

[Richards v. Richards](#)

Ontario Judgments

Ontario Superior Court of Justice

K.N. Barnes J.

Heard: December 6, 2023.

Judgment: April 29, 2024.

Court File No. FS-20-17

[2024] O.J. No. 1871 | [2024 ONSC 2488](#)

Between Meghan Elizabeth Richards, and Evan Douglas Richards

(157 paras.)

Counsel

Both parties: Self Represented.

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K.N. BARNES J.

INTRODUCTION

1 Megan Elizabeth Richards (Ms. Richards) and Evan Douglas Richards (Mr. Richards) separated on October 14, 2017. They have two children. Ashlee Richards, 14 years old, and Hanna Richards, 11 years old.

2 This is a trial to change the final order of Justice McSweeney dated January 26, 2018 (the Order). The issues in dispute are decision-making responsibility, parenting time, police enforcement of the parenting time order, ongoing child support, retroactive child support, life insurance to secure child support and whether spousal support should be terminated.

3 Mr. Richards and Ms. Richards represented themselves.

4 I have considered all of the evidence and the submissions of the parties, however, I do not reproduce all the evidence that was presented at this trial. I will refer to portions that are necessary to provide context and to explain the conclusions I have reached in this trial.

5 How I have resolved these issues may not gain the approval of either parent, however, the paramount consideration in the resolution of this dispute is an impartial assessment of what is in the best interests of the children. I outline my reasons and my ultimate orders below.

BACKGROUND FACTS

6 In the Order to go per Minutes of Settlement, Justice McSweeney ordered joint custody. Primary residence would be with Ms. Richards and parenting time with Mr. Richards would occur on alternating weekends, from Friday at 6 pm to Sunday at 5 pm, to be extended to Thursday at 6 pm or Monday at 5 pm during holidays or PA days. This was varied by several temporary orders described below.

7 Shortly thereafter, Ms. Richards reported to the Dufferin Child and Family Services (DCFS) that there were instances of abuse and neglect of the children by Mr. Richards during his parenting time. Ms. Richards brought a motion seeking the suspension of Mr. Richards's parenting time due to an investigation by DCFS into her allegations. By a temporary order dated August 13, 2018, Justice McSweeney suspended Mr. Richards's parenting time. Justice Sprout terminated this order on August 20, 2018, and ordered DCFS to provide an update on the investigation by September 20, 2018.

8 In a letter dated August 16, 2018, DCFS advised the court that it was investigating Ms. Richards's allegation that Mr. Richards was under the influence of illicit substances while taking care of the children. DCFS advised that immediately upon receiving this information, Orangeville Police officers were dispatched to Mr. Richards's house. The police did not find any evidence to support the allegations. DCFS determined that the children were safe in Mr. Richards's care.

9 On consent, Justice Price made an order dated October 29, 2018, confirming the parties' agreement that Mr. Richards shall have parenting time every other weekend, from Friday to Sunday.

10 On March 4, 2021, Ms. Richards commenced a motion to change the Order. Ms. Richards sought primary residence and sole decision-making responsibility for the children. Ms. Richards alleged that Mr. Richards's home

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was littered with empty bottles of whiskey and drug paraphernalia, and the children reported strange odours coming from a room including the odour of cannabis. Mr. Richards's current girlfriend 'Kelly' was a known heavy drug user, particularly crack, and the children had witnessed Mr. Richards abuse animals.

11 Ms. Richards further alleged that Mr. Richards was violent and his violent behaviour escalated when he was drinking and taking drugs. Mr. Richards had been threatening his mother, niece, brother, and former girlfriend with bodily harm. Mr. Richards had guns and ammunition in his home. Ashlee and Hanna had become increasingly afraid of Mr. Richards and did not want to see him. Ms. Richards reported that Mr. Richards's mental health had drastically declined and posed a risk of harm to the children.

12 In a subsequent court appearance, Justice Fragomeni ordered that the children's primary residence shall be with Ms. Richards and that she have sole decision-making responsibility for the children. The order stipulated that Mr. Richards's parenting time was to be supervised and set for every Wednesday from after school until 8 pm, and Saturdays from 12 pm to 4 pm. Supervision was to be by an adult agreeable to the parties.

13 On March 29, 2021, Justice Trimble continued the temporary order of Justice Fragomeni and included an order for the appointment of an Office of the Children's Lawyer (OCL) investigator.

14 The parties could not agree on a third party supervisor for Mr. Richards's parenting time, therefore, supervision was conducted by the Headwaters Family Visit Centre. Mr. Richards began supervised in-person visits on May 2, 2021, each Sunday from 2-3 pm. He did this for just over 12 months. The last visit was on May 29, 2022. As of June 2022, Ms. Richards began cancelling visits on the basis that the children did not want to see Mr. Richards. Therefore, Headwaters Family Visit Centre suspended the visits until the children were ready to resume visits with Mr. Richards.

15 On September 16, 2022, the OCL investigator Kelly Schweitzer released a report concluding that there was no basis for the allegations that the children were unsafe during parenting time with Mr. Richards.

16 Ms. Richards contested the OCL report (the report). The OCL conducted an internal review and concluded that there was no basis to interfere with the findings of the original report. The OCL recommended immediate resumption of Mr. Richards's parenting time and immediate action to repair Mr. Richards's bond with the children.

17 On December 28, 2022, after reviewing the report and concluding that Ms. Richards was alienating the children from Mr. Richards, Justice Miller ordered unsupervised parenting time for Mr. Richards at specified times on December 28, 2022, December 30, 2022, and from January 3, 2023, to January 5, 2023. None of these scheduled parenting times took place. The parties both blame each other for this.

18 On January 16, 2023, Justice Van Melle dismissed a contempt motion brought by Mr. Richards, alleging that Ms. Richards had failed to deliver the children for his parenting time in violation of the orders of Justice Miller and Justice Trimble. The dismissal was because the self-represented Mr. Richards had failed to meet the legal threshold for a finding of contempt.

19 Justice Van Melle noted that for the December 28, 2022 pick-up, Ms. Richards had travelled to the pick-up location with the children in her car. Mr. Richards arrived and parked his vehicle behind hers. The children did not leave the vehicle. After waiting for 25 minutes, Mr. Richards exited his vehicle and approached Ms. Richards's vehicle and Ms. Richards called the police.

