CITATION: Clarke v Denyes, 2023 ONSC 3984
COURT FILE NO.: FS-19-8589
DATE: 07/05/2023

ONTARIO SUPERIOR COURT OF JUSTICE

RE: ***Harry James Clarke***, Applicant

and:

Melissa Joy Denyes, Respondent

BEFORE: M. Kraft, J.

COUNSEL: Julie Stanchieri and David Rappaport, for the Applicant

Michael H. Tweyman, for the Respondent

HEARD: June 13, 2023

ENDORSEMENT

Overview

[1] Mr. Clarke and Ms. Denyes are the parents of H., age 9, and E., age 6. They lived together for about 5 years and separated on January 19, 2018. They never married. For the first 2.5 years after separation, Ms. Denyes would not agree to allow Mr. Clarke to have overnights with the children. As a result, he started this litigation.

[2] H. has moderate to severe autism, an intellectual disability and ADHD. H. is engaged in many therapies with third party professionals because of his special needs. E. does not have any formal diagnoses. However, both parents agree that she struggles with anxiety and emotional dysregulation.

[3] The current parenting schedule has been in place since June 25, 2020. The children reside primarily with Ms. Denyes. Mr. Clarke has parenting time on Tuesdays and Thursdays for 2.5 hours, and on alternate weekends from Friday, at 4:00 p.m. to Sunday at 4:00 p.m. This schedule results in the children having overnight parenting time with their father on 2 overnights and 12 overnights with their mother, out of a 14-day cycle.

[4] The parenting schedule was agreed to by the parties in partial Minutes of Settlement, dated June 25, 2020. The terms of the Minutes became part of the Order of Hood, J., dated June 14, 2021, on a temporary without-prejudice basis.

[5] There is a three-week trial scheduled to start in 8 months from now, on February 5, 2024. Ms. Denyes has given notice that she intends to relocate with the children to Nova Scotia

because the cost of living in Toronto is too high, she believes H. would have access to more services to meet his special needs, and to be closer to family and friends. Mr. Clarke opposes this move. Whether or not Ms. Denyes will be permitted to relocate with the children, among other things, will be determined at trial.

[6] Mr. Clarke wants to immediately increase his parenting time with the children from 2 overnights out of 14 days, immediately to 4 overnights out of 14 days, and then graduate to 5 overnights out of 14 days by August. He also wants the court to order a parenting assessment so a skilled professional can write an expert report for the court and recommend which parenting schedule and decision-making model would be in the best interests of the children. The other parenting orders Mr. Clarke seeks are the parties should communicate on a co-parenting application only once a day; both receive information about the children and sign an Authorization and Direction to the third parties involved with the children; engage a child psychologist to work with E.; and have a right of first refusal to look after the children if the resident parent cannot look after the children on his/her scheduled parenting time for more than 8 hours.

[7] Ms. Denyes wants the current parenting schedule to remain in place until the trial is heard. She believes that change to the parenting schedule is not in the children's best interests, particularly H. She believes that both H. and E. benefit from the existing status quo and require the stability of a schedule where they have one home base during the school week. Ms. Denyes is agreeable to the children having one more overnight parenting time with their father over a 14-day cycle, during the summer when the children are not in school. She does not believe that a parenting assessment is needed in this case. Ms. Denyes is concerned about the cost of the assessment and worries that such an assessment will delay the trial of this matter. Further, she believes an expert is not needed to assist the court at trial because there will be other third-party witnesses who can assist the trial judge in determining which parenting schedule and decision-making model is in the children's best interests.

[8] Ms. Denyes brought a cross-motion seeking reimbursement for s.7 expenses she incurred for the children in 2022 and an order that Mr. Clarke pre-pay the children's future s.7 expenses in the sum of $3,085.12 per month.

[9] For the reasons that follow, I find that Mr. Clarke's temporary parenting schedule should increase from 2 overnights out of 14 overnights, to 4 overnights out of 14 overnights between now and the trial of this matter. I find that it is in the children's best interests for the parties' communication to be limited to once a day and to take place on a co-parenting application; for each parent to have the first right to care for the children during the resident parent's time if the resident parent cannot look after the children for 8 hours or more; the parties to both sign an Authorization and Direction to ensure that all third parties involved with the children can communicate with both parents; and for E. to begin meeting with a child psychologist as soon as possible. I order the parties to reconcile the s.7 expenses they each paid for the children in 2022, after considering my rulings below and determine which of the two of them owes the other a reimbursement, and that Mr. Clarke contribute to the children's ongoing s.7 expenses only as agreed to. The issue of whether afterschool childcare and/or respite care is a s.7 expense to which Mr. Clarke must contribute in the future is to be determined at trial when the full costs

of these expenses are known and can be compared with the totality of the children's s.7 expenses along with the knowledge of what funding, if any, may be available for such expenses.

Issues to be Decided

[10] The issues for me to decide on the motion are:

a. Has there been a material change in circumstances since 2019 when Pollak, J. dismissed Mr. Clarke's motion for increased parenting time and a s.30 assessment or since 2020 when the parties consented to the current temporary, without-prejudice parenting schedule?

b. If the answer to a. is yes, is it in the children's best interests for the current temporary parenting schedule to change prior to the trial resulting in Mr. Clarke having more than 2 overnights out of 14 nights with the children?

c. Should a s.30 parenting assessment should be ordered?

d. Should the following ancillary parenting orders be made:

i. Should the parties begin to communicate on a co-parenting website?

ii. Should there be a first right of refusal if the resident parent is unable to look after the children for more than 8 hours?

iii. Should Ms. Denyes sign an Authorization/Direction to enable the third parties working with the children to communicate with both parents?

iv. Should E. see a child psychologist prior to trial?

e. Should Mr. Clarke reimburse Ms. Denyes the sum of $3,283.73 for the children's s.7 expenses incurred in 2022?

f. Should Mr. Clarke prepay a monthly sum for the children's ongoing s.7 expenses for 2023 in the sum of $3,085.12, and the parties reconcile the expenses twice a year?

Background

[11] H. is currently 9 years old. On January 12, 2018, he was diagnosed with moderate to severe autism, an intellectual disability and ADHD. H.'s current needs and treatment costs are extensive. They include ABA Therapy; speech therapy; occupational therapy; academic support and tutoring; and communication devices. He in the care of a pediatrician and a pediatric neurologist. H. is mostly non-verbal.

[12] A main concern for both parents about H. is his safety, given that he poses a flight risk and does not understand boundaries. H. has run away from school 5 times this past year alone. He has also demonstrated that he can damage and destruct property when frustrated. H. is able to dress himself and eat on his own but requires support to do so. He can speak in 1–3-word utterances. His primary mode of communication is through a Proloquo2go. H. takes medication regularly for ADHD.

