2013 ONSC 2486
Ontario Superior Court of Justice

Kerr v. Easson

2013 CarswellOnt 5127, 2013 ONSC 2486, [2013] W.D.F.L. 3794, [2013] O.J. No. 1931, 227 A.C.W.S. (3d) 739

Jeremy Albert Kerr, Applicant and Dana Lynn Easson, Respondent

Gray J.

Heard: March 25, 2013; March 26, 2013; March 27, 2013; March 28, 2013; April 03, 2013
Judgment: April 29, 2013
Docket: 34058/11

Counsel: Shawn M. Philbert, for Applicant
Kirsten Hughes, for Respondent

Subject: Family; Property

Table of Authorities

Cases considered by *Gray J.*:

Gordon v. Goertz (1996), 1996 CarswellSask 199, [1996] 5 W.W.R. 457, 19 R.F.L. (4th) 177, 196 N.R. 321, 134 D.L.R. (4th) 321, 141 Sask. R. 241, 114 W.A.C. 241, [1996] 2 S.C.R. 27, *(*sub nom. *Goertz c. Gordon)* [1996] R.D.F. 209, 1996 CarswellSask 199F (S.C.C.) — referred to

Persaud v. Garcia-Persaud (2009), 81 R.F.L. (6th) 1, 2009 ONCA 782, 2009 CarswellOnt 8851 (Ont. C.A.) — referred to

Willick v. Willick (1994), 6 R.F.L. (4th) 161, 119 D.L.R. (4th) 405, 173 N.R. 321, 125 Sask. R. 81, 81 W.A.C. 81, [1994] 3 S.C.R. 670, [1994] R.D.F. 617, 1994 CarswellSask 48, 1994 CarswellSask 450 (S.C.C.) — referred to

APPLICATION by mother for variation of final order.

***Gray J.*:**

1 This is a motion by the respondent to change a final order of Coats J. dated December 16, 2011. In addition, the respondent asserts claims that may be more accurately described as enforcement claims, arising out of her position that the applicant did not pay certain amounts that he should have paid to get the matrimonial home ready for sale, and that he has not complied with certain of his obligations under the order.

Background

2 After the parties had marital difficulties, they continued to live under the same roof in the matrimonial home, and ultimately entered into a final order, on consent, that was issued by Coats J. on December 16, 2011. They continued to live under the same roof until April, 2012, when the respondent left to live with her mother in Burlington. The matrimonial home ultimately sold on September 4, 2012, and the applicant continued to live there until the house was sold.

3 The parties have one child, Easson Jeremy Kerr, born July 31, 2006. Pursuant to the consent order, the child is with the applicant on an overnight basis on Tuesdays and Thursdays, and on alternating weekends from Friday afternoon until Monday morning. The parties have joint custody of the child.

4 It is not in dispute that the applicant has issues regarding his consumption of alcohol. His employment has been sporadic, and he has been on disability. In 2011, the year the consent order was issued, it was agreed that his income was $21,807.17. I am satisfied, based on the evidence I heard, that was not contradicted by the applicant (indeed, he did not give evidence at trial), the applicant's current income is approximately $53,000 per year.

5 The respondent, until recently, has had responsible positions in her employment, and has earned a significant income. She is currently on disability, and has been for some three years. At the date of the consent order, it was agreed that her tax free income was $113,149.85. Her current income is $99,375.84, of which $83,518.08 is non-taxable.