20 Justice Van Melle noted that based on the report, Ms. Richards had no basis for withholding the children from parenting time with Mr. Richards.

21 In a case conference dated February 10, 2023, Justice Fowler Byrne observed that Ms. Richards continued to withhold parenting time from Mr. Richards, despite the OCL report and the orders of several judges that she should not do so. Ms. Richards asserts that the children did not want to see Mr. Richards.

22 Justice Fowler Byrne also noted that Mr. Richards refuses to begin reconnection with the children through a supervised parenting time plan, asserting that this would constitute an admission to the children that he had done something wrong.

23 In a Trial Management endorsement dated June 23, 2023, Justice McGee made the same observations about both parties.

PRELIMINARY MATTERS

24 I referred to the comments and orders made by other judges to show the chronology of this case and because these orders are part of the evidentiary record. However, none of the motion or conference judges had the benefit of hearing *viva voce* evidence from witnesses which was tested by cross-examination. Therefore, I review the evidence called at this trial on its own merits and will not be influenced by or consider factual findings or conclusions reached by the motions and conference judges.

25 I found all witnesses called by Ms. Richards to be credible. Mr. Richards testified in his defence and filed letters which were unchallenged by Ms. Richards.

26 One of the grounds for Ms. Richards's challenge of the report was that Ms. Schweitzer did not interview Ashlee Richards. Ms. Schweitzer explained that this was because Ashlee has selective mutism and would not speak to her. Despite her complaints, Ms. Richards relies on Ms. Schweitzer's recommendation that the children reside primarily with her and she be awarded full decision-making responsibility.

27 Ms. Schweitzer accounted for the fact that she did not speak to Ashlee in preparing her report. Her reason for not speaking to Ashlee is reasonable. Though Ms. Schweitzer did not speak to Ashlee, considering the tender ages of the children and the nature of the relationship between Ashlee and Hanna, I am satisfied that Hanna also spoke on behalf of Ashlee when she spoke to Ms. Schweitzer.

28 As a result of Ms. Richards's complaint, the report was subjected to the OCL's internal review process and was found to have followed protocol and procedure and prepared according to the OCL's standards. There is no basis to refute that conclusion and therefore I accept the report in its entirety. I have considered the impacts of subsequent events on the children's stated preferences.

PARENTING TIME

29 A material change in circumstances must be established before a parenting order is changed: *Divorce Act*, R.S.C., 1985, c. 3 (2nd Supp.), s. 17 (the *Act*). A material change is a change which if known at the time of the original order would have most likely resulted in different terms in the order: *Willick v. Willick*, [1994] 3 S.C.R. 670, at para. 20. Thus, these criteria must be satisfied: 1) there must be a *prima facie* strong proof that there has been a material change in circumstances regarding parenting (unsubstantiated rumours are not enough); 2) this said parenting issue must be important; 3) the circumstances must be urgent and pressing; and 4) the party seeking the change must demonstrate that the change sought is in the best interests of the child: *Gardner v. Greenspan*, [2020] O.J. No. 3569

30 The best interests of the child is the *only* consideration in making a parenting or contact order: *Divorce Act*, s. 16(1). Factors relevant to the best interests of the child are related to the primary considerations of the child's physical, emotional and psychological safety, security and well-being: *Divorce Act*, s. 16(2). All factors relating to the circumstances of the child must be considered including the child's needs and preferences considering the child's age and maturity and need for stability: *Divorce Act*, s. 16(3)(a) and (e). Thus it is not simply a circumstance of "whatever the child says goes".

31 Other factors to consider include the nature and the strength of important relationships in the child's life, the

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willingness of each parent to support the strengthening of the relationship of the other in the child's life, cultural, linguistic, spiritual upbringing and heritage issues, the willingness of parents to care for the child, the previous and present care plan for the child, the willingness of parents to communicate and cooperate in raising the child, the impact of any relevant civil or criminal proceedings and the impacts of family violence: *Divorce Act*, s. 16(3) - (4).

32 As a matter of principle, a child should have as much time with "each spouse as is consistent with the best interests of the child": *Divorce Act*, s. 16(6). This principle is only relevant where it is in the best interests of the child: *Barendregt v. Grebliunas*, [2022 SCC 22](#), [469 D.L.R. \(4th\) 1](#), at para. 153. Maximum parenting time does not mean equal parenting time. It means the maximum amount of parenting time for each parent which is in the best interests of the child: *Knapp v. Knapp*, [2021 ONCA 305](#), [155 O.R. \(3d\) 721](#), at paras. 30-32.

33 A parent who genuinely believes that the child is unsafe when with the other parent should not be punished because the allegations turned out to be without foundation: *N.S. v. D.A.S.* ([2003](#)), [49 R.F.L. \(5th\) 219](#) (Ont. S.C.), at para. 68. However, subject to the best interests of the child, this may be a factor in changing the allocation of primary decision-making responsibility and primary residence.

34 Parenting time, including primary residence and decision-making responsibility, may be reallocated in circumstances where the child is acting out due to the extreme animosity of the parent with primary residence; and where the authorities have determined that allegations made by that parent are unfounded: *T.R. v. J.R.* ([2006](#)), [28 R.F.L. \(6th\) 55](#) (Ont. S.C.), at paras. 69, 78, 95-97.

35 Parental alienation is harmful to the child and in circumstances where a reallocation of parenting time is in the best interests of the child, an order changing primary residence and decision-making responsibility may be appropriate: *Bouchard v. Sgovio*, [2021 ONCA 709](#).

POSITION OF THE PARTIES

36 Ms. Richards submits that Mr. Richards misuses alcohol and cocaine. She alleged that there is alcohol and drug use paraphernalia at Mr. Richards's home. Mr. Richards and his girlfriend 'Kelly' are drug users. Mr. Richards gets more violent when he drinks and consumes drugs. Mr. Richards keeps guns and ammunition in his house and he was charged with assaulting his girlfriend.

