

CITATION: Gerasimopoulos v. Sambirsky, 2024 ONSC 2368
COURT FILE NO.: FS-20-16735
DATE: 2024-05-06

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Georgia Gerasimopoulos

Applicant

– and –

Kevin Andrew Daniel Sambirsky

Respondent

)
)
)
) Danielle Di Rezze and William Rogers, for
) the Applicant

)
)
) **James Singer**, for the Respondent

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)
) **HEARD: April 8th, 9th, 10th, 11th and 12th,**
) **2024**

M. KRAFT, J.

REASONS FOR DECISION

Nature of the Trial

[1] This trial is about whether the respondent, Kevin Andrew Daniel Sambirsky (“Kevin”), who has a diagnosis of Bipolar 1 Affective Disorder (“Bipolar”), should be permitted to have unsupervised parenting time with the two children, both boys, aged 9 and 6. While Bipolar is a manageable, life-long mental health condition, the applicant, Georgia Gerasimopoulos (“Georgia”), argues that the children cannot have unsupervised parenting time with Kevin even when he is well, because they have been exposed to his erratic behaviour during a manic episode that was traumatic, scarred them emotionally for life, and any future exposure places their future physical and emotional safety at risk. Kevin has put forward a comprehensive safety plan to mitigate the boys’ exposure to a future manic episode, designed by his psychiatrist in response to Georgia’s concerns. Georgia has no confidence in the safety plan because it requires Kevin to self-report the onset of manic-bipolar symptoms and she does not trust him or his judgment. Because Kevin lives alone and all members of his nuclear family live outside of Toronto, Georgia will not agree to Kevin having unsupervised parenting time with the children.

[2] While there are other cases that have afforded unsupervised parenting time to a parent with mental illness, Georgia argues that this is a novel case because Kevin lives alone and, as a result, there is no other adult present in his household to gauge whether a future manic episode may be occurring. Essentially, Georgia is asking this Court to make a final order for supervised only parenting time for Kevin to protect the children if he is unwell in the future. I disagree that this is a novel case. I do not agree with Georgia that the children require such significant protection to the point of full supervision whenever they are in the presence of their father because he may have a potential future manic episode. Rather, the role of the Court is to design a parenting plan that recognizes it is in the children's best interests to have a meaningful relationship with both parents, particularly since Kevin is mentally healthy now, while balancing how to protect the children from future harm from a potential future manic episode Kevin may have. To do otherwise would mean that the court is preventing the children from having a normalized parent-child relationship with a parent who has demonstrated he is loving, capable, willing, and attuned to their needs and interests based on Georgia's generalized fear of Kevin's mental health condition. To make an order for supervised only parenting time for Kevin as suggested by Georgia would mean that this Court is being swayed by a stereotype that a parent with an episodic mental health condition is unfit to parent a child on his or her own, which in this case, is particularly problematic since it is agreed that Kevin is significantly bonded to both children and is a parent with whom both children are strongly attached. **I do not believe the court would require supervision of a parent's parenting time if he or she had an episodic physical health condition and this ought not to be treated differently.**

The Family and Brief Factual Background

[3] Both parties are 46 years of age. Kevin is an Enterprise Account Executive at a software company. In 2023, his total income \$391,739. Georgia has been employed for 15 years at Transcontinental Media as a Business Analyst. She earns about \$90,000 a year. Both parties worked full-time during the marriage.

[4] Kevin and Georgia were married on May 17, 2015. They have two children, both boys. A. was born on June 29, 2014, and is 9 years of age. L. was born on August 23, 2017 and is 6 years of age.

[5] When A. was in Kindergarten, he was diagnosed with Autism Spectrum Disorder ("ASD"). He has delayed language reception/expression, and issues with behavioural regulation and social skills. Both parents testified that A. is high functioning. A. has an Individual Education Plan (IEP), receives support from a Speech Language Pathologist ("SPL") at Red Oak, and a behavioural therapist through Works of Wonder. L. has no identified special needs.

[6] The parties separated after 5 years of marriage on May 16, 2020, when A. was 4 ½ years old and L. was 2 years of age.

[7] Kevin has Bipolar. Kevin's psychiatrist testified that Bipolar is an episodic illness, where people can have manic or depressive episodes and where people have periods of wellness and periods where they are unwell. Other than one episode at about age 17, Kevin did not experience a single manic or depressive episode during the parties' marriage and was mentally healthy. He managed his Bipolar during the marriage with medication. During the marriage, Kevin did have

alcohol use disorder but has been sober since December 2019. At the time of separation, Kevin was using cannabis daily. He testified that he has not used cannabis in six months.

[8] At the time of separation in May 2020, Kevin had a manic episode resulting in him being apprehended by the police and subsequently being admitted to St. Joseph's Health Centre ("St. Joseph's") for 9 days ("2020 episode"). Kevin has been under the care of a psychiatrist, Dr. Virginia Duff, since his hospitalization in 2020. Dr. Duff is the clinical director of the West End ACT Team at St. Joseph's. As a result of this manic episode, the Catholic Children's Aid Society ("CCAS") became involved in the family.

[9] After the 2020 episode, Georgia obtained *ex parte* orders and would not agree to Kevin having unsupervised parenting time for a year. It took about two years of Kevin having to bring repeated motions to gain unsupervised, increased, and meaningful parenting time with the boys.

[10] At the time of the 2020 episode, Georgia moved out of the matrimonial home with the children and they have lived in the maternal grandparent's home with Georgia's parents and her brother, Peter. Georgia plans to continue to reside with her parents and brother in the matrimonial home with the children.

[11] In July 2020, Kevin moved to Niagara Falls to live with his mother, because Georgia requested possession of the matrimonial home to return there with the children, which she was granted. While Kevin was in Niagara Falls, he regularly took the train to Toronto to exercise his parenting time with A. and L., often having less parenting time than the time it took for him to commute back and forth between Niagara Falls and Toronto. It took six months for Kevin to obtain supervised overnight parenting time with the children. At the end of November 2020, Kevin was permitted to have the children for one overnight every two weeks in Niagara Falls with his mother supervising.

[12] Kevin's father, Wally Sambirsky ("Wally"), lives in Kingston with his wife, Katheryn Nickerson ("Katheryn"). Wally has been supervising Kevin's weekend time with the children since the second manic episode Kevin experienced on June 3, 2023. Kevin has a sister who lives in Niagara Falls and a brother who lives in Texas.

[13] The matrimonial home was subsequently sold in March of 2021, at which time Kevin returned to Toronto and moved into his current home at Dundas and Church.

[14] The CCAS closed its file in February 2022 and had no concerns with Kevin's parenting of the children at that time. In November 2022, the parties attended parenting mediation with Christine Kim and signed an Interim, Partial Separation Agreement providing Kevin with unsupervised parenting time pursuant to a graduated schedule starting with 5 overnights out of 14 days in Phase 1; 6 overnights out of 14 days in Phase 2, and equal parenting time in Phase 3. The only issue in dispute was whether Kevin should have decision-making responsibility over the boys' athletic and sports activities. Georgia wanted sole decision-making responsibility over all decisions related to the children.

[15] One month before Kevin was to start Phase 2, he unfortunately experienced another manic episode on June 3, 2023, while he was caring for the boys ("2023 episode"). Kevin's parenting

time with the boys was then suspended, on consent. Since then, he has only had 13 hours of parenting time with the children each week, partly supervised by Brayden Supervision Services (“Brayden”) and partly supervised by his father, Wally and/or Wally and Katheryn.

[16] The supervision notes from Brayden for the period December 10, 2023 to and including March 17, 2024 are all positive, with no issues whatsoever.

Issues to be Decided at Trial

[17] The issues for me to determine are as follows:

- a. What parenting schedule for the children with their father is in their best interests? More specifically, should they to continue to have supervised-only parenting time with their father as proposed by the mother for 13 hours each week, or should they have unsupervised parenting time including overnights?
- b. Should Kevin have decision-making responsibility over the children’s sports activities?
- c. What amount of child support does Kevin owe Georgia for the two children?

Brief Conclusion

[18] I have determined that it is in the best interests of A. and L. to have parenting time with Kevin on an unsupervised basis, pursuant to a graduated schedule, starting with 4 overnights out of 14 and increasing to 5 overnights out of 14 at the commencement of the 2024/2025 school year. An integral part of this parenting plan is the six-prong Safety Plan designed by Kevin’s psychiatrist, with the added caveat that the children receive some psychoeducation about Kevin’s condition and warning signs to be taught in an age-appropriate and calm manner. I have designed a parallel parenting decision-making regime giving Georgia final decision-making responsibility for education, health, cultural/religious decisions impacting the children, after a robust consultation process with Kevin. I have ordered Kevin to have final decision-making responsibility in terms of the children’s sporting/athletic and extra-curricular activities, after a robust consultation process with Georgia. I have also ordered the parties to engage in a family dispute resolution process, namely, to retain and work with a Parenting Coordinator for at least a year to assist them in implementing the parenting plan ordered. Kevin will continue to pay child support to Georgia for the two children pursuant to the Federal *Child Support Guidelines*, SOR/97-175 (“CSG”) on his base salary of \$150,000 a year, to be topped up as soon as he receives his T4 income. The parties shall share the cost of the children’s s.7 expenses proportionate to their combined incomes.

Issue One: What parenting time schedule is in the children’s best interests?

[19] Kevin seeks a final order granting him parenting time with A. and L. pursuant to the parenting schedule set out in the parties’ Interim, Partial Separation Agreement (a graduated schedule starting with 5 overnights out of 14 and increasing to equal time-sharing) with a detailed Safety Plan to mitigate the children’s future exposure if he experiences another manic episode. Georgia does not want the children to have any parenting time with Kevin unless it is supervised

because she does not believe the children are safe with Kevin if there is no supervision. She maintains that the children were scarred from their exposure to Kevin's 2023 episode. Georgia proposes that Kevin's current parenting schedule of 13 hours a week, supervised only, should remain in place.

The Law

Best Interests Factors

[20] The Court is required to consider the best interests of the children in making any parenting order: s.16(1) of the *Divorce Act*, R.S.C., 1985, c.3 (2nd Supp.).

[21] Primary consideration is required to be given to the children's physical, emotional and psychological safety, security and well-being: s.16(2).

[22] The best interests factors are set out in s.16(3) of the *Divorce Act*. The factors that are relevant to this matter 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 spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;
- c. each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
- d. the history of care of the child;
- e. the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
- f. any plans for the child's care;
- g. 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;
- h. the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;
- i. any family violence and its impact on, among other things,
 - i. the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
 - ii. the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child.

[23] While the court is not to consider the past conduct of any person, the court is able to consider past conduct if the conduct is relevant to the exercise of their parenting time, decision-making responsibility or contact with a child: s.16(5). It is on this basis that Georgia asks the court to consider what happened during Kevin’s 2023 episode.

[24] In allocating parenting time, the court is required to give effect to the principle that a child should have as much time with each spouse as is consistent with the best interest of the child: s.16(6).

Supervised Parenting Time

[25] A parent seeking supervised parenting time for the other parent bears the burden of establishing that supervision is necessary: *W.H.C. v. W.C.M.C.*, 2021 ONCJ 308, *Klymenko v. Klymenko*, 2020 ONSC 5451.

[26] In *Stec v. Blair*, 2021 ONSC 6212, at paras. 22-24, Fowler Byrne J. reviewed the law related to supervised access and explained the reason that it is not automatically granted:

- a. Supervised access is a great intrusion into the relationship between a child and parent and its continued imposition must be justified: *Young v. Hanson*, 2019 ONSC 1245, at para. 32, also cited in *G. v. F.*, 2021 ONSC 1362 at para. 47.
- b. The intrusion is less striking when supervision is by a family member in a home setting, but nonetheless, it is not a long-term solution. Supervised access is designed to provide a temporary and time-limited measure, to resolve a parental impasse over access, rather than provide a long [term] solution: *M. (B.P.) v. M. (B.L.D.E.)*, (1992), 1992 CanLII 8642 (ON CA), 97 D.L.R. (4th) 437, at para. 33. (Ont. C.A.)
- c. The onus lies on the person seeking that parenting time be supervised, to show that such supervision is necessary. The greater the restriction on regular parenting time, the more important it is to show why the restriction is necessary: *Liu v. Xie*, 2021 ONSC 222, at para. 69, *Docherty v. Catherwood*, 2015 ONSC 5240, para. 38.

[27] Supervised access “is beneficial for children who require gradual reintroduction to a parent, or whose safety requires it until such time as the parent is sufficiently rehabilitated and a child is no longer in danger or physical or emotional harm.” *Najjardizaji v. Mehrjerdi*, 2004 ONCJ 374 (CanLII), [2004] O.J. No. 5472 (OCJ).

[28] The Courts have taken the view that because supervised access creates an artificial environment, it should not be ordered as a long-term arrangement: *Hunt v. Hunt*, 2023 ONSC 5411, at para. 43.