6 Certain paragraphs of the lengthy consent order are particularly relevant to the issues arising here. They are:

> 2. The parties shall have joint custody of the child of the marriage. Easson Jeremy Kerr, born July 31, 2006.
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> 3. The parties shall strive to make important decisions with respect to the child's health, education, religious upbringing and general welfare jointly. They will share all information related to child's health, education, religion and welfare. If they reach an impasse on the above, or is either raises concern with the other parent's mental health, the parties shall refer to a parenting coach or mediator arbitrator to resolve issues concerning Easson. They shall equally share in this expenditure and the parenting coach or mediator/arbitrator can thereafter apportion costs.
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> 5. Once the parties commence residing in separate residences, the Applicant shall have parenting time with the child every Tuesday and Thursday from pick up after school until drop off the following morning at school. The Applicant shall also have the child on alternating weekends from pick up after school on Friday until drop off Monday morning at school.
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> 22. The parties shall ensure that the child attends and is on time for all of his extracurricular activities. No new activities shall be scheduled by either party without the other parents consent.
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> 24. The parties shall ensure that they follow routine feeding, bathing and sleep schedules which are consistent with both parents' homes.
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> 25. The parties shall ensure that the child complete his homework while in their care and that they sign the child's agendas accordingly.
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> 28. The parties shall reside in the Halton/Peel Region and the child shall continue to attend his current school for the balance of the 2011/112 academic year. On a go forward basis, the child shall attend a school that is in the Respondent's catchment area which shall remain in the Halton/Peel Region.
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> 33. Once the parties commence residing in separate households and on the first of the month thereafter, the Respondent shall pay to the Applicant month child support of $1,214.00. This is based on section 9 of the Guidelines, a straight set off approach, and the Applicant's income of $21,807.17 and the Respondent's tax free income of $113,149.85.
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35. The parties shall pay their proportionate share of the child's special and extraordinary expenses after taking into account any tax deductions or credits relating to the expense and any eligibility to claim a subsidy benefit or income tax deduction or credit relating to the expense. The parties will supply the necessary proof of income/Income Tax Assessment information to the other for this purpose.

36. The parties shall consult and agree with each other in advance with respect to enrolling the child in extra-curricular programmes or incurring expenses for extra-curricular programmes.

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40. The Respondent shall pay to the Applicant spousal support from October 1, 2011 to June 30, 2018, at which time the Applicant's entitlement to ongoing spousal support shall terminate.

41. Spousal support of $1,600.00 per month shall be paid from October 1, 2011, and on the first of the month thereafter until the month of the closing of the parties' matrimonial home, which shall not exceed June 30, 2012. Spousal support payments during the period of October 1, 2011 until the closing of the matrimonial home, being no later than June 30, 2012, shall not be taxable as income to the Applicant nor a tax deduction to the Respondent in accordance with the *Income Tax Act*.

42. Commencing July 1, 2012, or the 1 st of the month following the month the parties' matrimonial home closes, whichever comes first, the Respondent shall pay the Applicant spousal support in the amount of $2,822 per month, on the first of the month. Spousal Support payments from July 1, 2012 or the 1 st of the month following the month the parties' matrimonial home closes, whichever comes first, shall be included in the income of the Applicant and shall be deductible to the Respondent in accordance with the *Income Tax Act*.

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48. The matrimonial home municipally known as 174 Forbes Terrace Milton, Ontario L9T 0S6, shall be immediately listed for sale with Terri Lynn and Norm Hilson of ReMax Realty.

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50. They shall mutually cooperate and get the home ready and showable for listing by no later than December 16, 2011.

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57. The Respondent has ownership of the 2010 Mazda Speed 3 Vehicle which the Applicant drives. The Applicant has ownership of the 2007 Ford Taurus which the Respondent drives. The Applicant shall transfer ownership of the 2007 Ford Taurus to the Respondent. The Respondent shall transfer ownership of the Mazda Speed 3 vehicle to the Applicant. The Applicant shall assume the RBC Loan affiliated with the 2010 Mazda Speed 3. The parties shall sign any documents necessary to ensure that they are not taxed on the transfer of their respective vehicles. Any costs of the transfer shall be paid by the parties jointly.

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61. The parties shall equally divide the Velocity/Mail.com Stocks. They shall sign all necessary paperwork to facilitate doing so. This shall be done by no later than January 15, 2012.

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66. The above shall constitute a final settlement of all equalization claims and property issues between the parties. Each party will release their rights as against the other to make any claim in the future for equalization, property division or to make a claim to the estate of the other.

7 The respondent testified that she has fully paid all of the child and spousal support as required by the consent order.

