CITATION: Young-Marcellin v. Marcellin, 2021 ONSC 3026
COURT FILE NO.: F340/10-02
DATE: 2021/04/22

SUPERIOR COURT OF JUSTICE – ONTARIO
FAMILY COURT

RE: Julie Natasha Young-Marcellin, Applicant

AND:

Marcel Andre Marcellin, Respondent

BEFORE: T. G. PRICE, J.

COUNSEL: Brian Ludmer - Counsel for the Applicant

K. Andersen - Counsel for the Respondent

HEARD: April 7, 2021

ENDORSEMENT

[1] The Applicant seeks relief against the Respondent under Family Law Rule 1(8) for failing to comply with a number of different court orders. The failures are said to be wilful and repeated. All pertain to their daughter, J., who recently turned 15.

[2] The Notice of Motion details a number of alleged breaches and lists a broad spectrum of orders sought to compel compliance by the Respondent. All are crafted to address what the Applicant calls the Respondent's "campaign" to remove J. from her care and turn J. against her.

Background

[3] The parties were married on August 14, 1994 and separated at the end of June 2009.

[4] After they separated, the Applicant took the children and stayed with them in a women's shelter, claiming to be concerned that the Respondent would physically harm her once he was served with legal documents concerning the separation. She alleged that the Respondent had twice assaulted her during the marriage.

[5] The parties were divorced by an order made by Justice Templeton on March 1, 2011. Under the terms of that order, the Applicant was granted "sole custody of the parties' two children" who were, at that time, 8 1/2 and 5 years of age. J. is the younger of the two children.

[6] The order further specified the times when the children were to be in the care of the Respondent, including during holidays. It also included provisions pertaining to other incidents of custody and access. It appears that the terms were incorporated from either Minutes of Settlement or a separation agreement.

[7] The Respondent was employed as a police officer with London Police Services for 21 years until 2016, after which he became an employee of the City of London, first as a former mayor's Chief of Staff, then moving on to an unspecified position in the City Manager's office.

[8] His employment was terminated by the City of London. That termination has resulted in some very public litigation in which the Respondent seeks damages for defamation and conspiracy to make false allegations in order to have him fired from his job with the City. The Applicant is one of the Defendants.

[9] On August 15, 2019, on a Motion to Change brought by the Respondent, and on consent, the custodial provisions of the divorce order of Justice Templeton were varied. Under the order made that day by Justice Garson, the Applicant continued to have sole custody of J., while her elder sister, M., was to have her primary residence with the Respondent, who was also granted authority to make important decisions about M.'s welfare, including "medical, education, major non-emergency health care, and religious activities."

[10] The order further provided that the Applicant would have" liberal and generous time" with M., subject to the child's wishes and as arranged between the Applicant and M.

[11] The Applicant claims that the change with respect to M.'s residence and custodial care was the result of a "prolonged and successful campaign" by the Respondent to alienate M. from her, and that the order followed the Respondent's "relentless insistence that M. not have a schedule because she was old enough to decide for herself." Since the order, according to the Applicant, she has had "virtually no relationship with M."

[12] While the Applicant reported that she agreed reluctantly to the changes with respect to M. contained in Justice Garson's order, she also acknowledged that the order was made on consent and that one cannot go behind the order to examine what motivated the parties to resolve the matter as they did.

Evidence of the Applicant Pertaining to J.

[13] The Applicant set out in some detail the nature and quality of her relationship with J. prior to October 4, 2020 when, she claims, their relationship changed suddenly and without warning.

[14] Before then, the relationship between J. and the Applicant appears to have been happy, loving and respectful. The Applicant produced a note written to her in 2019 by J. It is clear that, when the note was written, J. loved her mother and held her in the highest regard.

[15] The Applicant detailed the many things that she and J. did together, plus the several community and school-related activities with which J. was involved while she resided with the Applicant. The Applicant details herself and J. regularly attending theatre and symphony productions, and going together to museums, movies and on shopping excursions.

[16] The Applicant also highlighted J.'s close relationship with her circle of friends, noting that the Applicant's home was a favourite gathering spot for J. and her friends.

[17] According to the Applicant, J. also did well at school. In March 2020, the Applicant purchased a residence closer to Brescia University College, about which J. was expressing an interest in attending. J. was given input into the decoration of the home. The Applicant expressed her hope that J. would continue living at home while she attended university.

[18] The Applicant deposed that, prior to August 2020, J. "often lamented the extreme pressure" that the Respondent, M., the Respondent's son by a prior relationship, "and others in [the Respondent's] home were putting on her to move to [the Respondent's] home." J. would frequently call her reporting that the pressure was "too much", "that she just could not take it anymore" and telling the Applicant that she just wanted to come home.

[19] According to the Applicant, on or about October 4, 2020, the Respondent began to intermittently withhold J. from her in violation of her custodial rights as established by Justice Templeton and reiterated by Justice Garson.

[20] Consequently, over the ensuing four to five months, J. went from being the loving child with whom she was very close to "a child who says that, but for the fact that we are genetically related, she would otherwise have nothing to do with me at all."

[21] The event of October 4, 2020 which is said to have precipitated the monumentally negative change in the relationship between the Applicant and J. appears to have been quite innocuous. On that date, the Applicant texted the Respondent to ask that he ensure that J. return home on time to work on being ready for school the next day, "as specified in the order dated August 15, 2019."

[22] According to the Applicant, the Respondent "shared my texts to him with J." because, shortly thereafter, J. called her, very angry, and accused her of being controlling, unloving and uncooperative. As the Applicant deposed, "simply because I would not do exactly as she demanded - allow her to avoid her schoolwork on Monday or Tuesday – J. refused to come home from the Respondent's house."

[23] The Applicant further deposed that J. told her that the Respondent had told J. that she should be able to come and go whenever she pleases, that she is old enough to make her own decisions and that a custody order is no longer necessary.

[24] Based on the events of October 4, 2020, the Applicant asserted that the Respondent "by implication, inaction and permission validated the breach of the court-ordered parenting plan."

[25] According to the Applicant, J. did not come home for a week after this incident. When she did, she was said to revert to being "her happy self again", enjoying "her time at home as we expressed our love and affection together."

[26] On November 4, 2020, the Respondent picked up J. at 11 PM, after the Applicant had specifically asked him to not do so and took her back to his residence where she has, in effect, been residing ever since with the Respondent, his fiancée and M., rarely returning to the Applicant's residence. When she does, she is emotionally distant.

[27] The Applicant cited this incident as evidence that the Respondent was "deliberately and flagrantly failing to comply with the order dated August 15, 2019."

[28] The effect of the Respondent's actions, according to the Applicant, is that one day she was "a loved and valued parent, then seemingly overnight I became hated."

[29] The Applicant described J. as a "14-year-old minor living in a household filled with hatred towards me" which has "tainted her perception of me in such a short period of time." As a result, the Applicant asserted, J. also "has been filled with hatred towards me" which was never present before.

[30] The Applicant claimed that J. called her throughout November 2020 and yelled at her, saying that she does not love J. or care about her.

[31] The Applicant further deposed that, now, when she speaks with J. by telephone, J. screams at her for no apparent reason, insults her, calls her derogatory names and places the phone on speaker to ensure that other individuals in the Respondent's home can listen in. This is a stark contrast to the manner in which J. previously spoke with the Applicant.