[13] E. is currently 6 years old. She has no current diagnoses but is demonstrating some potential psychological and academic issues, such as struggling with visual sensory processing. Both parents agree that E. has difficulty with anxiety, self-soothing and emotional dysregulation. Although she is 6 years old, she continues to use a soother. Mr. Clarke thinks E. should see a child psychologist to address her anxiety and emotional dysregulation. Ms. Denyes agrees but does not think it is necessary for such therapy to begin until after the trial of this matter, which is 8 months from now.

[14] Both H. and E. attend a local public school for neurotypical children. H. is in Grade 3 and E. is in Grade 1. H. is in class of 20 students. The parties disagree over H.'s school placement. Mr. Clarke thinks H. should be moved to a school where his special needs can be addressed, and Ms. Denyes wants H. to remain at his current school.

[15] Ms. Denyes is employed a Practice Leader at Intact Insurance and earns $152,000 a year from this position.

[16] Mr. Clarke is employed by the Toronto Port Authority as a casual worker and earns $37,900 a year. He pays child support, however, on an imputed income to him of $82,150 in the sum of $1,242 a month. Additionally, Mr. Clarke pays 50% of the children's s.7 expenses even though his proportionate share would be far less than that.

[17] Since the partial Minutes of Settlement were signed in June 2020, Ms. Denyes has not agreed to increase Mr. Clarke's parenting time beyond the 2 overnights out of 14 nights.

[18] In September 2022, Mr. Clarke married his current wife, Holly Clarke ("Holly"). Holly is present when the children have parenting time with the father. According to Mr. Clarke, the children have established close and loving bonds with Holly when they have parenting time with him.

[19] It is not disputed that Ms. Denyes does not like Holly and is not supportive of her involvement with the children. Ms. Denyes has been openly hostile to Holly online and in person.

[20] H. was recently approved for the Ontario Autism Program funding provided by the Government of Ontario. He is entitled to receive $65,000 to be used toward eligible core clinical services and supports starting May 1, 2023, to April 30, 2024. When H. turns 10 years of age next year, the funding available to him reduces to a maximum of $41,400. Ms. Denyes did not tell Mr. Clarke about the funding directly. Ms. Denyes did not provide evidence identifying which of H.'s s.7 expenses are covered by the autism funding.

Issue One: Has there has been a material change in circumstances since 2019 or 2020 when the parties agreed to the current, without-prejudice, temporary parenting schedule?

[21] I find that Mr. Clarke has demonstrated that there has been a material change in the children's circumstances since 2019 when his initial motion for increased parenting time and a s.30 parenting assessment was dismissed by Pollak, J. I also find that Mr. Clarke has proven there has a been a material change in circumstances since 2020 when the parties agreed to the current temporary parenting schedule. These material changes in circumstances justify a further change to the temporary parenting schedule pending trial.

[22] The general approach to motions which try to vary temporary orders is that there should be extenuating circumstances before doing so. The law describes necessary circumstances as being material, substantially important or compelling reasons: *Lamacchia v. Caruallo*, 2022 ONSC 687, at para [24]; *McIsaac v. Pye*, 2011 ONCJ 840; *Bolotnov v. Moldavski*, 2015 ONCJ 530 at paras. 22 and 24; *Shotton v. Switzer*, 2014 ONSC 843; *Greve v. Brighton*, 2011 ONSC 4996 at para. 24; *Redmond v. Redmond*, 2018 ONSC 4559 at paras. 15-16).

[23] I am persuaded that the following circumstances demonstrate a material change in circumstances justifying an increase in Mr. Clarke's parenting time:

a. The schedule that was in place in 2019 did not have Mr. Clarke having any overnight parenting time with the children. As such, Pollak, J. had no evidence before her as to the children's ability to manage overnight time with Mr. Clarke nor did she have evidence of Mr. Clarke' parenting ability.

b. At the 2019 motion, Ms. Denyes submitted that Mr. Clarke struggled with alcohol and drove while intoxicated with E. on his lap and H. in the back of the car. Mr. Clarke vehemently denied these allegations. To attempt to disprove the allegations, Mr. Clarke agreed on a without prejudice basis to use a RAMP breathalyzer for 10 months which showed he had no difficulty maintaining consistent sobriety. This all took place after the 2019 motion and was not before Pollak, J.

c. Pollak, J. directed that this matter proceed to a trial as quickly as possible. It was not contemplated that 4 years later, the trial would not have been heard.

d. At the 2019 motion, the extent of H.'s needs were not known. He had not yet been diagnosed with autism, an intellectual disability and ADHD at the time the 2019 motion was argued. Now H.'s extensive special needs are known and both parents are aware of these needs and recognize what must be undertaken to meet these needs.

e. Both parents have undergone significant parent training and had extensive involvement with the third-party professionals involved with H. Both parents have demonstrated an interest, willingness, and capacity to meet H.'s needs.

f. When Pollak, J. dismissed Mr. Clarke's motion for expanded parenting time, a determination was made that there was no evidence of H. having clinical issues.

The only evidence of H.'s autism was a report from 2017 in which the reporting doctor cautioned the parents to reference autism due to H.'s young age. It is now materially different since a Neuropsychological Assessment of H. was undertaken, confirming his diagnoses of having an intellectual disability, autism, and ADHD.

g. When the parties entered into the consent, without-prejudice temporary parenting schedule in 2020, H. was 6 years old, and E. was 3 years old. Now the children are 9 and 6 respectively and they have demonstrated their ability to adjust to and thrive to a parenting schedule which includes overnights on alternate weekends with their father. Both children are now at an age where they can have longer blocks of time away from each parent.

h. Both parents have undergone Questioning since the Pollak, J. order and the 2020 Minutes of Settlement. There was no cogent evidence arising from Ms. Denyes' Questioning that would lead a decision maker to determine that Mr. Clarke's parenting time ought not to be expanded.

[24] I must now turn to whether the temporary parenting schedule should be changed prior to trial.

Issue Two: Is it in the children's best interests for the current temporary parenting schedule with their father increase from having parenting time with him on 2 overnights out of 14 days?

[25] I find that it is the children's best interests for Mr. Clarke to have increased parenting time with the children from the current schedule of 2 overnights out of a 14-day cycle, to 4 overnights out of 14 days between now and the trial of this matter.

[26] I am not persuaded that the two increases in Mr. Clarke's overnight parenting time, which he seeks, between now and the trial of this matter is necessary or in the best interests of the children.

