

**COURT OF KING'S BENCH OF MANITOBA**  
**(FAMILY DIVISION)**

**B E T W E E N:**

PETER WILLIAM JAMES BLAKE,	)	<u>Randall A. Horton</u>
	)	for the applicant
applicant,	)	
	)	
- and -	)	
	)	
ERIKA CLAIRE DONALD,	)	<u>Jessica A. Schofield</u>
	)	for the respondent
respondent.	)	
	)	
	)	Judgment Delivered:
	)	January 29, 2025

**PETERSEN J.**

**OVERVIEW**

[1] The parties have a high conflict relationship. Despite being intelligent, capable, and loving parents, they have been embroiled in continual conflict for more than six years. They require the Court to determine what parenting arrangements should be put in place for their seven-year-old son, H., when they live two provinces apart.

[2] The applicant/Father seeks an Order to vary his parenting time with H. The respondent/Mother acknowledges that a new parenting regime is required but does

not agree with the Father's proposed plan. At trial, the Mother also sought to change H.'s surname and the Father sought to have the support matters determined. As neither party filed pleadings to request this additional relief, I declined to adjudicate these issues.

[3] The parties have agreed on the Father's parenting time with H. for his spring and winter breaks from school each year. The parties have also agreed that each of them shall have one uninterrupted vacation week with H. (the "vacation week") in the years they do not have him for spring break. Further, they have agreed that the Father's parenting time for H.'s school breaks (spring, summer and winter), the vacation week, and in October may be exercised in Calgary, Alberta or such other location of the Father's choosing. If he chooses to exercise any of these parenting times at a location other than Calgary or Winnipeg, Manitoba, the parties agree that the Father shall be solely responsible for the cost of same.

[4] The parties have also been able to arrange parenting time between H. and the Father pending this decision.

[5] What is left to be determined is the Father's parenting time for H.'s summer break from school and every month that he does not already have parenting time agreed upon. In addition, both parties agree that they need a process to schedule the Father's parenting time each year without requiring them to negotiate the dates and times. They each recognize that negotiating parenting time is a significant contributor to their conflict.

[6] The issues to be determined are:

- a) The balance of the Father's parenting time with H. throughout the year and where it should be exercised;
- b) A process for the parties to schedule their yearly parenting time;
- c) Communication, both between the parties, and with H. via video conferencing; and
- d) Decision-making responsibility.

### **BACKGROUND**

[7] The parties commenced living together in April 2016 when the Mother moved to Calgary, where the Father lived, to begin her residency in family medicine. H. was born in April 2017. The parties married in July 2017 and separated just six months later, in January 2018. The Father filed for divorce in Alberta on July 20, 2018. The parties were divorced in May 2021.

[8] Both parties have variable work schedules that make it difficult for the Father to have set parenting time with H.

[9] The Father is a professional violist with the Calgary Philharmonic Orchestra (the "Orchestra"). He must be available and present for the rehearsals and performances scheduled throughout the Orchestra season, which runs from after the Labour Day weekend in September until mid-June each year. He does not work during the Orchestra summer break. At the end of each season, the Father receives an incomplete preliminary work schedule for the upcoming Orchestra season. He receives a "final" schedule at least 28 days before the Orchestra season commences in September. Despite this "final"

schedule, the Orchestra can make further changes to the Father's work schedule with a minimum of 28 days' notice to him.

[10] The Mother is a physician and works both as an emergency room doctor and a hospitalist, where she oversees patients' in-hospital care. The Mother provided little detail about her work and work schedule. She stated that she has various positions and for each of these, her work schedules are set from time to time but there is no specified date or dates by which she is given her work schedules.

[11] The Father has a common-law partner, Heather Stock, with whom he has lived for almost five years. The Mother has not re-partnered.

### **LITIGATION HISTORY**

[12] The parties have been litigating this matter for more than six and one-half years. Ten court orders have been pronounced during this time. To provide context, I will summarize the parties' litigation history but will only reference the Orders relevant to this decision.

[13] After their separation, the parties attempted to resolve their family matters by utilizing a parenting consultant. This ended when the Mother withdrew from the process.

[14] Shortly thereafter, in April 2018, the Mother made an urgent court application to move with H. from Calgary to Brandon, Manitoba when H. was just 12 months old. The Mother's request was based on her desire to finish her residency on a part-time basis, focus on rural family medicine, and be closer to her parents who live in Brandon. She believed that her parents would be able to assist her and H. whilst she finished her

residency. The Father filed a cross-application to prevent the Mother from moving H. from Calgary.

[15] A Final Order was pronounced in July 2018 in the Court of Queen's Bench of Alberta (as it then was) permitting the Mother to move with H. to Brandon ("2018 Final Order"). This was the first substantive Order made in this matter. The 2018 Final Order also provided the Father with joint custody, a significant increase in parenting time pending the move, and thereafter, alternate weekends in Brandon, as well as time at Christmas, for the Orchestra spring break, and in the summer months, all to be exercised in Calgary. This Order also provided, *inter alia*, that the parties have video conferences with H. every second day when in the other's care, child support be paid, and the parties share equally in the travel expenses associated with the Father exercising his parenting time with H. The 2018 Final Order also set out a process for the parties to work together to agree upon the Father's parenting time from September to August of each year, commencing with the 2018/19 year.

[16] The 2018 Final Order was temporarily suspended in September 2020 by a further Alberta Court Order which instead specified the Father's parenting time until December 2020 (the "2020 Order"). This Order also specified times for the Father's video conferences with H. three times each week.

[17] In February 2021, a Variation Order was pronounced by the Alberta Court which varied the Father's parenting time until September 2022, when H. was scheduled to start kindergarten (the "2021 Variation Order"). This Order provided the Father with parenting time for one week during the Orchestra spring break, two weeks in each of July and

August, one week over Christmas in even years, and one week over New Years in odd years. This parenting time was to be exercised in Calgary or such other location in Canada of the Father's choosing. The 2021 Variation Order also provided the Father with parenting time in Brandon for one week in May and October each year, and up to three days of parenting time in any month that he did not already have parenting time with H., as well as "such further and other reasonable and generous parenting time as may be agreed between the parties."

[18] A Consent Order pronounced by the Alberta Court in March 2021 permitted the Mother to temporarily move with H. from Brandon to Winnipeg until June 30, 2022. This Order also provided that the Father's parenting time during this period occur in Winnipeg instead of Brandon. In June 2022, the Mother chose not to return to Brandon and remains living with H. in Winnipeg despite the terms of this Order. The Father is not opposed to the Mother and H. continuing to live in Winnipeg.