[32] The Applicant also claimed that J. consistently tells her she has no interest in speaking with her and that "the relationship that we had before is no longer and will never be a thing again."

[33] The Applicant has tried to counteract J.'s anger by reminding her of the happy times they spent together after she returned home in October. This, in turn, has led to J. denying positive experiences with the Applicant.

[34] J. allegedly told the Applicant that she would not come home until the Applicant "stopped what I was doing." When asked what she meant, J. was reportedly unable to articulate anything "beyond her frustration that I insist that we follow the court ordered schedule."

[35] The Applicant alleged that J.'s transformation has resulted in J. disregarding regular attendance at school, neglecting schoolwork, failing to attend online schooling on her

distance learning days, ceasing her associations with her childhood best friends because of their mothers' continuing association with the Applicant, becoming disassociated from everyone in her maternal extended family and ceasing her involvement with the most significant of her previous extracurricular activities, all since she has begun to stay at the Respondent's residence.

[36] The Applicant identified J.'s "lack of responsibility to stay on top of her schoolwork" as "evidence that she is unable to take care of herself and make proper decisions in her own best interests."

[37] The Applicant described another incident said to be illustrative of the dramatic changes in J. since October 2020.

[38] In early June 2020, J. told the Applicant that she was struggling with her body image and asked to speak with someone about it. Arrangements were made for J. to meet with a woman at an organization focusing on healthy body image amongst teenage girls. That person recommended that the Applicant engage a therapist to work on some of J.'s beliefs around body image. The Applicant did so. J. first met with the therapist privately in July 2020 while the Applicant remained in the waiting room. J. regularly told the Applicant that she liked the therapist and that their talks were helping her feel better about herself.

[39] After J. had begun to stay with the Respondent in November 2020, the Applicant and J. agreed to a joint session with that therapist. They met at the therapist's office. When asked by the therapist what was going on, J. began to yell at the therapist about the Applicant being "stupid" and "crazy" and that she did not want to see the Applicant anymore.

[40] When the therapist asked J. what had occurred to cause this sudden change in her, given that, in prior sessions, J. had said to the therapist that she and the Applicant were really close, and that the Applicant was "your best friend", J. responded that the Applicant "won't sign papers so I can do whatever I want. My dad will let me come and go whenever I want so I want to live with him so I can do whatever I want." *(This statement is a direct quote from the Applicant's affidavit. She did not explain how she was able to capture the child's precise words as she suggests, by the use of quotation marks, she did.)*

[41] The therapist allegedly tried to explain to J. the need for a court-ordered schedule. Shortly thereafter, J. told the Applicant that she would not return to meet with that therapist.

[42] The Applicant described J.'s response to the therapist as the "point in the session that [the Respondent's] agenda came through."

[43] That "agenda", according to the Applicant, consisted of the Respondent "manipulating, pressuring and scripting J.'s behavior in an effort to strip me of primary residence and a loving relationship with" J., as he is alleged to have done with respect to her older sister, M.

[44] The Applicant made a series of claims about the Respondent's actions which she suggests evidence his intent with respect to J. She deposed that:

a. since October 2020, he has been forwarding her text messages to him on to J.

   The Applicant referred specifically to one text message in which she voiced her "displeasure" to the Respondent about him referring to her by her first name when speaking with the children, rather than as their mother, while referring to his new partner as "mom."

   According to the Applicant, the result of the Respondent having forwarded that text message to J. was conflict between her and J. The conflict was said to have been evidenced in a series of text messages between the Applicant and J. on November 23, 2020.

   In those text messages, J. tells the Applicant that the event in which the Respondent had referred to the Applicant in conversation with J. as "Julie" had occurred four months before, that it was not now relevant, and that the Respondent "referred to you as Julie because to him you're just Julie."

b. since October 2020, J. has "been instructed to take pictures and share with [the Respondent] my correspondence with her." In support of this conclusory statement, the Applicant appended as an exhibit to her affidavit a text message from J., said to have been sent to the Applicant accidentally, which contains a screenshot of a text earlier sent by the Applicant to J. [*The Applicant did not elaborate on how she knew that J. was "instructed" to take this screenshot or to send it on to the Respondent. The screenshot appended as the exhibit did not indicate to whom J. was intending to send it. In fact, she deposed that when she questioned J. about it, J. did not respond.*]

c. the Respondent has "attempted to have J. quit coaching competitive cheer, which is close to our home", something that the Applicant also alleges that the Respondent did with M., "when he was alienating her from me in getting her to move into his home";

d. the Respondent "is also trying to separate J. from her lifelong friends, who do not support his recent actions";

e. the Respondent is "manipulating" J.'s "demeanor and attitude" by his "influence and direction";

f. the Respondent is trying to obtain J.'s birth certificate, that he is encouraging her to get a job near his house, and that he is working with her on a resume, all of which the Applicant "believes is being done to incentivize" J. to not go home to her;

g. the Respondent had ignored her custodial rights by overriding an optometric appointment, which the Applicant had made for J. for October 20, 2020, by scheduling an appointment for J. on a different date without the Applicant's consent;

h. the Respondent has tried, since withholding J., to arrange alternative therapy for her, which is contrary to her role as the custodial/decision-making parent.

The Applicant identified a psychologist, reportedly retained by the Respondent to meet with J., with whom the Applicant was able to speak and explain the parties' circumstances, as a result of which the psychologist "rightly decided not to provide services in violation of my custodial authority" and in light of J.'s prior therapeutic relationship with the counsellor who she stopped seeing after November 2020; and

i. the Respondent had "also usurped my decision-making in co-parenting by unilaterally booking a dermatology appointment for J. for March 10… in the face of the order and my counsel's letter of March 13, 2021." *[Unfortunately, the letter was not produced so I have no knowledge of its contents.]*

[45] The Applicant alleged that, unlike her, who has "made every effort to protect [the children] from the family conflict and to support their relationship with their father", the Respondent has "for years forced [the children] into the middle" of their dispute.

[46] While the accuracy of that claim remains to be determined, the Applicant was certainly not hesitant to share her views about the Respondent with the court.

[47] She described the Respondent as a person who "mixes nurturing with anxiety-provoking interactions, explosive anger, unreliable involvement, controlling behavior and "spousified" behavior (where he treats the girls like adults and expects them to act on his behalf)." She deposed that, "as a result, J. - like M. - has developed an insecure attachment to the Respondent and is desperate to please him."

[48] The Applicant further asserted that the Respondent "does not care" that J. has missed school.

[49] According to the Applicant, it is her experience that the Respondent's children "are just his possessions." She continued, theorizing that the Respondent "appears prepared to sacrifice J.'s academic, emotional and other needs to continue his war against me."

[50] None of the Applicant's conclusory statements in the previous paragraphs about the type of person that she claimed the Respondent to be, or the behaviour he is said to have exhibited, were predicated on specific evidence.

[51] The Applicant also asserted that the Respondent is "ungovernable." In support of this contention, she cited the fact that the Respondent's Motion to Change was commenced

on November 23, 2020, while he was "blatantly in breach of the residential schedule for J. stipulated in the Order dated August 15, 2019."

[52] She asserted further that the wrongful withholding of J. on October 5, 2020 came "after years of intense pressure on her to leave my home."

