

# In the Provincial Court of Alberta

**Citation:** EC v AC, 2017 ABPC 36

**Date:** 20170224  
**Docket:** FF901000567  
**Registry:** Calgary

Between:

EC

Applicant

- and -

AC

Respondent

2017 ABPC 36 (CanLII)

## Restriction on Publication

**Identification Ban** – See the *Family Law Act*, section 100.

By Court Order, there is a ban on publishing information that may identify the children or guardians in this matter.

**NOTE:** This judgment is intended to comply with the ban so that it may be published.

### Reasons for Decision of the Honourable Judge Steven E. Lipton

#### INTRODUCTION

[1] The issue in this acrimonious family dispute concerns the appropriate parenting plan for the child ACC born August 2011 (hereinafter referred to as either the “Daughter” or “ACC”).

[2] The applicable legislation is the *Family Law Act*, Statutes of Alberta, 2003 c. F-4.5 (hereinafter referred to as the “FLA”).

[3] The father EC (hereinafter referred to as either the “Father” or “EC”) filed a *FLA* parenting application on June 30<sup>th</sup>, 2015. The mother AC (hereinafter referred to as either the “Mother” or “AC”) filed her *FLA* parenting application on August 14<sup>th</sup>, 2015. At the time this dispute went to trial, the Father was 60 years old and the Mother was 45 years old.

[4] I will refer to the Mother and Father together as the “Parents”.

[5] This has been an extremely difficult trial due to the intransigent position each has adopted throughout. What started out as a booked one-day trial morphed into a five-day trial as this drama unfolded in court.

## **THE EVIDENCE AND COMMENTARY**

[6] Pursuant to the court order of Burrell J. dated December 4<sup>th</sup>, 2015, the Parents retained the services of Evelyn Wotherspoon to assist in determining a parenting plan for ACC. Burrell J. further ordered that the cost of retaining Ms. Wotherspoon was to be shared equally between the Parents.

[7] Between March 1<sup>st</sup> and May 20<sup>th</sup>, 2016, Ms. Wotherspoon conducted 22 interviews on this file at her office, in the Parents’ homes, in ACC’s school, with collateral sources, and over the phone.

[8] Thereafter, Ms. Wotherspoon prepared her ‘Child Mental Health Evaluation Report’ of May 22<sup>nd</sup>, 2016, (hereinafter referred to as the “Wotherspoon Report”) which was marked as an exhibit.

[9] Ms. Wotherspoon testified and was qualified as an expert in early childhood mental health and development.

[10] Ms. Wotherspoon said that a child’s mental health and childhood development are opposite sides of the same coin. If continually exposed to stress, a child can’t develop properly and could suffer from poor mental health. Stress in a child interferes with brain development and emotional regulation.

[11] At page 19 of the Wotherspoon Report, she stated:

“Child development can be thought of as the child’s ‘job’ that can be divided into three basic tasks; from the first moments of life, [ACC] has been a) forming close emotional ties; b) she has been learning about the world around her through exploration and play; and c) she has been learning how to regulate her emotions, attention and behaviour through parental guidance and modelling. Children can only do this job well in the context of supportive relationships. From early infancy, children attune themselves to the caregiving style of their parents. Babies are built to adapt to their parents and to love the people around them. Those loving relationships are the key ingredient in healthy development. That is why I can say with confidence that [ACC] has the perfect parents for her, regardless of how they might judge one another. What [ACC] is not built for, and what can do her real harm, is ongoing conflict between her trusted attachment figures. Parental conflict is stressful to her, it can cause her to doubt her relationships, and conflict is highly distracting and stressful for her caregivers, making them less

available to her. It is therefore critical to take immediate steps to address the conflict and to help these parents find strategies that they can use to co-parent effectively.”

[12] Regarding co-parenting, Ms. Wotherspoon said that the Parents must support each other, communicate well, and agree on expectations and discipline for their Daughter. However, Ms. Wotherspoon noted at page 22 of her Wotherspoon Report that:

“The fact that neither parent could acknowledge even a mild behaviour problem with a four-year-old child was a red flag in my view, particularly when I was able to observe three episodes of pouting within a 15-minute observation. It tells me that the parents are either overlooking behaviour challenges or they are catering to the child so well that she never has the opportunity to become emotionally dysregulated. In order to learn how to regulate her emotions, [ACC] needs opportunities to be imperfect and to experience boredom, sadness, frustration and disappointment. However, I think these two parents will make negative judgments about one another if [ACC] is expressing negative feelings in either household. This is putting pressure on each of them to create an environment that is free of any distress or disappointment for [ACC] ...”

