IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *M.P.D. v. C.R.D.,*
2017 BCSC 397

Date: 20170223
Docket: E133344
Registry: Vancouver

Between:

M.P.D.

Claimant

And

C.R.D. a.k.a. C.R.R.

Respondent

Before: The Honourable Mr. Justice G.C. Weatherill

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:	W.A. McLachlan
Counsel for the Respondent:	D.H. Goodwin
Place and Date of Hearing:	Vancouver, B.C. February 22–23, 2017
Place and Date of Judgment:	Vancouver, B.C. February 23, 2017

[1] **THE COURT:** I am appreciative of the fact that both of the parties are here. I understand the difficulties the parties are having with each other but, as I indicated to counsel, the only thing that matters is the best interests of the children, at least at this stage.

[2] Children have the right to a strong and loving relationship with both parents. When one parent deliberately sets out to undermine a child's relationship with the other parent, it is far too often that the court is left with the task of having to act in the best interests of the child to put a stop to that parental abuse.

[3] Before me are two in what have been a series of contested applications in this high-conflict, acrimonious family dispute involving two innocent two children.

[4] The first application is that of the claimant for an interim order implementing the recommendation of Mr. Robert Colby, a registered psychologist, as set out in his January 17, 2017 s. 211 report, that he, the claimant, assume all parenting time of and parenting responsibilities for the children, except on specified supervised occasions when they will be parented by the respondent. The claimant also seeks various ancillary orders.

[5] The second application is that of the respondent for orders that Mr. Colby produce his entire file, that the parties retain the services of a parenting coordinator for a minimum period of two years, that there be what is called a "hear the child" report pursuant to s. 211 of the *Family Law Act*, S.B.C. 2011, c. 25 [*FLA*], that there be no contact between the parties except by email or through counsel, and that the claimant make further financial disclosure.

[6] The trial of this action is currently scheduled to commence in a little more than eight weeks, on April 24, 2017, for ten days. Given what has transpired over the course of this two day hearing, I question whether ten days will be sufficient.

[7] There is currently both a parenting time order and a protection order in place. Both expire at 4 p.m. today, which is in less than one hour. Accordingly, I am giving my reasons for judgment on these applications orally. If they are transcribed,

I reserve the right to make edits to them for grammar or syntax, but the effect will not change.

BACKGROUND

[8] The parties were married on October 10, 1997. There are two children of the marriage: P., age 13, born December 20, 2003, and A., age 11, born July 16, 2005.

[9] The claimant has been a commercial realtor since 1994. By any measure, he has been financially successful. He is currently the senior vice-president of a large, well-known commercial realty brokerage firm.

[10] At the time of their marriage, the respondent was working as a licensed residential realtor. Within six months of the marriage, she quit that employment. Her resignation became the source of significant disagreement between the parties. The respondent occupied herself with the design and coordination of renovations of various of the parties' family homes and other real estate holdings which sold at a profit.

[11] The parties separated on November 1, 2011, but continued to reside separately in the former matrimonial home until December 1, 2012 when the claimant moved to alternate accommodation. The children continued to live in the former matrimonial home with the respondent who assumed primary parenting responsibilities. The parties initially engaged collaborative lawyers to assist them in the resolution of their dispute, but that process broke down and this proceeding was commenced by the claimant on November 23, 2013.

[12] On February 26, 2014, Master Keighley ordered that a s. 211 report be obtained. That report was prepared by Mr. Robert Colby and is dated July 31, 2014 (the "2014 report").

[13] As noted, Mr. Robert Colby is a registered psychologist who has been engaged in that field for over 50 years. He has extensive experience dealing with family breakdowns involving children and has prepared for this court countless

s. 211 reports under the *FLA* as well as s. 15 reports under its predecessor legislation.

[14] In his 2014 report, Mr. Colby reported that the respondent generally presented positively and the claimant generally presented negatively in the eyes of the children. Despite these perceptions, he recommended, among other things, that the parties equally share parenting time of the children on a 2-2-3 rotation, equally sharing holidays and summer breaks, and that week-on and week-off parenting time be considered for the 2015 school year. Mr. Colby also recommended that the claimant have final decision-making authority with respect to the children's medical and educational needs.

[15] Mr. Colby recommended that the claimant attend counselling sessions and that the respondent have a psychiatric assessment. Although the claimant, at least to some extent, complied with that recommendation, the respondent did not.