[53] She claimed that J.'s behavior "ranges from completely defiant and anti-social to warm-loving and affectionate, depending on whether [the Respondent] is actively agitating for her to live with him or not." [*Again, how she made this connection was not clear to me.*]

The Order of Justice Hebner

[54] There is a third order in issue on this motion.

[55] On February 9, 2021, the parties participated in a case conference with Justice Hebner, during which she made an order with respect to "family reconciliation therapy." While the order addresses other matters as well, that portion of the order dealing with such therapy read, in its entirety, as follows:

> The parties Marcel Andre Marcellin and Julie Natasha Young-Marcellin shall retain Paula DeVeto, subject to her consent and availability, to engage in family reconciliation therapy with the cost to be divided between the parties equally, subject to reapportionment by the trial judge.

[56] The Applicant criticized a letter dated February 19, 2021, sent by counsel for the Respondent to Ms. DeVeto, in which counsel wrote, *inter alia*, that:

a. before she would be comfortable executing the Certificate of Independent Legal Advice appended to a document entitled "Parent-Child Contact Treatment Program Agreement", (*a copy of which was not provided to me for review*) a certain provision would need to be removed because, while "it could turn out that having a relationship with the mother is in J.'s best interests… ultimately, the best interests of the child is a legal issue for a judge to determine";

b. the February 9, 2021 order of Justice Hebner "clearly states that the court's concern is with J. and her mother reinstating a relationship/contact with one another, as opposed to reinstating the historical court order";

c. J. wishes to "commence individual counselling to discuss issues that are outside the context of reconciliation therapy";

d. Ms. DeVeto's agreement should be amended to reflect the right of J. to withdraw from counseling pursuant to the terms of the *Healthcare Consent Act*; and

e. J. "should have an opportunity to receive independent legal advice prior to an agreement of this scope being executed."

[57] The Applicant further asserted that the Respondent took the position during a meeting between the parties' counsel and Paula DeVeto on February 22, 2021 that he "would not sign a contract that stated that the goal of the reconciliation therapy was to facilitate the implementation of our existing court order."

[58] According to the Applicant, during the meeting of February 22, 2021, Ms. DeVeto "strongly refuted" the position of the Respondent that J. could participate in "parallel individual therapy even if it would conflict with, or not be coordinated with, the cause of the court-ordered family reconciliation therapy."

[59] In support of the assertions about what was reportedly said in the meeting with Ms. DeVeto, the Applicant claims to rely upon information provided to her by her counsel.

[60] The Applicant also made the following claims about J. which, in my view, were not mere assertions of fact but, instead, seemed to be more in the nature of opinion on topics about which lay persons are not permitted to opine:

a. J.'s "fear of [the Respondent] enables his alienating behaviour to succeed"; that "on the one hand she wants to please [the Respondent]. On the other hand, she is desperate to insulate herself from the pressure, stress and anxiety he creates. She has repeatedly watched the impact of her father's post-separation abuse and does not want to be on the receiving end of his anger or take sides. Taking his side in our dispute is the only way to make her pain stop"; and

b. "Given J.'s traumatic history of exposure to intimate partner violence and family conflict, her father's emotional abuse, separation from her sister, and her father's Jekyll-and-Hyde-like behavior (namely his absence, withholding of love and affection, yelling, intermittently mixed with excessive praise, love and gifts), J. lacks the capacity for independent thought and action in relation to her care."

[61] She also deposed that she "believes [a change in residence] is not truly reflective of what [J.] wants, but rather is demonstrative of Marcel's successful efforts to manipulate and alienate J. from me. J. could not provide any concrete reasons as to why she does not want to see me."

[62] Relying on all the information in her affidavit, which the Applicant claims detail "pervasive and ongoing breaches of the court orders", she asserts that the Respondent is "not fulfilling his obligations as a co-parent under the current orders and is actively undermining them."

Evidence of Nicole Jesco

[63] The Applicant filed a supporting affidavit sworn by Nicole Jesko, a person described as the Applicant's "family assistant". Ms. Jesko deposed that she interacted regularly with J., often in the manner of an older sibling.

[64] She reported seeing no major conflicts in the home between J. and her mother until October or November 2020, and at no time did she see, hear or experience J. seeking to move to her father's home.

[65] She also deposed to having observed some of the changes in J.'s demeanour described in the Applicant's affidavit.

[66] She further asserted that on access weekends J. would often say she did not want to go to her father's residence, wishing that she could stay home instead.

[67] She alleged that J. told her that her father made her feel bad.

[68] She also claimed that J. often said that she missed her older sister, M.

[69] Ms. Jesko lastly asserted that the Respondent would often show up at the Applicant's home and take J. away at times not specified in the access schedule

Respondent's Evidence - A Preliminary Ruling

[70] The affidavits upon which the Respondent relied for this motion were filed for two purposes.

[71] He had brought a cross-motion, seeking to vary, on an interim basis, the final orders referred to earlier in this endorsement. The two affidavits filed on behalf of the Respondent addressed that motion.

[72] The affidavits also responded to the motion brought by the Applicant. In many instances, the evidence appears to have been intended to address both motions.

[73] I ruled that the Respondent's motion would not proceed on the same day as the Applicant's motion.

[74] Accordingly, this endorsement will only refer to evidence set out in the affidavits filed by the Respondent which address the Applicant's motion and the issues raised therein.

Evidence of the Respondent

[75] The Respondent deposed that, in response to his Motion to Change with respect to M., the Applicant began to withhold J. from him, allowing no contact between him and J. between August 10, 2018 and December 2018. As a result, he brought a contempt motion in December 2018 to reinstate his parenting time with J.

[76] He denied the Applicant's allegations that he has been attempting to alienate the children, providing what he called examples of the Applicant's "alienation attempts." They included the Applicant:

a. calling 911 on the day that M. began to live with him, reporting that she had run away, knowing that to be untrue. When the police told the Applicant that they had spoken with M. and that she was safe with the Respondent, the Applicant requested to speak with someone from the domestic violence unit. She then proceeded to report that the Respondent had assaulted her in 1994 and 1995, without providing exact dates. The Respondent was arrested and charged, but the charges were ultimately dropped by the Crown; and

b. speaking openly and regularly to both children throughout their childhood in such a way that they are aware of her "animus" toward the Respondent, as they are also aware of the parties' history of family court proceedings.

[77] According to the Respondent, J. had been sporadically expressing a desire to spend more time at his residence since early 2019. She began to "forcefully express her desire to spend more time with me outside the strict terms of Justice Garson's order" in September 2020, with the Applicant refusing those requests. J. finally informed him in November 2020 that she wished to reside with him and her sister full-time.

[78] The Respondent deposed that events escalated in October 2020 when J.'s requests to spend more time with him and her sister were again met with refusals by the Applicant, resulting in arguments between J. and the Applicant.

[79] The result, according to the Respondent, was that on October 4, 2020 and again on October 19, 2020, J. refused to go home to the Applicant on time. She stayed at his home for additional days – four in early October and two later that month.

[80] Following J.'s refusal to return home after the visit of October 4, 2020, the Respondent informed the Applicant via text message "that J. did not intend to follow the access schedule."