8 The respondent testified that the applicant has paid virtually none of the special and extraordinary expenses for their son. As a result, Easson now is not enrolled in any significant extra-curricular activities.

9 The respondent testified that the applicant has made virtually none of the disclosure that he is required to make, except for one pay stub from which she has calculated the applicant's current income.

10 The respondent testified that when the matrimonial home was sold, she incurred virtually all of the expenses to carry the matrimonial home and get it ready for sale. Those expenses came to approximately $50,000, and she wants the applicant to pay one half of that amount. Furthermore, she calculates that there are certain other expenses that should have been incurred by the applicant alone, which she paid. She estimates that amount to be approximately $31,000.

11 As reflected in paragraph 57 of the order, there was to be a transfer of ownership of certain vehicles. The applicant refused to effect the transfer.

12 Pursuant to paragraph 61 of the order, the parties were to divide equally certain shares. The applicant refused to sign the paperwork in order to effect the division.

13 The respondent testified that the applicant has been somewhat inconsistent in exercising his visitation rights with their son.

14 The respondent purchased a home in Bowmanville, which closed on July 30, 2012. She did not advise the applicant that she had done so. Instead, she brought the motion to change that is now before me. She signed the motion to change on July 22, 2012. Among other things, she requested that she be permitted to enrol their son in the Kawartha Lakes School District "as the respondent and the child will be residing in the Durham Region, for the September, 2012 school year, as the respondent will be residing there, effective August 16, 2012." The motion to change was served on the applicant on August 16, 2012.

15 Almost immediately, the applicant brought a motion for contempt, alleging that the respondent was in the process of violating paragraph 28 of the consent order, which requires her to reside in the Halton/Peel Region. Instead of moving into the Bowmanville home the respondent continued to live with her mother in Burlington. She now says it was not her intention to live in the Bowmanville home unless, and until, she received an order from this court allowing her to move there with the parties' son. Needless to say, I am somewhat skeptical of this explanation having regard to the secretive way in which she purchased the Bowmanville home and did not advise the applicant of it, and the clear statement in the motion to change that it was her intention to live in Bowmanville effective August 16, 2012. Be that as it may, the respondent has continued to live in Burlington with her mother, and has used the Bowmanville home as a weekend retreat. The parties' son has continued to attend school in Halton.

16 The respondent testified that since the separation, her son's homework has not been done while he has had overnight visits with the applicant. This has particularly been a problem with respect to his reading. The child is expected to do 20 — 30 minutes of reading with his or her parent after school. A log is supposed to be kept of this. There is an agenda that the child carries between the home and the school.

17 A teacher from Easson's school was called to give evidence, who testified that there were a number of back dated signatures of the applicant placed on the log that purported to show that readings with his son had been done. The teacher had kept a photocopy of the original document, without the signatures. I am satisfied that the applicant attempted to alter the document later to make it appear that readings had been done when they had not been done.

18 The child's marks in school are generally satisfactory, but they are lower in reading. While they are technically satisfactory, they are nevertheless lower than the marks he received in other subjects. I am satisfied that his relatively low mark is due, in part, to the fact that his father does not do the reading with him that he should do.

19 The respondent testified that after visits with his father, the child is overtired and moody. Furthermore, he becomes angry because his mother will not allow him to play certain video games that are age-inappropriate. They are "World of Warcraft", and "Diablo 3".

20 The respondent testified that she found out that her son was playing these games, and her son told her that his father had said he should not tell his mother that he was playing them. The respondent found out from her mother, who then advised the respondent.

21 The respondent testified that she discussed this with the applicant. He promised that he would stop allowing his son to play these games at his home. Notwithstanding this promise, playing the games has continued, and the child has started to have nightmares.

22 A teacher from the school testified that she had discovered that the child was playing these video games, and was quite concerned. She inserted a note in the agenda, which reads as follows:

> Easson mentioned he has been playing a new video game called Diablo as well as World of Warcraft. I am a bit concerned as both these as rated mature content which I think is not appropriate for a 6 or 7 year old child. Perhaps RAZ-Kids could be a better alternative.