[16] On September 30, 2014, two months after the 2014 report, Master Young, as she then was, ordered equal parenting time for the children in accordance with the recommendations of the 2014 report.

[17] In October 2014, a 2-2-3 rotating parenting time was put in place. Thereafter, the respondent became concerned that the parenting time rotations were too disruptive for the children. The claimant became concerned that the respondent was attempting to alienate the children from him. The dispute between the parties escalated.

[18] On August 10, 2015, the parties appeared before Mr. Justice Pearlman on various applications. The scheduled trial in September 2015 was adjourned pending Justice Pearlman's decision. His reasons for judgment are dated December 18, 2015. He dismissed the respondent's application to have the claimant's counsel disqualified and he allowed, in part, her application to amend her counterclaim. He found that there was a "substantial tactical element" to the respondent's

disqualification application. He awarded costs against the respondent to be assessed at 50 percent of special costs, payable in any event of the cause.

[19] On June 16, 2016, after considerable effort, the parties entered into a consent order before Master Taylor regarding a week-on and week-off parenting schedule for the summer school break.

[20] On July 21, 2016, the parties commenced a two-day hearing before Mr. Justice Bernard in respect of another volley of contested applications that they had filed. Given the limited court time that was available, Mr. Justice Bernard dealt only with the claimant's application for an order that Mr. Colby provide an updated s. 211 report. He dismissed the respondent's application that there be a "views of the child" report under s. 211 to be conducted by a Dr. Ronald LaTorre. Instead, he granted the claimant's application that there be a full updated s. 211 report prepared by Mr. Colby. The parties subsequently agreed to vary that order to incorporate provisions of a "views of the child" report in the updated s. 211 report.

[21] On October 6, 2016, the parties jointly retained Mr. Colby to carry out the terms of Mr. Justice Bernard's order. The updated s. 211 report was released by Mr. Colby on January 17, 2017 (the "2017 report").

[22] Mr. Colby observed that the children presented with some degree of emotional distress, as well as with a sense of anxiety, fearfulness, and depression as a direct result of the dynamics of their interactions with the respondent, their mother, which included highly negative views expressed by her to them about the claimant, their father. Mr. Colby reported that the level of their emotional distress was a threat to their emotional well-being.

[23] He stated at p. 93:

> Addressing issues of family violence, a number of concerns are addressed. There does not appear to be any physical threat to any individual from any of the parties in regards to presenting physical threat. However, in saying that there are [no] concerns raised regarding the dynamic of the relationships that exist between the children and their mother. The children are in a very controlled environment, fearful of rejection by their mother if they are non-

> compliant with their mother's demands that they engage in making statements which the children state are blatantly not true, in regards to their interactions with their father. This is a highly intrusive matter and presents as an emotional imposition on the children that would be defined as indicative of family violence. It is felt that these children are engaging in behaviours to protect themselves from their mother's anger and rejection and are compliant in a manner that they feel they have no choice. The children, therefore, enter into presenting information in writing which they know will be used within the court process and in their statements about their father which are highly intrusive and detrimental to the children and to their wellbeing.
>
> [Emphasis added]

[24] Mr. Colby expressed concern that the respondent does not feel she has played a role in the creation of the children's emotional issues and takes no responsibility for them. He opined that the children feel responsible for their mother's emotional and psychological condition. He provided the following observations, opinions, and recommendations:

a) The children are at risk in their mother's care. Mr. Colby raised concern about the children's emotional and psychological well-being and recommended that they be immediately transferred to the care of their father.

b) The claimant retain a psychiatrist to assist the family dynamics and the respondent's psychiatric status.

c) The claimant see his counsellor on at least a monthly basis.

d) The claimant retain the services of a child specialist to address the needs of the children and, in particular, the dynamic of his verbal and interactive communication with them.

e) The respondent's interactions with the children not include any engagement involving the children's journals or the children writing about their experiences regarding the claimant's care of them.

f) The children have the ability to communicate with their father at all times and be able to return to his care if they wish.

g) The claimant have all decision-making authority under s. 41 of the *FLA*, including the authority regarding the children's medical care, education, and school-based involvement.

h) The children engage in two months of weekly sessions with Dr. Sarina Kot, a registered psychologist who has been assessing the children, as well as further sessions as recommended by her.

[25] Mr. Colby expressed concern regarding how the respondent will interact with the children if his recommendations were accepted by the court. He recommended that until the respondent demonstrates her understanding of and willingness to abide by appropriate boundaries and guidelines regarding the children, there be no overnight parenting by her and that her ongoing interaction with the children be supervised by someone who is not aligned with the respondent.