[81] On November 4, 2020, another argument ensued between J. and the Applicant when J. requested that her weekend access begin two days earlier than scheduled, and the Applicant refused her request. J. then "asked to be picked up to avoid further escalating the argument and informed the Applicant that she would stay at my home and would return when things calmed down between them."

[82] According to the Respondent, J. has been "residing primarily at [his] house since then."

[83] The Respondent asserted that it was not J.'s intention at the outset to "upend the parenting arrangement in the order of Justice Garson, but rather, to simply spend more time at my house with me and her siblings."

[84] He asserted that what has occurred was the result of the Applicant being "dogmatic about enforcing strict adherence to the parenting time in Justice Garson's Order."

[85] According to the Respondent, J.'s "views and preferences [are] to reside full time with me."

[86] His "plan of care" for J. is for her to reside full time at his residence and to continue attending the same secondary school, where she is in grade nine.

[87] He further asserted that, being 15 years of age, J. "is at an age where her views and preferences will be largely determinative in these proceedings." *(J. turned 15 years of age the day before this motion was argued. She was 14 years of age when her residence changed in October 2020.)*

[88] The Respondent deposed that he "will continue to do [his] best to encourage the relationship between the Applicant and J."

[89] He further deposed that he has "made every effort that [he] can think of to date in order to reinstate the parenting relationship between J. and the Applicant mother."

[90] In outlining his "attempts…to reinstate [the] previous parenting arrangement", the Respondent deposed that, immediately after the events of October 4, 2020:

a. he informed the Applicant that he "could not physically force J. into my vehicle to bring her home";

b. he "encouraged [J.] to speak with the Applicant about their disagreement" , suggesting at the time that J. might need a few days to "cool off", and that she "was welcome" to stay with him for that purpose;

c. he "continued to reiterate to both the Applicant and J. that they needed to" work out their "problem", but that J. was adamant that she would not return to the Applicant's care "unless she agreed to be more flexible with the parenting arrangements."

[91] Since October 4, 2020, the Respondent deposed that he has:

a. "encouraged J. to speak with her therapist and even suggested she participate in a counselling session with [the Applicant]", a suggestion to which the Applicant and J. reportedly agreed but which foundered when the Applicant allegedly later stated that "she would only attend the counselling session if J. returned home first";

b. "explained to J. on many occasions that if she worked things out with the Applicant through counselling and honest conversation that things could get better";

c. "consistently encouraged J. to work through her disagreements with the Applicant through respectful communication"; and

d. "encouraged J. to return to the Applicant's house even when she refuses and gives pushback."

[92] The Respondent reported that J. has been in communication with the Applicant since November 2020 but that their relationship has not improved.

[93] He deposed that, “J. continues to clearly articulate what she wants and has even expressed that the stress of the situation is causing anxiety and she wants it to stop.”

[94] The Respondent denied the Applicant’s allegations against him with respect to actions he is alleged to have taken to cause the children to reside with him, specifically denying that he engaged in a “campaign” to cause M. to reside with him and that M. was alienated from the Applicant.

[95] The Respondent outlined his version of the reasons why M. ended up living with him, but since the order of Justice Garson is not to be looked behind, I will neither repeat that information nor rely upon it.

[96] He also denied having any motivation or incentive to alienate the children from the Applicant, then reiterated that the Applicant was the one who caused criminal charges to be brought against him which were later withdrawn. These charges, he asserts, caused him to lose his 23-year career with the City of London, 21 years in policing and two at City Hall. As deposed by the Respondent, “The Applicant ruined my life and reputation in a very public manner, after M. decided to live with me.”

[97] Additionally, the Respondent:

a. denied ever retrieving J. from the Applicant’s residence, deposing that he has never been there. He reported that the picking up and dropping off of J. at that location is done by his common law partner or occurs in a public place;

b. denied attempting to pressure, manipulate or script J.’s behaviour;

c. denied that J.’s marks and school attendance had deteriorated since she began to reside with him, producing some report cards which he claimed supported his position;

d. denied the allegation that J. is no longer associating with her childhood friends, asserting instead that J. is angry with the Applicant because she has been involving the mothers of those children in the issues between her and J.;

e. denied that J. has no contact with the Applicant's family, identifying members with whom J. has regular contact; and

f. denied that J. is unable to articulate her frustrations, asserting that he has observed her unsuccessfully attempt to communicate her feelings with the Applicant due to the Applicant’s denial of those feelings or her pretending to not know what J. is talking about.

[98] He acknowledged assisting J. in preparing a resume, indicating that he and his fiancé had done so because J. had recently expressed an interest in applying for a part-time job.

[99] The Respondent further asserted that many of the extracurricular activities in which J. was previously involved have been postponed or cancelled because of COVID-19. He intends, however, to re-enroll her once those activities resume.

[100] As for the Applicant, the Respondent claimed that she:

a. raised the children "to believe that I was a "monster" and consistently made the children feel guilty whenever they expressed loving feelings towards me";

b. intentionally led the children to believe, when they were younger, that the Respondent had abandoned them by not informing them when there had been a change to the parenting schedule;

c. "has a long history of lying to me [and the children] about various situations", which is why he showed J. some text messages that had been sent to him by the Applicant, leading J. to conclude that the Applicant had lied to her about something the Respondent had allegedly texted to the Applicant;

d. historically, "has done everything that she can to curtail" the Respondent's parenting time with the children;

e. has recently interfered in an attempt by J. to enroll in counselling to address suicidal ideation on the grounds that it would conflict with the counselling ordered by Justice Hebner; and

f. objected to an appointment with a dermatologist for J. having been scheduled by anyone other than herself.

[101] The Respondent defined his "parenting plan" as supporting J. and putting her needs first. This is said by the Respondent to include, but not be limited to, "providing her with the medical and mental health care that she is in need of, supporting her healthy relationships, supporting her educational and professional pursuits, providing her with the physical activities of her choosing, providing a loving and positively communicative home and supporting her in her relationship with the Applicant mother that feels right and healthy to J."

Evidence of Kristina Wong

[102] The Respondent also filed an affidavit sworn by his partner, Kristina Wong. Upon review, the content of that affidavit seems more directly related to the motion which did not proceed before me on April 7, 2021. The only assertion made by Ms. Wong in her affidavit which might bear on the Applicant's motion is that "J. regularly expresses to Mr. Marcellin and I *(sic)* how much she enjoys living with us. She regularly expresses that she feels relaxed and comfortable in our home."

[103] Ms. Wong also asserts that the statement made by Nicole Jesco in her affidavit about the Respondent attending at the home of the Applicant, ever, "is an outright fabrication."

Reply Evidence of the Applicant

[104] In her reply affidavit, the Applicant provides less evidence than she does argument about the failings of the Respondent to comply with the court orders. She also repeats some of the evidence she provided in her initial affidavit.

[105] Her assertions were in the nature of submissions more properly made by her counsel than in providing the court with evidence in reply to the case made by the Respondent in defence of her motion.

[106] She did, however, depose that, despite Paula DeVeto having changed some of the content of the contract she requires the parties to sign before she will begin the reconciliation therapy ordered by Justice Hebner, the Respondent continues to refuse to proceed with the therapy.

Analysis

[107] Counsel for the Applicant described this as a high-conflict case. That it is.

[108] However, in my view, the conflict has been generated by actions taken by each of the parties.