23 This page of the agenda mysteriously disappeared, but the teacher had kept a photocopy of it. I am satisfied that the applicant removed this page from the agenda because it contained material that might be detrimental to his case.

24 The respondent testified that she learned that the applicant took the child to a new church, the Evangelical Church. This had not been discussed with the respondent. She testified that the parties had agreed that they would agree on decisions regarding the child's religious upbringing. She testified that she asked that applicant to stop taking the child to this church, but he continued to do so. She sent him an email regarding the matter and received no response.

25 The respondent testified that her son has made comments to her that are of concern. She testified that he told her that the applicant had told him that at aged 12, he can decide where he wants to live, and that he should live with the applicant. Her son stated to her "I don't need you to love me. I don't need you. I don't care." When asked why he said this, the response was "Because".

26 The respondent testified that she would prefer to live in the Bowmanville home, and take her son with her. She testified that the home is in a good neighbourhood, with good schools close by, and it would provide stability. However, if she is not able to move to Bowmanville, she wants the access arrangements changed so that the applicant does not have their son on an overnight basis during the week.

27 On cross-examination, the respondent acknowledged that the applicant's drinking had been a problem both before and after the consent order was issued. She also acknowledged that she had complained about the child viewing inappropriate video games before the order was issued. She acknowledged that with respect to the religious issue, it could have been dealt with by the use of a mediator/arbitrator, as contemplated in paragraph 3 of the order.

28 On cross-examination, the respondent asserted that if she lives in Bowmanville and the applicant does not have mid-week overnight access, the applicant could pick up the child in Bowmanville at approximately 3:45 p.m, and be with the child in Bowmanville for a few hours and drop the child off at the respondent's home in Bowmanville. She acknowledged that under that scenario, the applicant would have to drive 112 kilometres each way in order to have access to the child.

29 In the alternative, the respondent testified that she could drive the child to what she believes is the applicant's place of employment in Scarborough. She could have the child there by 4:30 p.m. and could pick the child up at 7:00 p.m. She acknowledged that this is based on the assumption that the applicant's place of employment is in Scarborough.

30 Marion MacLeod, a teacher at the child's school, testified that both parties have attended parent-teacher interviews. She testified that the child was late more often after April, 2012. She testified that with respect to the child's reading, he is developing as expected.

31 Ms. MacLeod testified that she has been aware that the child has been playing with age-inappropriate video games. She testified that she would not allow her own son to play those games. She discussed the matter with the child, who told her that he is not allowed to tell his mother that he is playing these games.

32 Nancy Wilson-Blackley, another teacher, testified. She testified that she has concerns about the child's reading. He will not reach the proper reading level by the end of Grade One. In October, 2012 he was at a lower level than he had been when he finished kindergarten.

33 Ms. Wilson-Blackley testified that it is very important that a child spend at least 20 minutes per day reading with his or her parent.

34 She testified that the parent is to date and sign the reading log when the reading exercise has been done. She testified that to March 24, 2013, the log disclosed that the reading had been done with the respondent on 89 days and with the applicant only 7 days. She testified that the child has told her that his father will not do home reading with him.

35 Ms. Wilson-Blackley testified that some signatures of the applicant have been added to the log after the fact. Furthermore, he has signed the log more often in the month before trial than he had before.

36 Ms. Wilson-Blackley testified that she has suggested using a computer program called RAZ-Kids. Under the program the student has a log in as well as the teacher. She can track the history of reading of books, and can compare it with the agenda. Having done so, she testified that with the respondent, the child has read 48 books, and with the applicant he has read 9 books.

37 Jenny Easson, the respondent's mother testified. The respondent lives with her. She testified that she has bonded with the child.

38 Ms. Easson testified that the child has told her "I don't have to do any homework at my dad's." The child has told her that he plays World of Warcraft and Diablo at his father's place. He told her that his daddy lets him play the games, and "Daddy lets me do whatever I want." He has also told her "Daddy says I won't have to have any more mommy days — just daddy days."