[29] In this case, Georgia is proposing that supervised parenting time be employed as a long-term remedy, rather than as a steppingstone to normalize Kevin’s parenting time because she believes the children are in danger of physical or emotional harm if unsupervised in Kevin’s care, because he may have another manic episode even though he is currently mentally healthy

Essentially, Georgia believes that Kevin's Bipolar condition makes him unfit to parent A. and L. without constant supervision.

Application of the Law

[30] In giving primary consideration to both A.'s and L.'s physical, emotional, and psychological safety, security, and well-being, I have the role of analyzing whether the evidence lies in favour of Kevin having unsupervised parenting time given his Bipolar condition, while weighing the best interests factors. I find that despite there being some risk of exposure to symptoms of Kevin's Bipolar 1 illness, with some psychoeducation for the boys and a detailed Safety Plan in place, the evidence is in favour of it being in A.'s and L.'s best interests of having unsupervised parenting time with their father for the reasons listed below using the best interests factors set out in s.16(3) of the *Divorce Act* as headings.

[31] To fully understand what has transpired in terms of parenting for A. and L. since separation, a review of the litigation history is important for context.

The 2020 Episode

[32] On May 23, 2020, Kevin was apprehended by the police and brought to St. Joseph's for a mental health assessment. Kevin remained in the psychiatric ward of the hospital for 9 days to stabilize because of this hypomanic-manic episode. Between May 17-23, 2020, Kevin was experiencing manic symptoms that led to the 2020 incident and the hospitalization. Starting on May 17, 2020, because of the agitated and bizarre ways in which Kevin was acting, Georgia left the matrimonial home with both children and began to live at her parents' home. The children were unaware that Kevin was struggling in any way.

[33] Kevin was discharged from the hospital on June 1, 2020. He was then and remains under the care of Dr. Duff, who works out of St. Joseph's. Kevin has also been following a wellness program established by Dr. Duff which includes adhering to the medication regime she prescribes, attending weekly Bipolar peer group sessions, and living a healthy lifestyle.

[34] When Georgia learned Kevin was being released from the hospital, she brought an *ex parte* motion on June 5, 2020, at which Diamond, J., granted her interim sole decision-making responsibility for the children, a temporary restraining order against Kevin, a temporary order that the children continue to reside with Georgia at her parents' home; and granted video/phone access (now referred to as parenting time) between the children and Kevin. Georgia served Kevin with the *ex parte* order and motion materials on June 7, 2020.

[35] On June 17, 2020, the parties attended a case conference before Akbarali, J., at which Diamond, J.'s order was changed to require Georgia to consult with Kevin before making any major decisions for the children. The restraining order was also changed to prevent Kevin from coming within 250m of Georgia's parents' home except in case of a medical emergency involving both or one of the children, in which case Kevin was permitted to be present. As well, the following consent orders were made:

- a. Starting June 1, 2020, Kevin was to commence paying child support in the sum of \$1,838 a month based on his annual income of \$130,000 on a without prejudice basis.
- b. Kevin was to immediately begin searching for alternate accommodation with a view to accommodating a nesting arrangement;
- c. The motion scheduled before Diamond, J. for June 19, 2020 was adjourned to July 3, 2020; and
- d. The parties were to continue to negotiate a parenting schedule.

[36] On June 25, 2020, Kevin was terminated from his employment.

[37] On June 30, 2020, Georgia commenced the within Application.

[38] On July 3, 2020, Georgia's initial motion was returned before Diamond, J.. Given additional concerns Georgia had raised about Kevin's behaviour, she asked for Kevin's supervised parenting time to be suspended on a temporary basis pending the production of Dr. Duff's clinical notes and records. Justice Diamond ordered Dr. Duff to deliver the copies of her clinical notes and records and confirm whether Kevin's recent blood test results show that he is taking his medication. The parties consented to Kevin having parenting time on Tuesday and Thursday evenings from 5:30 p.m. to 8:00 p.m. and Saturday morning from 10:00 a.m. to 1:00 p.m., to be supervised by Georgia's brother, Peter Gerasimopoulos. This schedule provided Kevin with a total of 8 hours of supervised parenting time in a week. The motion was adjourned to July 21, 2020.

[39] In his July 3rd, 2020 Endorsement, Diamond, J. noted that Georgia was also seeking an order for immediate possession of the matrimonial home so she and the children could return there, after having spent 6 weeks at her parents' home so the nesting arrangement contemplated at the conference before Akbarali, J. could commence. Kevin was permitted to reside in the matrimonial home until July 24, 2020 to allow him to find alternate accommodation, after which the children and Georgia were to return to the matrimonial home. Kevin moved to Niagara Falls to reside with his mother on a temporary basis, on the understanding that he would return to Toronto once he secured employment and the matrimonial home was sold.

[40] On July 21, 2020, both parties' motions were returnable before Diamond, J., being,

- a. Georgia's motion to reduce Kevin's parenting time to supervised parenting time to one day a week until a) his mental health improves and stabilizes and/or b) A. undergoes continued therapy to assist him with behavioural issues brought about because of the separation and Kevin's conduct during his supervised parenting time; and
- b. Kevin's motion for increased overnight time with L. only and leave to encumber his 50% interest in the matrimonial home to obtain a \$30,000 mortgage in favour of his counsel to secure his legal fees.

[41] On July 23, 2020, Diamond, J. did not change Kevin's parenting schedule and ordered that the supervised parenting time continue to take place on Tuesdays and Thursdays from 5-8 p.m. and on Saturdays from 10 a.m. to 1 p.m. In his Endorsement, Diamond J. made the following comments:

- a. "It is now up to [Kevin] to continue to work hard in order to not only take full ownership of his actions, but of the path forward to bridge the gap, which appears to have just started to form between him and A., before it widens."
- b. "[Kevin's] manic episode in May 2020 caused him to self-admit into the psychiatric ward of St. Joseph's Health Centre for nine days. While there have been bumps along [Kevin's] post-release road, the road is nonetheless still being travelled. As stated above, while he may not feel like it some days, [Kevin] is in fact armed with the support and tools necessary to address the needs of the parties' children, as those needs will always come first. On the record before me, I do not find it to be in the children's best interests to further limit [Kevin's] supervised access, and I hereby continue the existing consent supervised access terms on an interim basis."

[42] As stated above, Kevin moved to Niagara Falls to live with his mother in July 2020 so Georgia and the children could return to the matrimonial home. Kevin then commuted from Niagara Falls to Toronto for a total commute of four hours (2 hours each way) for each parenting visit on Tuesdays, Thursdays, and Saturdays, when his actual supervised parenting time was shorter than the commute.

[43] On July 27, 2020, Kevin served and filed his Answer and Claim. Georgia served and filed a Reply on August 7, 2020.

[44] In September 2020, Kevin became re-employed.

[45] On November 19, 2020, Kevin brought a second motion seeking increased, gradual overnight parenting time with the children. On November 23, 2020, Diamond, J. ordered that starting on November 28, 2020, and on alternating weekends thereafter, Kevin would have parenting time from Saturday at 10:00 a.m. overnight to Sunday at 3:00 p.m., to be supervised by his mother in Niagara Falls. Diamond, J. made the following comments in his Endorsement:

- a. "It is apparent that despite [Kevin's] world imploding upon him earlier this year, he has indeed taken significant strides and has shown himself to be a proud and dedicated parent."
- b. "[Kevin] should be commended for the steps he has taken, including the securing of new employment in his post-manic recovery."
- c. "...I believe that [Kevin] has done enough at this stage to warrant the opportunity he seeks and show the children that his dedication to them is real, subsisting and beneficial to all involved."

[46] On May 7, 2021, Kevin brought a third motion for increased parenting time. Only after being served with Kevin's motion materials, Georgia consented to an increase of his parenting time. Kimmel, J. made an order on consent increasing Kevin's parenting time from Saturdays at 10:00 a.m., overnight to Sunday at 3:00 p.m. and alternating Wednesdays from 6:00 p.m. – 8:00 p.m. (on the weeks he did not have weekend time), only after three weekends of him having parenting time on Saturdays and Sundays from 10:00 a.m. to 3:00 p.m. (with no overnights), and provided first:

- a. Kevin obtained a hair follicle test to go back 90 days to track his use of cocaine, alcohol, and cannabis;
- b. Kevin provided detailed information about his social work therapy¹, the Families in Transition program he was attending² and the frequency of his attendance at AA meetings.

[47] Kimmel, J.'s order indicated that the parenting schedule would be reviewed in September 2021. The Restraining Order issued by Diamond, J. on June 5, 2020 was varied so that it would not apply during parenting exchanges or if the children were participating in organized team sports.

[48] In September 2021, Kevin had his first unsupervised overnight with the children - 16 months after the 2020 episode. During this visit, Kevin explained to the children that Georgia was to blame for the marital and family breakdown. This was very upsetting to A., and L. was left giving A. and Kevin tissues as they cried. Georgia testified that when the boys returned home, they described the night as being horrible. Georgia contacted CCAS. At the time the CCAS worker was Marilyn Belas. Ms. Belas caused the Society to write to both counsel on September 17, 2021, recommending a suspension of Kevin's overnight parenting time. Kevin agreed to suspend his overnight parenting time. It is noteworthy that Ms. Belas wrote this letter without having spoken with Kevin about the parenting visit and, as a result, she testified that she apologized to Kevin for not speaking with him and obtaining his side of the story. Kevin also made a formal complaint about Ms. Belas' actions and the CCAS advised by letter that the case worker ought to have obtained Kevin's perspective and spoken with him.

[49] On April 28, 2022, Kevin brought a fourth motion for increased parenting time. Again, only after being served with Kevin's motion materials, Georgia consented to increasing Kevin's parenting time. Horkins, J. made an order, on consent, increasing Kevin's parenting time to alternating weekends starting on Friday, after school to Monday morning; providing Kevin with 6 consecutive nights with the children in the summer; providing that a new parenting schedule was to be re-evaluated in December 2022, with a view to expansion, if warranted; terminating the

¹ Exhibit 21 at Trial: Kevin's social work clinical in the Outpatient Mental Health Clinic at St. Joseph's Health Centre wrote a letter dated May 7, 2021, confirming that she had met with him for 8 sessions between March 1, 2021 and May 7, 2021 in a therapeutic manner with a focus on coping with the stress and psychological ramifications of dealing with the marital separation and the loss of access to his two sons.

² Kevin completed the Family in Transition First Steps program on May 14th, 2021 and the "Supporting Children Through Separation and Divorce" workshop offered by Family Service Toronto on June 16, 2021 – Exhibit #20 at trial.

restraining order against Kevin made by Diamond, J. on June 5, 2020; requiring the parties to continue to communicate by OFW or WhatsApp regarding delays for pick ups and drop offs; requiring the parties not to denigrate the other parent or extended family with A. or L.; providing Kevin and Georgia with equal parenting time during the Christmas school break equally; requiring the parties to attend parenting mediation with Christine Kim; permitting Kevin to travel anywhere in Ontario with the children provided he gives notice; and entitling both parents to access information about the children from all third parties.

[50] On September 15, 2022, the parties attended parenting mediation with Christine Kim. On November 8, 2022, the parties signed an Interim, Partial Separation Agreement which incorporated their mediated agreement. The parties agreed to a parenting schedule where Kevin would have an increase in his parenting time, to be phased in over time. In Phase 1, starting in January 2023, Kevin was to have parenting time on alternate Thursdays, from after school to Monday morning, and every Thursday from after school to Friday morning. This amounted to 5 overnights out of 14 days. In Phase 2, starting at the end of school in June 2023, Kevin's parenting time was to be on alternate weekends from Thursday, after school to Monday morning, and alternate Wednesdays, from after school to Friday mornings. This amounts to 6 overnights out of 14 days. Kevin proposed that Phase 3 be equal time sharing and the parties were to attend a further mediation with Christine Kim. There were three conditions precedent to the commencement of Phase 1 for Kevin to complete as follows:

- a. Kevin was to provide a letter from Dr. Duff confirming that he has attended with the doctor to monitor his prescribed medication for bipolar disorder;
- b. He was to continue to provide Georgia with this letter every 3 months until December 2023 provided that the treating psychiatrist or physician has confirmed that Kevin is adhering to his prescribed medication; and
- c. Kevin was to refrain from smoking cigarettes, consuming cannabis, or other recreational drugs, and drinking alcohol during his parenting time.

The 2023 Episode

[51] On May 31, 2023, a month before Phase 2 was to be implemented, Kevin began to experience warning signs of a possible Bi-polar 1 manic episode. He contacted Dr. Duff who prescribed Risperidone. The dose prescribed was not sufficient to stop the manic episode from happening. On June 3, 2023, Kevin's father was concerned about him when he and the children cancelled a planned trip to Kingston for the weekend and contacted the police to do a wellness check. Due to Kevin's paranoia, he did not want to open the door for the police and, as a result, they had to break the door down in front of the children. Kevin had also prepared his Last Will and Testament and had A. witness his signature before the police came.