[26] In this regard, he recommended that the respondent's parenting time be limited to once per week for dinner at her home, as well as daytime visits on alternating weeks for eight hours per day on Saturdays and Sundays.

[27] Mr. Colby recommended that there be periodic reassessments of the status of the children and the respondent before there are any extensions of parenting time. The assessment should be conducted through interviews with the children and the parties.

[28] Finally, Mr. Colby recommended that any concerns regarding the children's safety be reported to the Ministry of Children and Family Development (the "Ministry").

[29] On January 18, 2017, the day following release of the 2017 report, the claimant proceeded *ex parte* before Master Scarth and, on the basis of the 2017 report, obtained an order suspending the respondent's parenting time with the children pending a full hearing on January 20, 2017. The claimant also obtained a protection order which expired on January 20, 2017, restraining the respondent from directly or indirectly communicating with or contacting the children outside of her

parenting time, or attending their school or attending within one block of the claimant's home.

[30] On January 20, 2017, Master Scarth ordered that her suspension of the respondent's parenting time would remain in place until January 26, 2017. She also ordered that the respondent not discuss the 2017 report with the children. Master Scarth also extended the protection order until January 26, 2017. She made those orders because the respondent's counsel was unable to attend court on that day and put it over to January 26 in order to give the respondent's counsel an opportunity to attend.

[31] On January 26, 2017, Master Bouck varied Master Scarth's order to allow the respondent to have parenting time limited to Wednesdays from 6 p.m. to 8 p.m., and Sundays from 9 a.m. to 5 p.m. Master Bouck extended the protection order to February 23, 2017 at 4 p.m. and added a term that neither party would discuss the 2017 report with the children.

[32] The evidence indicates that, sometime after Mr. Colby's 2017 report, the claimant told the children that their mother was "borderline". The children researched or apparently researched the Internet and learned of a condition called "borderline personality disorder" and, according to the respondent, asked her if she was suicidal. If indeed the claimant made any such comment to the children, his doing so was extremely ill advised, insensitive, and thoughtless.

[33] Subsequent to Master Bouck's orders, the respondent retained Dr. Kevin Kjernisted to prepare an independent psychiatric report of her. That report was delivered on February 22, 2017, shortly before the hearing of these applications commenced.

[34] Based upon the respondent's self-report to him, as well as his review of the 2014 report, the 2017 report, and an affidavit sworn by the respondent on February 15, 2017, Dr. Kjernisted opined that:

a) the respondent does not present with sufficient significant impairment in social, occupational, or other areas of functioning and/or marked distress that is out of proportion to the severity or intensity of the stressor required for diagnosis of adjustment disorder;

b) the respondent does not have assiduous disorder imposed on another;

c) the respondent does not have borderline personality disorder; and

d) the respondent does not suffer from any mental or psychological illness that puts the children at significant risk or precludes her from parenting them in her own home unsupervised.

[35] Dr. Kjernisted does not provide any opinion regarding the respondent's conduct regarding the children's best interests, or explain why a mentally-sound person would send the text messages to her children that the respondent sent.

[36] Since January 18, 2017, the claimant has had primary care of the children. The respondent has had parenting time only on the limited basis ordered by Master Bouck; namely, Wednesdays for two hours and Sundays for eight hours.

[37] Unfortunately, despite the term of the protection order prohibiting the respondent from discussing the s. 211 reports with the children and communicating with them during the claimant's parenting time, the evidence suggests that she did both, which of course would be a breach of the January 26, 2017 protection order. She denies having deliberately done so.

[38] On February 11, 2017, counsel for the claimant advised the respondent's counsel that the respondent's limited parenting time was being suspended. I have not been asked to consider the appropriateness of that unilateral decision. However, it is my view that the determination of whether the conduct warrants a variation of an order as to parenting time is a matter for the court to decide, not for the claimant.

[39] Needless to say, the respondent has not had any parenting time or indeed any communication with the children since Wednesday, February 8, 2017.

ANALYSIS

[40] The applications before me engage Part 4 of the *FLA* which deals with the care of and time with children, and directs that in making orders on such matters, the court must only consider the best interests of the children. Section 37(1) of the *FLA* requires that in determining what is in the best interests of a child, the court must consider:

> (a) the child's health and emotional well-being;
>
> …
>
> (g) the impact of any family violence on the child's safety, security or well-being …;
>
> (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;
>
> …

[41] As is often the case in highly-acrimonious family disputes, the parties' respective affidavit evidence regarding what the other has done or failed to do regarding the children is obscured by the emotional overtones of the family breakdown. The court is left with having to determine the facts as best it can on the basis of the objective evidence it has before it.

