focus to the children in the context of spouses in a relationship which was not functioning is a usual and normal human result.

[85] In my view enmeshment is not the concern that Dr. England placed upon it in regard to parenting.

[86] In regard to paranoid traits, Dr. England's report states:

> Overall, the writer is most concerned regarding the psychological adjustment of [U.A.]. While it cannot be denied that she is accomplished academically, it would appear that there are significant personality factors operating which have stymied both professional and personal fulfillment. The clinical impression is that [U.A.] presents with paranoid traits, although not of the variety which one most typically encounters. In general, individuals with this style of personality have a strong need for autonomy and as a result, have difficulty with intimacy. In the writer's view, U.A. presents as having an unhealthy preoccupation regarding sexuality. Sexuality can become problematic in an individual's life when conflict regarding other issues becomes associated with it, such that sexual functioning is negatively impacted. For [U.A.], sexuality may trigger a conflict for her, as it requires a relinquishment of control, and a comfort with being impacted by another. Metaphorically this issue may be related to a history where [U.A.] has subordinated herself to others (e.g., pursuing areas of study in accordance with the wishes and expectations of others.) Now in mid-life, [U.A.] presents as grappling with certain issues of psychological development which normally are resolved much earlier in life. The later in life one attempts to resolve such issues is a painful and disruptive process. Cognitively, individuals with paranoid traits evince considerable rigidity in thinking, and immutability of their views, such that they make poor candidates for therapy. This was evident in the evaluation, for example, but not limited to, her presentation

> during the interview, and from information from collateral contacts. To some extent [U.A.] cognitive style almost approaches impairment, in the difficulty she faces in incorporating communication which conflicts with internal motivation. In connection with this, while she may be instructed on skills to decrease the enmeshed relationship with [child T], until the underlying motivation which drives this unhealthy attachment is addressed, it is not likely that significant movement will take place.
>
> ***
>
> The writer is concerned that [U.A.] has spent much of her adult life avoiding facing personal issues, and the conflict over the children has become incorporated into this avoidance. While [U.A.] denies any suicidality and there is no evidence of such a concern in the psychological testing, the writer is concerned that [U.A.] at some point experience a major depression. She presents as a dysphoric individual who has not yet found her way in life, and who copes by directing inordinate focus on issues outside of herself. Should a trial ensue, unfortunately [U.A.] may seize upon this as another opportunity to avoid addressing personal issues. Regardless of the outcome of a trial, healthy children inevitably leave their parents, and [U.A.] seems ill prepared to face this loss.
>
> It is recommended that [U.A.] engage in personal therapy for a consistent and extended period of time (e.g., no less than once a week, for no less than six months) in order to focus just on herself as an individual, with a view to helping her achieve financial stability and emotional fulfillment, that is independent of her relationship with her children.

[87] I am concerned with the finding made by Dr. England regarding traits of paranoia including U.A.'s unresolved conflict with her father which she testified to as explaining the changes she had made her educational and occupational endeavours. There was little evidence or written analysis on this finding and the limited time Dr. England had with U.A. leaves considerable room for doubt for such a broad conclusion. I note that Dr. England did not contact Ms. Moffitt, a registered clinical counsellor and U.A.'s therapist, who could have provided further background on this topic. U.A. had provided Ms. Moffitt's name to Dr. England as a contact.

[88] I agree with Dr. England's finding that U.A. was highly defensive. Her time as a witness clearly demonstrated this as well as considerable rigidity. U.A. had considerable difficulty answering questions put to her in a straightforward and simple way. I note for significant parts of her testimony she was prone to providing peripheral information or a prolonged description of context before answering questions. I asked her on several occasions to answer questions directly first and to then provide elaboration. She seemed to be largely incapable or unwilling of doing

so. Her justification that her argumentative style is a cultural feature was unpersuasive. Her strident and argumentative nature was observed by other witnesses. I found her comment that she did not understand the term "grooming" she used in a letter in reference to activities in B.T.R.'s home to be disingenuous. Her several references to farmers as "peasants" was consistent with the elitist superiority characteristic found by Dr. England. Her stated condition of speaking first with child A before agreeing to joint counselling evidenced in my view an unnecessary degree suspicion and mistrust. Though she acknowledged some responsibility for the breakdown in the family and for the determination in her relationship with child A, she was reluctant in doing so. This combined with her lack of acceptance of child A's letter to her which was validated by J.P. Boyd as a true reflection of the child's views, left me with the view that U.A. lacks some insight. However, I am not of the view that these observations are adequate justification to restrict parenting.

[89] At the same time, the evidence regarding B.T.R. indicates notable aspects of paranoid traits as well. Dr. England stated that paranoid traits include intense suspicion and mistrust, a tendency to hold grudges, blaming others, pathological jealousy, an angry temperament and reactivity to perceived insults.