39 Margaret Napier, the Principal of the child's school, testified. She testified that the home reading log disclosed that for March 25, 2013 to March 30, 2013, the mother had signed the log five times and the father had signed it zero times. From October 10, 2012 to March 24, 2013, the mother had signed the log 89 times and the father 8 times.

40 As noted earlier, the applicant did not testify. No other evidence was called on his behalf.

Submissions

41 Ms. Hughes, counsel for the respondent, submits that there should be a number of variations to the order of Coats J.

42 Counsel submits that there should be a variation to the child support and spousal support payments, having regard to the parties' current levels of income. If there is no adjustment to the living arrangements regarding the child, child support should be payable by the respondent in the amount of $733 per month, and spousal support in the amount of $1,354 per month. If there is a change in the living arrangements regarding the child, the applicant should pay child support in the amount $478 per month, and the respondent should pay spousal support at the low end of the range, in the amount of $1,337 per month.

43 Ms. Hughes submits that there has been significant non-compliance with the order, which should give rise to a change in the access and support provisions, as well specific orders requiring the applicant to pay certain amounts to the respondent.

44 Ms. Hughes points out that the applicant unilaterally introduced the child to a new church, without consulting the respondent, in direct violation of the order.

45 Of even greater significance, the applicant has adversely affected the child's welfare. He has failed to ensure that the child engages in at least 20 minutes of reading per day when the child is with him, and he has allowed the child to view age-inappropriate video games. Furthermore, he has told the child that he will not be living with his mother eventually, and that there will only be "daddy days" and not "mommy days".

46 Ms. Hughes submits that the applicant has refused to pay his share of special and extraordinary expenses, and he must be ordered to do so. Furthermore, there were expenses related to the sale of the home that he was to pay and he did not. He should be ordered to do so.

47 Ms. Hughes noted that the applicant has failed to abide by his obligation of disclosure and had he done so it would have led to an automatic change in both child support and spousal support.

48 Ms. Hughes also noted that there were a number of other provisions in the order that the applicant has not complied with, including transferring vehicles and shares.

49 Ms. Hughes submits that the respondent should be allowed to move to Bowmanville, and take the child with her. Such a move would be beneficial to the child, and in his best interests. Any inconvenience to the applicant in exercising access can be minimized, and in any event inconvenience to one of the parties cannot override the best interests of the child.

50 Ms. Hughes submits at the very least there should be an alteration in the time sharing arrangements. It is clear that the overnight visits with the applicant during the week are counter-productive. There is no virtually no reading with the child that occurs during those visits and the child is permitted, if not encouraged, to play age-inappropriate video games. Those games are potentially harmful, and concern has been expressed by the child's teachers. Notwithstanding warnings not to do so, the applicant has continued to allow the child to play those games, and notwithstanding encouragement to regularly read with the child, he has not done so.

51 Mr. Philbert, counsel for the applicant, submits that the motion to change the order of Coats J. should be dismissed.

52 Mr. Philbert points out that the respondent has changed her position somewhat since serving her motion to change. In addition to seeking a change in some of the terms of the order, she now seeks what should properly be termed "enforcement" orders. Those orders, Mr. Philbert submits, have no place in a motion to change a final order, and in any event were not sought in the motion. Mr. Philbert does not dispute that such issues can be pursued in the proper forum, but submits that this is not the proper forum. It would be open to the respondent to simply issue a statement of claim, or pursue other enforcement mechanisms that are available to her.

53 Mr. Philbert submits that in any event insufficient time has elapsed since the making of the order to conclude that any real change has occurred. He submits that the real reason for the respondent's motion is to allow her to move to Bowmanville. The decision to purchase the home in Bowmanville was made unilaterally by the respondent, without consulting, or even advising, the applicant. It was made for the respondent's convenience and not in the best interests of the child. It should not be used as a springboard to allow a change in the living arrangements regarding the child.

54 Mr. Philbert submits that any complaints the respondent has about the applicant's conduct were in existence before the order was made. There were complaints about his drinking before the order was made. There were issues about the child viewing inappropriate video games before the order was made.