[109] J.'s life is just the latest point of skirmish between them.

[110] The Applicant has the benefit of the existing orders. She does not need to continue to remind either the Respondent or her daughter of that fact.

[111] Unfortunately, her affidavits were full of jargon, and her animosity towards the Respondent permeated her evidence. She had a legitimate tale to tell, and she would have been better served in telling it without descending into mud throwing or psychological analysis, about which I had no evidence that she is qualified to opine.

[112] The Respondent, on the other hand, painted himself as J.'s saviour, the loving father who stands by his daughter whether she is right or wrong, unwilling to assert parental authority when he ought to, and abdicating to his daughter the right to make decisions she is not legally empowered to make. He also clearly has little use for the Applicant.

[113] Perhaps if the parties, and the counsel who draft their affidavits, toned down the heated rhetoric, the conflict would reduce.

[114] I am not so naive as to believe that will occur, but one can always hope for change.

[115] This is a simple case about whether the Respondent should be sanctioned for failing to require his daughter to return to reside with her mother, an arrangement which two Superior Court Justices have held to be in her best interests.

[116] Rule 1(8) of the *Family Law Rules*, O. Reg. 114/99 provides the court with a number of options for how it might deal with a person who fails to obey an order in a case or related case. The court is granted a discretion to make "any order that it considers necessary for just determination of the matter."

[117] Included amongst the non-exhaustive list of options available to the court which finds that a person has failed to obey an order of the court are options to order:

a. costs;

b. the dismissal of a claim;

c. the striking out of an application, answer, notice of motion, motion to change, response to motion to change, financial statement, affidavit, or any other document filed by a party;

d. that a party who fails to obey a court order is not entitled to any further order unless the court orders otherwise;

e. the postponement of a trial or any other step in the case; and

f. that a party be found in contempt, provided that a motion to that effect is brought by the aggrieved party.

[118] In her recent decision in *Oliver v. Oliver*, 2020 ONSC 2321, Justice K. Tranquilli confirmed that the court must undertake a three-part inquiry in determining whether to apply the effects of r. 1(8).

[119] Those steps consist of the following:

1. The court must ask whether there is a triggering event of non-compliance with a court order that would allow it to consider the wording of sub-rule 1(8).
2. If the triggering event exists, the court should then ask whether it is appropriate to exercise its discretion in favour of the non-complying party by not sanctioning that party under sub-rule 1(8).
3. In the event the court determines it will not exercise its discretion in favour of the non-complying party, it is then left with the very broad discretion as to the appropriate remedy under sub-rule 1(8).

[120] The parties agreed that this is the test to be applied.

Has There Been a Triggering Event of Non-Compliance with a Court Order?

[121] Again, the parties appear to agree on this issue.

[122] Put simply, J. is twice the subject of a custody order in favour of the Applicant. Justice Templeton granted custody of her to the Applicant. Justice Garson confirmed that order when he changed the custodial arrangement with respect to her elder sibling.

[123] The Respondent was afforded specific access under those orders.

[124] Beginning in early October 2020, J. was over-held by the Respondent and did not return to the care of the Applicant when she ought to have been returned. The precipitating event was a request by the Applicant that J. return to her home to prepare for school the following day. Counsel for the Respondent agrees that this precipitating event led to J. remaining in the care of the Respondent.

[125] Even if that were not to be the case, in November 2020, J. vacated her mother's house and took up residence in the home of her father. Any time since then that she has been in the care of her father, when she ought to have been in the care of her mother, is an event of non-compliance by the Respondent with the custodial orders of Justices Templeton and Garson.

[126] Indeed, the Respondent seems not to care in the least that he is disobeying those court orders. He makes clear that he is quite prepared to continue to have J. reside with him, despite the orders of Justices Templeton and Garson. That, in my view, is not wise.

[127] Additionally, counsel for the Applicant cites and relies upon the failure of the Respondent to comply with Justice Hebner's order that he and J. participate in family reconciliation therapy with the Applicant, claiming that he will not do so if a reversion to the previous status quo is a goal of the therapy.

[128] I do not agree with counsel for the Applicant that Justice Hebner's order requires that the goal of the family reconciliation therapy be the reinstatement of the status quo respecting the Applicant's primary care of J. That is an over-layering by counsel for the Applicant that is not apparent on the face of the order. While that may be an assumed and desirable result of successful family reconciliation therapy, it does not say so in the order.

[129] The absence of the condition advocated for by the counsel for the Applicant, however, does not assist the Respondent because, as of the date that this motion was argued, he had not taken any concrete steps to comply with Justice Hebner's order to have himself or J. begin the process of becoming involved in the therapy.

[130] Instead, he had his lawyer raise a number of spurious submissions to Ms. DeVeto about changes to the agreement and affording "rights" to J. which she does not have, as a means of avoiding participation in the therapy.

[131] Of course, I have not seen Ms. DeVeto's agreement which the Respondent is said to be refusing to execute.

[132] All of that aside, I emphasize that the purpose of the therapy is "reconciliation". That means that all participants must be prepared to acknowledge where they may need to change how they interact for their mutual benefit.

[133] Furthermore, as is evident from the letter sent to Ms. DeVeto by counsel for the Respondent, the position that he has taken that J. has an absolute right to refuse to participate in such counselling and, whatever her decision, it can only be made after she consults with legal counsel is incorrect. J. is not a party to this proceeding. While she may or may not have some legal right to seek legal advice, she does not have the right to disregard a court order about which she, *as a child*, is the focus and to which she is subject, if not directly, then clearly by necessary inference.

[134] To the extent that the Respondent is supporting that position, he is, in my view, not complying with the order of Justice Hebner.

[135] Therefore, I have no difficulty finding that there have been several triggering events of non-compliance with the court orders of Justices Templeton, Garson and Hebner on the part of the Respondent.

Is it Appropriate for the Court to exercise its discretion in favour of the Respondent by not sanctioning him under sub-rule 1(8)?

[136] This is the area where counsel for the Respondent focused her submissions.

[137] She claimed that the Respondent has not disavowed his obligation to support the custody orders, citing his evidence that he has attempted to do so.

[138] From a review of his affidavit, however, those efforts have consisted of nothing more than conversations with J., during which he has done nothing more than "encourage" her to converse with her mother to resolve their differences, and "explained" to her that she needs to do so.

[139] Succinctly, counsel for the Respondent put her client's case at its highest when she submitted that he does not have the ability to compel his 15-year-old daughter to comply with the court order.

[140] The only act of compulsion she referred to, and rejected on her client's behalf, was physically forcing J. into his automobile because to do so would constitute assault.

[141] The real question raised by the submissions of counsel for the Respondent is whether the efforts that the Respondent has expended, as described by him in his affidavit, constitute a serious effort on his part to ensure that the court orders are being complied with by J.

[142] He claims that he has done everything that he can think of to ensure J.'s compliance with the orders. With respect, he has not thought long or hard enough about his options.

[143] Counsel for the Applicant submits that the efforts described by the Respondent as having been taken by him to have J. comply with the court orders fall far short of those required by a non-compliant party seeking to obtain the benefit of the court's discretion to not be sanctioned under subrule 1(8).

[144] In fact, counsel for the Applicant submitted that the only defence that would have enabled the Respondent to avoid sanctions would have been a demonstration by him of a series of escalating consequences imposed on J. in an effort to compel her compliance with the orders. I agree.