[52] On June 13, 2022, the parties attended an urgent case conference before Horkins, J. as a result of the 2023 episode. On consent, Kevin agreed to suspend his parenting time but to continue to be able to speak with the children by telephone or FaceTime. The CCAS became involved with the family again.

[53] On the recommendation of Horkins, J., on June 30, 2023, a five-way zoom meeting was held with both parties, their respective counsel and with Dr. Duff. Prior to this meeting, Georgia and her counsel prepared a list of 21 questions and concerns so that Dr. Duff was prepared to answer these during the meeting.³ The objective of the meeting was to address Georgia's concerns about the children's exposure to Kevin's manic episode and to prepare a safety plan that would address Georgia's safety concerns for the children. A six-prong safety plan was put forward by Kevin and his psychiatrist.

The Safety Plan

[54] On July 12, 2023, Dr. Duff wrote a letter which confirmed that she had met with Kevin twice since he had been discharged from CAMH on June 6, 2023; the episode was caught early and resolved quickly; and he was back to his normal mental state. In this letter Dr. Duff outlined the Safety Plan⁴ designed to mitigate against exposure of the children to potential future episodes as follows:

- a. As a first level of assurance, Kevin would contact Georgia immediately upon sensing any early signs of decompensation. The children would then not visit with Kevin and his parenting time would be suspended until his treating psychiatrist/physician determined that he was capable to resume parenting.
- b. Secondly, Kevin will grant permission to his treating psychiatrist/physician that if they have reason to believe his mental wellness was wavering that they should directly reach out to Georgia to inform her of the concern. Kevin's parenting time would similarly be discontinued until he was sufficiently better. If CCAS is involved at that time, then they can assess the situation and determine a timeline for restarting and increasing Kevin's parenting privileges;
- c. Thirdly, Georgia will have permission to contact Kevin's treating psychiatrist or physician if she felt there was cause for concern to answer her concerns;
- d. Fourth, Kevin will give permission to release his clinical records to Georgia and her legal counsel;
- e. Fifth, Kevin will be given a prescription for Risperidone 1-2 mg which he will fill and have on hand at home which he can use proactively in the event that he senses early signs of decompensation.
- f. Sixth, Kevin will go to the emergency department to consult with a psychiatrist if he is sensing early signs of decompensation and is unable to make an appointment with his treating psychiatrist or physician in a timely manner.

³ Exhibit 14 at Trial.

⁴ Exhibit #13 at Trial.

[55] On September 20, 2023, the parties attended a Trial Management Conference before Horkins, J. The trial of this matter was fixed for five days to commence on April 8, 2024. The parties were to request that the OCL complete a Voice of the Children report; the parties were to work on an agreeable parenting schedule for Kevin and the children to be supervised by Kevin's father. Regrettably there was no agreement reached concerning Kevin's parenting time. Horkins, J. granted Kevin leave to bring a motion for increased parenting time prior to the trial.

[56] In August, 2023, Georgia would only agree to allow Kevin to have very limited supervised parenting time, supervised by Kevin's father.

[57] On October 26, 2024, Kevin brought a motion to increase his parenting time as contemplated by the order of Horkins, J., dated September 20, 2023. Kevin was not seeking unsupervised parenting. Rather, he sought to increase his parenting time and to expanding the supervisors from his father to include Jim McGinley and Michelle Mostyn. Specifically, Kevin was seeking a parenting schedule where he would be with the children on alternating Saturdays, from 10:00 a.m. to 3:30 p.m., to be supervised by his father, Wally; 3 hours supervised by Jim or Michelle; and a mid-week visit supervised by Brayden Supervision Services with pick-up at school at 3:30 p.m. to 8:00 p.m. Vella, J. ordered that Kevin's parenting time be as proposed by Georgia, to be supervised by Wally or Brayden as follows:

- a. Alternating Saturdays from 11:00 a.m. to 4:00 p.m., supervised by Wally;
- b. Alternating Sundays, from 11:00 a.m. to 4:00 p.m., supervised by Wally or Bradyn; and
- c. Every Wednesday, with pick-up at school at 3:30 p.m. to attend at a public library, the AGO, ROM or another "similar quiet place" and returned to Georgia at the Lansdowne TTC Station at 8:00 p.m., to be supervised by Brayden.

[58] With that background, an application of the best interests factors set out in s.16(3) to the facts of this case follows below, using the headings of each factor.

Best Interests Factors

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

[59] Both A. and L. are relatively young, at ages 9 and 6. They both require consistency and stability.

[60] There is no dispute between the parties as to what is age-appropriate in terms of a parenting schedule. We know from the Interim, Partial Separation Agreement, dated November 8, 2022, that the parties were comfortable agreeing to a graduated parenting schedule starting with Kevin having 5 overnights nights out of 14 days, expanding to 6 overnights out of 14 days, six months later. After the Interim, Partial Separation Agreement was signed, Kevin's parenting time proceeded without issue. At no point during the trial did Georgia suggest that 5 or 6 overnights out of 14 days did not meet the children's needs based on their ages or stages of development. The issues raised

by Georgia were only about whether Kevin can meet their needs when he is unwell from a Bipolar episode.

[61] In my view, therefore, it makes sense, only if there is a reliable Safety Plan in place, that A. and L., given their ages and stages of development, follow a parenting schedule where they have significant overnight time with both parents.

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

[62] The evidence is clear that the children are connected to and bonded with each parent. The children are also connected to their maternal extended family with whom they live on a day to day basis. The children are also bonded to Wally and Katheryn, given the time they have spent with them in Kingston and in Toronto.

[63] The Brayden supervision notes, which span the time from December 19, 2023 to March 17, 2024, demonstrate that the children are bonded and comfortable with Kevin.

[64] The CCAS workers also observed that Kevin is bonded with the children and that they have a strong and healthy relationship with him. Ali Kalaz was the Family Service Worker at CCAS involved with the family starting on November 24, 2021. The CCAS records state as follows:

- a. On December 18, 2021: "I sat and observed Kevin and the children's interactions, I noted that:
 - i. Kevin was alert and interactive with the children
 - ii. Kevin spoke calmly and clearly when addressing his children;
 - iii. A. and L. were playful and present comfortable in their interactions with their father (they went to him freely and approached him with requests and questions)
 - iv. Kevin calmly but firmly redirected A. when he did something he should not (i.e., drinking L.'s Bubbly beverage when his was right next to it). Kevin asked A. how he would feel if L. did the same thing. He noted that A. would probably not like it. A. agreed
 - v. I did not see an indication that the children were uncomfortable or reluctant to interact with their father. They presented in the same way they did when I saw them at their mother's home. They were playful, inquisitive, energetic and interactive."
- b. On January 15, 2022: "During home visits with Kevin and the children, Kevin has been observed to be attentive to, affectionate and playful with his children. Both children present comfortable with Kevin in his home. They behave in the manner they did when observed at their mother's. The children freely approach Kevin for

talk and play. A. also feels comfortable enough with his father to be “naughty” (e.g., occasionally ignoring his father and drinking his brother’s beverage, etc.)”

- c. On January 14, 2022: After speaking with Dr. Duff, in response to Mr. Kalaz’s questions, she stated that:
 - i. Kevin has settled down significantly since last time she talked to him last year;
 - ii. There is no contraindication with using alcohol and marijuana, but she is under the understanding that Kevin does not use either substance.
 - iii. That last March she had an accident, and in her absence, he decided to decrease his medication. He had this idea that he would go back to his older plan. He stopped Risperidone and reduced Epival, He is fine without the Risperidone. He has to stay on Epival as it has heled stabilize him (he got a job, an apartment, and is now seeing his children).
 - iv. Kevin was angry and had trouble seeing the other side of the story last year, but he has stabilized since then.
 - v. She has no concerns at all with Kevin’s ability to parent young children.
- d. On February 24, 2022: “I have observed you to be an attentive, interactive, and affectionate father to both your sons, who presented comfortable, responsible, and energetic during my visits to your home. I hope that you will continue to exercise reasonable judgment when responding to your children’s inquiries about the family separation.”

[65] It is agreed by both parents that they each have a strong and connected relationship with the children. Georgia’s testified that the children love Kevin and want him to be proud of them. She also testified that she knows Kevin loves the children.

Each spouse’s willingness to support the development and maintenance of the child’s relationship with the other spouse;

[66] This is a critical factor the Court has considered. While Georgia maintains that she is supportive of the children having a relationship with Kevin, I am not persuaded that she has taken active steps to facilitate their relationship with Kevin or that the children feel that their mother values the relationship with their father. Many of the steps taken by Georgia in this case, although they emanate from her concern about the children’s safety and rightly so, particularly when Kevin has been unwell, also demonstrate that Georgia has been unable to place A.’s and L.’s needs and best interests ahead of her own anxieties about Kevin.

[67] Examples of Georgia’s conduct marginalizing Kevin’s parenting role and not fully being insensitive to the mental health struggles he was experiencing, include the following:

- a. Shortly after the 2020 episode, Kevin lost his employment. He testified that this was extremely distressing to him. Dr. Duff had initiated Kevin's driver's licence suspension with the Ministry of Transportation and Georgia decided to unilaterally sell Kevin's car to her brother, without notice to him, within a week of serving him with the *ex parte* order. During her testimony when asked about whether she felt she should have told Kevin about this, she answered that "[she] didn't have to".
- b. Neither A. nor L. were present for the 2020 episode nor the police apprehending Kevin. Yet, despite this, Georgia told A. about the restraining order, which certainly was not in A.'s best interests. Georgia did not deny doing this in cross-examination. Telling A. that his father cannot come to their home, or contact Georgia, promotes a worry or feeling of anxiety about his father in A.
- c. At a case conference before Akbarali, J. in June 2020, Georgia was ordered to consult with Kevin before making any major decisions about A. and/or L. Georgia has breached this court order since it was made. During her testimony Georgia admitted that she has made several important decisions about the children without consulting with or giving Kevin any information about them, including about engaging therapists for A.
- d. Once Dr. Duff was able to report to Georgia that Kevin had stabilized from the 2020 manic and was following a treatment plan, Georgia still declined to relax the terms of the Restraining Order. Instead, Georgia continued to rely on the terms of the Restraining Order to restrict Kevin from being able to attend at the children's schools and activities. As a result, Kevin was forced to bring several motions to relax and then terminate the Restraining Order, which was not done until two years later by Horkins, J.
- e. Georgia sought exclusive possession of the matrimonial home and was granted this order. As a result, Kevin moved into his mother's home in Niagara Falls in July 2020. At that time, he requested overnight supervised parenting time with the children in Niagara Falls, which clearly would have been supervised by his mother. Georgia would not consent and, instead, sought to *decrease* Kevin's supervised parenting time from 3 days a week to 1 day a week. Diamond, J. did not reduce Kevin's parenting time. While in Niagara Falls, for 4 months, Kevin travelled via Go Transit and TTC to spend time with A. and L. The travel time from Niagara Falls to Toronto took a total of 4 hours each time (2 hours each way), which far exceeded the supervised parenting time Kevin had with the boys.
- f. On November 23, 2020, Diamond J. noted Kevin's dedication to A. and L. and Dr. Duff's updates to the Court and Georgia regarding Kevin's ongoing treatment and recovery. It was on this basis that Diamond, J. made an order for graduated parenting time, supervised overnights in Niagara Falls on alternating Saturdays from Saturday at 10:00 a.m. to Sunday at 4:00 p.m. Diamond, J.'s Endorsement reads:

“For several months, the respondent commuted to Toronto to exercise his supervised access to the children. The respondent would travel four hours (two each way) by public transit as his driver’s licence was suspended as a result of his previous manic episode. For the Tuesday and Thursday evening access visits, the respondent commuted from Niagara Falls and back (four hours in total) to spend approximately 1.5 hours each with his children...I believe that the respondent had done enough at this stage to warrant the opportunity he seeks, and show the children that his dedication to them is real, subsisting and beneficial to all involved”

- g. Since being released from St. Joseph’s Hospital in 2020, Kevin had to bring a total of four motions to incrementally increase his parenting time with the children. None of these increases in parenting time were agreed to by Georgia, until *after* Kevin was put to the expense of having legal counsel prepare and serve his motion materials. Kevin has given consent and provided to Georgia and her counsel his entire personal medical file, as well as to the Court and the CCAS in an effort to be transparent about his psychiatric care and his medication compliance.
- h. Kevin has tried to communicate with Georgia on many occasions to be part of decisions being made for A. and L., particularly with respect to their sports and extra-curricular activities. Georgia has either totally disregarded these attempts at communication or answers Kevin by saying she is not prepared to implement any of his suggestions, even though the evidence is clear he has always been the parent to initiate, teach and participate in the children’s extra-curricular and athletic endeavours.
- i. In March 2021, Kevin moved back to Toronto to be closer to the children. Because Kevin’s mother lives in Niagara Falls and his father lives in Kingston, Georgia would not agree to unsupervised parenting time, so his in-person parenting time was temporarily on hold and sparse, even though a mutual friend, Amol, was able to occasionally supervise.
- j. It took Georgia 1 full year to agree to unsupervised parenting time for Kevin and the children even though Dr. Duff reported to the Court that Kevin had recovered from the 2020 episode and had a clean bill of mental health months earlier. In May 2021, Kevin brought a motion for unsupervised parenting on alternate weekends plus a mid-week dinner from 6:00 to 8:00 p.m. Georgia would not agree to allow him to pick up the children at school on Fridays or drop them off at school on Mondays. Kevin was able to obtain an order relaxing the Restraining Order so he could attend at the children’s organized sports activities not on his parenting time. Only after Kevin was put to the expense of preparing his motion material did Georgia consent to some increased parenting time. In order for Kevin to obtain one-overnight of parenting time with the children in a 14-day period, he had to agree to hair follicle testing for alcohol even though Georgia knew that Kevin had been

sober since December 31, 2019, and attest to the completion of a parenting program, and three additional consecutive weeks of no overnights.