[27] I do not agree with Ms. Denyes that the current status quo ought to be maintained simply because Mr. Clarke agreed to it in 2020, particularly, since he agreed to it because it was all that was offered to him. Further, I do not agree with Ms. Denyes that an increase in school-week parenting time with the father for the children is not in H.'s best interests and will be destabilizing and detrimental to him. Finally, I am satisfied that Mr. Clarke does have the parenting and communication tools necessary to spend more parenting time with H. or E. during the week, and that his accommodations are sufficient to house the children.

The Law

[28] The *Children's Law Reform Act*, R.S.O. 1990 c.C.12 *(CLRA)* is the applicable statute in this matter given that the parents are not married.

[29] In determining parenting time for H. and E., I am required to consider all factors relating to the circumstances of both children and in doing so, primary consideration is to be given to the children's physical, emotional and psychological safety, security, and well-being: s.24(2).

[30] The best interests factors are set out in s.24(3) of the *CLRA*, and those which are relevant to this case include the following:

a. The child's needs, given the child's age and stage of development, such as the child's need for stability;

b. The nature and strength of the child's relationship with each parent, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;

c. Each parent's willingness to support the development and maintenance of the child's relationship with the other parent;

d. The history of care of the child;

e. Any plans for the child's care;

f. The ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child; and

g. The ability and willingness of each person in respect of whom the order would apply to communicate and co-operate, with one another, on matters affecting the child.

[31] In making the allocation of parenting time, I am required to give effect to the principle that a child should have as much time with each parent as is consistent with the best interests of that child: s.24(6).

[32] In applying the s.24 best interests factors to this case, I make the following findings:

The child's needs, given the child's age and stage of development, such as the child's need for stability

[33] The children's current ages and stage of development are such that they have demonstrated an ability to manage increased parenting time with their father. The two mid-week visits of 2.5 hours each day currently in place, are disruptive and do not afford the children sufficient, meaningful time with Mr. Clarke. Further, these weekly visits result in the children having to go through 4 unnecessary transitions. A schedule that provides for exchanges to take place at school and at least one mid-week overnight will provide the children with longer periods of time with the father and enable him to be part of their bedtime and morning routines which is in their best interests.

The nature and strength of the child's relationship with each parent, each of the child's siblings and grandparents and any other person who plays an important role in the child's life

[34] The nature and strength of the children's relationship with both parents has been demonstrated. While Mr. Clarke acknowledges that Ms. Denyes is an excellent advocate for H., he maintains that he was not able to become more involved with H.'s care and third-party professionals because she will not allow him to do so. Now that the parents are separated, there is no reason why both parents cannot be as involved as one another in taking on the role of involvement with the third parties providing care and support to H. Further, if the father has additional overnight time with the children, this will enable the children to continue to spend time with both the paternal and maternal grandparents;

Each parent's willingness to support the development and maintenance of the child's relationship with the other parent

[35] Mr. Clarke has demonstrated a willingness to support the maintenance of the children's relationship with Ms. Denyes. However, Ms. Denyes has not necessarily demonstrated a willingness to support the development and maintenance of the children's relationship with Mr. Clarke and his wife. It is important for Ms. Denyes to accept that Holly is Mr. Clarke's wife and, as such, is an adult who is involved with both H. and E. when they have parenting time with Mr. Clarke. A schedule that allows the children longer blocks of time with Mr. Clarke will ensure that Ms. Denyes does not interfere with the children's relationship with their father and his spouse.

The history of care of the child

[36] The history of the children's care has been that they have spent more time with Ms. Denyes since the separation than with their father. However, the status quo in place since the temporary, without prejudice parenting time order was entered into in 2020 cannot be relied on as an agreed upon status quo. The Minutes which were turned into an order of Hood, J. was not made based on a consideration of evidence. Further, Ms. Denyes' own evidence is that she is struggling to manage her workload and care of the children. She wishes to engage the services of after school and respite care, even though Mr. Clarke is willing and able to look after the children. It is common ground that the children do not sleep well in Ms. Denyes' home. Mr. Clarke claims the children continue to co-sleep with her and Ms Denyes claims the children co-sleep with him. Mr. Clarke expresses that he wants to break the cycle of the children co-sleeping with either parent but cannot do this if they are only with him 2 nights out of 14 and without Ms. Denyes' commitment to work with him collectively toward this united goal. Two affidavits from Michelle Hughes, sworn on February 10, 2023, and on May 12, 2023, were filed by Mr. Clarke in support of his motion. Ms. Hughes observed the father's parenting time with the children and her evidence is that Mr. Clarke has been consistent in his care of the children, provides them with healthy meals and assists them with homework. Ms. Denyes argues that Mr. Clarke's was supported by Holly at each of these parenting visits and while the affidavit is positive about Mr. Clarke ability to care for the children, the issue for her is that an increased parenting schedule will disrupt the children because it is a drastic change,

and she does not believe Mr. Clarke has the parenting ability to safely and capably look after the children over long periods of time. I do not agree. There is nothing in the evidence that suggests Mr. Clarke lacks the ability to capably and safely look after the children overnight. He has been doing so for two consecutive overnights on alternate weekends since 2020. The fact that Holly is present during Mr. Clarke's parenting time is not a negative issue for the children. Holly is a significant adult in the children's lives.

[37] Ms. Denyes argues that the current status quo should be maintained until there is a trial of these issues because it is working and has been in place since 2020. Mr. Clarke's evidence is that he only agreed to the schedule set out in the temporary Minutes because it was all Ms. Denyes would agree to at the time and he wanted to have overnight time with the children. The case law provides that the parent who unilaterally creates the status quo should not benefit from the status quo he or she has created: *Adams v. Nobili*, 2011 ONSC 4714, at para. 22. I agree with the proposition that a status quo created by one party unilaterally, even in this case, where Mr. Clarke consented to it, since his time with the children was so limited, ought not to be relied on as the "status quo" justifying no change in parenting time.

[38] Further, I agree with Kaufman, J. in *Lamacchia v. Caruallo*, 2022 ONSC 687, in which he held that without prejudice agreements do not create status quos, particularly when such agreements are labelled "without prejudice".[1] In *Lamacchia,* the parties had entered into without prejudice Minutes of Settlement and the father brought a motion to expand his parenting time from what was set out in the Minutes. Kaufman, J. found that the court could change the Minutes on an interim basis prior to trial even where there were competing affidavits on the record and significant credibility findings needed to be made. Kaufman, J. stated that while credibility findings generally require a trial, this is less true when there has been Questioning that could assist the motions judge. In this case, Questioning has been conducted and there is nothing in Ms. Denyes' evidence to justify why the children ought not to be able to enjoy more parenting time with their father, or that it would not be in their best interests to do so.