37 Ms. Richards said that her relationship with Mr. Richards was abusive; he was violent towards her and she was particularly rattled by recent allegations of assaultive behaviour by Mr. Richards against his girlfriend. I note that Mr. Richards's girlfriend downplayed the allegations and stated that she was not scared of Mr. Richards. Mr. Richards resolved these allegations by way of a peace bond.

38 Ms. Richards's testimony of abusive behaviour toward family members is refuted by the unchallenged evidence of Mr. Richards's mother, Marie Pullen.

39 Ms. Richards said she had seen Mr. Richards abusing the children. She said the children are terrified of their father. Hanna was in high school when she discovered that her father was living in a house across the street from her school. She said Hanna was terrified

40 According to Ms. Richards, due to Mr. Richards's misuse of alcohol, cocaine and acts of violence, he provides an unsafe environment for the children during his unsupervised parenting time. She said that due to Mr. Richards's actions observed by the children, they refused to see Mr. Richards.

41 Ms. Richards is in favour of a gradual reconnection between Mr. Richards and the children. She suggests that Mr. Richards be required to take anger management and substance abuse treatments, including providing periodic random urine screens as evidence of his sobriety.

42 Ms. Richards suggests that the children be enrolled in reintegration therapy for a period before the resumption

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of any parenting time. She suggests that parenting time should commence with supervised parenting time which can progress over time to unsupervised parenting time as Mr. Richards demonstrates his sobriety.

43 Ms. Richards submits that the children's wishes regarding parenting time with Mr. Richards should be respected.

44 Mr. Richards submits that there is no evidence that the children are unsafe during his unsupervised parenting time. The OCL, the police and DCFS have all concluded that the children are safe with him. He has suffered immensely over several months because Ms. Richards has illegally prevented him from spending any time with his children. He seeks immediate reinstatement of his unsupervised parenting time with the children.

ANALYSIS

45 This analysis is not conducted from the perspective of either Mr. Richards or Ms. Richards. This is a child-centred approach. The paramount consideration in my analysis is what is best for Hanna and Ashlee.

46 Both parents concede that the other loves the children. Mr. Richards concedes that Ms. Richards is a good parent. School progress reports show that Hanna and Ashlee are doing well. However, the children's current hostility demonstrated towards Mr. Richards suggests that an event or events have occurred to turn these children against their father. These events are due to either the actions of Mr. Richards or Ms. Richards, or some combination of both.

47 Ms. Richards and Mr. Richards have a toxic relationship. This relationship has a detrimental impact on Ashlee and Hanna. Both parents have demonstrated that they cannot co-parent without the participation of a third party.

48 Indicia of the hostility between the parties includes Ms. Richards's allegations that Mr. Richards abused her during their marriage. Ms. Richards was charged criminally for threatening to kill Mr. Richards. Mutual friend Krystal Paquette stated that Ms. Richards threatened to kill Mr. Richards.

49 The unsuccessful court-ordered parenting time exchange scheduled for December 28, 2022 is an illustration of the high hostility between the parties and how it negatively impacts the children.

50 No sounds from the children can be heard on the audio recording of Ms. Richards's 911 call to the police on December 28, 2022. The only voices are those of Ms. Richards and the 911 dispatcher. During the call, Ms. Richards described actions attributed to Mr. Richards. Specifically, he blocked her car with his vehicle when the children were not coming out of her vehicle to see him, walked to her vehicle and then walked back and moved his vehicle away. Ms. Richards could be heard reassuring the children that all would be well. Ms. Richards told the 911 dispatcher that the children were upset and did not want to see Mr. Richards. It is reasonable to conclude that this incident only contributed to the children's belief that their father is a scary person who should be avoided.

51 The degree of hostility was such that Mr. Richards and Ms. Richards could not have a constructive child-focused conversation to decide how to resolve the situation in a manner that was in the children's best interests. Instead, the situation escalated when Mr. Richards walked to Ms. Richards's car and Ms. Richards called the police.

52 As a general principle, it is in the best interest of the child to have as much time with each parent as possible: *Divorce Act*, s. 16(6). Within that context, the inability of both parents to work together to resolve the situation is not in the children's best interests.

53 Mr. Richards concedes that he uses cocaine, alcohol and marijuana occasionally. He insists that his use has no impact on his parenting time with the children. There is support for this position. DCFS, the police and the OCL have all investigated and concluded that Ms. Richards's allegations could not be verified and the children are safe in his care.

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54 Letters from the children confirm that they do not want to see their father. In separate letters dated December 2023, from Hanna and Ashlee. The children provide a list of derogatory descriptions of Mr. Richards that accord with Ms. Richards's allegations.

55 Ms. Schweitzer completed her report on September 14, 2022. Evidence which post dates this report suggests that the children are scared of their father and do not want to see their father.

56 Lynn Kuff works at Family Transition Place as a counsellor. She is Ashlee and Hanna's counsellor. Ms. Kuff confirmed that Hanna and Ashlee have said that they do not want to see their father. They told her they were happy when the visits stopped. Ms. Kuff said that the children did not express any concerns about their mother and wanted to remain with their mother.

57 Courtney Collier is Ms. Richards's friend. She testified that on May 23, 2023, while she was talking to Ms. Richards in the presence of Ashlee and Hanna, she observed Ashlee cower as Mr. Richards approached them. She observed Ashlee react to her father's presence in a manner that suggested that she was scared of her father.

58 From all the foregoing, I conclude that after Ms. Schweitzer prepared her investigator's report the children have expressed an intention not to see their father.

59 The children's views and preferences must be considered: *Divorce Act*, s. 16(3)(e). These children are very young. The circumstances under which they have formed and expressed their preference must be examined to determine whether their views are in their best interest. Maintaining a positive emotional bond with both parents must be encouraged unless such action is not in the children's best interest.

60 The question is why do the children have this view of Mr. Richards? Is it because of what they observed Mr. Richards do? Is it because of what Ms. Richards has been telling them about Mr. Richards? Or some other reason?

61 Mr. Richards has not had parenting time with the children since May 29, 2022. It is reasonable to expect such a long period of separation will have a detrimental impact on the bond between parent and child. Mr. Richards's decision not to accept the temporary solution of supervised parenting time has certainly not improved his relationship with his children.