[19] At the Mother's request, a Consent Parenting Order was pronounced in Alberta in June 2021 to transfer the family proceedings from Alberta to Manitoba by July 29, 2021. This Order also provided the Father with specified parenting time between June and September 2021.

[20] In July 2021, a further Consent Child Support and Parenting Order was pronounced in Alberta which requires the parties to communicate through Our Family Wizard ("OFW") and to read and respond to emails within specified timelines. This Order also, *inter alia*, set video conferences between the Mother and H. for the summer months, set timelines for the parties to consider retaining a parenting coordinator, and specified dates for the

Father's September parenting time which was previously unspecified in the earlier Consent Parenting Order.

[21] Proceedings were commenced in Manitoba in June 2022 when the Father filed a Notice of Application to Vary in this Court seeking "to implement a new parenting plan with respect to [H.], as more specifically defined in [his] parenting plan." He did so on the basis that the 2021 Variation Order was expiring and he was under the belief that there would be no Order governing the parties' parenting time after September 2022. The Mother filed a Notice of Opposition to Variation in October 2022.

[22] By consent, the Father subsequently filed a Notice of Motion to Vary in January 2024, seeking the same relief as in his earlier pleading and the Mother filed a Notice of Opposition to Variation in February 2024. With the parties' consent, I directed that the trial proceed with a hybrid hearing wherein the parties filed their direct evidence by affidavit and the cross-examinations took place before me in court.

[23] At trial, the Mother argued that upon the 2021 Variation Order expiring, the 2018 Final Order recommenced governing the parties' parenting time. Although I concur with the Mother in this regard, she acknowledged that new parenting arrangements are required to reflect H.'s current age and stage of life. Both parties agreed that the 2018 Final Order, which was made when the Mother was initially moving to Manitoba and H. was only 14 months old, is no longer appropriate for H.

### **TRANSFER OF FAMILY PROCEEDINGS**

[24] Before proceeding, I must address the transfer of the family proceedings from Alberta to Manitoba and the Order to be made.

[25] The 2018 Final Order from Alberta does not specify under what legislation it was made but it clearly was not made in a “divorce proceeding” as neither party had yet filed for divorce (see s. 2(1) of the ***Divorce Act***, R.S.C., 1985, c. 3 (2nd Supp)). Accordingly, the 2018 Final Order must have been pronounced under Alberta's provincial family law legislation and not the ***Divorce Act***. As a result, all the subsequent Orders made in Alberta varying the 2018 Final Order would have also been made under their provincial legislation.

[26] In April 2021, the granting of the divorce was severed from the balance of the corollary relief sought in the divorce pleadings. None of the ***Divorce Act*** corollary relief was dealt with. Thereafter, upon the Father seeking a further parenting order, the Alberta Court transferred the corollary relief proceedings to Manitoba pursuant to s. 6(1) of the ***Divorce Act***. Pursuant to s. 6(4), this Court now has “exclusive jurisdiction to hear and determine the proceeding.”

[27] Although it appears that the parties envisioned that the Manitoba proceeding was a variation, s. 2(1) of the ***Divorce Act*** confirms that “a proceeding in a court in which either or both former spouses seek a ... parenting order” is a “corollary relief proceeding” under that Act (emphasis added). As the 2018 Final Order and subsequent Orders were made under Alberta’s provincial legislation, a corollary relief proceeding under the ***Divorce Act*** requires that a new Final Order be made under that legislation as opposed to a variation of the prior Alberta Orders.

[28] In fact, I do not have jurisdiction to vary the 2018 Final Order or subsequent Orders made under Alberta’s provincial legislation. Pursuant to the ***Divorce Act***, I can

only vary a “parenting order” that has been pronounced under the **Divorce Act** (s. 2(1) and 17(1)). Pursuant to **The Family Law Act** of Manitoba, I can only vary a “parenting order” that has been pronounced under that Manitoba provincial legislation (s. 2(1) and 39(1)).

[29] Any Final Order I make under the **Divorce Act** shall have legal effect throughout Canada (s. 20(2)) and may be “registered in any court in a province and enforced... as an order of that court” (s. 20(3)). A Final Order pronounced under the **Divorce Act** supersedes the Alberta Orders made under its provincial legislation by virtue of the doctrine of paramountcy (**Pantry v. Pantry**, 1986 CanLII 2537 (ON CA); **Houle v. Trottier**, 2012 ONSC 6661). The result is that the orders I make pertaining to parenting time, communication, and decision-making responsibility shall supersede, or take the place of, the Alberta Court Order provisions (made under their provincial legislation) that deal with the same issues. The support provisions contained in the 2018 Final Order in Alberta continue to be enforceable until such time as a support order is made pursuant to the **Divorce Act**, at which time that order shall supersede the support provisions in the Alberta Court Order.

[30] This does not change the issues to be determined or the outcome of my decision.

[31] In Manitoba, where a divorce is not claimed but a former spouse seeks an order for parenting time or decision-making responsibility regarding a “child of the marriage” under the **Divorce Act**, it is to be commenced by filing a Petition (Rule 70.03(2)(b.1) of the King’s Bench Rules, M.R. 553/88). As previously noted, the Father filed both a Notice of Application to Vary and a Notice of Motion to Vary. Despite not having filed a

Petition, it was clear to the parties from the pleadings filed that the Father was seeking to implement a new parenting plan, which he attached to his supporting affidavit, and which included new parenting times and decision-making responsibility. The Mother agreed that new parenting arrangements are required.

[32] I am guided by Rule 70.02.1(1) which requires the Court to assist parties in securing a “just, most expeditious and least expensive determination of every family proceeding on its merits”. Accordingly, based on the principle of proportionality, I did not require either party to file further pleadings.

### **THE FATHER’S ADDITIONAL PARENTING TIME AND WHERE IT SHOULD BE EXERCISED**

[33] The *Divorce Act* requires that in determining parenting time, “[t]he court shall take into consideration only the best interests of the child...” (s. 16(1)). I am further mindful that I must consider all the relevant factors set out in s. 16(3) in determining what is in H.’s best interests. In weighing these factors, I have given primary consideration to H.’s physical, emotional and psychological safety, security and well-being (s. 16(2)). In coming to my decision, I have also considered the terms in the Alberta Orders pertaining to parenting time, video conferencing, and decision-making responsibilities as they have, together, created the current status quo for H. and his parents.