Any plans for the child's care

[39] Mr. Clarke's plan for the children's care is to have more parenting time with him on a graduated basis. While Ms. Denyes refers to Mr. Clarke's proposed parenting schedule as a drastic change in the schedule, the children have already demonstrated the ability to have overnight time with their father without difficulty. There is no reason in the evidence before the court, to assume that Mr. Clarke cannot look after the children on an overnight basis during the school week since he has been able to do so on the weekends without difficulty.

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[1] *Button v. Konieczny*, 2012 ONSC 5613 (CanLII), 2012 CarswellOnt 12353 (S.C.J.); *Shaw v. Shaw* (2008), 62 R.F.L. (6th) 100 (Ont. C.J.); *Musheyev v. Gilkarov* (2016), 89 R.F.L. (7th) 444 (Ont. S.C.J.); *De Silva v. De Silva* (2016), 78 R.F.L. (7th) 130 (Ont. S.C.J.); *Rigillo v. Rigillo* (2019), 2019 ONCA 548 (CanLII), 31 R.F.L. (8th) 356 (Ont. C.A.); *Hamilton v. Hamilton*, 2021CarswellOnt 161 (S.C.J.).

[40] Mr. Clarke has demonstrated that he regularly plans activities for the children, engages in physical exercise with them, plans and makes meals with them and does their homework. He is in contact with the third part professionals involved with H. and E. and will continue to be involved with them.

The ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child

[41] Both parents have demonstrated the ability and willingness to care for and meet the needs of the children. Although Ms. Denyes has raised concerns she has about Mr. Clarke's parenting abilities there is no evidence before the court to demonstrate that Mr. Clarke lacks parenting abilities to look after the children during the school week when he has been able to do so on the weekends. The evidence on record demonstrates that he has completed a number of parenting courses related to Autism and is able to provide the children with appropriate physical activity, assistance with homework, healthy meals, and a safe environment. His care with them has been consistent and he has demonstrated he understands their need for consistency and stability. Mr. Clarke is in regular contact with the children's doctors, dentists, therapist, teachers, tutors, and H.'s other support professionals. He has such contact, not to instigate conflict as Ms. Denyes suggests, but rather to ensure that he is aware of an attuned the children's needs so he can address them.

The ability and willingness of each person in respect of whom the order would apply to communicate and co-operate, with one another, on matters affecting the child

[42] The parties have not communicated as effectively as they ought to have to date. It is important that they be able to cooperate in terms of matters affecting the children. This lack of cooperation, ought not, in my view, prevent the children from having expanded parenting time with Mr. Clarke. The level of cooperation between the parties may impact decision-making responsibility at trial but ought not to impact Mr. Clarke's ability to have more parenting time with the children between now and the trial.

[43] I do not agree with Mr. Clarke that his parenting time should increase twice gradually from 4 nights out of 14 nights and then further increase to 5 nights out of 14 nights in August. I am concerned that two changes to the parenting schedule over the next two months may be difficult for the children's adjustment. Increasing the children's parenting time with Mr. Clark from 2 overnights out of 14 days to 4 nights out of 14 days addresses the issues Mr. Clark argues the children are experiencing with the current schedule, which he submits are as follows:

a. The children are struggling with the very limited parenting time with him on Tuesdays and Thursdays from 4:00 to 6:30 p.m. They do not have sufficient time to settle in with him and, instead, are being shuttled back and forth between houses. Both children have shown signs of anxiety and stress as they prepare to return to Ms. Denyes' home and regularly ask him if they can stay overnight. As a result of these transitions, Mr. Clarke's proposed schedule reduces the 10 transitions over a 14-day prior to 4 transitions. The schedule I have ordered only maintains one mid-week visit for 2.5 hours and turns the second mind-week time into an overnight.

b. When he picks up the children's from their mother's home, they appear bored and listless. Ms. Denyes acknowledged in Questioning that Mr. Clarke has greater energy than her. Mr. Clarke plans activities for the children and engages in physical activity with them, which is particularly important for children who had ADHD and autism. With two additional overnights in a 14-day period, Mr. Clarke can now continue to plan activities with the children while also be part of their mid-week routine.

c. Ms. Denyes works long hours and has indicated that she is struggling to balance her work responsibilities with her parenting responsibilities. As a result, she is seeking after-school and respite care. Mr. Clarke is willing and able to spend more time with the children, which he submits is preferable to a stranger. With the schedule providing Mr. Clarke with two additional overnights in a 14-day period, Mr. Denyes will have two additional nights where she can work or rest without the additional responsibilities of childcare.

d. Ms. Denyes' evidence is that the children do not sleep well in her care. Mr. Clarke's evidence is that the children sleep well in his care. He believes that the transitions from his parenting time back to the mother's home does not help either child with sleep. His proposal that the children have mid-week overnights with him will eliminate the need for the children to have to adjust and settle in to two different households on one night. The two additional overnights in Mr. Clarke's care will allow the children to settle and develop a sleep routine in their father's care during the school week.

[44] In the circumstances, I find that it is in the children's best interests for their parenting time with Mr. Clarke to increase on the first week following the release of this Endorsement, as follows:

a. Commencing on the first week following the release of this Endorsement,

i. During Week One,

1. Tuesdays, from 3:00 p.m. until 6:30 p.m.;

2. Thursdays, from 3:00 p.m. to Friday morning, drop off at school.

ii. During Week Two,

1. Tuesdays, from 3:00 p.m. until 6:30 p.m.

2. Thursdays, from 3:00 p.m. to Sunday, at 4:00 p.m.

Issue Two: Should a s.30 parenting assessment be ordered?

[45] I find that a s.30 parenting assessment should be ordered immediately and be available to the trial judge determining this case. I am not persuaded that Ms. Denyes is correct namely,

that third parties involved with the children will give the trial judge the same perspective as a skilled professional who can make recommendations as to what is in the children's best interests. Further, Ms. Denyes' concerns about the cost of the assessment is too high for the parties is addressed by Mr. Clarke's agreement to pay the full cost of the assessment. In addition, the concern that a s.30 parenting assessment may delay the trial of this matter is addressed by the parties choosing an assessor who is able to meet the time deadlines in this matter.

[46] Mr. Clarke seeks an order for the court to appoint an assessor to conduct a parenting assessor to make recommendations to the court as to what is in the children's best interests in terms of parenting schedule and decision making. He argues that the need for the assessment is urgent so it will be ready in advance of the trial which is scheduled to commence in February 2024. Further, since H. is unable to communicate his views and preferences and E. is too young to do so, Mr. Clarke argues that an assessment will allow the court to have an objective opinion from a third-party in the face of competing evidence.