62 Steve Ling is Ms. Richards's father and he has observed the children to have a close bond with both parents. He has never heard Ms. Richards say anything bad about Mr. Richards to the children.

63 Andrew Richards is Mr. Richards's brother. The brothers do not have a good relationship. Andrew Richards said Mr. Richards misuses alcohol and needs substance abuse and anger management counselling. Andrew Richards has not seen Mr. Richards consume illicit substances in the presence of the children. Andrew Richards said Mr. Richards is not a bad parent.

64 Andrew Richards's description of Mr. Richards as a good parent is confirmed by the unchallenged evidence of Mr. Richards's friends Jeff and Ann Lynn Murray, who observed the children to be happy to be in Mr. Richards's company and Mr. Richards as a caring parent to his children.

65 Andrew Richards said he has not observed Mr. Richards abuse the children. He described him as a caring parent who would benefit from some parenting classes. He referred to one instance, while Mr. Richards was living with him, Mr. Richards killed a sleeping raccoon in the attic with a knife in the presence of the children. Mr. Richards in his testimony downplayed the incident. He said he was simply protecting the family.

66 Mr. Richards challenged Andrew Richards's credibility on the basis that he was a drug dealer. He filed a letter from B.H. alleging that Andrew Richards is a drug dealer. Overall, this does not have an adverse impact on my assessment of Andrew Richards's credibility since his evidence is generally corroborated. For example, Mr.

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Richards himself confirmed Andrew Richards's account of the raccoon incident. I accept Andrew Richards's evidence.

67 Andrew Richards agrees with Ms. Richards that Mr. Richards should engage in substance abuse and anger management counselling. He recounted that Mr. Richards once lived with him in his basement and when Mr. Richards moved out he discovered that the basement was overrun with empty bottles of liquor. This suggests that while there is no basis to conclude that Mr. Richards's substance use is adversely impacting the children, it is in the children's best interest to adopt strategies to reduce the likelihood of such misuse impacting the children.

68 The unchallenged evidence of Mr. Richards's work superior Arthur A. Skid confirms Mr. Richards's employment as a Civil Manager with the company and describes him as dependable. This leads me to conclude that even if Mr. Richards was misusing substances, such use did not affect his employment.

69 Mr. Richards told Ms. Schweitzer that he uses marijuana to help him sleep. Mr. Richard said he uses cocaine occasionally and drinks alcohol socially. He also told Ms. Schweitzer that he last used cocaine in May of 2021. He said he did not use such substances when he was parenting the children and his use did not interfere with his parenting. The police raid of his home, DCFS's investigation, the fruits of the OCL investigation and Andrew Richards confirm this. I conclude that there is no evidence that Mr. Richards's substance use is adversely impacting the children.

70 Ms. Richards told Ms. Schweitzer that during their marriage she and Mr. Richards used cocaine and alcohol frequently. In her first interview with Ms. Schweitzer, Ms. Richards said she had been clean and sober for 5 years. In her second interview, she clarified this statement: she said she drinks alcohol with dinner. Staff at the supervision centre reported to Ms. Schweitzer that on one occasion there was a strong smell of alcohol emanating from an area where Ms. Richards was situated. Ms. Richards said this was due to her use of hand sanitizer.

71 Ms. Schweitzer observed Ms. Richards and Mr. Richards spending parenting time separately with the children and noted no issues of concern with either parent. She concluded that they were both good parents. Reports she received from school officials and the children's doctor indicates that Mr. Richards is a good parent.

72 At this point, I conclude that absent rumour and innuendo from the community there is no basis to conclude that Mr. Richards's drug use is impacting his parenting time with the children. The report and the evidence from all the collateral sources, except Ms. Richards, lead to the conclusion that Mr. Richards is a good parent. I discuss the impact of the children's comments and letters below.

73 Absent concrete evidence, no conclusion can be drawn that Mr. Richards's drug use is impacting his parenting time with the children. Certainly, such a conclusion cannot be made based on unsubstantiated rumours. This same line of reasoning applies to Ms. Richards's drug use.

74 Ms. Richards was a drug user with Mr. Richards during their marriage. Though she has been sober from hard drugs for 5 years she continues to have some alcohol with her dinner. There is no evidence to conclude that her consumption of alcohol adversely affects the children. From all accounts, she is a good parent. It would be blatantly unreasonable to conclude that because of her history as a drug user, any rumours in the community that she continues to use drugs are true and that it adversely impact her care of the children. In the absence of reliable evidence, such a conclusion would be based on innuendo and rumour and completely unreasonable.

75 Substance misuse is a substance use disorder which refers to continued use of the substance despite significant life consequences. Symptoms which may or may not be present include using larger amounts of the substance over time, failing at efforts to stop or control use, excessive amounts of time dedicated to obtaining, using, or recovering from the substance, strong urges to use, use resulting in failure to accomplish major life obligations at work, school, or home, continued use despite interpersonal problems, reducing or stopping important activities due to substance use, a need for larger amounts of substances over time or diminished effect of the substance.....in fact, individuals with substance use disorders are at risk of relapse after many years of recovery.²

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76 There is no evidence that either parent is misusing substances such as to negatively impact parenting time with the children, however, there is evidence of past and current substance use. In this context, the contemporary understanding of substance misuse stresses the need for vigilance to ensure substance use does not evolve into misuse such as to adversely impact parenting time.

77 When Hanna spoke to Ms. Schweitzer, she said she had not seen Ms. Richards use drugs. She was not sure if Mr. Richards smoked marijuana but had not seen him smoking it. Hanna told Ms. Schweitzer that Mr. Richards drinks more than Ms. Richards. She saw a whisky bottle on a counter once when with Mr. Richards. Mr. Richards tried to hide that he was drinking it and there was an occasion when she saw 3 to 4 bottles of alcohol on the counter at Mr. Richards's house. Hanna said Mr. Richards smoked in a separate room which she and Ashlee were not allowed to enter.

78 The only reasonable inference to be drawn from Hanna's comments is that she believes that her father drinks alcohol and suspects that he smokes marijuana during his parenting time with them. Regardless of who is responsible for this perception, going forward the parenting plan must include steps to restore Hanna and Ashlee's trust in Mr. Richards.