[34] H. is an active, independent, inquisitive and happy seven-year-old child. He attends grade 2 at a French Immersion school. From the parties’ testimony, H. does well at school, has many friends and enjoys numerous extracurricular activities. In light

of H.'s age and the conflict that he has undoubtedly been subjected to, it is not appropriate to garner his views or preferences.

[35] In his early years, H. moved with the Mother from Calgary to Brandon and then, three years later, from Brandon to Winnipeg. As a result of the Mother's moves, H. has become accustomed to travelling to Calgary on a regular basis to spend time with the Father in his home.

[36] From all of the evidence before me, I have no doubt that H. has a strong and loving relationship with each of his parents. It is clear from each of the parties' testimony that they love H. immensely. This is not a case about either party's parenting ability. Both parties clearly acknowledged in their closing arguments that the other party is a good and capable parent to H.

[37] The Father has been actively involved in H.'s life since birth and this has only been limited by the fact that the Mother and H. moved to Manitoba more than six years ago. The Mother acknowledged in her testimony that had she not moved with H., she expects that the parties would have been equally involved in H.'s life, which may have included the parties having equal parenting time.

[38] The Father described in detail the many activities that he and H. participate in when together, whether it be in Manitoba or Alberta. It is clear that the Father and H. enjoy their time together and participate in a wide range of activities that challenge H. physically, mentally and emotionally. I find that H.'s life is enriched by the time he spends with the Father.

[39] H. also has strong relationships with each party's extended family. H. has a good relationship with Ms. Stock, whom he has known for five years and is comfortable in her company. H. also appears to have good relationships with his grandparents despite his paternal grandparents living in British Columbia and his maternal grandparents living in Brandon. H. also has a relationship with Ms. Stock's parents. H. is fortunate to have so many people that provide him with love, care and support.

[40] On the face of it, both parties expressed a willingness to support the development and maintenance of H.'s relationship with the other party, however, I find that this is where the parties' difficulties primarily lie. Although the Mother quite rightly acknowledges that H. should have a meaningful relationship with the Father and repeatedly professed to fully support this, her actions suggest otherwise.

[41] From all of the evidence before me, I find that the Mother has been controlling and rigid in scheduling H.'s time with the Father and has, at times, been manipulative. This has impacted the parties' ability to co-parent H. The Mother's actions have created conflict between the parties which is unnecessary and not in H.'s best interests. I have come to this conclusion based on the evidence. By way of example,

- a) Following the 2018 Final Order being granted, the Mother demanded that she drop off H. at the Father's rented accommodations to enable her to vet the suitability of the residence. The Final Order did not provide her with such powers;
- b) The Mother has delayed the commencement of the Father's in-person parenting time with H., sometimes for upwards of two hours, on the

premise that H. insisted that they finish reading a book or do some other small task. It is hard to believe that such tasks could take two hours to complete. Although the Mother denies that she has been late for the Father's parenting times, I find the Father more credible on this issue. Further, I agree with the Father that the Mother could have redirected H.'s attention to avoid being substantially late for his parenting time had she wanted to do so;

- c) The Mother has frequently scheduled activities or vacations on days that the Father had previously requested parenting time. In these situations, it has typically been the Father's parenting time with H. that has been reduced to accommodate the Mother's plans. The Father indicates that he has agreed to these reductions because he fears that otherwise he would not get to see H. at all. A recent example of this will be provided later in this decision;
- d) The Mother has not respected H.'s court-ordered video conferencing time with the Father. She continues to be present and often disruptive during the Skype calls despite specifically agreeing that H. will be provided privacy for these calls. Further, in January 2024, the Mother, in one week, did not commence the Skype calls as scheduled and was respectively 15 minutes, four hours, and 37 minutes late for three consecutive calls, without any notification to the Father that the calls would be delayed; and

- e) The Mother fails to respond to the Father's emails in a timely manner despite a court order requiring her to do so. An example of this was the Father's attempt to schedule his summer parenting time for 2022. In an attempt to avoid conflict over setting his upcoming summer parenting time, the Father emailed the Mother in October 2021 to inquire if she had any preferences for the 2022 summer months. The Mother did not respond to this inquiry despite the Father sending follow-up emails.

Having received no substantive response from the Mother, the Father instead provided his specific requests for the upcoming summer at the end of March 2022. When the Mother still did not respond, the Father booked flights for his proposed parenting time (July 1 to 14<sup>th</sup>) and advised the Mother.

In mid-April, the Mother replied to advise that she was not in agreement with his proposed dates. The Father told her that he now had other commitments and booked these dates as she had failed to respond. The Mother did not reply. The Father sent a further follow-up email to the Mother on May 24, 2022, to which the Mother again did not immediately respond.

The Mother replied roughly three weeks later, in mid-June, just two weeks before the Father was scheduled to commence his July parenting time with H. In this email, she stated that he is not to unilaterally choose dates but then she, herself, unilaterally informed the Father that he could have

parenting time with H. from July 11 to 24 or July 19 to August 1, 2022. The Father responded the next day to propose a compromise but the Mother did not respond to this email. Although neither party indicated what parenting time the Father ultimately had with H. in July 2022, the Mother indicated in her testimony that she had H. for the Folk Festival at the beginning of July in each of the last three years, which would have included 2022.

[42] Despite her denials to the contrary, the Mother's testimony and actions revealed that she believes that her time and plans with H. should be prioritized over the Father's parenting time.

[43] I appreciate that the Mother attempted, in her closing argument, to devise a plan to minimize the ongoing conflict that arises whenever the parties attempt to schedule the Father's parenting time. Although I agree that reducing the conflict between the parties is in H.'s best interests, there are other factors that must be carefully considered and weighed in determining what is in H.'s best interests.

[44] I find that it is important that H. continues to spend regular periods of parenting time with the Father.

[45] The Mother's closing argument proposing that in six months of the year, the Father's parenting time of up to four nights in the month be pre-set, without regard to his work schedule, is not in H.'s best interests. This proposal could result in the Father being unable to exercise half of his monthly parenting time with H. If the Father is unable to accommodate the pre-set parenting time, H. will not see the Father in person for the

entire month and it could result in H. not seeing the Father in person for multiple months at a time (for example, September, October, and November). This is clearly not in H.'s best interests.