[47] Ms. Denyes opposes the order for a s.30 assessment because she argues the parties simply do not have the funds to pay for such an assessment when the litigation costs are so high. Further, she submits that the court will be able to hear from a number of third parties involved with H. at trial, which will be more than sufficient for the court to determine the issues. Finally, Ms. Denyes is concerned that a s.30 assessment may delay the trial scheduled to commence in February 2024.

The Law

[48] The jurisdiction for the court to order a parenting assessment is set out in section 30 of the *CLRA* sets out as follows:

> **30** (1) The court before which an application is brought for a parenting order or contact order with respect to a child, by order, may appoint a person who has technical or professional skill to assess and report to the court on the needs of the child and the ability and willingness of the parties or any of them to satisfy the needs of the child. R.S.O. 1990, c. C.12, s. 30 (1); 2020, c. 25, Sched. 1, s. 8 (1).

[49] In the often-cited case of *Glick v Cale*, 2013 ONSC 893 CanLII, at para. 48, the court cited the following factors relating to the family dynamic that the court can consider when determining whether a s.30 parenting assessment should be ordered. Without repeating all of them in full, they can loosely be described in the following groups:

a. What is the dynamic between the parents like?

b. Is there a clinical diagnosis that impacts the family?

c. Is the child manifesting behaviours that are connected to the parents' dynamic or conduct?

d. What is the estimated cost and do the parents have the financial resources to pay for the cost?

e. Will the assessment cause delay that is not in the best interests of the child? In considering the impact of delay, is it more likely than not that the delay necessarily involved in an assessment will enable the parents to have a better understanding of the family dynamic and arrive at a resolution without a trial?

f. Is the assessment in the best interests of the child(ren)?

[50] In applying these criteria to the facts of this case, I find as follows:

a. Mr. Clarke submits that prior to separation the parties played equal parenting roles. Ms. Denyes disagrees. Mr. Clarke argues that the dysfunction between them arose only upon separation because of Ms. Denyes' refusal to allow him to have appropriate parenting time.

b. Mr. Clarke and Ms. Denyes cannot agree on decisions about H.'s needs. Ms. Denyes has H. attend a neurotypical school and Mr. Clarke believes it would be in H.'s best interests to be placed in a school that can address his special needs. It is only after Mr. Clarke brought a motion, part of which was to dispense with Ms. Denyes' consent to send a referral package to the Identification, Placement and Review Committee ("IPRC"), that Ms. Denyes agreed to do so. The IPRC process will recommend a program and school for H.'s placement;

c. Last year, the IPRC recommended that H.'s school should be changed to one that could provide home with specialized learning amongst other peers with special needs. Mr. Clarke wanted to follow this recommendation and Ms. Denyes refused. On April 4, 2023, the parties were asked to attend an emergency meeting at Pape about H. At the meeting, the principals and teachers expressed that they did not feel Pape was the best school placement for H., since he has become increasingly frustrated and left behind. It was recommended that the parties submit a referral package to the IPRC to obtain an updated placement recommendation for H. Just prior to the motion, Ms. Denyes agreed to make the referral to the IPRC and attend the School Support Team in September. However, she has already acknowledged that she is against moving H. to a special education class regardless of the IPRC recommendation. This kind of conflict could be avoided if a s.30 assessment report made recommendations as to how such impasses between the parents should be handled in the future for H.

d. The relationship between the parties is unhealthy and makes it difficult for the parties to identify the best interests of the children. Ms. Denyes has consistently made decisions for the children based on her sole belief as to what is in their best interests without regard for Mr. Clarke or the recommendations of third parties. The most recent example put forward by Mr. Clarke is the school placement for H. Another example is that Ms. Denyes cancelled H.'s ABA therapy in 2020. She

recently advised that she intends to restart his ABA therapy without including Mr. Clarke in this decision.

e. Mr. Clarke argues that he acknowledges Ms. Denyes' contributions as a parent but believes she is struggling with being overwhelmed with looking after a child who has extensive special needs and working full time. Ms. Denyes, however, in Mr. Clarke's view does not respect or value Mr. Clarke's parenting abilities. Her motion material supports that she does not believe Mr. Clarke has the ability to have expanded parenting time with the children.

f. Both parties appear to blame each other for the dysfunction.

g. There are clinical diagnoses of H. making him vulnerable to ongoing conflict given his special needs. Further, while E. does not have any diagnoses, both parents agree she is struggling, making her more fragile to ongoing exposure to conflict.

h. There is no way to ascertain H.'s views and preferences given that he is non-verbal. E., at age 6, is too young to be express her views and preferences. There may be some clarity if a private assessor becomes involved.

i. There will only be further delay caused by the assessment if it cannot be done urgently.

[51] I am persuaded that a section 30 parenting assessment would benefit the parties and the Court. The parties attended mediation before four mediators which proved to be unsuccessful. The parties cannot agree on which school will be best for H. The high conflict nature of this case requires a great deal of communication between counsel. Given the competing views of the parents, there is a dispute as whether the parents each have the requisite capacity to identify both children's needs and develop strategies to meet those needs.

[52] The parties shall reach out to the four doctors proposed by Mr. Clarke , namely, Dr. Susan Walker Kennedy, Dr. Dan Fitzgerald, Dr. Kimberly Harris, and Dr. Stephen Cross and determine which of the four assessors can see the parties first. The parties shall retain the assessor who can first begin the assessment and commit to completing the assessment report in advance of the trial. The assessor retained by the parties shall receive a copy of this Endorsement.

[53] Mr. Clarke has offered to pay the full cost of the s.30 assessment so Ms. Denyes' concern that they cannot afford the assessment along with the litigation can be addressed in that manner. I agree with Mr. Clarke that a s.30 assessment will eliminate the need for many witnesses at trial and provide the Court with one objective third party's expert opinion as to what he/she believes is in the children's best interests given their extensive needs.

Issue Three: Should ancillary orders relating to parenting be made?