79 The children's observations suggest there is a real potential for Mr. Richards to misuse substances such as to adversely impact his parenting time with them. In these particular circumstances, it is in the best interests of the children to be preemptive and require Mr. Richards to reassure his children of his sobriety via therapeutically informed parenting strategies, random urine screening and other therapeutically approved means.

80 In addition, Ashlee's observations of animal abuse during parenting time are a concern. In their letters and Hanna's comments to Ms. Schweitzer, the children describe personal observations which have left them with a very negative impression of their father, these include animal abuse and consumption of alcohol. It is reasonable to conclude that these observations contribute to their negative view of their father. The only reasonable conclusion to draw is that regardless of Mr. Richards's intentions, his actions traumatized the children. Though for reasons that follow, I conclude that this is not the only reason.

81 Hanna told Ms. Schweitzer that Ms. Richards told her and Ashlee, that though she wanted the children to have a good relationship with their father, she was keeping them away from him because he was creating a bad environment for the children. Ms. Schweitzer also noted that in her first interview, Hanna wanted to see Mr. Richards. She noted that Hanna used language which was more adult in nature i.e. beyond what one would expect of the vocabulary of a then 11-year-old. By the second interview, Hanna had changed her mind about spending time with her father.

82 It is unreasonable to expect Ms. Richards to have no concerns about observations recounted to her by her children. Given the unfortunate state of relations between the parties, it was reasonable for Ms. Richards to report the allegations to the appropriate authorities for investigation. However, considering their tender ages, 11 and 9, it was unreasonable for Ms. Richards to tell the children that their father creates a "bad environment for them" during parenting time. This is particularly so since none of the investigatory agencies had confirmed the allegations. Under such a circumstance, it is reasonable to expect children of such tender age to conclude that their father was to be avoided because he was a bad person.

83 As a result of these allegations, Mr. Richards's parenting time was downgraded to supervised. He exercised this parenting time until May 29, 2022, when Ms. Richards unilaterally cut off parenting time in violation of court orders. The supervising centre had reported no issues with Mr. Richards's parenting during his parenting time.

84 Mr. Richards has not seen the children since May 29, 2022, and yet by the time of the unsuccessful parenting exchange in December 2022, the children were in an upset and frenzied state. They were simply petrified to see their father. Also, there is Ashlee's frightened reaction upon seeing her father as reported by Ms. Collier. The children expressed a high level of concern and a mostly negative view of their father in letters submitted at trial.

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What happened between May 2022 and March 2024? Mr. Richards had not seen or spoken to his children during that period.

85 Considering the reports from the supervision centre and Ms. Schiweitzer's observations, I find the children's reaction to Mr. Richards to be rather extreme. The only reasonable conclusion to draw is that Ms. Richards has inappropriately involved the children in the dispute between her and Mr. Richards and, whether advertently or inadvertently, she has contributed to the alienation of the children from their father.

86 Both parents have contributed to the current state of affairs. The children have suffered and are suffering because of this. The parents must cooperate to repair the relationship between the children and their father. Both parents must cooperate to ensure that Hanna and Ashlee can trust their father again. Hence, the orders for counselling and a phased approach towards unsupervised parenting.

87 Allegations that were levelled by Ms. Richards have been investigated and determined to be unfounded. A consideration of this fact alone leads to the conclusion that there has been no material change in circumstances warranting a change in the parenting time order. However, I have previously articulated my conclusions on the children's current state of mind, and within that context, it is not in their best interests to order an immediate resumption of unsupervised parenting time for Mr. Richards.

88 Mr. Richards and Ms. Richards have a hostile relationship and thus far have demonstrated that they are unable to parent together effectively without the intervention of a third party. This hostility is adversely affecting the children.

89 Mr. Richards and Ms. Richards love their children. Both parents want what is best for their children. Mr. Richards has suffered tremendously from the inability to see his children. Ms. Richards has suffered tremendously from her belief that her children are unsafe when with Mr. Richards and from managing the effects of the children's refusal to see Mr. Richards. Unfortunately, the personal animosity can cloud their perceptions of the role they have each played in the current state of the relationship between Mr. Richards and the children.

90 Ms. Richards and Mr. Richards have a previous history of alcohol and drug use during their relationship. Ms. Richards has a recent history of multiple years of sobriety from hard drugs. She occasionally consumes alcohol. Mr. Richards reports social use of alcohol, cocaine and marihuana. He insists he does not misuse these substances and that his use does not adversely affect his ability to work or parent the children effectively.

91 In response to allegations lodged by Ms. Richards, investigations by the police, DCFS and the OCL have found no issues with Mr. Richards's parenting.

92 Given the past, and perhaps current, alcohol and drug use, it is in the children's best interests for any parenting order to include safeguards to ensure that sobriety is maintained during parenting time with the children.

93 The children do not want to see Mr. Richards. The children are alienated from their father. Both parents blame each other for the current relationship between Mr. Richards and the children. I have concluded that Mr. Richards and Ms. Richards are both to blame for the current state of the relationship between Mr. Richards and the children.

94 Mr. Richards's complicity stems from some well-meaning but misplaced parenting strategies he has adopted during his parenting time with the children. Ms. Richards's complicity stems from comments she has made to the children about Mr Richards. The children are still very young and the comments were not age-appropriate and only served to increase the children's anxiety about spending time with their father.

95 Given the foregoing, reintegration therapy is necessary to help the children repair their relationship with Mr. Richards. In addition, even though Ms. Richards has engaged in therapy in the past, ongoing therapy is required for both parties to help them work through these difficult co-parenting conditions. For example, not every allegation of misconduct by the children on the part of Mr. Richards should warrant a flagrant violation of a court order. 14 and

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11-year-old children cannot simply "run the show" because they are not yet mature enough. Ongoing therapy and support are necessary to enable Ms. Richards to identify and adopt less drastic strategies as appropriate.

96 Therapy is also recommended for Mr. Richards to help him appreciate that this is not a contest between him and Ms. Richards but an analysis of what is in the best interests of the children. Also, to help him know that on occasion, the children's adverse reaction may not necessarily be because of Ms. Richards's influence but rather because of some well-meaning but ill-advised parenting strategies he may be adopting.