55 Mr. Philbert submits that the respondent should not be permitted to move to Bowmanville which would have the effect of significantly altering the applicant's ability to visit with his child. As a practical matter, the applicant would have to drive about one and a half hours each way, through rush hour traffic, in order to exercise his right to visit with his child. As noted earlier, the proposed move to Bowmanville is only to convenience the respondent, and has no grounding in the best interests of the child. There is no need to significantly alter the access arrangements simply to convenience the respondent. The child has always lived in Halton, goes to school in Halton, his family is in Halton, and he has no connection with Durham Region. There is simply nothing in the proposed move that would be in the best interests of the child.

Analysis

56 I agree with Mr. Philbert that the enforcement issues are not properly before me. What is before me is a motion to change the final order of Coats J. dated December 16, 2011. If the respondent wishes to pursue the issues regarding alleged violations of the order, and/or issues regarding the obligation of the applicant to contribute to the expenses of the matrimonial home before its sale, she can pursue those issues in another forum.

57 In order to succeed in changing a final order, the moving party must show that there is a material change in circumstances: see *Gordon v. Goertz*, [1996] 2 S.C.R. 27 (S.C.C.); *Willick v. Willick*, [1994] 3 S.C.R. 670 (S.C.C.); and *Persaud v. Garcia-Persaud* (2009), 81 R.F.L. (6th) 1 (Ont. C.A.). In order for a change to be "material", it must be one of some significance, and it must relate to a state of affairs that was not known or foreseen at the time the original order was made: see *Willick*, *supra*.

58 I do not accept the applicant's argument that some of what is complained of here was known at the time the order was made, and thus cannot be relied on. Taken to its extreme, such an argument would preclude the court from making adjustments to an order, even where the welfare of the child is at stake and changes are clearly in the child's best interests.

59 It seems to me that where an order is made on consent, it reflects the implied undertaking of the parents that they will conduct their affairs in a way that reflects the best interests of the child. Where the parents do not do so, it is not open to them to argue that just because they were acting in a way that was contrary to the best interests of the child before the making of the order, that cannot be relied on to change the order.

60 In this case, the parties have agreed that they will have joint custody of the child. They have agreed that they will make important decisions with respect to the child's health, education, religious upbringing and general welfare jointly. They have specifically agreed that they shall follow routine feeding, bathing and sleep schedules which are consistent with both parents' homes, and they have agreed that they will ensure that the child complete his homework while in their care and that they will sign the child's agendas accordingly.

61 These provisions, in my view, reflect a common understanding that the parents will act in their child's best interests and will look out for his general welfare. In my view, any significant deviation from the explicit and implicit undertakings to look out for the child's best interests and his general welfare can give rise to a material change in circumstances.

62 That is not to say that every circumstance that might detrimentally affect the child will necessarily be considered a material change in circumstances. Parents are not perfect and they will make mistakes. The court will not assume jurisdiction to correct every mistake in the guise of a material change in circumstances.

63 However, in my view, there are two circumstances here that significantly impact on the child's welfare, that are material changes in circumstances. They are the applicant's neglect of the child's home reading, and the applicant's allowance, and even encouragement, of the child's playing of age-inappropriate video games.

64 Without question, it is important that both parents assist the child in acquiring appropriate reading skills. The importance of this is underscored by the use of a log, which the parents are required to sign when they have done the

appropriate reading with the child. For the applicant to neglect this activity is inexplicable, and in my view, inexcusable. It is not sufficient, in my view, to argue that the child is attaining a grade of C or C+ and that this is sufficient. According to one of the teachers, the child is falling behind, and will not achieve the appropriate reading level if the current situation continues.