[42] Mr. Colby's s. 211 reports were ordered so that the court would have the benefit of observations from an independent third party with specialized training in family dynamics. In effect, Mr. Colby has acted as the court's eyes and ears to aid in its assessment of the children's best interests. It is obviously important that the court be confident that his observations, assessments, and recommendations were provided in an unbiased manner and that his approach was balanced, fair, and impartial: citing *M.A.H.L. v. K.M.L.*, 2002 BCSC 1808 at para. 82.

[43] Counsel for the respondent submits that little, if any, weight should be given to Mr. Colby's 2017 report because it has not been tested by cross-examination and

because Mr. Colby was influenced by his belief that the respondent requires a psychiatric assessment and thereby assessed the respondent's parenting of the children "through a distorted lens" of mental incapacity. He points out t at a similar finding was made by this court in an unrelated case, *J.P. v. B.G.*, 2012 BCSC 938 at para. 368. He submits that I should accept Dr. Kjernisted's opinion as to the respondent's sound mental state.

[44] I reject those submissions for several reasons. First, Dr. Kjernisted's opinion is also untested by cross-examination. Second, Dr. Kjernisted does not provide any insight as to what is in the best interests of the children or what motivated the respondent, who he found to be mentally fit, to have written the text messages she wrote to her children demanding that they engage in conduct that was fabricated and orchestrated to undermine their relationship with their father. Third, in *J.P.*, Mr. Colby had received negative reports of and conclusions regarding the mother from the Ministry that were provided to him contrary to a court order that the Ministry not provide any instruction to him. Here, no such outside influence exists. Mr. Colby based his assessments on his own observations of the family dynamics.

[45] The contrast between Mr. Colby's two reports is palpable. In the 2014 report, he recommended equal parenting time and wrote at page 70:

> This Psychologist is making the above parenting time recommendation because it is important for these children to be able to maintain a relationship with both parents. The degree of dysfunction with both children in terms of anxiety and distress, however, would be decreased, as the periods of time with their father would be shortened [a reference to a 2-2 3 rotating schedule rather than a seven-day rotation]. This will also allow [Mr. D.], as recommended below, to build a more positive and interactive relationship with his children, seeking assistance in that regard.

[46] Between the 2014 and the 2017 report, Mr. Colby observed a significant change in the family dynamics, based largely upon the respondent's text messages to the children and on what the children told him in his interviews of them. He opined at p. 89:

> In regards to the dynamics of these children within the two parental homes, it presents as a most highly conflicted, negative and pathological engagement

> within the maternal household. These children, who are … provided for within the maternal household, are also presenting with a high degree of wariness in regards to their mother's emotional status and need. The children are a strong component of her self-identity which incorporates her needs to see herself as a sole provider for the children … In presenting in regards to the needs of the children, it is absolutely detrimental to these children to be engaged in such a structure and these children need to be excluded from this negative dynamic in regards to their expected rejection of their father and the carrying of that rejection into their written statements and their exclusion from communicating directly with him, as required by Court Order.

[47] Counsel for the respondent submits that between the two Colby reports, the claimant engaged in conduct that resulted in the children becoming alienated from their mother. He submits further that all of the respondent's actions during that same time period must be viewed in light of the surrounding circumstances. He points out that prior to the 2014 report, the respondent had primary parenting of the children. After that report, based on its recommendations, the children were moved to a rotating 2-2-3 parenting schedule, which resulted in them having very little consistency and stability in their lives, which was exacerbated by the parents' inability to cooperate and communicate with each other in an adult and civil fashion. Counsel for the respondent submits that, as a result, the children began having difficulties and became stressed. The numerous troubling text messages referred to by Mr. Colby in the 2017 report were, says the respondent, intended to alleviate the power imbalance between the parties, and to help the children "stand up to their father", who she describes as a relentless bully who will not stop until he gets his way. She also maintains that the claimant has a history of minimizing the children's medical needs and ignoring them during his parenting time. These assertions are denied by the claimant.

[48] Counsel for the respondent submits that, on the whole of the evidence, the respondent does not present a serious risk to the children and that equal parenting time should be reinstated pending trial.