97 One cannot underestimate the stress and challenge of dealing with the reality that your children have expressed fear or discomfort of the kind described. Some therapy is recommended to equip Mr. Richards with strategies to navigate these and other related challenges.

98 The detrimental impacts on Ashlee and Hanna of parental alienation, substance misuse, the toxic parental relationship between the parents and the interruption of the child-father bond cannot be discounted. It is in the best interest of Hanna and Ashlee to make orders to address these issues most effectively. I have endeavoured to do so.

99 Based on the foregoing, a phased approach to shared parenting time for Mr. Richards is required. This does not mean that Mr. Richards lost or that Ms. Richards is the winner. It means that regardless of who is responsible for the children's current views of their father, both parties must cooperate to do what is in the best interest of the children.

100 The young children have concerns about parenting time with their father. Regardless of whether the allegations are true or not, a strategy which allows them to rebuild their trust and experience the love their father and mother have for them is required. In all the circumstances, it is in the best interest of the children for a phased approach to parenting time with Mr. Richards.

101 Hanna and Ashlee need stability in their lives. The allegations against their father have been investigated and are unsubstantiated. Once the allegations were found to be unsubstantiated there was no legitimate basis for Ms. Richards to continue to withhold the children's parenting time from their father. The children are young and their views and preferences have been influenced by both parents for the reasons articulated above.

102 Mr. Richards has refused to participate in supervised counselling because of a concern that the children would believe he has done something wrong. This perspective is reasonable given how his parenting time was curtailed, however, in the face of the children's current view of him, it is not in their best interests to thrust the children fully into an unsupervised parenting regime. It is in the children's best interest to create circumstances in which they can trust their father. All measures below, including random urine screens and phased parenting from supervised to unsupervised, are intended to aid the achievement of this objective.

103 For reasons articulated previously, I accept the OCL report and the recommendations contained therein with certain variations to permit a phased-in approach to unsupervised parenting time for Mr. Richards due to the current mental state of the children. Additional factors to consider are the hostile nature of the relationship between the parties, particularly their demonstrated inability to discuss and calmly resolve parenting disputes, the inevitable reality that children will have complaints about their parents, and the history of noncompliance with court orders. I make the orders listed below.

PARENTING TIME ORDER

104 Paragraphs 1, 2, 3, 4 and 5 of the January 26, 2018, final order shall be deleted and replaced with the orders set out below.

105 Parenting Coordinator: On or before May 30, 2024, the parties shall retain a Parenting Coordinator. The Parenting Coordinator shall help the parties adhere to the parenting plan outlined below using a process consistent

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with the best interests of the children. Should there be any costs associated with this service, considering their incomes Mr. Richards shall bear 60% of the costs and Ms. Richards shall bear 40%. The parties may seek leave of the court to vary this order if they can demonstrate they have been able to parent cooperatively on their own without adversely impacting their children.

106 The appointment of a Parenting Coordinator to act as a buffer between the parents is necessary to significantly reduce the stress the children invariably experience from the hostility between the parents. This appointment should be in effect until such time the parents demonstrate that they can co-parent.

107 Decision-Making: Ms. Richards shall have sole decision-making for Hanna Daniel Richards born October 1, 2009, and Ashlee Patricia Richards born October 4, 2011. Ms. Richards shall consult with Mr. Richards for all major decisions regarding the children's health, education, counselling, and religion. In the event of a parental disagreement over a decision, the parents shall first favour the recommendation of any school, medical, dental, or psychological professional involved. If the parties cannot agree, Ms. Richards shall have final decision-making authority. Mr. Richards shall have full and independent access to the children's health, education, religion, counselling, and extra-curricular activities information. Mr. Richards shall be responsible for accessing this information directly from the source.

108 Plan for dispute resolution: On or before June 20, 2024, Mr. Richards and Ms. Richards in consultation with the Parenting Coordinator, shall agree on a plan to resolve any disputes that may arise in the implementation of this parenting plan to avoid the unilateral termination of parenting time by either party. This plan shall be filed with the Court to the attention of Justice Barnes on or before June 27, 2024.

109 Educational Session: Mr. Richards and Ms. Richards shall separately attend an educational session to enable them to appreciate how this degree of hostility adversely impacts the children and acquire the skills to co-parent effectively in circumstances of high hostility.

110 Counselling children: On or before May 17, 2024, the children shall commence counselling to repair the relationship between them and their father. The children shall receive counselling with a therapist experienced in post-separation conflict. The counselling shall focus on relevant topics including, but not limited to, the children's exposure to adult conflict and inappropriate information, and how to reunite and build trust with their father without feeling like they are betraying their mother.

111 Counselling parents: On or before May 15, 2024, Mr. Richards and Ms. Richards shall separately attend counselling to enable them to appreciate how this degree of hostility is adversely impacting the children and to acquire the skills to co-parent effectively in circumstances of high hostility. Such counselling shall include but not be limited to topics such as:

- a) How to safeguard against potential substance misuse in circumstances of high stress, and anger management.
- b) How Mr. Richards and Ms. Richards can support each other in parenting in the best interests of the children.
- c) How Mr. Richards can get back the trust of his children.
- d) How both parents can cooperatively utilize the phased-in approach to unsupervised parenting time to prepare the children for a successful unsupervised parenting time with Mr. Richards.
- e) How both parents can better recognize parental actions that would traumatize the children and how to avoid such actions.
- f) How to prevent the children's exposure to substance misuse and violence.
- g) How to resolve disputes and concerns when the children express concerns about the parenting of either parent.

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- h) How to ensure that substance use does not evolve into substance misuse such as to adversely impact parenting time with children and what steps to take to protect the children should this occur.
- i) How to restore and maintain the trust of the children and any other topics relating to the stresses associated with the children not wanting to see their father, as well as strategies to improve the children's relationships with both parents.

112 Before June 19, 2024 and thereafter, Mr. Richards; Ms. Richards; Hanna and Ashlee shall have multiple counselling sessions with their respective therapists at a frequency to be determined in consultation with their therapists.