[46] H. lives with the Mother in Manitoba. No one is seeking to change this. Even if I am inclined to grant the Father all of the parenting time he seeks, he will only have approximately 26% of in-person time with H. in any given year. The Mother has the benefit of having the majority of parenting time with H. throughout the year. This is the piece that the Mother does not appear to appreciate.

[47] In most months, the Father only has up to four nights of parenting time. These often occur from Sunday to Tuesday, Wednesday or Thursday depending on the Father's work schedule, as he typically performs on Friday and Saturday evenings. The Mother has parenting time with H. for the balance of the month. The Mother is at liberty to organize her work schedule to maximize her time with H.

[48] If the parties lived in the same city and shared parenting time, there is no doubt that sharing H.'s school breaks equally would be a reasonable expectation and, perhaps, a reality. In light of the parties living in two different provinces, this is not a realistic expectation. H.'s school holidays are the best opportunity for the Father to enjoy extended periods of parenting time with H. Similarly, long weekends or school professional development days ("PD days") that can be included in his parenting time also provide the Father with an opportunity to spend an additional day with H. when he is not in school. These should be utilized by the Father whenever possible. The Mother will have the opportunity to take advantage of the PD days that fall on a Friday to give

her a “long weekend” at times. The Mother, of course, has the benefit of having H. in her care at all times that H. is not in his Father’s care.

[49] At the commencement of trial, the parties had already reached agreement to share H.’s spring break and winter break equally. This only leaves H.’s summer break from school to be determined by me.

[50] Contrary to the Mother’s testimony, it appears that no matter what the Father proposes for his parenting time with H., it is rarely acceptable to the Mother. Either the Mother has already planned something for the weekend that the Father is seeking, or it is the only weekend that the Mother is not working in the month, and she wants to spend it with H.

[51] A prime example of this was the Father’s request to have parenting time with H. from February 8 to 12, 2024. He requested this weekend to take H. skiing to celebrate his 40<sup>th</sup> birthday. The Father originally made this request in September 2023.

[52] The Mother refused to consent to this on the basis that the Father had parenting time for the second half of H.’s winter break, which extended into January, and would have H.’s spring break at the end of March. She was concerned about H. travelling three months in a row and did not want H. to miss two days of school to attend this trip. On November 29, 2023, when the parties were unable to reach agreement on this, the Father was granted permission to proceed with a contested interim motion to have this issue determined.

[53] The Mother ultimately agreed that the Father could take H. skiing provided that the child was returned to Winnipeg one day earlier than requested, the Father consent

to the Mother travelling internationally with H. for one week immediately following the ski trip, and other miscellaneous relief sought by the Mother. H.'s earlier return was necessary because the Mother had arranged for her and H. to leave on vacation February 12, 2024, despite knowing that the Father had asked for this time four months earlier.

[54] When the Father originally requested this weekend, there was no suggestion that the Mother was planning a vacation in February. The Mother only advised the Father of her travel plans in December 2023. She testified that she delayed telling the Father until she had received confirmation from her major employers that she could get the time off work. As she had known since September that the Father wanted parenting time from February 8 to 12, 2024, she could have requested vacation time that did not coincide with the Father's requested dates. Instead, she asked to have vacation time that clearly overlapped the dates sought by the Father. In fact, the Mother testified that she had hoped to commence her vacation with H. as early as February 8, 2024, knowing that these were the specific dates that the Father was seeking to take H. skiing. I am left to conclude that the Mother specifically scheduled her vacation adjacent to the Father's requested parenting time to justify reducing the Father's weekend time with H., which ultimately occurred.

[55] In addition, despite the Mother objecting to H. missing school to have parenting time with the Father, she then took H. on a seven-day vacation immediately following the ski trip with the Father. As a result of the vacation with the Mother, H. missed an

additional five days of school. H. also missed a further one-half day, or more, of school because the Mother missed their return flight home.

[56] Similarly, the Mother was also reluctant to agree to the Father's requested February weekend because it would result in H. having to fly three times in three months. Yet, despite this alleged concern, the Mother voluntarily chose to take H. on vacation in February, which resulted in him flying a fourth time in three months.

[57] A further issue arose with respect to this February parenting time when the Father told the Mother that Ms. Stock would need to pick up H. in Winnipeg in his place. This resulted from him having to make last minute travel arrangements because the Mother delayed agreeing to his requested parenting time. The Mother refused to agree to Ms. Stock picking up H., despite knowing that H. was familiar with Ms. Stock and had spent considerable time with her over the last four years during the Father's parenting time. The Mother ultimately relented just prior to the contested motion proceeding but not without an inordinate amount of stress and uncertainty being placed on the Father and, more importantly, H.

[58] This is not to say that all the blame falls at the Mother's feet. The Father has, at times, sought to make last minute changes to his parenting time that are difficult for the Mother to accommodate. I also appreciate that difficulties arise when the Orchestra makes changes to the Father's work schedule with just 28 days' notice or when the airline changes its flight schedule at the last minute.

[59] Both parties have also attempted to interpret the prior Orders to their benefit.

[60] What these parties need is a clear, detailed Order as to each of their parenting time with H. and a process for scheduling their parenting time without having to agree.

[61] For ease of convenience, I will address each of the Father's unresolved parenting times over the course of a year.

***Summer Break***

[62] The Father wants to maximize his parenting time with H. in the summer months each year when he is off work and H. has no school and reduced activities. He seeks to have two three-week periods of parenting time with H. during the summer break. He argues it is not a significant increase as he had H. for approximately five weeks in total in 2023 (for two periods of just over two weeks each). For ease of scheduling, the Father proposed that he have the first three weeks and the last three weeks of H.'s summer break, which would provide the Mother with approximately three weeks with H. between the Father's summer periods of parenting time.

[63] The Mother was not agreeable to this for 2024 as she indicated she had plans to take H. to the Folk Festival from July 11 to 14, 2024. She also indicated that she wanted to take H. camping with friends and to the Icelandic Festival in Gimli the August long weekend to expose H. to her family's heritage. She instead proposed that the Father have parenting time from July 15 to August 1, 2024 (17 nights) and from August 15 to September 2, 2024 (18 nights) for a total of 35 nights whilst she would have 33 nights.

[64] The Mother's proposed summer plans for 2024 precluded the Father from being able to have two three-week periods of parenting time with H. over the more than nine weeks that H. had no school.