65 The playing of age-inappropriate video games is also a significant concern. Both teachers called as witnesses were concerned. Even without their evidence, common sense would suggest that such a concern is justified. Children can pick up messages that violence is acceptable. The excerpts from Diablo 3 furnished to me in evidence include, in its description, "shake the earth, blast your enemies with fire and ice, summon other worldly minions and much more as you wield the powers of your heroic birthright", and "lay waste to legions of evil throughout randomized, 3-D environments." The excerpt from World of Warcraft includes "witness zeppelins flying over smoldering battlefields; battle in epic sieges - a host of legendary experiences await." I have no difficulty concluding, as the child's teachers have, that these games are entirely inappropriate for a six or seven year old boy. The applicant has been spoken to about this by the respondent and by the teachers, and he has continued to allow the child to play these games. Once again, in my view, this is inexplicable and inexcusable.

66 These features constitute a material change in circumstances, and justify a change in the order of December 16, 2011. The question is what change is required in the best interests of the child.

67 The respondent does not request a change in custody, nor does she request a change in the weekend access. The change she requests is that the weekday access be changed from overnight to daytime access only. In my view, that change is justified and required.

68 The issues regarding reading and the playing of inappropriate video games will be minimized, although probably not eliminated, by a change in the overnight access arrangements during the week. If this child spends two additional weeknights at home with his mother, I have no doubt that reading will occur before the child goes to bed. Also, the child will have two evenings where the possible playing of video games will be reduced.

69 I recognize that the child will still be with his father on two weekdays without overnight access, and he could still play video games then. He will also have three overnight visits on each alternate weekend and he could play video games then. Furthermore, one of those overnight visits is on Sunday before the child attends school on Monday. He might not do his reading with his father on Sunday night.

70 While this is a concern, I do not think at this point the applicant should have his access reduced any more than for the 2 overnight visits during the week. However, the applicant should understand that if there is any further concern in the future, his access might be reduced again.

71 I am also concerned about the messages that seem to be conveyed to the child that he might not live with his mother anymore, that there will only be "daddy days" in the future, and that he can do whatever he wants. This adds to my concern about the reading and the playing of video games. It is not necessarily in the best interests of children that they can simply do whatever they want. Some discipline is required. It is not surprising that if a child is permitted to do whatever he wants, he may wish to spend more time with the parent that allows him to do whatever he wants. However, this is not in the best interests of the child.

72 I will allow the applicant to have visits with his son every Tuesday and Thursday from pick up after school until 7:00 p.m. when he must be dropped off at the respondent's home. That should give the respondent sufficient time to have the necessary reading with the child before bedtime.

73 I am not prepared to allow the respondent to move to Bowmanville with the child. I am persuaded that the purchase of the home in Bowmanville was simply for the respondent's convenience, and has little to do with the best interests of the child. Among other things, such a move would seriously impact on the ability of the applicant to have meaningful

contact with his son. If the respondent wishes to retain the Bowmanville home as a weekend getaway place that will be sufficient. If she needs to sell the home, so be it.

74 Having regard to the change in the access arrangements, the applicant must henceforth pay child support. Effective June 1, 2013, he will pay $478 per month.

75 I am not prepared to order a change in spousal support. Pursuant to paragraphs 40 and 42 of the order, spousal support is to be paid to June 30, 2018, at the rate of $2,822 per month. Unlike child support, the duration and amount of spousal support is not tied to any particular level of income. The respondent knew of the applicant's alcohol problem before the separation and was undoubtedly aware that his income might vary. Her level of income was relatively fixed and would likely remain so. I am not persuaded that there has been a material change in circumstances so as to justify a change in spousal support.

76 For the reasons articulated earlier, I am not prepared to entertain the other requests made by the respondent, which are effectively enforcement-related, or are claims based on an alleged obligation to jointly contribute to the upkeep of a jointly-owned property. Those claims are dismissed without prejudice to their being advanced in a different forum.

77 If the parties are unable to agree on the specific alterations to the order that are now required, I may be spoken to.

78 I will entertain brief written submissions with respect to costs, not to exceed three pages, together with a costs outline or bill of costs. Ms. Hughes will have 5 days to file her submissions and Mr. Philbert will have 5 days to respond. Ms. Hughes will have 3 days to reply.

Application granted.

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