113 Virtual supervised parenting time: Commencing June 19, 2024, until July 17, 2024, Mr. Richards shall have virtual supervised parenting time with Hanna and Ashlee every Wednesday from 4.30 pm until 7 pm, and Saturdays from 12 pm to 4 pm. Supervision shall be conducted by the Headwaters Family Visit Centre. Should the Centre's schedule not permit such supervision, then supervision shall be at a centre agreed upon by the parties.

114 In-person supervised parenting time: Commencing July 17, 2024, until August 15, 2024, Mr. Richards shall have in-person supervised parenting time with Hanna and Ashley every Wednesday from 4.30 pm until 8 pm, and Saturdays from 12 pm to 4 pm. Supervision shall be conducted by the Headwaters Family Centre. Should the Centre's schedule not permit such supervision then supervision shall be at a centre agreed upon by the parties.

115 Random urine screens: Commencing June 19, 2024, until August 15, 2024, Mr. Richards shall provide the results of random (not previously scheduled) urine drug tests to the Headwaters Family Visit Centre staff and the Parenting Coordinator to determine his sobriety before each visit, whether supervised and virtual or supervised and in person.

116 Unsupervised Parenting Time: Commencing August 15, 2024, the children shall have unsupervised parenting time with Mr. Richards on Wednesday of each week from 4:30 pm to 7.30 pm. Parenting time could include taking the children and being present at their extra-curricular activities.

117 Random urine screens: During the first 30 days of supervised parenting time, August 15, 2024, to September 15, 2024, Mr. Richards shall provide the results of random (not previously scheduled) urine drug tests to the Parenting Coordinator to determine his sobriety before each visit.

118 Unsupervised Parenting Time: Commencing September 16, 2024, Mr. Richards shall have unsupervised parenting time with the children, every other weekend from Friday after school to Monday morning at school. Parenting time shall be extended when a PD day from school and/or holiday occurs during those weekends. For example, the children shall begin parenting time with their father on Thursdays after school if there is a PD day on Friday, and/or extended to Tuesday morning at school if there is a holiday or PD day on Monday.

119 Every other day contact: Commencing August 15, 2024, the children shall have telephone calls or some form of virtual contact with their father at minimum every other day. The calls are to be initiated by the children. The children shall be encouraged to participate; however, it shall be acknowledged that the onus is on Mr. Richards to engage the children during this time.

120 Summer Holiday: Commencing Summer 2025, The children shall have unsupervised parenting time with Mr. Richards on the week turnabout schedule. The schedule shall begin at the end of the school year until the first day of school. The transition to the summer week turnabout schedule should recognize the parenting schedule at the time and ensure the least disruption to the children's schedule. For example, the children should not suddenly transition to another parent's home mid-parenting time schedule to begin and/or end the summer schedule. Parents are encouraged to agree upon a natural transition into and out of the summer schedule that minimizes the disruption of the children.

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121 All other holidays including March Break, Easter, Thanksgiving and Christmas should be equally shared between the parties. The schedule shall take into consideration the traditions of each household.

122 Both parents should be responsible for the day-to-day decisions regarding the children during their parenting time.

123 The children shall spend Mother's Day with their mother and Father's Day with their father regardless of the parenting time schedule. At a minimum, the children shall have between 11 am to 6 pm with their respective parent.

124 Parenting Time on Halloween shall alternate years.

125 Exchanges shall occur at school when possible. During times when this is not possible, the parties shall meet at a neutral location halfway between their homes. During these times, the parents shall equally share transportation responsibilities.

126 There is a history of multiple breaches of parenting orders. Parenting time shall be police enforced.

127 Ms. Richards and Mr. Richards shall speak positively about the other parent, and actively support the children's relationship with them, and with their extended family members. Neither parent shall ask the children questions about the other's home.

128 Both parents shall ensure the children are protected from adult information, including opinions regarding decision-making and parenting time.

129 Neither parent shall consume more than 2 standard-size drinks of alcohol in a 24-hour period and shall not consume any non-prescribed cannabis or any other non-prescribed drugs during the time that the children are in their presence or care.

130 On or before June 1, 2024, both parents shall use a parenting app for child-focused communications. If the parents cannot agree on the app, they shall use the Family Wizard app. They shall share equally in any costs associated with the app.

131 The children shall not reside more than a 30 km distance from their father.

132 The parties may consult resources such as Headwaters Family Visit Centre; Dufferin Child and Family Services, Family Transition Centre, Caring Fathers or any other resource they are aware of for assistance in implementing all aspects of the Order set out above expeditiously.

ONGOING CHILD SUPPORT

133 Commencing May 1, 2024, Mr. Richards shall pay to Ms. Richards the sum of \$1491.00 representing the Child Support Guideline amount for 2 children based on his 2023 income of \$101,538.24.

134 Child support shall be set per *Federal Child Support Guidelines* (CSG) section 15.1(1) and (2). The presumptive rule is that child support will be calculated based on the income of the payor spouse and per the CSG (section 3).

135 The Order imputed an income of \$79,928.00 to Mr. Richards and required him to pay \$1218.00 per month in child support since February 1, 2018. As per the Order, child support was to be adjusted per his income of the prior year. Based on this formula, the 2019 guideline child support and proportionate share of section 7 expenses payable is calculated based on his 2018 income. The same formula is applied for 2020 and all subsequent years.

136 Mr. Richards failed to disclose his income for the years 2019 to 2023. The income he should have reported is as follows: 2019: \$96,122; 2020: \$98,967; 2021: \$98,967; 2022: \$120,950; 2023: \$101,538.24.

CHILD SUPPORT ORDER

137 Based on the foregoing, paragraph 17 of the January 26, 2018 order is deleted and commencing May 1, 2024, Mr. Richards shall pay to Ms. Richards the sum of \$1491.00 representing CSG support for 2 children based on his 2023 income of \$101,538.24.

138 On May 1, 2024, as per the Order, Mr. Richards shall provide evidence of his income as filed with Canada Revenue Agency and his 2024, child support shall be further readjusted accordingly.

LIFE INSURANCE ORDER

139 Mr. Richards is already subject to an order requiring him to secure his child support obligation with life insurance. This has not been done. Therefore, paragraph 26, of the Order is varied as follows:

On or before July 15, 2024, and for as long as the Respondent is required to pay child support, he will designate the Applicant mother as the irrevocable beneficiary, in trust for the children, of this life insurance policy through his employer.