- k. In September 2021, Kevin asked Georgia if he could attend for L.'s first day of school and Georgia refused because of the Restraining Order. Georgia also relied on the terms of the Restraining Order to not allow the two of them to have any communication by phone; or to allow Kevin to attend virtual psychotherapy sessions for A. which she arranged with Merrill Barber until after months he had made the request. Georgia would also not allow Kevin to pick up the children at her parent's home.
- l. In September 2021, a set-back occurred because Kevin told the children that Georgia wanted the separation. This incident took place at Kevin's first overnight parenting time. It resulted in the CCAS conducting an investigation and Georgia alleged that Kevin had stopped taking his mediation, which was not true. The CCAS recommended that Kevin's overnight parenting time be suspended, which recommendation Kevin accepted despite having worked so hard to achieve his increased parenting time. Dr. Duff made it clear to Georgia that Kevin never stopped taking his Epival. It was a further 5 weeks before the CCAS agreed to a reinstatement of Kevin's overnight parenting and then it closed its file on February 24, 2022.
- m. The next increase in parenting time did not occur until April 28, 2022. Kevin brought a motion for increased parenting time so he could pick up and drop off the children at school. Again, only after Kevin had been put to the legal cost of preparing motion material and serving it on Georgia did she consent to him having a complete weekend with the children, so that Kevin could pick up the children on Fridays at school and drop them off Monday mornings. Horkins, J. also terminated the Restraining Order made during the original *ex parte* motion before Diamond, J. two years earlier. This order was critically important to Kevin because it was the first time since separation that Kevin could be at the children's school and interact with their teachers. Georgia could have consented to terminate the Restraining Order earlier but chose not to.
- n. After the 2023 episode, Kevin's parenting time with the children was suspended. On June 30, 2023, Kevin attempted to collaborate with Georgia and her counsel by arranging a five-way zoom meeting, which answered a list of 21 questions Georgia and her counsel had for Dr. Duff about Kevin's mental health. A Safety Plan was devised to ensure the children would not have further exposure to any future manic episode that Kevin may experience. Georgia is not agreeable with the Safety Plan and remains steadfast in her position that Kevin only be permitted to have supervised parenting time with the children even though Dr. Duff has been clear that Kevin is currently mentally healthy.

[68] I find that Georgia has a generalized fear about Kevin ability to parent the children effectively because he suffers from an episodic mental health condition. The allegations by her are

that his mental health condition makes him unfit to parent the children without 24 hour supervision by another adult. These anxieties are based in her fear about Kevin potentially having a manic episode in the future and it is these anxieties on which Georgia submits that the children cannot have a normalized relationship with their father even when he is well.

[69] Georgia insists on Kevin's parenting time remaining supervised. If the court were to make the order Georgia requests, there would be no basis from which Kevin could argue a material change in circumstances that would justify him having unsupervised parenting time in the future. I say this because Dr. Duff testified that Kevin is currently mentally healthy and fully recovered from the 2023 episode. On what possible basis, therefore, could Kevin bring a Motion to Change and argue that his parenting time should become unsupervised?

[70] While I am persuaded that Georgia is aware that the children love their father and vice versa, I am not of the view that she is actively demonstrating to the children that their relationship with their father is important. I believe that Georgia has been unable to do so, out of fear that the children's emotional safety and physical safety are at risk when they are in their father's care. I believe that with an appropriate Safety Plan in place, Georgia will be able to let go of some of her bias against Bipolar and anxiety about Kevin's mental health condition, so she can proactively communicate to the children that she truly believes that it is critically important to them to have a close and meaningful relationship with both parents.

The history of care of the child;

[71] Both A. and L. have been cared for by both parents. It is agreed that there were times in the marriage when Kevin was travelling for work and Georgia took on a more significant parenting role. Since separation, Kevin has demonstrated a steadfast commitment to caring for the boys. While there has been inconsistency in the parenting schedule arising out of the 2020 and 2023 incidents, I do not find that this inconsistency should be relied upon as a status quo.

[72] In terms of parenting history, Kevin testified that A. was diagnosed with ASD when he was 3 ½ years of age at Holland Bloorview. Kevin explained that he participated in sessions with the Autism Society to obtain psychoeducation about Autism; he advocated with Georgia to ensure that A. obtain his IEP; they worked together to get the available resources the TCDSB could offer A.; and he attended several sessions at George Hull Centre for families looking after children with ASD. Georgia did not deny that Kevin did these things, but she testified that she was the primary parent involved in arranging for A.'s ASD support.

[73] In terms of day-to-day care, the evidence on record is that both parents worked full time and shared in the responsibilities of cooking, getting the children ready for school, waking up and soothing the children in the middle of the night and the bedtime routine. Kevin testified that there were many occasions when he was left alone to care for the children, including nights when Georgia was out with friends and once when she went to visit her sister in San Francisco with A. and he looked after L.

[74] While Kevin was travelling for work, he testified that he was away for about 20% of the time, meaning there were weeks when he was away for 1-2 days and other weeks when he was

away for 3 days. During Kevin's travel, he explained that Georgia had more parenting responsibilities than he did but, that he maintained contact with them at night through WhatsApp video and would share information about the locations in the United States where he was which spiked A.'s interest in geography.

[75] Further, Kevin testified that he was integrally involved in teaching both children various athletic and gross motor milestones. Kevin taught A. to skate at age 3, at the Long Branch arena near the matrimonial home. He also taught L. how to skate at age 3. He plays soccer with both boys, attended all of their games and assisted in their love of hockey. Kevin testified that singlehandedly taught both boys to ride their bicycles, starting with the tricycle, training wheels to taking off the training wheels. While Georgia may have watched these events, she did not dispute that Kevin was the parent who was involved with the boys in hands-on learning of these sports-related skills. Kevin did acknowledge that Georgia was more involved in the boys swimming skills than he was.

[76] After the separation and each of the Bipolar episodes, Kevin testified that he continued to be involved with the children as much as possible. When he initially had supervised access on Tuesdays, Thursdays and Saturdays, supervised by Georgia's brother, Peter, he would take A. to his sessions at Boomerang Health and he continues now to take A. to his SLP lessons at Red Oak.

[77] Once Phase 1 of the mediated parenting agreement was in place, Kevin testified that he and the children finally had a regular routine where they were sharing meaningful time together. He described picking up the children on Thursdays from school and preparing meals with them together. He testified about engaging in a homework routine, reading and bedtime on Thursday and Friday evenings, and spending weekends being active and productive. In addition, Kevin took A. to his SPL sessions at Red Oak on Thursdays, and his minor hockey on Saturdays. Kevin's involvement in parenting was corroborated by Wally's and Katheryn's testimony. Georgia did not dispute Kevin's involvement.

[78] The evidence on record is clear that both parents have been integrally involved in the care of the children.

The child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;

[79] On March 9, 2024, Michelle Nagy, a clinician with the OCL, delivered a Voice of the Child Report ("VoC Report"). Both children were interviewed in person by Ms. Nagy on February 27, 2024 and March 5, 2024. They were accompanied by Georgia on both occasions.

[80] In the summary of the VoC Report, Ms. Nagy reports that A. was clear and consistent that he would prefer to spend the majority of his time at his mother's home. She also summarized that A. was clear that he wanted a supervisor present due to safety concerns when he has parenting time with Kevin. Ms. Nagy stated that L. was not clear or consistent in interviews.

[81] The report expressed the views and preferences of each child, which are detailed below:

A.'s Views and Preferences expressed in the First Meeting

- a. "A. indicated that the schedule changed after the police came to his home last June. He explained that his paternal grandfather called the police because he was worried that his son (A.'s father) was not feeling well. A. indicated that his father was a little sick at the time and his grandfather wanted the police to give his father medication. He stated that his father was mad at people because he was sick and under the weather."
- b. "A. stated that he does not know what his father was sick with and suggested that perhaps he was just not feeling well."
- c. "A. indicated that he was a little sad and concerned about why his father did not let them get on the train to Kingston. He stated that he was not sure what it was about but this prompted his grandfather to call the police. He stated that his father and grandfather had planned this trip to Kingston. He grandfather was worried and called the police."
- d. "A. recalled feeling scared at the time because he thought his father would be going to jail. He stated that the police told him to leave the room and wait for his mother.";
- e. "A. indicated that his since this incident, he only goes to his father's house sometimes. He stated that now he just wants to be safe when with his father. He also stated that there is always a supervisor present when he sees his father.";
- f. "A. indicated that he worries about not being safe because there was another time in June when he felt unsafe with his father. He explained that a homeless person followed them and his father gave this person a cigarette. A stranger told his father that wasn't right and A. wondered whether the homeless man could hurt them.";
- g. "A. indicated that he feels a bit better when there is a supervisor present when he sees his father. He stated that he thinks his father has an illness but he is not aware of what this illness is."
- h. "A. stated that he does not know what his mother thinks of his father. He indicated that she wants him to see his father, but she is not sure if it is a good idea.";
- i. "A. reported that he would prefer to spend most of time at his mother's home. He stated that [he] wants to see his father but would like to limit it to four hours one day per week. He indicated that he wants this time to be spent at his father's place with a supervisor present. He stated he wants this to be the case because he feels safe with the supervisor present. He expressed concern that the same types of incidents could happen as he had previously described if a supervisor was not present."
- j. "A. indicated that his mother told him to tell the clinical investigator something but then looked away and said he could not remember what he was supposed to say."

- k. “A. described his father as nice but also kind of mean. He stated that a long time ago he [had] grabbed him and said a bad word to him. A. stated that he likes to play board games with his father.”

A.’s Views and Preferences expressed in the Second Meeting

- l. “A. shared that he had parenting time with his father on Sunday. He described it as being a very good visit.”
- m. “A. indicated that he believes his father is doing well. He stated that he knows this because they are having lots of fun together.”
- n. “He stated that it was a lot of fun to play sports with his father.”
- o. “A. reported that he does not know anything about his father’s sickness. He stated that all he knows is that he wasn’t feeling well the day they were supposed to go to Kingston.”
- p. “A. stated that since that day, they now have a supervisor or his grandfather present when he sees his father. He indicated that he was not so sure why they need to be there when he sees his father. He the stated that he is not so sure that it is safe to just leave him and his brother with his father because of the incident with the train.”
- q. “A. indicated that if he was ever alone with his father and felt unsafe he would just call his grandfather. He stated that his grandfather could help his father because he is his father’s father. He indicated that he would expect that his grandfather would tell him to give his father medication and the medication would help him feel better.”
- r. “A. stated that he does not feel unsafe with his father right now because there are supervisors with them. He states that he would worry that if supervisors were not present then things may go wrong.”
- s. “His father wants them to rotate seven days in each of their homes. He states that his mother still thinks it is better for them to have less time with their father for safety reasons.”
- t. “A. stated that it is hard to say what he wants because he likes his mom and his dad. A. reported that he thinks he should a little bit of time with his father and a little bit more time with his mother. He stated that perhaps the scheduled should change and perhaps it should stay the same as it is now.” He stated that he probably wants a little bit more time with his father but he would like it to remain supervised.”

L.’s Views and Preferences expressed in the First Meeting

- u. “L. states that he sees his father at his house and his grandfather comes over when he is there. He states that sometimes his mother also pays a lady to watch them while there. He explained that he does not know how often he sees his father.”
- v. “L. stated that he likes going to see his father and likes playing Lego while there.
- w. “L. indicated that his father wants him to stay with him more. He stated that his mother wants him to stay with her more. He stated that he wants to be with each of them a lot. L. then stated that he had no idea how much time he wants with each of them but a lot.”
- x. “L. indicated that he does not care if a supervisor is present when he sees his father. He stated that he is unaware of why this person is there but indicated that they have always been there when he sees his father.”