[49] Mr. Colby's 2017 report is lengthy, thorough, detailed, and troubling. It discloses an abundance of instances of the respondent having engaged in what the

claimant's counsel aptly described as "psychological warfare" upon the children in an attempt to have them believe that their father is a bad person, not worthy of any parenting time with them. Her tactics included pressuring the children to state falsehoods about not only their father, but also about their own emotional status. She encouraged them to feign symptoms of unhappiness, anxiety, depression and distress to their teachers and medical professionals in an attempt to dishonestly project that they were suffering emotional turmoil and distress at the hands of their father.

[50] Equally troubling is the evidence presented by the claimant that since January 2016, 2017, there has been a litany of breaches by the respondent of the protection orders of Masters Scarth and Bouck by discussing the Colby reports with the children and by numerous text messages being sent to them outside of the respondent's parenting time from a cell phone belonging to the respondent's mother; i.e., the children's grandmother. Without deciding the question, my suspicion is that those communications were likely initiated by the respondent, not by her mother. If so, they were a clear and continuing attempt by the respondent to influence the children's views of their parents.

[51] In contrast, there is no objective evidence indicating that the claimant's parenting of the children since the January 18, 2017 order has been anything but positive.

[52] As troubling as the respondent's conduct has been, I am, nevertheless, cognizant of the importance of the children maintaining a relationship with both parents. I am mindful of the sentiments of Madam Justice Griffin in *F.K. v. M.K.,* 2010 BCSC 563, where she stated at para. 147 that an order for supervised access requires evidence of exceptional circumstances:

> … as it is just one small step away from a complete termination of the parent-child relationship.

[53] Although there is a history in this case of coercive and controlling behaviour on the part of the respondent during her parenting time with the children, I am

persuaded that the fashioning of a mechanism allowing the respondent unsupervised parenting time pending a full trial of this action is not only possible, but is in the best interests of the children.

[54] In this regard, the respondent seeks an order pursuant to s. 211 of the *FLA* that there be a "hear the child" report prepared by a member of the B.C. Hear the Child Society to record the wishes of the children respecting the parenting arrangements and residency at the parties' respective homes.

[55] According to its website, the Hear the Child Society is a non-profit society that was formed in 2009 to support opportunities for children to share their views and be heard when their best interests are being determined in a family justice decision-making setting. The society maintains a roster of trained child interviewers who conduct interviews with children and, as I understand it, provide a non-evaluative report of what the child said to them.

[56] Counsel for the respondent submits that a "hear the child" report differs from a "views of the child" report, because the latter generally contains a commentary or analysis or assessment of the child's views, whereas the former is merely a transcript of what was asked and answered. There are numerous examples of this court having considered such "hear the child" reports: see *Henderson v. Bal*, 2014 BCSC 1347 at paras. 92–93, and *Thomson v. Thomson*, 2016 BCSC 904.

[57] It appears that the practice of obtaining "hear the child" reports has developed partially because some judges prefer not to interview children themselves, and partly because of the costs of the additional assessment component of a "views of the child" report. I am told by counsel for the respondent that a "hear the child" report generally costs something in the range of $1,000, where as a "views of the child" assessment can cost upwards of $6,000.

[58] Section 211 of the *FLA* does not provide the court with jurisdiction to order a "hear the child" report. Rather, it expressly contemplates a qualified person being appointed to assess the views of a child. It does not envision a simple interview of

the child without an assessment. It may be that legislative amendment is in order. Regardless, it is my view that this is a case where an assessment of the views of the children will be of significant benefit to the trial judge.

CONCLUSION

[59] I am making the following interim orders pending the court's decision at the trial of this action:

a) The respondent's parenting time as set out in the order of Master Bouck dated January 26, 2017 will continue, commencing Sunday, February 26, 2017. It will be unsupervised.

b) The protection order granted by Master Bouck on January 26, 2017, is not renewed and will expire at 4 p.m. today, which is in 13 minutes. In its place, I am ordering that neither party will have any communication with the children that can reasonably be construed as disparaging of the other or as an attempt to disrespect or undermine the other parent's parenting, parenting rights, or parenting role. During their respective parenting time with the children, neither party will engage in any attempt to intimidate the children or manipulate or influence what they write in their respective journals, or otherwise attempt to negatively influence the children regarding the other party's parenting of them.

c) The children will at all times have the right and ability to initiate private communications with the party who is not then parenting them, and be able to return to the other party's parenting if they wish.