RETROACTIVE CHILD SUPPORT ORDER

140 Ms. Richards seeks a retroactive child support payment of \$26,979.60. Mr. Richards shall pay retroactive child support of \$18,432.00 on or before November 1, 2024.

141 Paragraph 20 of the Order states: On or before May 1st of each year, commencing in the year 2018, the parties will exchange income information for the prior calendar year. They will use this information to adjust the child support payable, including both the Table amount and the proportionate sharing of the children's section 7 special or extraordinary expenses.

142 Mr. Richards has consistently made his monthly child support payments, however, his payments for 2018 were never adjusted annually as required per the Order. Therefore, each year there has been a shortfall in his payments. I have no evidence of his 2018 income, therefore, I shall use his 2019 income to determine the child support he should have paid for 2019.

143 Ms. Richards's reported income for 2019: \$5529.00; 2020: \$990.00; 2021: \$13,412; 2022: \$29,076; 2023: 29,076.00.

144 To determine the amount of underpayment for 2019 - 2023, the annual Table amount of child support paid as per the 2018 figures (\$14,520) is subtracted from the amount he was required to pay for each of those years. The total child support arrears for this period is \$17,340.00. The breakdown is set out below:

<i>Year</i>	<i>Monthly CSG support</i>	<i>Yearly CSG support</i>	<i>Yearly support paid</i>	<i>Difference</i>
2019	\$1425	\$17100	\$14,520	\$2580
2020	1425	17100		2580
2021	1459	17508		2988
2022	1459	17508		2988
2023	1727	20724		6204
Total difference				\$17,340.00

145 For the period January to April 2024, the total amount paid is \$4872.00 (1218.00 x 4). The correct amount payable is \$5964.00 (1491 x 4). The total arrears over this period is \$1,092.00 (5964 - 4872).

146 Adding the 2024 arrears amount to the total amount from the table above, the total child support arrears owing is \$18,432.00. Ms. Richards seeks retroactive payment of the arrears. Mr. Richards submits that he cannot afford to pay. There is no reasonable excuse for the failure to comply with the court order. The court has the discretion to vary the retroactive arrears payable where the payor can demonstrate undue hardship:

CSG, s.10. The court in *Mathews v. Matthews* (2001), 14 R.F.L. (5th) 129 (Ont. S.C.) describes the test as follows: Determine whether the circumstance indicate that payment will cause the payor spouse undue hardship. A non-exhaustive list of factors to consider is set out in section 10(2) of the CSG. If the court determines that there is undue hardship, then section 10(3) of the CSG requires a consideration of the standards of living of the two households. If the payor has a higher standard of living than the other spouse the application must be denied. If the converse is correct, then the court must consider the needs and means of each spouse to determine whether the retroactive award amount shall be adjusted.

147 Mr. Richard bears the onus to demonstrate that he would suffer undue hardship. He has failed to provide any evidence in that regard except to assert that he cannot pay. Mr. Richards will incur additional expenses associated with the new parenting plan. Therefore, he shall have time to pay. He shall pay the retroactive child arrears of \$18,432.00 on or before November 1, 2024. Thereafter, interest shall accrue on any unpaid amount at the rate of 5% per annum.

SECTION 7 EXPENSES

148 Ms. Richards seeks an order requiring Mr. Richards to pay his proportionate share (60%) of section 7 expenses (\$6,200) as set out in the Order. \$6200.00 is the total cost of buying braces (dental) for Hanna and Ashlee. This request is dismissed. The expenses were not incurred per the terms of the Order.

149 Paragraph 22 of the Order requires parties to exchange information about section 7 expenses on or about May 1 of each year. The details of the information required are particularized in the Order.

150 Paragraph 23 states: The parties will only contribute to extracurricular activities for the children if both parties consent to the expenses in advance, in writing. Neither party will unreasonably withhold consent. If one party does not obtain the other party's consent and still wishes the children to participate in the activity, the party will be 100% responsible for the cost of the same. If consent is obtained by both parties, they will share such expenses on a proportionate basis with the Respondent being responsible for 60% and the Applicant being responsible for 40%.

151 There is no evidence that Mr. Richards was consulted about this expense before it was incurred and no evidence he agreed to pay for or contribute to the payment of the braces. The Order requires prior notification and consent in writing. It is only upon written consent that the 60% and 40% division kicks in. Absent that, the party seeking to incur the expense is 100% responsible for it, therefore, Ms. Richards's section 7 contribution request is dismissed.

SPOUSAL SUPPORT ORDER

152 Paragraph 27 of the Order requires Mr. Richards to pay Ms. Richards \$111.00 per month as spousal support. Mr. Richards seeks the termination of 1

153 Section 15.2 of the *Divorce Act* sets out the objectives of a spousal support order and the factors to consider in determining whether to issue such an order and the quantum of a spousal support order.

154 Entitlement to spousal support can be established on three bases: 1) compensatory; 2) contractual; and 3)

non-compensatory i.e. economic hardship from the breakdown of the marriage: *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420.

155 Ms. Richards owns and operates a restaurant. She did not assert an entitlement to spousal support. Both parties are in agreement that the order be terminated on condition that the payment is applied to the children's benefit. That paragraph shall be deleted. Spousal support payments shall cease May 1, 2024.

ANCILLARY ORDER

156 Except as varied by the orders I have made, all other provisions of the January 26, 2018 Order remain in effect.

COSTS

157 Success on this trial was mixed, therefore, there shall be no costs order.

K.N. BARNES J.

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Amendments:

- The child's name spelled Hannah is amended to Hanna
- Paragraph 112, June 19, 2019 is amended to June 19, 2024
- Paragraph 133, the income for Mr. Richards is amended from \$101,538.00 to \$101,538.24

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- 1 Amendments specified at the end of the reasons for judgment.
 - 2 Stephanie Tabashneck, "Substance Use and Parenting: Best Practices for Family Court Practitioners" (June 2021), online: <<https://www.afccnet.org/LinkClick.aspx?fileticket=-RkXrNzIkr8%3d&portalid=0>>.