L.’s Views and Preferences expressed in the Second Meeting

- y. “L. indicated that he sees his father with a supervisor. He indicated that his mother feels safer with someone being there because the police came to their home one time after they moved a trip to Kingston. He stated that he was not aware of why the police came to his father’s home. He described his father as being sad that day.”
- z. “L. shared that his father has a sickness but he doesn’t know what it is. He stated that his mother told him that his father was sick. He stated that he has seen his father sick twice in his life but he doesn’t know what happens when he is sick. “
- aa. “L. stated that he feels safe at his father’s house. He stated that if he ever felt unsafe he would not tell anyone because his father does not have a phone like at his mother’s home.”
- bb. “He stated that he would prefer to not see his father often. He then stated that he has no idea what he wants. L. then stated that he wants to see parent’s an equal amount. He explained that he would want to see each of his parents for four days at a time because then it is not too much time with either of them....He then stated that he also only wants to see father a little bit.”
- cc. “He stated that his father wants to see him for longer period of time. He stated that he knows this because he can see it in his father’s eyes.”

[82] Views and preferences generally are not elicited from children under the age of 9 because it is difficult to obtain independent and consistent views from a child aged 6. It is not surprising, therefore that L.’s stated views and preferences are inconsistent. In terms of A.’s expressed views and preferences; the Court has some concerns with the VoC the report for the following reasons:

- a. During cross-examination the OCL clinician stated that she did not have prepared written questions that she asked A. and L. and that it is not the policy of the OCL for a clinician to have prepared questions when interviewing a child. While that

may a correct description of the OCL policy, it makes it difficult to understand some of the statements A. made when it is not known what the questions were that he was apparently answering.

- b. It is clear from the statements that A. made that his mother did direct him to say something to the OCL clinician during the first meeting. While A. could not remember what that was, the OCL clinician did not return to that issue in the second meeting and it would have been helpful for the Court to know, if possible, what the directions were from the mother.
- c. A. consistently expresses enjoying his time with his father while also expressing some anxiety about his safety when with his father. A. similarly clearly expresses that he knows his mother is concerned about his and L.'s safety when with their father. L. also expressed that his mother pays for a supervisor and feels safer when there is a supervisor present. I am persuaded therefore, that the children are very aware that their mother feels they are unsafe in the presence of their father. That concern and anxiety on her part filters down to A. and/or L. and is not in their best interests because it demonstrates to them that they should fear their father. As a result, it is difficult to decipher and separate A.'s independent fears and concerns about spending time with Kevin and what fears exist because of Georgia expressing her own fears and concerns.

[83] While the Court notes the views and preferences of A. to only have supervised parenting time with his father, this is only one factor I have considered in reaching the order I have made. The desire for supervision clearly comes from A.'s concern about his safety. A.'s concerns may be entirely his own. It is just as likely, in my view, based on the record before me, that A.'s safety concerns arise because he is very aware, as is L., that Georgia is concerned about their safety when they are in their father's care.

[84] Dr. Duff testified that Bipolar 1 is a manageable condition and, if properly managed, people with Bipolar can be very high functioning, but for the time when one is in an episode. She also testified that there is a stigma attached to Bipolar 1 in the sense that people are afraid of it. It is a difficult disorder to understand that someone can be unwell when they are unwell but perfectly well when they are healthy. Dr. Duff specifically testified that the stigma of Bipolar is that people will still not trust the person with Bipolar or misjudge the person and blame things on Bipolar.

[85] It is clear that Georgia lacks trust in Kevin, in his judgment when he is with the children, and in his insight into his own condition. While it is understandable why Georgia is concerned about the children, I am persuaded that this lack of trust impacts the children negatively.

[86] I agree with Justice Tellier in *Byers v. Byers*, 2023 ONSC 297, that while a VoC Report is the most direct way for the court to receive the children's views and preferences from a neutral source, the main drawback of this process is "that it is acontextual, insofar as the mental health professional does not meet with the parents or gather information through other sources, including documents." In this case, the OCL clinician was clear that the only information she had from the parties were their intake forms. She did not meet with either parent or gather information from any

collaterals. It is impossible to know, therefore, whether A.'s views and preferences are influenced by Georgia, even if not intentionally.

[87] Dr. Duff testified that she thought it was important for both A. and L. to be given age-appropriate information about their father's condition. She describes having this knowledge as an important skill for both children so they are aware that Kevin has the potential to have a manic episode and if that happens, they know what to do: namely, to call their mother or grandfather.

[88] I am persuaded by Dr. Duff's testimony that A. should be privy to Kevin's condition and being part of the safety plan. In this way, if Kevin does have another Bipolar episode, A. knows what to look for, is prepared and knows who to call and will make the call as soon as possible. The training for both children, in my view, should come from Dr. Duff and not from either parent. Dr. Duff testified that children with Bipolar parents must be trained or educated with calmness and not with anxiety. The goal is to ensure that the children are confident that everything is in place if another episode happens so they feel calm that it will be managed well and for them to learn that manic episodes are infrequent events, so both A. and L. can appreciate that and enjoy a meaningful relationship with their father.

[89] I am also of the view that any parenting time schedule between Kevin and the children will have to include both A. and L. receiving psycho-education about Kevin's Bipolar condition since both children told the OCL clinician that they are aware that he has a "sickness" but do not have sufficient information about the sickness. A.'s lack of information can cause anxiety and concern, particularly, when both boys want to be sure that their father is ok. As well, any parenting time schedule between Kevin and the children, if unsupervised, will have to include a component that considers A.'s concerns and expressed anxiety about a lack of supervision so that his voice is heard.

Any plans for the child's care:

[90] In terms of this factor, both Georgia and Kevin have demonstrated they are willing and capable of making plans for the children's care while they are with either parent.

[91] Kevin, specifically, testified about the importance of having a father in his life, even though his parents separated when he was 11 years of age. Kevin explained that his involvement with both A. and L. has been extensive in terms of their sports and athletic skills.

[92] There is no dispute between the parties that either of them have plans for the children's care that are inappropriate. Georgia plans to continue to reside with the boys at her parents' home with her brother, which appears to be in the children's best interests as they both expressed enjoying living with extended family. Kevin plans to continue to reside in his apartment with the boys and there are many activities and things to do in the apartment building with the children, which is also in their best interests as they both expressed enjoying the swimming pool, gym and rooftop at their father's home. Both parents have demonstrated that they believe it is in A.'s and L.'s best interests to spend significant time with their respective grandparents.

[93] In terms of Kevin's plan for caring for the children, he testified that he would continue to take the Epival and Ability to manage his Bipolar 1. As explained by Dr. Duff, Risperidone is not

a medication Kevin takes on a long-term basis and rather, it is reserved as part of his emergency safety plan, given that it has now worked twice when Kevin had the 2020 and 2023 episodes so it can be trusted to assist Kevin in the future to get a potential manic episode under control.

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;

[94] Again, the evidence on the record demonstrates to me that both parties are equally willing and able to look after and meet the needs of the children, subject only to Kevin's ability being restrictive when he not well. This is when the Safety Plan comes into play.

[95] I find that Kevin demonstrated insight into his Bipolar condition during his testimony. He testified that he understood it is a lifelong illness with many symptoms. He described his manic symptoms as experiencing insomnia, sensations of euphoria, delusions of grandeur, having racing thoughts and paranoia. Kevin explained that he was first diagnosed with Bipolar 1 in 2003. He had one manic episode in 2010. He managed his condition with medication without any issues or episodes until the separation. Kevin explained that in addition to taking daily medications, following a healthy diet, engaging in regular exercise and mindfulness activities are all part of his wellness plan in an effort to seek to reduce stress and anxiety and maintain his wellness. Kevin testified that he had a manic episode in 2020 at the time of separation and then again in 2023. Kevin testified that while it is impossible to know for certain what causes a manic episode, his own experience is that extremely stressful life events have been a triggering impetus for him.

[96] In terms of Kevin's insight into the 2020 episode, he was able to explain that he was dismissed from his employment in November 2019, after having been at that company for 4 years. In March 2020, he was scheduled to begin new employment with Densify, but the Covid-19 health crisis hit, the first day he was supposed to start working. In early May 2020, Kevin testified that he told Georgia that he was sensing he was feeling manic and it was escalating. Weeks later, the stress from working from home full time, balancing two children's schedules who were attending school from home, and the feeling that his marriage was unravelling, caused Kevin to tell Georgia that he wanted to go and speak with her parents. Kevin explained that the series of events that followed, led him to being apprehended by the police. He testified that he recognized he was not thinking clearly and while he initially resisted being apprehended by the police, he did agree to be taken by ambulance to the hospital.

[97] Kevin testified about the work he has done and is doing with Dr. Duff, learning about the importance of taking the medications prescribed to him and seeking out support from a Bipolar peer forum. Kevin also testified about attending therapy with Frances Martin, a social worker at St. Joseph's Health Centre. Kevin explained that Frances Martin was an important resource for him as he provided Kevin with the ability to address the stress arising from the breakdown of the marriage and the loss of having A. and L. in his life. Kevin is also currently seeing a therapist through the employee assistance program offered through his employment.

[98] In terms of the incident that occurred in September 2021 at the first unsupervised overnight Kevin had with the boys, his testimony demonstrated that he had insight and took accountability for his actions. Kevin explained that he understands the gravity of him explaining to the boys that

he was not responsible for the breakdown of the family. Despite the fact that Kevin was feeling vilified by Georgia for the breakdown of the marriage and family, he was able to recognize that it was not in the children's best interests for him to have had this conversation with the children. Kevin's overnight parenting time was suspended for 6 weeks at that time.

[99] After this September 2021 incident, Kevin was upset with the fact that the CCAS worker, Marilyn Belas, wrote a letter recommending a suspension of his overnight parenting time without speaking with him at all. As a result, Kevin made a formal complaint with the CCAS about the process. Ultimately on March 1, 2022, Kevin received a letter from Nicky Mina from the CCAS who acknowledged that the case worker (Ms. Belas) and the service team at the Society could have engaged with him more with respect to the overnights. This letter confirms to the Court that the CCAS worker could have, at least, spoken with Kevin to obtain his perspective on what had transpired. Marilyn Belas also testified that she apologized to Kevin for not obtaining his perspective of that incident.

[100] The evidence on record demonstrates that Kevin is able and willing to look after the children and meet their needs when he is well. The concerns raised by Georgia are his ability to look after the children and meet their needs when he is not well.

[101] To analyze the potential risks and concerns raised by Georgia and to engage in an analysis of harm reduction, the Court has turned to the Safety Plan designed by Dr. Duff, with both counsel and the parties.

[102] In terms of the safety plan, Dr. Duff testified the following:

- a. The purpose of the safety plan is to manage a potential further Bipolar episode so it caught early, nipped in the bud quickly and to protect A. and L. from being exposed as much as possible to a manic episode, while at the same time maintaining the ability for Kevin to see and parent his children when he is well. In addition, it is meant to make everyone feel more confident.
- b. She recognized that the first level of assurance does require Kevin to contact Georgia upon sensing any early signs of decompensation.
- c. In the second level of assurance, she noted that Kevin has never before this Safety Plan granted her permission to reach out to Georgia if she has any reason to be worried about his mental state. Dr. Duff explained that the reason he has agreed to do so now, is to avoid what happened at the 2023 episode. Now, if Kevin contacted Dr. Duff about feeling a manic episode coming on, first, his parenting time would be automatically suspended and second, Dr. Duff would contact Georgia immediately.
- d. In the third and fourth levels of assurance, Dr. Duff explained that Georgia now has the ability to contact her to raise her concerns and have them answered. Dr. Duff testified she believes this assurance makes the safety plan work better because Kevin lives alone, and this will allow Georgia to reach out if she has any concerns that Kevin seems "off". Up to now, Georgia has been free to reach out to Dr. Duff

and give her information but Dr. Duff did not have the ability to release information to Georgia. Now, the safety plan allows Dr. Duff to release information about Kevin to Georgia, so they can all work together to protect the children from any future episodes. Further, Dr. Duff was of the view that obtaining her clinical records and notes may allow Georgia to feel more confident that she has a say in the parenting and is not “out of the loop”.

- e. In the fourth level of assurance, Dr. Duff explained that giving Kevin the proactive prescription of Risperidone so he has it readily available at a dosage of 2 mg is very helpful because it has been the medication known to stabilize him during a manic episode. Having the Risperidone readily available to Kevin if he starts to sense he is decomposing will allow the medicine to work in a rapid fashion, without an additional barrier of Kevin having to reach out to get the prescription.

Georgia’s Concerns about the Safety Plan

[103] Georgia’s position is that the Court should not order parenting time to Kevin unless it remains supervised because there is no way for the Court to ensure that the children will be safe, physically or emotionally. Given that Kevin suffers from Bipolar, he has and can continue to have manic and/or depressive episodes. Georgia argues that Kevin’s judgment, when it is leading up to, or when he is in an episode, is seriously lacking, making him unfit to parent the children alone or unable to place the children’s needs and interests at the forefront when he is caring for them. She argues that even though Kevin has been under the care of a psychiatrist since the 2020 episode, Dr. Duff, said that Kevin has not followed all of her recommendations in terms of medication, and in fact, cannot be trusted to do so when he is unwell.