[65] At the conclusion of the trial and for the parties to be able to plan their summer holidays, I provided an oral decision for the parties' summer parenting time for 2024. I found that it was important for H. to maximize his time with the Father over the summer months when they respectively have no school/work commitments. The Father had H. for two blocks of at least two weeks of summer parenting time in the summers of 2021 and 2022 and for two blocks of just over two weeks in 2023.

[66] To accommodate the Mother's plan to take H. to the Folk Festival in 2024, I made an Order that the Father have a three-week period of parenting time immediately following the Folk Festival and a second three-week period at the end of H.'s summer break but had the Father return H. two days before school recommenced. The Mother had H. for the balance of the summer break.

[67] To avoid unnecessary conflict in future and to enable the parties to plan their summer holidays, I find the Father's proposal to have set parenting times over the summer break reasonable.

[68] For clarification, H.'s summer break shall be defined as the day after his school ends in June until the day before his school recommences. As a result of this, the first week of the summer break may include a few days at the end of June and the last week of the summer break may include the first few days in September.

[69] In the Father's closing argument, he offered that in alternate years, the Mother could have the first part of July to enable her to take H. to the Folk Festival. This would allow her to take H. to the Icelandic Festival in the other years.

[70] In 2025 and odd years thereafter, the Father shall have H. for the first three weeks and the last three weeks of H.'s summer break, with H. being returned two days before his school recommences. In 2026 and even years thereafter, the Mother shall have H. from the day school ends until the Monday following the second Friday in July to enable her to take H. to the Folk Festival. The Father shall then have H. for the next three weeks, commencing on the Monday following the second Friday in July, and the last three weeks of H.'s summer break, with H. being returned two days before his school recommences. The Mother shall have parenting time for the balance of H.'s summer break each year.

***June***

[71] The parties have agreed that the Father shall have parenting time with H. in Winnipeg for up to six nights in June each year. The Mother, however, wishes to restrict the Father's parenting time to not be the last week of June.

[72] As the Orchestra season ends in or about mid-June, this provides the Father with the ability to have additional time with H. in Winnipeg.

[73] Although the Mother's restriction may be understandable in odd years when the Father is to have his summer parenting time the first three weeks of July, it is contrary to the Mother's argument at trial that it is beneficial for the Father to spend time with H. in Winnipeg so that he can attend H.'s extracurricular activities, school events, etc. The last week of June may include activity wind ups and special school activities. These are special events that the Father often does not have the opportunity to attend and this week could provide the Father with the ability to do so.

[74] I am not persuaded that the Father's June parenting time should be restricted in even years when the Mother has her summer parenting time the first two weeks of July. Accordingly, I order that the Father have parenting time in June for up to six nights in Winnipeg and that in 2025 and odd years thereafter, this parenting time shall not be the last week of June. In 2026 and even years thereafter, there shall be no restrictions on when the Father takes his June parenting time. The process for scheduling the Father's parenting time in June and other months will be set out later in this decision.

***October***

[75] The Father seeks a four-day weekend of parenting time in October, from Thursday to Monday, to be exercised in Calgary.

[76] The Mother agrees to this but wants the Father's parenting time to be the Thanksgiving long weekend in odd years and the third weekend of October in even years. The Mother proposes the third weekend of October in even years because there is a province-wide PD day adjacent to that weekend every year.

[77] The Thanksgiving holiday is important to the Mother as she seeks to celebrate it with H. in alternate years. I appreciate that it may also be important to the Father but that his work commitments may interfere with the holiday. The Mother had H. for the Thanksgiving long weekend in 2024. Accordingly, the Mother shall have parenting time with H. for the Thanksgiving long weekend in even years, commencing in 2026. The Father shall be entitled to have the Thanksgiving long weekend in 2025 and odd years thereafter. In even years, and in odd years, if the Father is not able to have parenting time over the Thanksgiving long weekend, he shall have up to four nights of

parenting time with H. in October and shall be entitled to exercise this parenting time in Calgary each year. In choosing his parenting time for October in even years, the Father shall give first consideration to having H. the third weekend of the month, if possible, to minimize the days that H. has to miss school to attend this parenting time in Calgary.

***Other Months***

[78] The Father seeks to have parenting time of up to four nights in every month that he does not already have parenting time with H. This is consistent with what the parties have been doing pursuant to the 2021 Variation Order although it is four nights instead of three.

[79] The Mother's parenting plan attached to her affidavit did not provide the Father with parenting time every month, however, in cross-examination, she stated that this was an error and that she intended for the Father to have parenting time each month. In her closing argument, she agreed to the Father having up to four nights of parenting time in any month that he did not already have scheduled parenting time. For most of these months, she argued that the Father's parenting time commence the last Sunday of the month and that for November, his parenting time be set to commence the third Sunday of the month. For March and December in odd years, the Mother proposed that the Father select his parenting time no later than July 15<sup>th</sup>.

[80] As previously explained, having pre-determined periods of parenting time is not in H.'s best interests as it may preclude him from seeing the Father in-person for an entire month or, perhaps, months at a time due to the nature of the Father's work obligations.

[81] I find that it is in H.'s best interests to have parenting time with the Father each month. In the months that he does not already have parenting time with H., the Father shall have up to four nights with H.

***Miscellaneous Provisions***

[82] I also order that the Father have such further and other times as may be agreed between the parties. Although I appreciate that the parties may not yet be able to work together cooperatively, I am hopeful that they will, in time, be able to make accommodations for one another and in particular, where it is beneficial for H. The Father's request for additional time shall be provided to the Mother with at least 25 days' notice and the Mother shall use her best efforts to accommodate his request.

[83] The Final Order shall also include the following miscellaneous provisions:

- a) neither party shall speak negatively about the other party, or allow third parties to do so, in H.'s presence;
- b) neither party shall move H.'s residence from Winnipeg without the written consent of the other party or further court order; and
- c) the Mother shall be responsible for scheduling and taking H. to all of his medical and dental appointments; she shall provide the Father with at least seven days' notice of the scheduled appointment so he can communicate any concerns he may wish to have addressed at the appointment; and the Mother shall, within 72 hours of the appointment, provide the Father with an email outlining all pertinent information shared by H.'s doctor, dentist or other healthcare provider.

***Calgary Parenting Time***

[84] The parties have agreed that the Father may exercise five of his parenting times each year in Alberta. These include spring break or the vacation week, two blocks of parenting time during the summer break, in October, and the winter break.