[13] In order to improve communication between the Parents, Ms. Wotherspoon proposed they sign up for ‘Our Family Wizard’ as a communication tool.

[14] With respect to conflict resolution, Ms. Wotherspoon proposed two alternatives due to the Parents having “... unusual difficulty with communication of plans or managing even small points of contention.” At pages 21 and 22 of her Wotherspoon Report, she stated:

“A parenting plan cannot account for every problem or unforeseen complication and these parents are highly stressed when they have to negotiate with one another. The conflicts could be lessened in one of two ways. Option A: As the primary caretaker, [the Mother] could be assigned the responsibility for decisions related to school enrollment, routine health and dental care, and after school or recreational activities until elementary school is done and [ACC] will be more capable of expressing her own views. Option B: the parents could attempt to resolve issues as they arise for a brief period of time, and then defer to a parenting coordinator with arbitration powers in those situations where they are unable to resolve minor disputes ...”

[15] Ms. Wotherspoon said that ACC appears to be a healthy and well-adjusted child at this time. ACC appears to have adapted to her Parents’ individual styles of parenting. Currently, ACC does not exhibit any stress in moving between her Parents’ homes. Both Parents are very motivated to be in their Daughter’s life. However, the ongoing conflict between the Parents will cause ACC’s mental health to deteriorate.

[16] While both homes are suitable for parenting time, Ms. Wotherspoon recommended that ACC should have a primary residence, especially on school nights.

[17] Ms. Wotherspoon said the Father was guarded when asked to discuss his weaknesses. He was described by Ms. Wotherspoon as having a win-lose approach to this dispute, rather than focusing more broadly about his Daughter’s welfare. For example, Ms. Wotherspoon was puzzled as to why the Father would be offended by the Mother’s request to be notified if he was going to attend ACC’s classroom on any particular day. It was Ms. Wotherspoon’s opinion that

ACC ought to be prepared for what might happen on a given day and that the Mother's request was reasonable.

[18] The Mother was described to Ms. Wotherspoon by a psychologist, who was a collateral source that Ms. Wotherspoon spoke to, as having a tendency to be controlling at times. Ms. Wotherspoon speculated that AC's prior relationship with HB (hereinafter referred to as "HB") with whom she has a daughter SB (hereinafter referred to as "SB") has coloured her views of EC.

[19] Ms. Wotherspoon opined that there was no evidence of either EC or AC engaging in alienation of affection.

[20] Based on her observation of the Parents, Ms. Wotherspoon said that neither presented with any mental health issues that would require a referral to a psychiatrist or psychologist.

[21] Ms. Wotherspoon pointed out that quality of parenting time is not the same as quantity. The former is more important. An overnight with a parent does not do much for forming attachments with a child.

[22] Finally, Ms. Wotherspoon was agreeable to the parenting arrangements that were in place between the Parents in September 2016. At that time, the Father had alternating weekends from Friday after school until Sunday at 6:30 p.m., as well as every Tuesday from 11:30 a.m. until 4:00 p.m. the same day.

[23] Ms. Wotherspoon noted that ACC could gradually handle longer separations away from her Mother, who is the primary secure attachment, once she turns age six, but only if the "... parents work cooperatively together".

[24] I will start my summary of the Parents' evidence by way of a characterization of them.

[25] The behaviours of the Parents have, in my opinion, attained a level of malevolence insofar as ACC's welfare is concerned. There is a cycle of conscious obsessive behaviour – attack and counterattack - that has come to dominate their interactions to the detriment of their Daughter.

[26] Since the commencement of this litigation, there has been a marked increase in the level of tension between the Parents. Communication and cooperation between the Parents has become worse. With the issuance of the Wotherspoon Report, there has been a further deterioration in communication and cooperation between them. Each has played a role in exacerbating the situation.

[27] The Mother strikes me as being neurotic in her dealings with the Father. I am unsure of and unqualified to determine the genesis of her behaviour. She made false allegations about the Father's mental health. She made false allegations about the Father growing marijuana in the basement of his home. During cross-examination, she was at times unable to give an unqualified answer to a straightforward question.