[145] Counsel for the Respondent cited a number of cases where courts have addressed how a parent might respond to a recalcitrant teenager or older child who is the subject of a court order and who does not wish to comply with that court order.

[146] Those cases include:

***Godard v. Godard,* [2015] O.J. No. 4073 (C.A.)**

[147] In this case, the original motion judge had found ample evidence of failure on the part of the custodial parent to require her 11-year-old child to attend access with her father. As the Court of Appeal noted, the motion judge found that the child was "under the impression that she could decide, starting at the age of 12, whether she wished to continue access" with her father.

[148] While this was a contempt motion, which requires a higher standard of proof than a motion to compel compliance under subrule 1(8), the Court of Appeal rejected the Appellant's submission that it was sufficient for the custodial parent to encourage the child to attend access in order to avoid a finding of a deliberate and wilful disobedience of a court order beyond a reasonable doubt.

[149] The Court of Appeal addressed the issue of how parents might approach dealing with older children and having them comply with court orders as follows:

> **28** Although a child's wishes, particularly the wishes of a child of S.'s age, should certainly be considered by a court prior to making an access order, **once the court has determined that access is in the child's best interests a parent cannot leave the decision to comply with the access order up to the child.** As stated by the motion judge, **Ontario courts have held consistently that a parent "has some positive obligation to ensure a child who allegedly resists contact with the access parent complies with the access order**": (citations omitted)
>
> **29** No doubt, it may be difficult to comply with an access order, especially as children get older. **Parents are not required to do the impossible in order to avoid a contempt finding. They are, however, required to do all that they reasonably**

> **can.** In this case, the motion judge inferred deliberate and wilful disobedience of the order from the appellant's failure to do all that she reasonably could: **she failed to "take concrete measures to apply normal parental authority to have the child comply with the access order". (Bolding added)**

[150] Quoting the motions judge, the Court of Appeal addressed the submissions that a parent cannot force the child to comply with the court order, writing:

> **30…** [W]hat does the mother do when this child doesn't want to go to school or doesn't want to go to the dentist? What are her mechanisms? Right? ... Does this child have an allowance? Does she have a hockey tournament that maybe she's not allowed to go to if she doesn't go to see dad before? Are there things she could do to force her to go short of the police attending at her house and physically removing her?

[151] The Court of Appeal found that the mother "did not go beyond mere encouragement to attempt any stronger forms of persuasion." As a result, the Court of Appeal dismissed the Appellant's appeal from a finding that she was in contempt of the court order that the child attend access with her father.

***Stuyt v. Stuyt,* [2009] O.J. No. 2475**

[152] In this case, the child who was the subject of the proceeding was 13 years of age. The parties had engaged in years of litigation over a number of issues including custody and access. The mother had custody of the children. There was a specific schedule when the children were to be in the care of the father. The evidence established that on several occasions the 13-year-old child simply vacated the residence of the mother and went to stay with the father. On some of those occasions, he did so despite direction from his mother that he remain at home. The court found that by allowing the child to remain in his care at times when he was supposed to be in the care of his mother, the father was in contempt.

[153] Justice C.D. Aitken wrote the following about the father's evidence that he tried to have the child follow the terms of the order:

> **44** The Respondent's evidence is that on a number of the occasions in question, he attempted to convince Braden to return to the Applicant's home but Braden refused. There is nothing in the evidence that lends any credence to the Respondent's evidence that he tried, in good faith, to persuade Braden to return to the Applicant's home but the Respondent could not convince him to do so. The Respondent's behaviour belies this assertion.
>
> **45 There is no evidence from the Respondent that he actually told Braden that he had to return to the Applicant's home on any of the occasions in question.** There is no evidence that he actually took Braden back to the Applicant's home (via the intermediary) on any of these occasions (aside from the night of May 6th, when the Respondent returned Braden hours later). **There is no evidence that the**

> **Respondent took any disciplinary action against Braden for his refusal to abide by the access regime to which both the Applicant and the Respondent had agreed. He did not ground him. He did not remove any privileges. He did not impose any sanctions for disobedience to parental instructions.** On the contrary, Braden was rewarded for being at the Respondent's farm instead of the Applicant's home. **(Bolding added)**

[154] Justice Aitken continued:

> **52** In order to meet his own needs of wanting Braden living with him, the Respondent is undermining Braden's respect for the Applicant, for the law, for the courts, for the police, and for authority in general. Heaven help Braden as he moves through his teenage years and his years as a young adult if this is the message he is receiving from his father.
>
> …
>
> **54** I join in the chorus along with several of my colleagues who have observed as follows.
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> > A parent has some positive obligation to ensure that a child who allegedly resists contact with the other parent complies with the existing access order. (*Hatcher, supra,* at para. 27; *Quaresma, supra,* at para. 8)
> >
> > **A parent governed by an access order is not entitled, in law, to leave access up to the child.** (*Hatcher, supra,* at para. 28; *K.(B.) v. P.(A.),* [2005] O.J. No. 3334 (S.C.J.) at para. 24)
> >
> > **There are many tasks that a child, when asked, may find unpleasant to perform. But ask we must and perform they must. A child who refuses to go to or stay at the home where he is supposed to be under an access order should be treated by the parent the same as a child who refuses to go to school or who otherwise misbehaves. The job of a parent is to parent.** (*Hatcher, supra,* at para. 28; *Geremia v. Harb,* [2007] O.J. No. 305 (S.C.J.) at para. 44)
>
> **55 The Respondent cannot hide behind Braden's wishes as a reason not to comply with the orders of Polowin J. Whether the Respondent or Braden agrees or disagrees with those orders, both must comply with them. It is the responsibility of the Respondent to show that he is the adult, he is the parent, and he will take appropriate steps to make sure that the access schedule in the orders is complied with. (Bolding added)**

***B.K. v. A.P.*, [2005] O.J. No. 3334**

[155] In this case, the child was 11 years of age, and the father had a custody order. The mother refused to return the child to the care of the father after being required to do so by a court

order and claimed in her defence that the child refused to live with his father. Justice Mackinnon wrote the following with respect to the mother's position:

> **22** The situation is different with respect to the April 13, 2005 order. **Not only has the mother not returned Charles to the father's custody, she has not made any effort to do so.** In her affidavit, she states several times that Charles refused to leave her home on February 13 and has remained in her de facto custody since, by his own choosing. While **she states that she has continued to encourage Charles to follow the court order,** the specifics given are with respect to encouraging Charles to visit his father, at Easter and Father's Day. Notably, he did visit his father on both occasions. **There is nothing in the mother's affidavit to show that she told Charles about the April 13 order, and that he and she must comply with it. No effort to actually deliver him or send him to his father's, as required by that order, has been made.** The comments of Chadwick J. in Fenato v. Fenato, [1999] O.J. No. 3546 (S.C.J.) (QL):
>
> > para. 15 **I find it hard to understand how a custodial parent cannot control or direct an 11-year-old child unless the parent is not making a sincere effort to do so. I would expect if the father had taken a firm and more supportive stand Dominic would have returned to his mother** and these incidents involving the police may never have occurred. It certainly leads one to draw the inference the father has very little control over his 11-year old son. If this is indeed the case Dominic may be completely out of control as he enters his teenage years.
>
> …
>
> **24 It is clear from reading her affidavit that the mother's view is that Charles does not want to live with his father. It is equally clear that, given his wishes, she does not intend to comply with the court order that he do so. The law does not entitle Ms. B.K. simply to leave this up to Charles.** I find Ms. B.K. in contempt of paragraph 1 of the April 13th order. **(Bolding added)**

***Michener v. Carter,* [2018] O.J. No. 2325**

[156] In this case, the children were 13 and 15 years of age. They resided with their mother in Ontario. Their father resided in British Columbia. Access between the father and the children had dwindled to the point that they were refusing to speak with him or visit with him when he attended in Ontario for that purpose. The father brought a motion seeking an order that the court find the mother in breach of orders affording the father access.