[104] Georgia submits that Kevin should have cancelled his parenting time as soon as he had early warning signs of a manic episode in May 2023. His failure to do so caused extreme stress and emotional harm to both A. and L. Georgia describes that when she picked them up from Kevin’s home after the police had knocked down the door, both A. and L. told her that they “thought they were going to die”. She argues that the VoC Report clearly confirms that A. remains scarred by the June 3 2023 incident, A. is concerned about not being safe when he is with Kevin, and A. would prefer for his time with his father to remain supervised.

[105] Further, Georgia submits that she and Kevin cannot communicate effectively. Their text messages indicate that. As a result, Georgia does not feel she can rely on Kevin to communicate with her if he is feeling any ‘early signs’ of a bipolar episode coming on. In addition, Georgia argues that Kevin lacks insight into his Bipolar, particularly, on how his condition impacts the children. Although Georgia recognizes that Kevin is in treatment and has developed a safety plan with Dr. Duff to enable to have unsupervised parenting time, she has no confidence in the safety plan because it requires Kevin to monitor his own condition and self-report to both Dr. Duff and/or her if he is not feeling well. Given that Kevin could have done that at the end of May 2023, and chose not to do so, Georgia does not have any confidence that A. and L. will be safe in Kevin’s unsupervised care. Finally, Georgia has no stop-gap to assist in the protection of Kevin if the children are in his unsupervised care because Kevin lives alone and there is no other adult who could assess Kevin’s mental health and/or look out for A. and L.

[106] In *P.P. v. A.V.*, 2021 ONSC 7459, Himel, J. referred to the Revised AFCC-Ontario Parenting Guide⁵ and the principles therein regarding mental illness (at page 48) as being instructive:

“Parental Substance Abuse or Mental Illness

Mental illness or substance abuse problems may adversely affect parenting if that parent is emotionally unavailable, is unable to adequately discipline and set limits, or provide a safe environment for the children. In such cases, it may be necessary to consider alternative parenting arrangements such as therapeutic intervention, supervised parenting time, or limited parenting time until the concerns have been satisfactorily addressed. *Protocols may need to be put in place for ongoing or periodic monitoring and for a resumption or gradual increase in parenting time.*

To the extent that parents with a mental illness or substance abuse issue are compliant with their treatment plan, or parenting is not affected, regular parenting time can be established or resumed. In many cases, it will be beneficial to proactively plan for a relapse, with provisions to address the affected parent’s responsibility to communicate the relapse and the arrangements that will be in place to ensure the children’s safety (e.g., supervisory arrangements, switch to virtual parenting time, temporary suspension of contact) while the parent takes steps to address their situation. Parents should also consider whether their children may benefit from psycho-educational programs to assist them in understanding the issue their parent is experiencing; in many situations, this may be an important element of safety planning.

Unless a parent with mental illness or substance abuse issues acknowledges their condition and its effect on parenting, it may be necessary for the courts to be involved in making a parenting plan. It should, however, also be appreciated that even if a parent has substance abuse or mental health issues, if those are properly addressed, in the long-term children will often want and benefit from a relationship with that parent.” [Emphasis added]

[107] I agree with Justice Himel that the principles set out in the AFCC Ontario Parenting Guide are instructive for this Court. The phrase “Mental Health is Health” is derived from a movement wanting to change the way mental health is treated to be as similar as physical health is treated. The purpose is to give mental health the attention it deserves in the health care system and also for mental illness to be given treatment, not judgment. The stigma associated with Bipolar, was aptly described by Dr. Duff; it is the idea that people do not trust someone with Bipolar to have proper judgment even when he or she is well.

[108] If Kevin had another lifelong episodic condition which was rooted in his physical health, such as Diabetes, Epilepsy, or chronic back pain, as opposed to Bipolar, which is rooted in his

⁵ [Microsoft Word - AFCC-O Parenting Plan Guide \(Version 2.0, December 2021\) .doc \(afccontario.ca\)](#).

mental health, it would still be incumbent on Kevin to manage his condition and self-report when he was unwell. If a parent looking after children, for example, went into a diabetic coma, had an epileptic seizure, or suffered a serious back spasm, he or she would be unable to look after the children without support. In any of those circumstances, children could potentially be exposed to a very scary circumstance. A Safety Plan intended to mitigate the children's exposure to seeing their parent unwell would likely be what the Court would do to mitigate against future episodes of any of these physical health conditions for harm reduction purposes. Diabetic comas, epileptic seizures, and/or a parent being unable to move, could be very frightening but steps can be taken to help prevent these episodes, the most important one of which is to follow a treatment plan. However, I think it would be unlikely for a Court to order supervised only parenting time for a parent with chronic diabetes, epilepsy, or chronic back pain. I am not persuaded that Kevin's condition should be treated any differently. Bipolar, like Diabetes, Epilepsy, and chronic back pain, is a lifelong, chronic condition that is manageable, yet there are no guarantees that future episodes won't happen. Manic episodes can be prevented if steps are taken by Kevin, the most important one being following his treatment plan, which includes taking both medications daily, eating healthy, sleeping well and engaging in mindfulness activities. All steps, the Court notes, Kevin is taking.

[109] The role of the Court is to recognize stereotypes, bias, and discrimination against marginalized groups and/or individuals when such issues present and ensure that decisions are not based on any such biases, or reliance on stereotypes. In the case at bar, Georgia's position on the limits needed on Kevin's parenting time, allegedly to protect A. and L., are rooted in negative stereotypes and a long-held stigma that mental health conditions and illness prevent someone from being a fit parent. While there is a significant push to promote understanding and encourage education about mental health and mental illness in society, there remains a great deal of stigma. A parent's mental illness is not, on its own, a reason to deny someone decision-making responsibility or limit someone's parenting time. The issue, as with all parenting matters, is whether an illness, be it physical or mental, impacts a parent's ability to care for a child or places a child at risk. Georgia is essentially asking this Court to deny Kevin decision-making responsibility and limit his parenting time and ability to spend time with his children without someone else being present because of his Bipolar diagnosis and the future threat of a manic episode. To do so, given that Kevin has been declared mentally healthy by his psychiatrist, would be tantamount to this Court being swayed by the stigma and negative stereotypes about people with Bipolar. I have based my decision only on what is in A.'s and L.'s best interests given that Kevin is currently mentally healthy, with the implementation of a Safety Plan to recognize that he suffers from a chronic, episodic, health condition, to mitigate against future harm to A. and L. To limit Kevin's parenting time to 13 hours a week of supervised only parenting time as proposed by Georgia, in my view, would be using his Bipolar diagnosis as a barrier to him having equal treatment under the law. I am not persuaded that denying the children unsupervised parenting time with their father is in their best interests or in keeping with the role of a Canadian court to assess the circumstances of these children, with the parents they have.

[110] Kevin has demonstrated that he is a capable and excellent parent when he is well. He has also demonstrated insight into his condition. Kevin has sought help and treatment, not just from Dr. Duff, but from Frances Martin and now from a new therapist offered to him through his EAP. He has attended Bipolar peer groups and he is committed to his overall wellness by maintaining a

healthy lifestyle and engaging in mindfulness. Kevin has taken all these steps, when he has been at his worst. Upon suffering his first manic episode in 10 years and being hospitalized, Kevin came out of the hospital having to face that his marriage was at an end and he had lost access to his children. He then lost his employment. Notwithstanding these obstacles, Kevin persevered. He continued to attend his medical appointments, he searched for alternate employment, he leaned on family for support, he took his medication and was ultimately commended by this Court for his efforts when he was able to gain unsupervised time with A. and L. after 16 months from the 2020 episode. It has not been a road, however, without bumps. Kevin has talked to the children about inappropriate things. He now knows he cannot discuss the marital breakdown or what he believes to be the reason for the separation with them. Kevin learned the hard way about this lesson when his overnight time was suspended just after having had one overnight after 16 months without any such time with the children. Kevin has also taken himself off medication. He testified that he knows he cannot do this and that he must adhere to the medication regime prescribed by Dr. Duff. Dr. Duff's evidence is that she has also made this extremely clear to Kevin.

[111] Kevin has also demonstrated that he has insight into the early warning signs that a manic episode is happening for him. He learned from the 2023 episode that Risperidone is the medication that can stop these symptoms and he now understands that he requires a dosage of 2 mg. Dr. Duff has ensured that Kevin has this medication on hand, with him, so he does not have to take the extra step of having to speak to a doctor before he can take proactive steps to help himself. While Kevin acknowledges that he did not reach out to Georgia to let her know that he was having early signs of a manic episode in 2023, he did reach out to Dr. Duff and he is now committed to letting Georgia know as well. The steps of the proposed Safety Plan clearly demonstrate that Kevin is prepared to be an "open book" to allay Georgia's concerns because it is also *his* priority that the children do not have exposure to him in a manic episode. His desire to be an involved, co-parent with Georgia, is the reason that Kevin has authorized,

- a. Dr. Duff or his treating physician, to reach out to Georgia if they have any concerns;
- b. Georgia to reach out to Dr. Duff if she has any concerns; and
- c. Georgia to receive all of Dr. Duff's clinical records and notes.

[112] Further, Kevin has agreed that his parenting time will be immediately suspended without the need for Georgia to go to court to get an order to that effect, if he is in the midst of a manic episode.

[113] No one can guarantee that Kevin will not have a future manic episode. However, Kevin is willing to bend over backwards to do everything in his power to prevent an episode and to alert the necessary people if he feels he is decomposing. The evidence on record already demonstrated that Wally could hear in Kevin's voice if he is decomposing. The evidence is also clear that Georgia has been aware when Kevin is "sick" or "sounding off". This means that Georgia can call Dr. Duff if she is worried and with some additional psycho-education, if there are any signs, at all, A. can tell Georgia immediately. While there is a component of Kevin having to also self-identify when he feels symptoms coming on, Kevin has already demonstrated that he has sought help in these circumstances. He did not seek help from Georgia, but he is now willing to do so.

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

[114] Kevin has demonstrated a willingness to want to communicate with Georgia about the boys. Georgia on the other hand, has demonstrated that she prefers to make unilateral decisions about the boys and not consult with or communicate with Kevin about them in advance. It will be incumbent on Georgia to communicate with Kevin and not just through OFW about the boys. The better the communication between the parents the more well adjusted A. and L. will be .

[115] One such example was when Georgia began to take A. to therapy with Merrill Barber through Boomerang Health, she failed to consult with Kevin or tell him about the therapy, despite the Order of Akbarali, J., dated July 7, 2020 which required her to consult with him. Similarly, when Georgia decided to get a behavioural therapist at Works of Wonder to work with A., named Aaron Strate, she made this decision unilaterally and did not consult with or even share this information with Kevin. Kevin testified that he would have liked the opportunity to know that these third party professionals were involved with the children and to collaborate with Georgia about them.

[116] As soon as the restraining order was relaxed by the Order of Kimmel, J., dated May 7, 2021, Kevin explained that he was thrilled to be able to attend the children's soccer games, swimming lessons, etc. Georgia could have cooperated with Kevin and consented to the terms of the Restraining Order being relaxed to allow Kevin to attend at public places where the children would be, particularly, where there would have been very little risk to her safety in those circumstances.

[117] Another example of Georgia refusing to cooperate with Kevin is when the CCAS offered the parents the opportunity to attend a Family Centered Conference and Georgia refused.

[118] By contrast, Kevin has demonstrated his desire to communicate and collaborate with Georgia. He explained that he grew up with athletics being a central focus and positive influence in his life. He competed at high levels of sports and believes he best able to make decisions for both children in terms of organized sports. Kevin testified that he believes sports has a core value system that aligns with his personal value. Georgia has not, to date, cooperated with Kevin in terms of arranging the children's organized sports activities.

[119] Both parents have lost trust in one another. This is commonplace in family law disputes with martial breakdown and children. The goal is for this trust to rebuild. The goal is for the parents to work together in their effort to ensure that A. and L. reach their potential and feel comfortable that both parents are important and critical in their lives. Children need to feel secure that both parents recognize the importance of the other. It is time for this litigation to end, so the conflict can subside and for both parents to turn all their focus and attention on being the best parents they can be. For Kevin, this includes looking after himself and being vigilant about his mental wellness. For Georgia, this includes trusting that the children are being well cared for when they are with their father.

Any family violence

[120] Georgia testified there was one incident of physical violence from Kevin toward her in 2019, to which Kevin admitted to as a one-off incident about which he was remorseful. There were no allegations of any further physical violence toward Georgia or the children.

[121] Georgia also testified about Kevin being mean and nasty to her during the marriage, talking crudely in front of the children and being verbally abusive. Several Exhibits were made during the trial of messages between the parties on OFW which confirm that Kevin has been sarcastic, rude and has blamed Georgia for the marriage breakdown and for him not seeing his children.

[122] There is no disagreement that Kevin has found it extremely difficult to manage coping with the breakdown of the parties' marriage, the loss of seeing his children daily and the lack of control and involvement he has had with the children since the separation. Kevin recognizes and admits during his testimony that he has not behaved perfectly and he has paid a significant price for that.