[85] The Father also seeks to exercise his February parenting time in odd years and his May parenting time in even years in Calgary. The Mother opposes this as it is her position that an additional trip to Calgary each year will be too much for H.

[86] I am not persuaded by the Mother's argument. In all other aspects of H.'s life, I have been told he is thriving. It is only when it relates to additional time with the Father that the Mother suggests that H. is having difficulties. In particular, the Mother suggested that H. struggles at transitions. In cross-examination, the Mother disclosed that she has been surreptitiously audio recording all of the transitions since the parties separated. The Father was unaware of this. Yet not one of the audio recordings were submitted into evidence. If, in fact, H. was having difficulties during transitions, I fully expect that the Mother would have tried to have it admitted as evidence before me.

[87] I am prepared to allow the Father to exercise his February and May parenting times, in alternate years, in Calgary as requested. These parenting times shall be from Thursday after school until Monday. This will enable the Father to have H. in Calgary roughly every other month, although I concede that in the summer months, he will be in Calgary two months in a row. This will result in H. travelling to Calgary six times from September to August each year.

[88] I would also order that, going forward, neither party shall audio or video record the transitions or any other interactions between H. and the other party.

### **PROCESS FOR SCHEDULING PARENTING TIME**

[89] It is important for the parties to have a detailed process for scheduling the Father's parenting time with H. Both parties agree that the process needs to minimize the requirement for them to negotiate the terms of the Father's parenting times. They disagree on how this is to be achieved.

[90] The 2018 Final Order set out a scheduling process, however, it was premised on the parties working together. This did not occur and conflict ensued as the Mother rejected the Father's proposed parenting times to accommodate her professional commitments or personal commitments involving H. This has become the greatest source of conflict between the parties and it must be avoided.

[91] To minimize this conflict, the process to be utilized to schedule the Father's parenting time shall be as follows:

- a) By July 15<sup>th</sup> of each year, the Father shall provide the Mother with his initial proposed parenting times for September to December. It is understood that these proposed times will be based on the preliminary Orchestra work schedule he receives in June and that these proposed dates may change;
- b) The Father's September parenting time shall not occur in the week following H.'s return to the Mother's care for the commencement of school. This will enable the Mother to have parenting time with H. and make plans for the second weekend of September each year;

- c) By August 15<sup>th</sup> of each year, the Father shall provide the Mother with all of his specified parenting times for the upcoming year, from September to August;
- d) The Mother shall not make alternate plans for H. during any of the Father's specified parenting times;
- e) By September 5<sup>th</sup> in odd years, the Mother shall provide the Father with her chosen vacation week with H. for the upcoming year (which shall not conflict with the Father's parenting times);
- f) The Father shall advise the Mother immediately should the Orchestra make any change to his work schedule that requires a change to his chosen parenting times. The Mother shall make her best efforts to accommodate these changes as well as any changes that are requested as a result of changes to flights by the airline;
- g) The Father shall provide the Mother with the flight arrangements, and the pick-up and drop-off times as soon as he books the necessary flights and shall do so at least 25 days prior to the commencement of his parenting time. The pick ups shall not be earlier than 9:00 a.m. and the drop offs shall not be later than 8:00 p.m. (or landing by 6:00 p.m. if it is the day before school recommences). The pick ups and drop offs shall occur at H.'s school or daycare, whenever possible, but if that is not possible, they shall occur at the Mother's home. Where there is limited time between the flight into Winnipeg and the return flight to Calgary, the Mother, or an alternate

of her choosing, shall drive H. to the airport or pick H. up from the airport, as required; and

- h) All of these communications shall be set out in writing to the other party via OFW.

[92] Although I appreciate that 25 days' notice is not ideal, the Father is restricted by the fact the Orchestra can change his work schedule with just 28 days' notice. In these situations, the Father requires some time to schedule flights. This is necessary as the Father explained that it can take up to two hours to book guardian fares, which provides a reduced fare for the companion accompanying H. to Calgary. This is a significant cost savings for the parties but requires the Father to telephone the airline's special care desk to arrange these fares.

## **COMMUNICATION**

### ***Between the Parties***

[93] To effectively co-parent, the parties must be able to communicate with one another on a regular basis. Both parties acknowledged that they need to improve their ability to communicate with one another.

[94] The parties are currently using OFW to communicate pursuant to the Consent Child Support and Parenting Order. That Order provides that the parties review their OFW account two times each week and respond to all email communications within seven days of reading the email.

[95] Despite the terms of that Order, there is a history of the Mother not responding to the Father's email communications in a timely fashion. When asked why she could not

check her OFW account daily or respond in a more timely fashion, the Mother indicated that she is unable to because of her work schedule and that if the email includes requests for parenting time, it may take some time to review her work schedule against the Father's requests. Based on the new protocol for scheduling the Father's parenting time, this should no longer be an issue.

[96] I find it incredulous that, in the past, the Mother has not responded to the Father's emails for months at a time. Although I appreciate that the Mother is a physician and may, at times, work long shifts, the Mother did not provide a clear explanation of her work schedule, how often she works or for what periods of time. I do not accept that the Mother is only able to review her OFW emails from the Father twice a week. In fact, the Father indicated that when an OFW email is received, the recipient receives notification of the new email and therefore, there is no reasonable explanation why the Mother cannot read her OFW emails on a daily basis.

[97] I also have difficulty understanding why it would take a week for the Mother to respond to an email. Again, I appreciate that the Mother has work obligations and an active seven-year-old, however, many other parents of active seven-year-olds who work full-time have the ability to review and respond to emails on an almost daily, if not daily, basis. It would be helpful to the parties' ability to communicate if there is a timelier response to email communications.

[98] I therefore order that the parties continue to use OFW as their regular form of communication and they each be responsible for paying for this service. Further, I order that they review their OFW account on a daily basis and that they respond to all

communications within 72 hours of receiving an email should it require a response. In addition, all of the parties' communications shall be respectful, concise and child-focused.

[99] In the event of an urgent or emergent issue, the parties may text one another.

[100] Where both parties are present at transitions, the parties shall be cordial to one another and shall keep their goodbye with H. positive and brief.

[101] Both parties indicated an ongoing desire to retain a parenting coach or coaches to assist them with their communications. Despite this, it has not come to fruition. Each party blames the other for their inability to retain such a professional.