[90] Dr. England found B.T.R. with highly defensive scores though U.A.'s was higher. He also scored high with elitist and superiority attitudes. Further, he had an extreme elevation of aggressive behaviour on the clinical scales. There is evidence which I accept of B.T.R. having a reactive personality. This includes his confronting authorities and chasing down other drivers on the road. In regard to one incident with the police he blamed the officer as concocting a story; and that another had bullied him. The evidence reveals that B.T.R. is not prone to accepting fault for this conduct. The evidence also supports my view that B.T.R. has made disparaging remarks about U.A. in the presence of the children as has U.A. This includes the unfortunate statement by B.T.R. to the children that he was leaving or had left their mother because of the lack of sex. B.T.R. stated he said lack of affection; he may have said affection, but the subsequent statements by the children suggest that he

likely also said “sex” in the conversation before the children. Both parents have engaged in physical action against one or the other child. This includes B.T.R. hitting the child T at a restaurant in a manner sufficient to cause a patron to contact the Ministry of Children and an official attending the restaurant to investigate and question the family; and U.A. engaging in a violent hair pulling altercation with child A. In regard to certain bank statements B.T.R. suggested they may have been forged by U.A. He provided no evidence for his assertion.

[91] On the matter of U.A.’s preoccupation with sexuality, Dr. England noted that she could have “better” written this part of the report. In clarifying this aspect she stated that she did not mean “to say that [U.A.] has a preoccupation with sexuality in the way in which one sees with individuals who are constantly thinking of sexual matters out of their own interest”. Rather, Dr. England explained that the preoccupation she was referring to was the “unrelenting concern about sexual activity that’s occurring in [B.T.R.’s] household and how that is damaging for the children”. An example Dr. England referred to was U.A.’s negative commentary regarding Ms. H taking the child A to purchase a bra which U.A. states the manner in which it was done was stated by U.A. as “overly” focused on sex and “tasteless”. U.A. also suggested that Ms. H was “grooming” child A. I have already mentioned that her evidence that she did not understand the term in my view was disingenuous. I also note a concern U.A. had regarding child T being given a drug while at B.T.R.’s residence. I found her testimony that a drug analysis of child T conducted after the child came home after a stay at her father’s was at the instigation of the family doctor and not her unconvincing, given the emails that suggest otherwise. Dr. England also referenced U.A.’s concern with the sexualized drawings of child T in 2011 and 2012 in this regard.

[92] Notwithstanding the above reservations, given the background provided by B.T.R. to U.A. regarding Ms. H and her parents, the relative suddenness of B.T.R.’s departure to live with Ms. H in her parents’ home, the express reason given by B.T.R. that he left the marriage because of the lack of sex, and the shock and anger of the marriage breakdown, in conjunction with the sexualized drawings by child T,

U.A.'s concerns were understandable in a relative sense. I am not persuaded sexual preoccupation warrants the ongoing concern attributed to it by Dr. England.

[93] While I have noted certain negative characteristics in U.A., I also received positive evidence from those who know her well. This evidence provides a broader perspective of U.A. which I found helpful and provided balance. I noted particularly the comment of Ms. Gregoire—who has known U.A. for nine years, has two young daughters, and who for a good period has had regular contact with U.A.—that she considered U.A. to be a role model for her as a parent.

[94] In sum, I do not find U.A. as impaired as found by Dr. England that the best interest of the child T requires restricted parenting by U.A. in the manner Dr. England recommends. Similarly, I do not find B.T.R.'s personality to be as positive as Dr. England found to support her finding.

[95] My view of the circumstances is that the negative behaviour of the parents is amplified by the highly acrimonious dispute and not supportive of one party being sufficiently superior to justify an imbalance in the parenting regime for child T.

[96] In determining parenting, the matter of violence and emotional abuse must be considered as there has been evidence of violence on the part of B.T.R. and U.A. toward the children as well as some emotional abuse. The recent evidence of the reaction of B.T.R. and Ms. H toward child T after discovery of drawings made by child T while on holiday with them is concerning. The child was questioned by both as to why the drawings had been made and child A was permitted to negatively engage in the conversation between the adults and child T. It was obvious child T was upset and felt isolated. The two had a concern these drawings could end up in court and used against them. This was the impression they communicated to the child. The tearing up the drawings exacerbated the child's situation. Ms. H at a later date taped her torn drawings, returned them to child T and apologized. It appears this incident arises from the tensions from the ligation and I am satisfied that it was transitory.

[97] In regard to the physical violence, this is a matter which is also of concern. Child T is challenging for both parents. I am satisfied that it is not part of a continuing pattern on the part of both parents, though I note B.T.R. has a reactive nature. The parents should seek out assistance in determining how best to parent child T without resort to physical violence. Similarly, U.A. should seek in her therapy, counselling regarding how best to relate to child A and avoid physical altercations as have occurred in the past.

[98] My assessment of the evidence is that the allegations by U.A. of alienation are unfounded. Though B.T.R. has made inappropriate statements regarding U.A. to the child and U.A. may believe that B.T.R. has seeded alienation in child A, I do not find this to be the case. The evidence is clear that child A wishes to maintain and have a relationship with her mother. U.A.'s view likely arises from the breakdown of the marriage with all of the darker and negative perceptions that can come from it.