d) The claimant will continue to have all decision-making authority under s. 41 of the *FLA*, including the authority regarding the children's medical care, education, and school-based involvement.

e) The parties will retain the services of a family justice counsellor or equivalent who will prepare a "views of the child" report pursuant to s. 211 of the *FLA* to

assist the court during the trial of this action. The person to be appointed will be determined by this court, unless the parties otherwise agree. The children will be interviewed separately on a minimum of two occasions between now and April 24, 2017. They will be transported to the interviews by an independent person known to be trusted by the children. The report will be filed with the court with copies provided to the parties. Either party has liberty to call the author to give evidence at trial. The cost of the views of the child report will be shared equally by the parties. The costs, if any, associated with the preparation for and attendance by the author at trial will be borne by the party who calls the author as a witness, subject to the trial judge deciding otherwise.

f) There will be no direct communication or contact between the parties, except by email as necessary to effect and implement the foregoing parenting arrangements. In essence, I am implementing the recommendations set out in the 2017 report.

[60] I am also making the following additional orders:

a) By consent, Mr. Colby will, within 14 days of this order, produce a copy of his working papers that led to the July 31, 2014 and the January 17, 2017 s. 211 reports to each of the parties' respective counsel. He will also provide a copy of any of his psychological test results to a psychologist to be designated by counsel for the respondent. The costs of providing these documents will be shared equally by the parties.

b) The respondent's application for an order that the claimant produce his cellphone records is dismissed. All other documents listed in paragraph 7 of Part 1 of the respondent's notice of application filed February 9, 2017 that have not yet been produced by the claimant will be produced by him by March 31, 2017.

c) All other applications are dismissed.

[61] Costs will be in the cause. Is there anything I have missed? Is there anything that is not understood?

[62] MR. GOODWIN: My Lord, I may -- trying to look at my notes here, but I understood we are returning to Master Bouck's parenting time.

[63] THE COURT: Correct.

[64] MR. GOODWIN: Commencing Sunday, that is the Sunday and the Wednesdays, is --

[65] THE COURT: Yes.

[66] MR. GOODWIN: That's the intent. The other comment I had was --

[67] THE COURT: You have heard my comments about the importance --

[68] MR. GOODWIN: Yes.

[69] THE COURT: -- of the children having a relationship with both parents.

[70] MR. GOODWIN: Yes.

[71] THE COURT: I am in no position, at this stage, to second guess Mr. Colby, hence the implementation, essentially, of his recommendations. The trial judge in eight weeks will be in a better position.

[72] MR. GOODWIN: Yes.

[73] THE COURT: This is why I wanted to ensure that both parties were present in the courtroom for my ruling—if the parties can find it within themselves, for the sake of their children, to become civil with each other and cooperate in the best interests of their children, then it seems to me that the parenting time can be extended, but that is up to them. I am not making any order in that respect. I am just saying that the time has come for these parents to recognize what they are doing to their kids.

[74] MR. GOODWIN: Yes.

[75] THE COURT: So again, I am in no position to make any other order, but that is the general message I want to send to the parties.

[76] MR. GOODWIN: Understood. The other question I had was with respect to the "views of the child" report, you had -- I believe you used the words "family justice counsellor".

[77] THE COURT: Or equivalent, I think I said.

[78] MR. GOODWIN: Or did you say or equivalent? That's what I wanted to know, because in order to get somebody to do it, it would need to be a private psychologist, I expect. A family justice counsellor could take a year or more to get a report done, so thank you.

[79] THE COURT: I will leave it to the two of you. You are both very experienced and knowledgeable family counsel, so I do not think you need me to hold your hand, do you?

[80] MR. GOODWIN: Certainly. I think that's -- My Lord, I think everything is clear.

[81] THE COURT: In my view, it will be very, very helpful to the trial judge hearing this case --

[82] MR. GOODWIN: Yes.

[83] THE COURT: -- to have a "views of the child" report.

[84] MR. GOODWIN: Yes.

[85] THE COURT: And not Mr. Colby.

[86] MR. GOODWIN: Yes.

[87] THE COURT: Somebody independent.

[88] MR. GOODWIN: Certainly.

[89] THE COURT: I am not saying he is not, but somebody different.

[90] MR. GOODWIN: Yes.

[91] THE COURT: And so the sooner the better, and I am fairly confident that the two of you can put your collective professional and experienced heads together to sort that out.

"G.C. Weatherill J."