[102] I am mindful that there is a fee for these services and that the Father said his finances are limited and have been stretched thin as a result of him having to initially bear all of the travel expenses necessary to exercise his parenting time with H. I am also mindful that the parties have not reconciled these travel expenses or H.'s special or extraordinary expenses for three years despite being obligated to do so on an annual basis pursuant to the 2018 Final Order. Accordingly, the parties are directed to take the necessary steps to reconcile their travel and special or extraordinary expenses forthwith.

[103] There was also some confusion about the role of a parenting coach as opposed to a parenting coordinator. A parenting coach is typically a social worker, psychologist or counsellor that can assist the parties in mediating day-to-day parenting issues. A parenting coach does not have the ability to arbitrate matters between the parties. The parties may either retain one parenting coach to work together with the parties or alternatively, each may retain their own parenting coach to work as a foursome to resolve

issues that may arise. A parenting coordinator, on the other hand, has the ability to mediate and arbitrate parenting issues for the parties. In Manitoba, the Family Arbitration Regulation, M.R. 105/2019, requires an arbitrator in a family arbitration to be a practicing lawyer with a minimum of 10 years' experience with family law as their primary area of practice (s. 1).

[104] The Father is open to retaining either one parenting coach or a parenting coordinator to assist the parties. The Mother seeks to retain two parenting coaches and is opposed to retaining a parenting coordinator.

[105] The ***Divorce Act*** provides at s. 16.1(6) that "[s]ubject to provincial law, the [parenting] order may direct the parties to attend a family dispute resolution process." A family dispute resolution process is defined 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" (s. 2(1)).

[106] I order that the parties retain one parenting coach for a minimum of 12 months to assist them in improving their communication and to mediate any parenting issues that may arise between them in future. I am hopeful that a parenting coach may assist the parties in avoiding further litigation. The costs associated with the parenting coach shall be shared equally between the parties.

[107] It would not be appropriate for the parties to retain Dr. Rosalyn Golfman for this role as the Mother stated that she has been working with Dr. Golfman for some time.

[108] If the parties are unable to agree upon the parenting coach to be retained within 30 days of receiving my decision, the Father shall, within seven days thereafter, provide

the Mother with the names of two parenting coaches in Manitoba that he is agreeable to using. From those two names, the Mother shall, within seven days, pick the parenting coach to be retained and notify the Father of her choice.

***Video Conferencing with H.***

[109] From the pronouncement of the 2018 Final Order, the Father has had regular video conferencing with H., via Skype or FaceTime. This originally occurred every second day during H.'s mealtimes but has since been varied to take place three times each week. The current video conference schedule is on Tuesdays at 6:00 p.m., Thursdays at 7:45 a.m., and Saturdays at 8:30 a.m. (all Manitoba time). The Mother also has reciprocal video conferencing with H. when he is in the Father's care although the timing of these is generally arranged between the parties based on the Mother's work schedule. The Father stated that he has accommodated the Mother's requested days and times, which are often every second day, even if they disrupted his plans with H.

[110] The 2018 Final Order also provided that each of the parties were to facilitate a video conference between H. and his other grandparents once a week for 10 to 15 minutes.

[111] By consent, the 2020 Order varied the video conferencing to three specified times a week. The 2021 Variation Order continued three video conferences each week but included the paternal grandparents in the Father's video conferences with H. on Mondays. There was no mention of ongoing video conferencing with the maternal grandparents in this Order.

[112] The Father seeks to have regularly scheduled video conferencing with H. three times each week. He wants H. to have a quiet place from which to video conference him without distraction and that it not happen from a vehicle. The Father seeks to have H. use the blue tablet that he bought for him because the tablet H. uses in the Mother's home is blurry. The Father has set up a chess game on this tablet to allow him and H. to play chess together during their video conferences. The Father would prefer not to have the video conferences occur before school as H. has to be at school at 8:20 a.m., is often rushed, and the video conferences are cut short because he is getting ready for school.

[113] The Mother seeks to change the Tuesday video conferences to Mondays at 6:00 p.m. She is prepared to have the Thursday and Saturday video conferences remain as they currently are. She wants to have video conferences with H. every second day when he is in the Father's care. She also seeks a provision that the Father be obligated to facilitate a video conference with the maternal grandparents once each week for 10 to 15 minutes when he has H. in his care for a week or more.

[114] There is no question that it is important for H. to have ongoing video conferences with each of his parents when he is away from either of them for extended periods of time. At H.'s age, it is reasonable to continue three video conferences a week between the Father and H. as they have limited in-person parenting time in most months. These video conferences are often the only connection that H. has to the Father for weeks at a time. The Father's video conferences with H. shall occur as follows:

- a) Tuesdays at 6:00 p.m. (Manitoba time);

- b) Thursdays at 7:00 p.m. (Manitoba time); and
- c) Saturdays at 10:00 a.m. (Manitoba time).

The Father may, at his choosing, include the paternal grandparents in any of his video conferences with H.

[115] When the Father has monthly parenting times of up to four nights, there shall be no video conferences between the Mother and H. In June, when the Father has up to six nights of parenting time in Winnipeg, the Mother shall have one video conference with H., which shall occur at 6:00 p.m. on the third full day of his parenting time. At all other times when the Father has H. for a week or more, the Mother shall be entitled to have three video conferences with H. each week, on the same days and times as the Father has. The Mother may include, at her choosing, the maternal grandparents in any of her video conferences with H. If any of these days or times do not work for the Mother, she shall advise the Father seven days prior to the commencement of his parenting time and shall provide a proposal for alternate days and times, but no more than three times each week. The Father shall use his best efforts to accommodate the Mother's proposed days and times.

[116] Both parties shall use their best efforts to reschedule video conferences to accommodate H.'s activities as may be required from time to time. If a video conference is going to be delayed, the party experiencing the delay shall advise the other party promptly of the anticipated delay by text message. If a video conference cannot occur as scheduled, it must be rescheduled to take place within 26 hours of the originally scheduled time. On weekdays, the rescheduled video conferences shall take place after

school, and on weekends, the video conferences shall be rescheduled between 10:00 a.m. and 8:00 p.m. (Manitoba time).

[117] It is also important to put parameters on the video conferences. Each of the parties shall provide H. with a quiet and private space to communicate with the other parent and shall not have it occur from a vehicle. For clarification, a private space means that the facilitating parent is not to be in the same room as H. during the video conference. The video conferences shall be between 15 and 30 minutes and each of the parties shall pay close attention to H.'s cues. If H. wants to end the conversation, the video conference must end.