[54] I find that the ancillary parenting orders Mr. Clarke seeks should be ordered as follows:

a. The parties should communicate only once daily through a co-parenting platform:

    i. Mr. Clarke believes it would be best for the parties to communicate through a co-parenting application. The parties tried to use the co-parenting app, Our Family Wizard, but Ms. Denyes did not like it and refused to continue to use it. Ms. Denyes blocked Mr. Clarke' email and, as a result, the parties only communicate now through text. Mr. Clarke submits that Ms. Denyes often harasses him and bombards him with 50-100 unanswered text messages. This is why Mr. Clarke wishes to specify that the parties communicate only once a day, except in the case of an emergency.

    ii. I am persuaded that it is the best interests of the children for the parties to communicate using a co-parenting application. I also agree than an order should be made requiring the parties not to communicate more than once daily, except in the case of emergency.

b. The right of first refusal:

    i. Mr. Clarke seeks an order that would give each parent the right of first refusal if the residential parent is unable to look after the children for more than an 8-hour period. Ms. Denyes will not agree.

    ii. In my view if either parent cannot spend his or her scheduled parenting time with the children for more than an 8-hour period, it is in the children's best interests for the residential parent to offer the other parent the right to look after the children in his/her place. If the other parent is free to do so, then the children will be cared for by that parent. If the other parent is not able to do so, then the resident parent shall arrange for alternate childcare and his/her cost.

c. Emily's involvement in therapy with a Psychologist:

    i. Mr. Clarke believes that E. would benefit from seeing a child psychologist given her anxiety, difficulty self-soothing and her emotional dysregulation. Ms. Denyes is agreeable but will not agree to that therapy starting until after the trial which is in 8 months from now. Ms. Denyes offers no explanation as to why E.'s therapy ought not to commence now, even though she has the same concerns about E. as does Mr. Clarke. Mr. Clarke proposes to obtain referrals for psychologists from E.'s family doctor, Dr. Garfield, and her Occupational Therapist. He submits that if he and Ms. Denyes cannot agree on a psychologist for E. once the referrals are given within ten days of being given referrals, then the court should decide by way of a 14B motion.

    ii. Given that both parents agree that E. is struggling with anxiety and emotional dysregulation, I find that it is in her best interests to commence therapy with a child psychologist as soon as she can be seen.

d. Authorization/Direction to Third Party Professionals:

i. Mr. Clarke seeks an order requiring Ms. Denyes to sign an Authorization/Direction so he can gain access to information from all third parties involved with both children. Ms. Denyes asserts that she includes Mr. Clarke in all communications with third parties and Mr. Clarke disagrees. He argues that Ms. Denyes deliberately schedules telephone calls, meetings and other communications that do not involve Mr. Clarke to exclude him.

ii. Ms. Denyes argues that is it unnecessary that she sign an Authorization/Direction since Mr. Clarke is already involved with the third parties involved with the children.

iii. In my view, an Authorization and Direction should be signed by both parents to ensure that all third parties dealing with the children are required to share information with both parents.

Issue Four: What order should be made regarding the children's retroactive and prospective s.7 expenses?

[55] Ms. Denyes seeks two orders with respect to the children's s.7 expenses:

a. An order that Mr. Clarke reimburse her in the sum of $3,283.73 for unpaid s.7 expenses incurred in 2022;

b. An order that Mr. Clarke begin to prepay for the children's s.7 expenses in the sum of $3,085.12 a month and an order that she be required to provide receipts to Mr. Clarke for s.7 expenses twice per year for expenses she incurred.

Should Mr. Clarke reimburse Ms. Denyes in the sum of $3,283.73 for unpaid s.7 expenses incurred in 2022?

[56] Pursuant to the Ontario *Child Support Guidelines*, O. Reg. 391/97 ("*CSG*") , s.7 outlines that the court may provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the parents and those of the child and to the spending pattern of the parents in respect of the child during cohabitation. The categories of expenses include

a. childcare expenses incurred as a result of employment, illness, or disability;
b. medical and dental insurance premiums attributable to a child;
c. uninsured health-related expenses that exceed $100;
d. extraordinary expenses for primary or secondary school education or other educational programs;
e. post-secondary education; and
f. extraordinary expenses for extra-curricular activities.

[57] Both parties agree that H.'s needs are significant given his diagnoses. As a result, he required significant supports. There is no dispute that many of the treatments in which H. is engaged are legitimate s.7 expenses.

[58] Ms. Denyes' income as reflected in her sworn financial statement, dated February 10, 2023, was $169,000 and Mr. Clarke' income is $37,900. Despite the calculation of their proportionate responsibility for the children's s.7 expenses, Mr. Clarke agreed to pay 50% of the children's s.7 expenses and table child support of $1,242 a month based on an annual income of $82,150.

[59] It is Mr. Clarke' position that Ms. Denyes incurs expenses beyond the means of the parties without first obtaining Mr. Clarke' prior consent.

[60] In terms of 2022 section 7 expenses, Ms. Denyes submits she spent $24,597.45 toward the children's s.7 expenses. Mr. Clarke already agreed to pay 50% of these s.7 expenses. It is common ground that Mr. Clarke paid Ms. Denyes $9,000 toward s.7 expenses in 2022. It is the balance that is at issue of $3,298.73.

[61] Mr. Clarke argues that Ms. Denyes has not supported her claim that she spent $24,597.45 for s.7 expenses in 2022. Ms. Denyes attached invoices and receipts for her s.7 expenses through a Dropbox link at paragraph 4 of her affidavit, sworn on February 10, 2023. Mr. Clarke submits that Ms. Denyes included invoices for tutoring of $6,580 and invoices for speech therapy of $6,250, when he paid the full speech therapy invoice and $1,115 of the tutoring invoice. According to Mr. Clarke, the receipts provided demonstrate that Ms. Denyes paid $11,700.36 toward s.7 expenses in 2022, not $24,597.45.

[62] Mr. Clarke also argues that Ms. Denyes has not particularized how much of her expenses were covered by her extended medical benefit plan. The *CSG* provide that in determination the amount of a s.7 expense, the court is required to consider any subsidies, benefits, credits, or income tax deductions exist relating to the expense. It is incumbent, therefore, for Ms. Denyes to identify her eligibility to claim any such subsidies, benefits, income tax deductions or credits for all s.7 expenses.

[63] Mr. Clarke agrees that many of the expenses incurred by Ms. Denyes for the children's s.7 expenses are reasonable including, tutoring for both children, camp for both children, occupational therapy for both children, speech therapy for H., ABLLS updates for H. every 6 months, tutoring, medication, BCBA for H., Karate for H., basketball and dance for E., medical appointments and medicine not covered by Ms. Denyes' benefits.

[64] Mr. Clarke argues that of the $11,700.36 claimed, the sum of $3,962.82 ought not to be included as follows:

a. A winter hat of $22.59;
b. Ms. Denyes' personal parent coaching of $1,030;
c. Respite care of $2,327.80 (he claims Ms. Denyes' affidavit miscalculates this $1,877.80)

d. Stationary (markers) of $116.88;
e. An i-pad for H. of $465.55.