[157] Justice J.P.L. McDermot wrote:

> **33** What steps does a parent have to go through to ensure that access take place? In *Jackson*, Chappel J. suggested four requirements for the parents to ensure that access

take place. In para. 63(d) of her decision, Chappel J. suggested an inquiry as to the following four factors:

i. Did they engage in a discussion with the child to determine why the child is refusing to go?

ii. Did they communicate with the other parent or other people involved with the family about the difficulties and how to resolve them?

iii. **Did they offer the child an incentive to comply with the order?**

iv. **Did they articulate any clear disciplinary measures should the child continue to refuse to comply with the order?** (*Godard*, Supra.; *Jackscha v. Funnell*, 2012 CarswellOnt 10467 (Ont. S.C.J.)). **(Bolding added)**

…

40 Whatever reason the children do not want to see their father, however, the real issue is whether the mother is taking all reasonable efforts to ensure that the access order was complied with. In the present case, I do not believe that she has. Prior to the abortive February visit, Ms. Michener deposed that, "If the children do not want to spend time with him or call him, I am not going to "punish" or "impose consequences" and if this is what the respondent interprets the term 'reprimand' in paragraph 49 of his affidavit I think it is inappropriate." It appears that the most that she is willing to do is to "encourage and promote the concept of having contact with their father regularly when they can and he is available." Later, after the failed visit, the applicant says that "I did encourage the children and told them it was okay for them to go with their father to Toronto and I was in support of it." When I asked counsel as to whether that was the only evidence of the applicant's attempts to force the children to go on the access visit, he confirmed that that was it.

…

42 Absent from all of these things were the latter two things that Chappel J. suggested were necessary for proof of compliance with an access order affecting children who were ambivalent over a visit with their father. **The applicant provided evidence of neither inducements nor disciplinary measures designed to enforce what both of these parents agreed was in the best interests of the children, which was a four-day visit with their father.** Rather, **Ms. Michener** confirmed that she was not willing to impose any consequences on the children if they did not wish to go on a visit with their father; she **said that the most that she is willing to do is to encourage the children to go on a visit with their father which is, frankly speaking, insufficient** to answer the allegations that she is in breach of the February 1 consent order.

…

> **44** I would firstly note that the reasons why the children do not want to go are not necessarily relevant to an enforcement motion where what is in issue is the efforts made by the responding party to make the access happen. It must be remembered that these parties agreed on two separate occasions that a visit between the children and their father was in the children's best interests. **Ms. Michener cannot now be heard to say that the visits may not, in fact, be in the children's best interests when the parties previously agreed that they were. (Bolding added)**

[158] The latter comment of Justice Mackinnon is particularly pertinent because counsel for the Respondent submitted that I must have regard to J.'s best interests when considering whether to sanction the Respondent for not complying with the custody orders and the order of Justice Hebner that J. participate in the reconciliation counselling.

[159] As is always the case, one cannot look behind prior orders that have not been appealed. Twice, Justices of the Superior Court, on consent, have found it to be in the best interests of J. that she reside in the custody of her mother.

[160] Justice Hebner undoubtedly thought it to be in the best interests of J. that she participates in reconciliation counselling, particularly in light of the evidence that the previous excellent relationship which existed between the Applicant and J. has substantially deteriorated for no discernible reason.

[161] In my view, I therefore need not undertake a "best interests" analysis on an enforcement motion where what is sought to be enforced is an order predicated on the child's best interests.

[162] Counsel for the Respondent argues that my discretion should be exercised in favour of the Respondent because there is currently pending before the court the Respondent's Motion to Change the order of Justice Garson as well as an interim motion seeking to regularize the residency of J. at the home of the Respondent.

[163] Counsel further submits that what precipitated all of this was a "dogmatic insistence" by the Applicant that the Respondent adhere to the order of Justice Garson without any willingness to demonstrate flexibility, particularly when the request for flexibility is being made by J.

[164] Be that as it may, what is clear from the Applicant's affidavit, what is not refuted by the Respondent, and what I accept, is that she and J. had an excellent relationship, regardless of what are said to have been her dogmatic views about compliance with the court orders, which suddenly and without warning deteriorated virtually overnight in October 2020.

[165] It is equally evident from the evidence of the Respondent that he regards the continued residence of J. with him as far superior to her continued residence with her mother, and that he is taking no serious steps to impress upon J. her obligation to abide by the terms of the orders, much less to compel her to do so by escalating consequences for her failure to do so.

[166] I reject the argument of counsel for the Respondent that I should have regard to the need of J. to have a close relationship with her elder sister or that the views of her elder sister should hold any significance to the court on this motion. She is not a party to it, and to the extent that she is attempting to persuade J. to remain at the home of their father, she is engaging in conduct which is equally disrespectful of the court orders to which her sister is subject.

[167] I equally reject the submission of counsel for the Respondent that I should apply Justice Tranquilli's holding in *Oliver v. Oliver, supra*, and conclude that, despite the Respondent's non-compliance with the orders, sanctions are not appropriate.

[168] *Oliver v. Oliver* is clearly distinguishable on its facts. There, the party in default had ceased paying support at the ordered amount because he had lost his job. He brought a Motion to Change while in default. That party could not simply compel his former employer to re-hire him. His situation was set and could not be changed unless he obtained new employment.

[169] Here, each day that J. remains with her father is a new day when the order could be complied with but is not. Each day, the Respondent could take steps to have J. comply with the order, but he does not.

[170] The cases are clearly different. Here, the Respondent has authority over J. which he simply refuses to exercise. In *Oliver*, the payor had no authority over his former employer to compel his re-hiring.

[171] Consequently, in light of these findings, and having regard to the well-established principle that parents have an obligation to do more than simply speak to their older children about their obligations to comply with court orders to which they are subject, I will not exercise my discretion in favour of the Respondent or decline to sanction him for his failure to comply with the court orders.

What is the Appropriate Remedy Under Subrule 1(8)?

[172] While counsel for the Applicant seeks relief that extends over 7 pages of his Notice of Motion, I am most troubled by the fact that, while this matter is before the court, J. continues to reside in the care of the Respondent and, for each day that she does so, her sense of power and the status quo in favour of her continued residence there are strengthened, while the rights and authority of the Applicant are progressively diminished.

[173] I am informed by the Respondent that J. wants to remain in his care. That remains to be seen.