[118] Video conferencing requires proper technology to be effective. The benefits of video conferencing are lost if the participants cannot see one another clearly in the video. The Mother shall allow H. to use the blue tablet that the Father purchased for this purpose. This tablet should travel with H. so that he may use it to video conference the Mother during the Father's parenting time.

[119] The Father provided the Mother with all the passwords and parental controls for the tablet so that she can facilitate the video conferences for H. This does not preclude the Mother from limiting H.'s other screen time while in her care. This simply ensures that H. has the appropriate technology to enjoy his video conferences with each of the parties.

### **DECISION-MAKING RESPONSIBILITY**

[120] The Mother seeks the right to make the final decision on all significant decisions regarding H.'s health or education in the event the parties cannot agree on the decision

to be made. More specifically, the Mother proposes that there be joint consultation on all significant decisions regarding H. but in the event of disagreement on health or educational issues, the parties shall obtain the advice of the related professional involved with H. (for example, H.'s doctor for a medical decision or dentist for a dental decision) and obtain their recommendation, if any. In the event that the parties are still unable to agree on the decision to be made, the parties shall attempt to mediate the decision with their parenting coach. If they still are unable to reach agreement, the Mother seeks to have the right to make the final decision and provide written notification to the Father.

[121] The Father seeks joint consultation on all significant decisions regarding H. with neither party having the right to make the final decision.

[122] Pursuant to the 2018 Final Order, the parties have joint custody, which requires joint consultation on all major decisions regarding H. Accordingly, neither party currently has final decision-making responsibility.

[123] The Mother's proposal is limited to health and educational decisions. Neither party suggested that there are any religious decisions to be made. The Mother's proposal did not address decisions regarding extracurricular activities.

[124] It is important that both parties be fully consulted on all significant decisions regarding H. This shall include all significant decisions regarding health, education, extracurricular activities, cultural, language, religion, and spirituality (s. 2(1) of the ***Divorce Act***).

[125] There has been a history of the parties not consulting one another with respect to decisions regarding H. The Mother enrolled H. in a French Immersion school without

consulting the Father. Although both parties are supportive of H.'s involvement in extracurricular activities, both complained that the other has not always consulted him or her about enrolling H. in activities. Emails that were entered into evidence confirm that the Mother has, at times, simply informed the Father that she has enrolled H. in an activity. This is not consultation.

[126] Joint consultation requires a discussion between the parties about the decision to be made. It requires some communication back and forth. In terms of extracurricular activities, it means providing the other parent with details of the proposed activity, the location(s), time commitment, duration, and cost. There might be discussion about H.'s preferences and the number of activities that he is to be enrolled in. It does not mean that one parent can enroll H. and simply inform the other that he has been enrolled.

[127] I agree with the Mother's proposal to have a protocol for seeking a resolution to disagreements on significant decisions regarding H. If the parties cannot agree, they shall first seek the advice and opinion, if any, of the applicable professional working with H. If the parties still disagree, they shall mediate the issue with their parenting coach so long as they have one.

[128] This is where my agreement with the Mother's plan ends. If the parties still disagree following mediation, I am not prepared to give one party the right to make the final decision on all future significant decisions to be made. I have serious concerns that if the Mother is given the right to make the final decision on medical and educational decisions, she will ultimately make the decision she wants without giving due

consideration to the Father's point of view, the applicable professional's advice and recommendation, or the parenting coach's view.

[129] With respect to extracurricular activities, each party shall provide the other with all of the details regarding H.'s activities, including the contact information for H's instructor(s), coach(es), manager(s), etc. Each shall also list the other parent on the registration form and/or any family contact list that may be compiled for H.'s extracurricular activities.

[130] The Father also seeks to have the ability to pick one extracurricular activity for H. to participate in each year. Although the Father is certainly at liberty to propose extracurricular activities for H. to participate in, he is obligated to jointly consult the Mother and reach agreement on the activities that H. is to be enrolled in.

[131] If the parties are unable to reach agreement on significant decisions relating to H. despite following the protocol set out above, they shall be at liberty to either hire a private arbitrator to determine the issue or return to court to have the matter determined. I am hopeful that the cost and/or time associated with arbitrating or litigating the issue will give the parties incentive to resolve the issue between themselves.

[132] Each of the parties shall have the right to make day-to-day decisions for H. while in their care.

### **CONCLUSION**

[133] For the reasons set out above, the Father's motion to revise the parties' parenting arrangements for H. is granted. The terms of the Final Order shall be as set out within this decision.

[134] The parties also agreed to retain a number of the original provisions from the 2018 Final Order. These agreed-upon provisions include paragraphs 6 to 11, inclusive, and paragraphs 13 and 34. These provisions shall be incorporated in my Final Order and should seek to follow the standard clauses to the extent that is possible.

[135] In closing, I would reiterate the comments of Gates J. in his decision of February 8, 2021. The comments he made to these parties almost four years ago remain as relevant today as they did then. He said:

I would urge both parents to take proactive steps to try and address their individual challenges flowing from the breakup of their marriage and the personal impact of the on-going high conflict related to their shared parenting responsibilities. I would observe that Mr. Blake appears to be highly traumatized from the loss of frequent contact with his son resulting from H's relocation to Manitoba with his mother some 2 1/2 years ago, I would also observe that Ms. Donald appears to be highly traumatized from the ongoing conflict with Mr. Blake relating to his ongoing access to H and, more importantly, his fervent desire to continue to play a very active role in H's life. The impact of this conflict on both parties was palpable throughout my extensive interactions with them over the course of the past number of months. It is clear to me that both parties have the potential to be extraordinary parents to their son. Unfortunately, the state of high conflict that permeates all of their interactions continues to have a highly negative impact on their parenting aspirations and the attainment of their full potential as parents.

While H remains a young child, ... I am gravely concerned that his knowledge and awareness of the high conflict between his parents is having, and will continue to have, a significant negative impact on his sense of security, self-worth, as well as his growth and development as a high functioning individual. I urge both parents to take all reasonable steps to protect H from this conflict.

[136] To this, I would only add that the parties need to take all reasonable steps to end the ongoing conflict between them. I am hopeful that a detailed Final Order will assist the parties in putting their high conflict relationship in the past. This would ideally be what is in H.'s best interests.

[137] The parties cannot change the past. What they can change is what each of them does going forward. I implore each of them to do so.

[138] Costs may be spoken to if the parties cannot agree.

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J.