[65] I make the following findings:

a. A winter hat and markers are not legitimate s.7 expenses under the *CSG* and ought to be paid for by table child support. Mr. Clarke need not contribute to these expenses incurred by Ms. Denyes;

b. Ms. Denyes' personal parent coaching does not fall under one of the enumerated categories of expenses set out in s.7 of the *CSG*. It is not a childcare expense incurred as a result of employment, illness, or disability. Mr. Clark need not contribute to this expense.

c. Respite care of $2,327.80 as claimed by Ms. Denyes or of $1,877.80 as calculated by Mr. Clarke does not neatly fall under one of the subcategories of s.7(1) of the *CSG*. However, I am convinced that it was in H.'s best interests for Ms. Denyes to have availed herself of respite care and that whether the cost of such respite care whether it be $2,327.80 or $1,877.80, such costs are reasonable in relation to the means of the parties. Accordingly, depending on whether Ms. Denyes can provide documentary evidence to verify that she spent $2,327.90 on respite care in 2022 or whether it is $1,877.80, Mr. Clarke shall pay his 50% share of the amount spent.

d. An i-Pad of H. is not a legitimate s.7 expense since he has another device which he uses to communicate. Ms. Denyes' choice to purchase an iPad for H. for use in her home does not fall under one of the categories of expenses listed in s.7(1). Mr. Clarke need not contribute to this expense.

[66] Ms. Denyes submits that the vast majority of H.'s expenses in 2022 were not covered by her extended medical/dental benefits, such as ABA therapy.

[67] Both parties shall recalculate his/her section 7 expenses for 2022 and reconcile what he/she paid and exchange their lists within five days of the release of this Endorsement. If any of her expenses were covered by health insurance of any funding available to H. in 2022, then Mr. Clarke should only be responsible to pay for 50% of those expenses. If Ms. Denyes cannot produce receipts or invoices for 2022 expenses, she cannot seek reimbursement from Mr. Clarke. After the reconciliation is complete, it should be clear as to what sum remains owing by Mr. Clarke, if any or whether Ms. Denyes owes Mr. Clarke funds on account of s.7 expenses he paid. If it turns out that Ms. Denyes owes Mr. Clarke funds for s.7 expenses, then she shall reimburse him.

Should Mr. Clarke prepay for the children's future s.7 expenses in the sum of $3,085.12 a month?

[68] I find that Mr. Clarke should not prepay Ms. Denyes monthly for future s.7 expenses. Many of the future s.7 expenses are not known and of the expenses that are known for H., many of these will be covered by the Autism funding H. has obtained.

[69] Ms. Denyes seeks to have Mr. Clarke prepay her a monthly sum for future s.7 expenses and the parties will reconcile the expenses twice a year. Mr. Clarke does not agree he should have to prepay expenses for the children unless and until the expenses are incurred. If the court is inclined to order Mr. Clarke to prepay s.7 expenses, he is only prepared to agree to the following s.7 expenses:

a. Tutoring of $822.50 a month, to which he will contribute $400 a month;
b. Camp fees of $200 a month;
c. Speech language pathologist of $520 a month
d. ABLLS Updates of $233.33 per month
e. BCBA of $50 a month
f. Occupational therapy of $50 a month
g. Appointments of $208.33 a month
h. Karate of $38.61 a month.

[70] Instead of prepaying Ms. Denyes on a monthly basis, Mr. Clarke proposes the following four-step mechanism:

a. Step 1: each parent will advise the other of the expense he/she wishes to incur for the children. If it is a recurring expense, it shall be explained. Any documentation regarding the expense shall be provided;

b. Step 2: Before the expense is incurred, each parent will advise whether he or she consents to the proposed expense in writing. A request must be answered within 72 hours unless a parent is on a vacation, in which case the response shall be within 72 hours of the return from vacation. If the 72 hours elapses, consent is deemed to have been provided. If consent is refused, the parties will mediate the dispute with Seema Jain if agreeable to both parties and reimbursement will be an issue to be litigated. If consent is refused, the parent may still incur the expense but cannot expect to be reimbursed until the matter is resolve by agreement or court order. Neither parent will pay for an activity to take place when the children are with the other parent if not agreed to by both parents;

c. Step 3: the parent incurring the expense will provide the other parent with proof of payment;

d. Step 4: the parties who did not incur the expense will reimburse the other parent within 72 hours of receiving proof of payment unless that parent is on vacation in which case the reimbursement shall be made within 72 hours of the return.

[71] Ms. Denyes argues that the 4-step process proposed by Mr. Clarke is patently unrealistic and does not provide a mechanism for conflict if the parties cannot agree.

[72] After Ms. Denyes brought her motion, H. obtained autism funding of $65,000 for approved expenses to be spent between May 1, 2023, and April 30, 2024. Mr. Denyes did not provide the court with evidence as to which of H.'s s.7 expenses are to be paid from this funding.

Childcare.

[73] In terms of future s.7 expenses, Ms. Denyes is seeking to arrange for childcare between the hours of the end of the school day and the end of her workday, from 3:20 p.m. to 5:30 p.m. during the week, when it is her scheduled parenting time. The Sprouts website, from where she seeks to obtain babysitting services, indicates that 3 days per week per child is $638.45 x 2 ($565 per child plus HST), or $1,276.90 per month for both children. She acknowledges that there is some tax benefit she can access which should be taken into consideration but has not provided any evidence as to the extent of the tax benefit.

[74] Mr. Clarke does not agree that after school childcare is a s.7 expense to which he ought to contribute since he finishes work by 2:30 p.m. and can make himself available to look after the children until Ms. Denyes finishes work. He argues that he does not intend to make use of after school childcare on his scheduled days.

[75] Given that Mr. Clarke will now have parenting time on Tuesdays, Thursdays and alternate Fridays, Ms. Denyes will only have to arrange for childcare on Mondays, Wednesdays, and alternate Fridays, which is two days in one week and three days in the second week. Ms. Denyes shall advise Mr. Clarke in writing as to the cost of after school childcare for these ten days a month. The cost of childcare to enable Ms. Denyes to work between now and the trial is a legitimate s.7 expense under s.7(1)(a). What is not known is whether this expense is reasonable taking into consideration the means of the parties and the other significant s.7 expenses needed for H. and E. Further, Mr. Clarke has indicated that he is willing and available to look after the children after school until the end of Ms. Denyes' workday at no cost to the parties. This may not be a decision that is in the children's best interests given that it will require daily transitions for the children which may be disruptive. Submissions were not made on this point.