[174] The Respondent has a motion pending for child support adjustments and for the appointment of the Children's Lawyer to represent J. in these proceedings, originally returnable April 28, 2021 but now apparently administratively adjourned to July 21, 2021

because of the pandemic and the Chief Justice's "Updated Notice to the Profession and Public Regarding Court Proceedings" dated April 20, 2021.

[175] It is reasonable to conclude that J. also wants a Children's Lawyer appointed to represent her so that she can have a voice in the proceedings.

[176] J. needs to understand that with rights go responsibilities. She may have the right to support her father asking for the appointment of a lawyer to represent her in these proceedings. She does not have the right to conclude or assume that the court would simply appoint a lawyer to represent her in the face of her unwillingness to participate in counselling or to adhere to the terms of orders which affect her.

[177] The Respondent denies the Applicant's claim that J. lacks the maturity to make decisions on her own behalf. He claims that she is a mature young woman who is able to address the issues facing her rationally and with a clear mind.

[178] If he is right, she will no doubt understand that, if she wants to be treated as a responsible adult, she needs to behave like one.

[179] The same can be said for the Respondent. The logic driving him to conclude that he can, without consequence, proceed with his motion pertaining to child support and involvement of the Children's Lawyer on April 28, 2021 (now July 21, 2021), and his motion seeking to change the residential arrangement as it pertains to J., currently scheduled for June 30, 2021, when he is not making serious efforts to comply with the existing orders eludes me.

[180] If I do not take steps to re-establish the situation that existed prior to October 4, 2020 immediately, the Respondent may well glide to victory on his Motion to Change with the wind in his back, leaving the Applicant shut out of the proceedings without so much as a fair chance to present her case. Moreover, J. will have been rewarded for her failure to obey the court orders, and the wrong message will be sent to her about her obligations to do so.

[181] While the relief sought by the Applicant on this motion is far-reaching, it seems to me that the simplest remedy is to ensure that the Respondent takes definitive steps to require J. to return to her mother's care, to remain there, and to meaningfully participate in family reconciliation therapy, with meaningful and escalating consequences should J. fail to do so, before he is allowed to move these proceedings forward.

[182] I reject the submission of counsel for the Respondent that the proper thing to do is to allow the Respondent's motions to proceed and to be heard on their merits.

[183] Why would I? What lesson is learned in that case by the Respondent - that there is no sanction for thumbing one's nose at the court, and for encouraging one's child to do the same? Would that same lesson not be communicated to J.?

[184] Consequently, I make the following order:

1. The Respondent is in breach of the final orders of Justice Templeton dated March 1, 2011 and Justice Garson, dated August 15, 2019 by over-holding and failing to return the child, J., born in 2006, to the care of the Applicant commencing on October 4, 2020 and on numerous repeated occasions since.

2. The Respondent is in breach of the said orders of Justices Templeton and Garson by not taking all reasonable and necessary steps to compel the return of J. to the care of the Applicant on each and every occasion that he was required to do so since October 4, 2020 by the terms of the said orders.

3. The Respondent shall forthwith cause J. to be returned to and remain in the care of the Applicant.

4. To ensure that J. returns forthwith to and remains in the care of the Applicant, the Respondent shall exercise his full parental authority over J., which includes, but is not limited to, taking definitive, reasonable and necessary steps to require her to return to and remain in the care of the Applicant, with meaningful and escalating consequences should she fail to do so.

5. The Respondent shall forthwith take all necessary steps defined by Paula DeVeto to become a participant in, and he shall thereafter attend, participate in, and fully complete, the course of family reconciliation therapy with J. and the Applicant (or either of them, as determined by Paula DeVeto) as ordered by Justice Hebner on February 9, 2021, on such terms as are recommended by Paula DeVeto.

6. Once J. has returned to and is in the continuing care of the Applicant, all existing orders affording parenting time to the Respondent are suspended until a period of 60 consecutive days have passed, during which the Respondent shall not have had contact with or been in communication with J., other than during the course of family reconciliation therapy with Paula DeVeto. The maximum period that this term shall apply shall be 120 consecutive days from the date that J. first returns to and remains in the care of the Applicant.

7. a. In the event that J., at any time during any period of 60 consecutive days referred to in paragraph 6, attends at the residence of the Respondent or meets with the Respondent for any reason other than for the purpose of family reconciliation therapy with Paula DeVeto, the Respondent shall arrange for her immediate return to the care of the Applicant.

b. In the further event that that J. remains with or in the care of the Respondent in the circumstances described in paragraph 7a. for longer than one hour on any such occasion without being returned to the care of the Applicant, the period of 60 consecutive days in which such event occurs shall thereupon be terminated, with a new period of 60 consecutive days to begin on the day following J.'s return to the care of the Applicant.

8. To ensure that J. meaningfully participates in the family reconciliation therapy ordered by Justice Hebner on February 9, 2021, the parties shall each exercise their full parental authority over J., which includes, but is not limited to, taking definitive, reasonable and necessary steps to require her to attend, participate in, and fully complete, the course of family reconciliation therapy ordered by Justice Hebner on February 9, 2021, with meaningful and escalating consequences should she fail to do so.

9. Once the suspension of the Respondent's parenting time provided for in paragraph 6 hereof has expired, the parties shall both exercise all required guidance, boundaries, incentives and consequences in their parenting of J. to ensure compliance with the terms of the court orders concerning parenting time, contact and if it is continuing at that time, family reconciliation therapy, and neither party shall ever accept any assertion by J. that she does not or will not comply with the terms of such court orders.

10. Until the last to occur of:

    a. The expiry of the latter of a period of:

        i. 60 consecutive days during which the Respondent shall not have had contact with or been in communication with J., other than during the course of family reconciliation therapy with Paula DeVeto; and

        ii. 120 consecutive days from the date that J. first returns to and remains in the care of the Applicant;

    and

    b. the completion by the parties and J. of the family reconciliation therapy ordered by Justice Hebner,

    has occurred, the Respondent is prohibited from proceeding with any motion in this proceeding, whether currently scheduled or not, including but not limited to, his motions returnable April 28, 2021 (now July 21, 2021) and June 30, 2021.

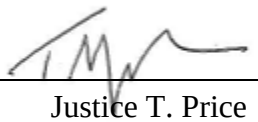
11. Subject to the terms of this order, the Respondent's motion first returnable on April 7, 2021 is adjourned to June 30, 2021 at 10:45 a.m.

12. The motions returnable April 28, 2021 (now July 21, 2021) and June 30, 2021 are hereby converted into dates on which only the re-scheduling of the said motions shall be spoken to unless the last of the conditions to be satisfied by the terms of paragraph 10 hereof has occurred.

13. In the event that there is disagreement between the parties over whether the last of the conditions to be satisfied by the terms of paragraph 10 hereof has occurred when the Respondent seeks to proceed with a motion in this proceeding, the terms of this order shall first be drawn to the attention of the presiding Justice for a ruling on that point.

14. Counsel may make costs submissions in writing within 15 days of the date of this order. Such submissions shall be written in Times New Roman 12-point font at 1.5 spacing and shall not exceed three typewritten pages exclusive of a Bill of Costs.

15. Counsel for the Respondent shall also disclose what she billed her client for this motion, since what counsel for an unsuccessful party bills their own client is a factor to be considered in assessing the reasonableness and proportionality of the amount of costs being sought by the successful party.



Justice T. Price

Date: April 22, 2021