[99] My assessment of the parents is that neither has the higher ground in terms of parenting child T. Neither is a perfect parent. The acrimony in this dispute has amplified the negative characterization of the parties, particularly in U.A. Recognizing that with some finality in the litigation, the tensions between the parties usually moderate; the best interests of child T would be served by an equal parenting regime where the child is parented on an alternating weekly basis. Child T will remain in her present school. Child A will continue to reside with B.T.R. Both parents will be guardians of each child.

[100] In regard to schooling for the child T, Dr. England opined that:

> parents and children are best served when siblings' schooling and extra-curricular activities are within the same geographic area. Therefore it is recommended that the child T attend a school that is within the same catchment area as the school the child A attends.

[101] As a general comment, the above statement may have some validity; however, each case must be assessed in the light of its specific circumstances. I am unable to accept her recommendation in this case. There is a considerable age

difference between the children. Child A will be graduating from high school soon while child T is still in elementary school. They have different personalities and interests. It is evident that there is a level of discord between child A and child T, including child A's jealously toward her sister, which in an intact family may not be as concerning but is a factor given the level of discord between the parties. I find that proximity is not a critical factor. Further, it is clear that the child T has strong ties with friends in West Vancouver and is doing well at her school. Remaining proximate to her present school and close friends is in the child's best interests. I note also that there was some suggestion that B.T.R. and Ms. H would at some point move, perhaps closer to West Vancouver.

Conclusion

[102] The parties are granted a divorce to take effect 30 days after this judgment is issued.

[103] The parents will be the joint guardians of each child. Final decision-making regarding child A will be with B.T.R. Final decision-making regarding child T will be with U.A.

[104] Child A will remain primarily resident with B.T.R.

[105] Child T will have liberty to phone either parent when with the other.

[106] Child T will be parented equally and will reside with each parent on an alternating weekly basis.

[107] For specificity the terms will include the following:

> The guardians will exercise all parental responsibilities with respect to the child on the following terms:
>
> 1. in the event of the death of a guardian, the surviving guardian will be the only guardian of the child;
> 2. each guardian will have the obligation to advise the other guardian of any matters of a significant nature affecting the child;

3. each guardian will have the obligation to discuss with the other any significant decisions that have to be made concerning the child, including significant decisions about the child's health (except emergency decisions), education, religious instruction and general welfare;
4. the guardians will have the obligation to discuss significant decisions with each other and the obligation to try to reach agreement on those decisions;
5. in the event that the guardians cannot reach agreement on a significant decision despite their best efforts, B.T.R. will be entitled to make those decisions in regard to child A and U.A. will be entitled to make those decisions in regard to child T; and the other guardian will have the right to apply for directions on any decision the guardian considers contrary to the best interests of the child, under s. 49 of the *Family Law Act*; and,
6. each guardian will have the right to obtain information concerning the child directly from third parties, including but not limited to teachers, counsellors, medical professionals, and third party care givers.
7. the guardians will maintain a common exchange journal regarding child T which is to be exchanged when the child is transferred to the other guardians. A shared online tool may be employed as an alternative. Each guardian is to record on a daily basis while the child is in his/her care matters relating to the child including:

    - School - such as events, key dates, report cards, newsletters, outings, assignments, home reading, parent/teacher meetings and homework;
    - Health - observations of the child, child's complaints, doctors' appointments, dental appointments, medications, injuries, and diet;
    - Social - invitations, activities taken and family events;
    - Extracurricular activities - registration, schedules, equipment, and events;
    - Clothing;
    - Key contact information for doctors, dentists, sitters, parents emergency contact numbers; and
    - Any other matter relating to the care of the child.

[108] In regard to item 7 above and child A, B.T.R. will provide weekly summaries regarding information exchange. The same will apply to U.A. should child A spend time with her.

[109] Child T is to remain in her present school. During those periods when the parent is the access parent, that parent will be responsible for the dropping off and picking up of the child up from school, as well as for her extra-curricular activities.

[110] Christmas and Spring breaks are to be shared equally regarding child T.

[111] Summer vacation period each year is to be divided equally regarding child T.

[112] Child T's birthday is to be alternated annually.

[113] Child T to spend Mother's Day with U.A. and Father's Day with B.T.R., regardless of whose day it would otherwise be.

[114] In regard to the matters in paras. 110 to 113, specific to child A, she is to be consulted as to her desires.

[115] Each party is at liberty to travel with the children on reasonable notice and with itinerary, proof of a return ticket (if applicable) and contact information provided to the other.

[116] Passport of child T to be held by U.A. except when required by B.T.R. for travel with child T; and passport of child A to be held by B.T.R., except when child A requires the passport to travel in which case he is to provide it to child A.

[117] The parties are to consult with child T's schoolteacher and counsellor to determine whether counselling is required and the nature and resource of and for such counselling.

[118] I will remain seized for one year from the date of these Reasons regarding parenting issues.

"The Honourable Mr. Justice Masuhara"