[76] Whether or not after school childcare is a s.7 expense to which Mr. Clarke ought to contribute is a matter to be determined at trial, when Ms. Denyes can advise the cost of afterschool childcare and this cost can be compared to the other s.7 expenses needed to be incurred on behalf of H. and E. This is without prejudice to Ms. Denyes' right to seek a retroactive contribution to this after school childcare at trial.

Respite Care

[77] Ms. Denyes also seeks to arrange for respite care in the future and seeks that Mr. Clarke should contribute to this cost as a s.7 expense. Mr. Clarke argues that respite care is not a s.7 expense since it is not a childcare cost incurred for her employment, illness or disability or training for employment and does not fall within an expense described in s.7(1)(a).

Additionally, it not a health-related expense for the direct benefit of the child and does not fall under s.7(1)(c). Mr. Clarke points to court decisions which have held that respite care is not a childcare expense and is not a legitimate s.7 expense.

[78] Since Ms. Denyes works full time and is H.'s primary caregiver, she submits she requires respite care to manage her responsibilities and to ensure that she does not have to take future stress leave from work, which she has had to do in the past. Ms. Denyes submits that sometimes the respite care is also to assist her when Mr. Clarke takes vacations on short notice. Mr. Clarke's position is that he is available to provide respite care to Ms. Denyes and he ought to be able to do so before a stranger is asked to do so.

[79] Now that Mr. Clarke will have 4 overnights out of 14, Ms. Denyes' need for respite care may change and be reduced. There is no evidence before the court as to whether any of the autism funding H. has received can be used toward respite care.

[80] The issue of whether respite care is a s.7 expense to which Mr. Clarke ought to contribute cannot be determined prior to the trial when the court has further evidence about H.'s autism funding and what the cost of the respite care will be. Similarly, the mechanism for how the parties ought to manage their future s.7 expense can be determined at trial.

[81] Between now and the date of the trial, the parties should advise each other of any s.7 expense he/she wishes to incur for the children and obtain the consent of the other party before asking the other parent to contribute to same. Upon obtaining the consent of the other party, the parent who incurs the s.7 expense should send the other party copies of invoices of written details of the expense. Within two weeks of receiving the invoice, the parents shall reimburse each other for 50% of the expense incurred. Any section 7 expense which is covered by health insurance or covered by H.'s autism funding should be fully explained so that the parties are only sharing the uninsured portion.

ORDER

[82] This Court makes the following order:

a. Pursuant to s.28(5) of the *Children's Law Reform Act ("CLRA")*, Mr. Clarke's temporary parenting time with the two children of the marriage shall increase on the first week following the release of this Endorsement to the following:

    i. During Week One,

        1. Tuesdays, from 3:00 p.m. until 6:30 p.m.;

        2. Thursdays, from 3:00 p.m. to Friday morning, drop off at school.

    ii. During Week Two,

        1. Tuesdays, from 3:00 p.m. until 6:30 p.m.

2. Thursdays, from 3:00 p.m. to Sunday, at 4:00 p.m.

b. Pursuant to s.30 of the *CLRA*, the parties shall retain one of Dr. Susan Walker Kennedy, Dr. Dan Fitzgerald, Dr. Kimberly Harris, and Dr. Stephen Cross (whomever is first available and able to complete his/her report in advance of the trial of this matter) to assess and report to the court on the needs of the children and the ability and willingness of the parties or any of them to satisfy the needs of the children. The parties shall provide the assessor with a copy of this Endorsement.

c. Pursuant to s.28(1) and (8) of the *CLRA*,

   i. The parties shall only communicate once a day through the co-parenting application Custody X Change unless there is a child-related emergency in which case the parties may communicate by text.

   ii. The parties shall execute an Authorization/Direction to enable the third parties involved with both children to communicate with both parents.

   iii. If the scheduled resident parent cannot look after the children on his/her scheduled day for 8 hours or more, he or she shall give the non-resident parent the right to look after the children in his/her place. If the non-residence parent cannot look after the children, then the resident parent shall arrange alternate childcare at his/her cost.

   iv. Mr. Clarke shall immediately seek a referral to a child psychologist for E. from her doctor and occupational therapist. Upon receipt of the names of such referrals, the parties shall contact the psychologists and determine which psychologist can begin to work with E. sooner and retain him/her.

d. Within ten days, each party shall provide the other with a reconciliation for the s.7 expenses she incurred in 2022, taking into account any health benefits, tax credits or funding that may have applied to these expenses. Mr. Clarke shall reimburse Ms. Denyes for the cost of the respite care she incurred in 2022, once she can demonstrate what she spent. If, after the reconciliation Mr. Clarke owes Ms. Denyes a sum for 50% of the children's 2022 s.7 expenses he shall pay that sum within five days of receiving the reconciliation from Ms. Denyes. If Ms. Denyes owes Mr. Clarke a sum of 50% of the children's 2022 s.7 expenses, she shall pay him that sum within five days of receiving the reconciliation, considering my findings above. Only expenses for which receipts or invoices can be produced shall be eligible for reimbursement.

e. Ms. Denyes' motion for Mr. Clarke to prepay her $3,085.12 a month for future ongoing s.7 expenses shall be dismissed. On a temporary basis, pending trial, Mr. Clarke shall pay 50% of agreed upon s.7 expenses which are reasonable and necessary and in H.'s best interests of $1,061.33 a month when such expenses are incurred and only if not paid by the H.'s Autism Funding and not by way of prepaid monthly expenses. These agreed upon s.7 expense include:

i. Tutoring of no more than $400 a month when incurred;

ii. Camp fees of no more than $200 a month when incurred;

iii. Medical expenses not covered by dental/health insurance of $208.33 a month when incurred.

iv. Karate of $38.61 a month when incurred.

v. Any other s.7 expenses agreed to by the parties in advance of being incurred.

f. This order regarding the children's s.7 expenses on an ongoing basis is without prejudice to either party's right to argue that less or more s.7 expenses are to be paid by each party retroactively or prospectively at trial.

g. The parties are encouraged to settle the issue of costs. If they are unable to do so, Mr. Clarke shall serve and file written costs submissions of no more than 3 pages, not including a Bill of Costs or Offers to Settle within ten days of the release of this Endorsement and Ms. Denyes shall serve and file responding written costs submissions or no more than 3 pages, not including a Bill of Costs or Offers to Settle within seven days of being served with Mr. Clarke's costs submissions. Mr. Clarke shall serve and file reply costs submissions, if any, of no more than 1 page, within 5 days of being served with the responding costs submissions.

M. Kraft, J.

Released: July 5, 2023