[123] There is no suggestion that Kevin has engaged in family violence toward the children since the separation. Quite the opposite. The evidence on record confirms he is involved, affectionate and interactive with the children.

[124] He has not, however, communicated with Georgia in a civil and cooperative manner and I believe both parents need coaching on how to co-parent effectively. For this reason, I am ordering a Parenting Coordinator to work with the parties on implementing the terms of my parenting order for at least one year. A "family dispute resolution process" is defined in s. 2(1) of the *Divorce Act* as a process outside of court that is used by parties to a family law dispute to attempt to resolve any matters in dispute, including negotiation, mediation and collaborative law.

Should Kevin have decision-making responsibility over the children's sports/athletics?

[125] Kevin seeks an order requiring Georgia to consult meaningfully with him in writing on all medical and educational decisions that impact A. and L. If the parties cannot agree on a decision, Kevin proposes that they have a conversational dialogue about the disputed decision. Ultimately, however, Kevin is agreeable to Georgia having final decision-making responsibility for these issues.

[126] Kevin seeks an order that he have decision-making responsibility with respect to the children's enrolment in organized sports leagues or sports-themed camps, provided he is first required to meaningfully consult with Georgia in writing. If there is no agreement on a disputed decision, Kevin proposes that they have a conversational dialogue about it.

[127] This decision-making regime proposed by Kevin is also known as parallel parenting, a concept that is used to describe a regime where specific, designed areas of decision-making authority are allocated to each parent independent of the other: *Lall-Persaud v. Persaud*, 2019 ONSC 3587.

[128] Generally, parallel-parenting orders have been made by courts in situations where both parents have been involved with the child and wish to retain decision-making rights, but the

conflict between them is such that a joint custody order is not in the child's best interests: see e.g., *M.(T.J.) v. M. (P.G.)* (2002), 2002 CanLII 49550 (ON SC), 25 R.F.L. (5th) 78 (Ont. S.C.), at paras. 19-20; *Cox v. Stephen* (2003), 2003 CanLII 18571 (ON CA), 179 O.A.C. 45 (C.A.); *Andrade v. Kennelly*, 2007 ONCA 898, 46 R.F.L. (6th) 235; and *Ursic* (2006), at para. 26.

[129] As Chappel J. explained in *K.(V.) and S.(T.)*, 2011 ONSC 4305, at para. 79:

“There are many merits to a parallel parenting regime, in appropriate cases. It gives both the child and the parents the benefit of maintaining each parent as a meaningful player in the child's life, over and above time sharing with the child. The importance of this factor from an emotional standpoint cannot be underestimated where a family is in turmoil because of a breakdown in the parents' relationship. In addition, by delineating clear areas of decision-making between the parties, parallel parenting has the potential in appropriate cases to disengage the parties and reduce parental conflict.”

[130] I am satisfied that Kevin has been integrally involved in teaching the children athletic skills, practising their sports with them, and attending their games. I am also satisfied on the record that Georgia has attended their games and sporting events.

[131] There has been conflict between these parties and there is a history of Georgia making important decisions about A. and L. without consulting with Kevin in any manner, despite her having consented to doing so, which was incorporated into the order of Kimmel, J., dated May 7, 2021. Georgia admitted to arranging for therapy for A.'s anxiety and OCD symptoms with Merrill Barber without consulting with Kevin or, even advising him after the fact. Georgia also admitted to arranging for behaviour therapy for A. with Aaron Strate without consulting with Kevin, or even advising him after the fact. By contrast, when Kevin asked Georgia to consider some of the camps and sporting activities Kevin proposed, Georgia did not do so, or indicated she was unwilling to enrol a child in hockey if it interfered with her weekend time.

[132] To be child-focussed, the parents have to work together and be able to have some communication. Given the history, the Court cannot make an order for joint decision-making responsibility and “hope” that the parent's communication will improve. Accordingly, I find it is in the children's best interests to order Georgia to have final decision-making responsibility for education, medical and cultural/religious decisions and for Kevin to have final decision-making responsibility for the children's organized sports activities. However, because these activities will fall on each parent's time with the children, a consultation process is necessary.

[133] I find that this family could benefit from assistance from a Parenting Coordinator who could help implement the parenting plan, monitor the Safety Plan, and assist the parties in the decision-making process.

What is the Quantum of Child Support Kevin owes Georgia?

[134] Kevin has an obligation to pay child support pursuant to *CSG*.

[135] Since separation, Kevin pays monthly child support to Georgia on his base salary of \$150,000 for the parties two children in the sum of \$2,077 a month. Once he received his yearly T4, Kevin has topped up the child support in a sum equal to the difference between what he paid in child support based on an annual income of \$150,000 and what he actual earned in the preceding year. In this manner, Kevin is paying child support in accordance with the Total Income set out in his T1 General form issued by the Canada Revenue Agency, as set out in s.16 of the *CSG*.

[136] Georgia did not lead any evidence that she had difficulty with the manner in which Kevin is paying child support.

[137] In 2023, Kevin's Line 15000 income was \$391,739.89. In 2023, Georgia earned \$89,929. Accordingly, Georgia earns 19% and Kevin earns 81% of the parties' combined income for s.7 expense purposes.

[138] Starting on January 1, 2024, Kevin shall continue pay monthly child support to Georgia based on an annual income of \$150,000 for two children in the sum of \$2,077 a month. When he receives his T4 for 2024, Kevin shall top up the amount of child support he should have paid Georgia, being the difference between he paid and what he earned in the preceding year.

[139] The parties shall share the children's s.7 expenses in proportion to their respective incomes. For the 2024 year, that will be 19% for Georgia and 81% for Kevin.

[140] Neither party led any evidence about the children's s.7 expenses or the manner in which these expenses shall be paid. In fact, Georgia did not lead any evidence about her child support entitlement, what the child support should be or future s.7 expenses for the children. Further, there are no provisions for child support whatsoever in her draft order submitted by Georgia at the commencement of trial.

ORDER

[141] This court makes the following order:

- a. The temporary orders of Horkins, J., dated June 13, 2023 and Vella, J., dated October 26, 2023 shall be set aside and replaced by this final order.

Regular Parenting Schedule

- b. Pursuant to s.16.1(4) of the *Divorce Act*, commencing 7 days following this order until the commencement of the academic year 2024/2025, the respondent's parenting time shall be 4 overnights out of 14 days, as follows pursuant to the following two-week rotation:
 - i. During Week One, on alternate Fridays, pick up at school to Monday mornings, with drop off at school;
 - ii. During Week Two, on Thursdays, after school to Friday morning.

- c. Pursuant to s.16.1(4) of the *Divorce Act*, following the rotation of the parenting schedule described in b. above, at the commencement of the school year in September 2024, the respondent's parenting time shall be 5 overnights out of 14 days, as follows pursuant to the following two-week rotation:
 - i. During Week One, on alternate Thursdays, pick up at school to Monday mornings, with drop off at school;
 - ii. During Week Two, on Thursdays, after school to Friday morning.
- d. In the event that Monday is a holiday, the respondent's parenting time will end on Tuesday, at the same time.
- e. When there is no school, parenting exchanges shall take place at the respondent's resident, 155 Dalhousie Street, unless the applicant agrees that the exchanges can take place at her residence, 111 Armstrong Avenue. Parenting exchanges may also occur at any other mutually agreeable location.
- f. Pursuant to s.16.1(4) of the *Divorce Act*, the parties shall make every reasonable effort to ensure that A. and L. attend special occasions involving their peers and extended family (i.e., special birthdays and anniversaries) as well as religious and cultural events.

Safety Plan

- g. Pursuant to s.16.1(4) of the *Divorce Act*, the Safety Plan authored by Dr. Duff, attached as Schedule "A" to these Reasons shall be forthwith implemented and adopted and shall constitute an inextricable part of this Order. In addition to the Safety Plan, once a week, the respondent shall make himself available (upon 48 hours notice) to meet with the applicant either virtually or in person (the choice is up to the applicant) for the purpose of ensuring that the respondent is maintaining his mental health wellness and managing his bipolar condition.
- h. Pursuant to s.16.1(4) of the *Divorce Act*, A. and L. shall be give psychoeducation about Kevin's bipolar condition in an age-appropriate, calm manner. This psychoeducation shall be given to A. and L. by Dr. Duff and/or another mental health professional agreeable to the parties, in consultation with Dr. Duff. The purpose of this psychoeducation is to explain Kevin's condition to the children and to advise the children of signs to be aware of for any potential future manic episode.

Communication

- i. Pursuant to s.16.1(4) of the *Divorce Act*,
 - i. the parties shall communicate about A. and L. by text primarily and by telephone or in person while necessary.

- ii. if either parent wishes to share information with the other parent that does not require a response, a text message shall be sent beginning with the acronym “FYI” indicating that no response is necessary.
- iii. if either parent needs to send the other parent a message that is urgent or time sensitive and requires a response, a text message shall be sent beginning with the acronym “PR”, for Please Respondent, indicating that a response is required.
- iv. if a reply to a “PR” message cannot be sent within 24 hours, the responding parent shall reply advising when a response can be expected.

Mother’s Day/Father’s Day

- j. Pursuant to s.16.1(4) of the *Divorce Act*, A. and L. shall be resident with the applicant for Mother’s Day and with the respondent for Father’s Day regardless of the regular schedule from Saturday at 10:00 a.m. to Monday morning drop off at school if Mother’s Day or Father’s Day does not fall on the honoured parent’s weekend.

Parent’s Birthday

- k. Pursuant to s.16.1(4) of the *Divorce Act*, the regular schedule shall apply regardless of a parent’s birthday.

Children’s Birthday

- l. Pursuant to s.16.1(4) of the *Divorce Act*, the parties shall organize their own birthday celebrations with the children on their own parenting time for the children’s birthday. On a child’s actual birthday, the regular schedule shall apply. The non-resident parent shall have a video call with the child or have the option to have up to 2 hours with the birthday child but cannot disrupt dinner plans that the resident parent may have that day.

Long Weekend

- m. Pursuant to s.16.1(4) of the *Divorce Act*, if a holiday is on a Friday, the weekend shall begin on Thursday after school/camp. If a holiday is on a Monday, the weekend will begin on Friday and end on Tuesday morning with drop off at school/camp.

March Break

- n. Pursuant to s.16.1(4) of the *Divorce Act*, the parties will split the March Break equally with the transition occurring on Wednesday at 4:00 p.m., unless mutually agreed otherwise.

Greek Orthodox Easter Weekend

- o. Pursuant to s.16.1(4) of the *Divorce Act*, the children shall reside with the applicant during Greek Orthodox Easter Weekend from Friday, after school to Monday drop off at school. If Greek Orthodox Easter Weekend falls on the same weekend as Catholic Easter, the children shall reside with the applicant from Thursday after school to Tuesday morning, drop off at school.

Roman Catholic Easter

- p. Subject to o. above, if this weekend is not the respondent's parenting weekend, the children shall reside with the respondent from Saturday, at 5:00 p.m. to Easter Sunday, at 8:00 p.m.

Summer School Break

- q. Pursuant to s.16.1(4) of the *Divorce Act*,
 - i. the Summer School break begins when school closes and ends up the first day of school.
 - ii. subject to (iii) below, the regular schedule shall apply except that each parent shall have up to two weeks with the children (unless the applicant intends to travel with the children to Greece in which case, subparagraph (iii) below applies). The choice of the week(s) has to be on the parents' already scheduled weekend, as per the regular schedule.
 - iii. the applicant shall be permitted to have the children for 4 consecutive weeks during the summer vacation for the purpose of international travel to Greece to visit family. The respondent shall provide the necessary travel consent in accordance with the Travel section (subparagraph q.q. below).
 - iv. in odd years, starting with 2025, the applicant shall choose her weeks (with her 2 weeks or her 4 weeks) by February 1st and the respondent shall choose his weeks by February 15th. In even years, the respondent shall choose his weeks by February 1st and the applicant shall choose her weeks by February 15th. For 2024, the respondent shall choose his weeks by May 15th, 2024.

The Thanksgiving Weekend

- r. Pursuant to s.16.1(4) of the *Divorce Act*, the regular schedule shall apply for Thanksgiving weekend;

Halloween

- s. Pursuant to s.16.1(4) of the *Divorce Act*, the children shall reside with the applicant from after school until the following morning if Halloween falls on a weekday. If

Halloween falls on a weekend, the children shall reside with the applicant from 4:00 p.m. to the following morning at 10:00 a.m. The applicant shall be responsible for the children's costumes. The respondent shall be permitted to visit with the children to see their costumes before the children go trick or treating, if timing permits

Christmas School Break

- t. Pursuant to s.16.1(4) of the *Divorce Act*,
 - i. the Christmas School Break begins at the close of school and ends the first day of school.
 - ii. the Christmas holiday schedule supersedes the regular schedule.
 - iii. the parents shall share the Christmas School break equal, except that
 - 1. the children shall reside with the applicant from December 24th to December 25th with the transition to the respondent at 2:00 p.m.
 - 2. The children shall reside with the respondent from December 25th, at 2:00 p.m.
 - 3. the children shall reside with the respondent on December 31st to January 1st in even-numbered years and with the applicant in odd-numbered years.
 - 4. the remainder of the break shall be shared equally by the parties.
 - iv. the Christmas schedule shall be determined by November 1st of each year.

PA Days

- u. Pursuant to s.16.1(4) of the *Divorce Act*, the resident parent on PA Days shall have the extra day with the child. If the resident parent is working or unable to care for the children on the PA Day, the other parent shall be given the first right of refusal to care of the children on the PAD Day with the transition being in the morning (school time) of the PA Day, unless mutually agreed otherwise.

Changes to Schedule

- v. Pursuant to s.16.1(4) of the *Divorce Act*, if a parent request a change to the schedule, and this applies when the non-resident parents would like to have A. and L. for a special occasion (often which means the scheduling of this occasion is out of the control of the non-resident parent), the requesting parent shall communicate by email about the request for a change to the regular or holiday schedule when the

need for the change arises with as much possible notice. The other parent shall reply within 48 hours of the requested change.

- w. Pursuant to s.16.1(4) of the *Divorce Act*, neither parent shall make plans for A. and L. when they are scheduled to be with the other parent, without first having the consent of the other parent.
- x. Pursuant to s.16.1(4) of the *Divorce Act*, the parents shall canvas and obtain the other parent's consent proposed regarding any potential changes to the schedule before mentioning anything to the children about a change or special activity.
- y. Pursuant to s.16.1(4) of the *Divorce Act*, in an emergency or unforeseen circumstances (inclement weather or illness), significant changes to the drop off or return times shall be communicated by a parent as soon as these changes become known to the parent having to make them.

Parenting Coordination

- z. Pursuant to s.16.1(6) of the *Divorce Act*, the parties shall retain a Parenting Coordinator ("PC") for a minimum of one year. The parties shall ask Christine Kim for a referral for a PC. The parties shall execute the PC Agreement put forward by the PC. The role of the PC is to assist the parties in implementing the parenting schedule, safety plan and decision-making regime set out in this Final Order. If Christine Kim does not have a referral for a PC, the applicant shall submit three names of PC's and the respondent shall choose one of the names from the applicant's list. The parties shall share the cost of the PC on the basis of the applicant paying 20% and the respondent paying 80%. The PC does not have the power to change the regular or holiday parenting schedule.

Decision-Making Regime

- aa. Pursuant to s.16.3 of the *Divorce Act*, the parties shall have meaningful consultation on all decisions impacting the children, including medical and health related decision, educational decisions, cultural/religious decisions and extra-curricular activities and lessons.
- bb. Pursuant to s.16.1(6) of the *Divorce Act*, for the first year of this parenting plan, the parties shall use the PC to assist them with their consultation relating to the decisions impacting the children if they cannot agree, before either parent makes a final decision.

Medical and Health Decisions

- cc. Pursuant to s.16.3 of the *Divorce Act*, for medical and health related decisions, the parents shall consult with the children's' doctors, dentists or health-care professionals to obtain their advice on a health-related issue. The applicant shall advise the respondent of a proposed medical/health-related decision. The

respondent shall either agree to the decision or provide the applicant with the reason he does not agree with the proposed decision. If the parties cannot agree, the applicant shall have final decision-making responsibility for these decisions and shall advise the respondent of the decision she makes.

Education Decisions

- dd. Pursuant to s.16.3 of the *Divorce Act*, for education-related decisions, the parents shall consult with the children's teachers, principals, psycho-educational consultants or any other professional involved with a child regarding an educational decision.
- ee. Pursuant to s.16.3 of the *Divorce Act*, the children shall continue to be enrolled in their current school, St. Pius X Catholic School. If the applicant moves, the children shall continue to be enrolled in the Toronto Catholic School Board.
- ff. Pursuant to s.16.3 of the *Divorce Act*, the applicant shall advise the respondent of a proposed education decision. The respondent shall either agree to the decision or provide the applicant with the reason he does not agree with the proposed decision. If the parties cannot agree, the applicant shall have final decision-making responsibility for these decisions and shall advise the respondent of the decision she makes.

Cultural/Religious

- gg. Pursuant to s.16.3 of the *Divorce Act*, for cultural or religious decisions, the applicant shall advise the respondent of a proposed cultural/religious decision. The respondent shall either agree to the decision or provide the applicant with the reason he does not agree with the proposed decision. If the parties cannot agree, the applicant shall have final decision-making responsibility for these decisions and shall advise the respondent of the decision she makes.

Extra-Curricular Activities or Lessons

- hh. Pursuant to s.16.3 of the *Divorce Act*, for the children's extra-curricular activities, including ice hockey, tennis and soccer, the parents shall consult with the children's current coaches and teachers, or any other professional involved with a child regarding extra-curricular lessons. The respondent shall advise the applicant of a proposed extra-curricular decision. The applicant shall either agree to the decision or provide the respondent with the reason she does not agree with the proposed decision. If the parties cannot agree, the respondent shall have final decision-making responsibility for these decisions and shall advise the applicant of the decision he made.
- ii. If the applicant enrolled the children in any summer camps or summer programs for the summer of 2024, she shall immediately advise the respondent of these plans. After consultation with the applicant, if the parties cannot agree on whether the

children shall remain enrolled in the camps/programs in which the applicant placed them for the summer of 2024, the respondent shall have final decision-making responsibility for the children's summer programs and shall advise the applicant of the decision he makes.

- jj. Pursuant to s.16.3 of the *Divorce Act*, for activities that fall on one parent's time only, that parent may enrol a child in an activity, sport or lesson of his/her choosing.
- kk. Pursuant to s.16.3 of the *Divorce Act*, for activities that fall on both parent's days, such as on weekends, the parties shall use their best efforts to agree on which activities or sports or lesson in which the children shall participate. If the parties cannot agree, the respondent shall have final decision-making responsibility for these activities. For clarity, the respondent shall not enrol the children in activities that purposefully interfere with the applicant's parenting time. The intention is that if some of the children's sports and team activities have practices, games or tournaments which fall on the applicant's parenting time and the parties cannot agree on whether the children shall attend such events, the respondent shall have final decision-making responsibility for these activities.
- ll. Pursuant to s.16.3 of the *Divorce Act*, the parents shall provide each other with all necessary information regarding activities and lessons regardless of which day the activities fall on;
- mm. Pursuant to s.16.3 of the *Divorce Act*, the children's education, health and religious/cultural events shall take priority over extracurricular activities if there is a scheduling conflict.
- nn. Pursuant to s.16.3 of the *Divorce Act*, the children's preferences regarding activities and lessons shall be considered before any such decisions are made.
- oo. Pursuant to ss.16.3 and 16.4 of the *Divorce Act*, both parties shall be free to watch the children participate in organized sports or any school performances regardless of the regular or holiday parenting schedule. The parties shall exchange information regarding practice schedules, game schedules, tournament schedules and school-related performances.

Substance Use

- pp. Pursuant to s.16.1(4) of the *Divorce Act*, neither party shall consume alcohol or drugs in front of the children while parenting the children. The respondent shall refrain from smoking cigarettes, consuming cannabis or other recreational drugs and drinking alcohol during his parenting time.

Travel

- qq. Pursuant to s.16.1(4) of the *Divorce Act*,

- i. when a parent travels without the children, that parent shall provide a reliable telephone contact number to the resident parent in case of a child-related emergency and/or if the children want to contact the traveling parent.
- ii. the parties may travel with the children during their regular and holiday scheduled time set out in this order, taking into account safety and health advisories.
- iii. proposed travel that would involve changes to the regular or holiday schedule requires the consent of the other parent.
- iv. written notice of travel, including an itinerary and full travel information shall be provided to the other parent in advance of travel if travelling outside of Canada.
- v. if travelling outside of Ontario with the children, the parent will notify the other parent, however, consent is not required within Canada.
- vi. the traveling parent shall provide the prepared consent letter required for border crossing to be notarized to the other parent containing the following information: departure and return dates, destination, hotel/accommodation name, flight (or train) numbers, and any other pertinent information) at least 2 weeks in advance of travel. The letter shall be returned to the travelling parent one week in advance of the departure date, with the children's passports. Any other details of the itinerary that are not required in the letter shall be provided no less than one week in advance of departure date. For shorter notice travel, the parties shall provide the required documents to the other parent as quickly as possible within reason and prior to the departure date.

Residential Moves

- rr. Pursuant to s.16.1(4) of the *Divorce Act*, every effort shall be made to provide at least 30 days' notice to the other parent prior to a residential move, provided the move is in the GTA.
- ss. Pursuant to s.16.1(4) of the *Divorce Act*, the parties agree to maintain our two residences the GTA – Greater Toronto Area.
- tt. Pursuant to ss.16.8 and 16.9 of the *Divorce Act*, moves with the children outside of the requirement in rr. above shall be as per the parents' mutual agreement, or otherwise by Court Order with the notice requirements to be followed as set out in the *Divorce Act*.

Change of Name

- uu. Neither parent shall take any action to change the names of the children without the written consent of the other parent. The provision will be deemed to be a bar to any such application and may be filed with and will be binding upon any officer of the Office of the Registrar General appointed under the *Change of Name Act* who receives such application by either parent in contravention of the provision

Dispute Resolution

- vv. If there is a dispute with respect to parenting issues, including requests to change the parenting agreement, the parties shall attend at the PC. If the dispute relates to the regular schedule, the holiday schedule or decision-making responsibility, the parties shall attend at least one closed-mediation session with Christine Kim or a mutually agreeable mediator, after first trying to resolve the matter with each other. The cost of the mediation shall be shared equally.

Child Support

- ww. Pursuant to s.15.1 of the *Divorce Act*, commencing immediately, the respondent shall pay child support in accordance with his 2023 income of \$390,000, payable as follows:
 - i. On the first day of each month, the respondent shall pay child support for the two children in the sum of \$2,077 a month based on his base salary for \$150,000 a year.
 - ii. Upon receipt of the respondent's yearly T4, he shall forthwith top up the different in child support owing between \$150,000 a year and his actual income for the preceding year.
- xx. Pursuant to s.15.1 of the *Divorce Act*, the parties shall share the children's s.7 expenses on the basis of the applicant paying 19% and the respondent paying 81%. The parties shall exchange receipts for the children's s.7 expenses twice annually on January 30th and June 30th in each year and reconcile which party owes the other funds.
- yy. Pursuant to s.15.1 of the *Divorce Act*, for as long as child support is paid, the parties shall provide each other with updated income disclosure within 30 days of the anniversary date of this order in accordance with section 24.1 of the *Child Support Guidelines*.
- zz. SDO to follow

Divorce

aaa. The applicant shall serve and file a Form 36, Affidavit for Divorce, or the parties shall serve and file a joint application for a simple divorce to my attention so the divorce can be processed.

Costs

bbb. If the parties cannot agree on costs, the applicant shall serve and file written costs submissions of no more than 3 pages in writing, not including a Bill of Costs and Offers to Settle within 15 days. The respondent shall serve and file written costs submissions of no more than 3 pages in writing, not including a Bill of Costs and Offers to Settle within 7 days of being served with the applicant's costs submissions. Reply costs submissions shall be serve and filed by both parties of no more than 1 page in writing within 5 days of the respondent serving responding costs submissions.

Justice Kraft

Released: May 6, 2024

CITATION: Gerasimopoulos v. Sambirsky, 2024 ONSC 2368
COURT FILE NO.: FS-20-16735
DATE: 2024-05-06

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Georgia Gerasimopoulos

Applicant

– and –

Kevin Andrew Daniel Sambirsky

Respondent

REASONS FOR DECISION

Kraft J.

Released: May 6, 2024

SCHEDULE “A”

SAFETY PLAN

1. As a first level of assurance, Kevin shall contact Georgia immediately upon sensing any early signs of decompensation. The children will then not visit with Kevin and his parenting time would be suspended until his treating psychiatrist/physician determined that he was capable to resume parenting;
2. Secondly, Kevin shall grant permission to his treating psychiatrist/physician that if they have reason to believe his mental wellness was wavering that they should directly reach out to Georgia to inform her of the concern. Kevin’s parenting time would similarly be discontinued until he was sufficiently better. If CCAS is involved at that time, then they can assess the situation and determine a timeline for restarting and increasing Kevin’s parenting privileges;
3. Thirdly, Georgia shall have permission to contact Kevin’s treating psychiatrist or physician if she felt there was cause for concern to answer her concerns;
4. Fourth, Kevin shall give permission to release his clinical records to Georgia and her legal counsel;
5. Fifth, Kevin shall be given a prescription for Risperidone 1-2 mg which he will fill and have on hand at home which he can use proactively in the event that he senses early signs of decompensation; and
6. Sixth, Kevin shall go to the emergency department to consult with a psychiatrist if he is sensing early sings of decompensation and is unable to make an appointment with his treating psychiatrist or physician in a timely manner.