[28] The Father strikes me as righteous, but with the arrogance of self-righteousness. During cross-examination, it was nigh impossible for him to answer a question without equivocation. He is a master manipulator. This trial is about his parental rights, not ACC's best interests.

[29] The Parents are both university graduates with professional degrees. They are both highly intelligent and achievement oriented.

[30] The Parents were engaged at one point in time. A number of attempts at cohabitation were unsuccessful. Their relationship finally ended in November 2015.

[31] The pregnancy of ACC was planned.

[32] After ACC was born, she spent several days in the neonatal intensive care unit. EC visited ACC in hospital daily during this period of time.

[33] During ACC's first year of life, the Father would spend two to three nights a week at the Mother's home. He would also watch ACC alone at his home for several hours on a Sunday during ACC's first year of life. EC's first overnight with ACC without the Mother being present occurred in March 2015.

[34] The Mother has been the primary caregiver of the Daughter since birth.

[35] In my opinion, the evidence indicates that the Father deferred decision making concerning ACC to the Mother before this litigation was commenced when there was at least a modicum of communication and cooperation between the Parents. The Mother hired a nanny, selected school(s), selected medical and dental professionals, and registered ACC for extracurricular activities. The Father was rarely advised of ACC's professional appointments. EC didn't initially know which extracurricular activities ACC was involved in, or the times these activities took place during the week. EC didn't ask AC for the name of ACC's family doctor until December 2015. EC asked for the name of ACC's dentist in May 2016. When this dispute became highly conflictual, the Father began to assert his parental rights, and the Mother began to withhold information from EC at times, especially with respect to health-related matters.

[36] The Father was eventually given all of ACC's relevant contact information by the Mother.

[37] The Father only volunteered once at ACC's first school. He initially chose not to be involved as a volunteer at ACC's current school until December 2015. EC thought he had to be a guardian in order to volunteer at ACC's current school. On one occasion, the Father did volunteer at ACC's current school after being asked to do so by the Mother.

[38] On August 25<sup>th</sup>, 2015, LaRochelle J. issued the first contact order in this matter. The Daughter was to reside with the Mother. The Father was given one weekend a month from Saturday at noon until Sunday at 4:00 p.m. He was also given two additional Saturdays a month from 9:30 a.m. to 5:30 p.m. the same day, as well as FaceTime with ACC twice a week.

[39] On December 4<sup>th</sup>, 2015, Burrell J. appointed the Father as a guardian of ACC. He issued the second order in this matter with the consent of the Parents. In addition to the time granted to him on August 25<sup>th</sup>, 2015, the Father was given every Tuesday from pick-up at school at 11:30 a.m. until drop-off at the Mother's residence at 4:00 p.m. the same day. Finally, the Father was granted such further parenting time as agreed between the Parents.

[40] Burrell J.'s order also sets out the following obligations of the Parents. The Parents were to retain the services of Ms. Wotherspoon and split the cost equally. The Father was permitted to

volunteer and participate at the Daughter's school and in any of her extracurricular activities. The Parents were to provide each other with the names, phone numbers, and e-mail addresses of the Daughter's doctors, therapist, coaches and other professionals so that either may contact them directly with the consent of the other. Finally, each was granted the authority to take the Daughter for emergency medical treatment.

[41] Subsequent to Burrell J.'s order of December 4<sup>th</sup>, 2015, the Mother voluntarily gave the Father additional parenting time. The Father's Tuesday times were extended to include vacation time. The Father was given parenting time over the Spring school break and during the summer of 2016. In September 2016, the Mother agreed to give the Father alternating weekends.

[42] I issued the final interim parenting order on December 5<sup>th</sup>, 2016, during a break in this trial. The Tuesday parenting time remained in place. EC was given parenting time during the December school break. In addition, EC's parenting time on alternating weekends from Fridays at 4:30 p.m. until Sundays at 6:30 p.m. was confirmed.

[43] The Father seeks the following increased parenting time:

- (a) One additional weekday with ACC similar to his Tuesday parenting time;
- (b) Commencing March 2017, keep ACC overnight on Sunday during his alternating week parenting time and take ACC to school Monday morning;
- (c) Every other school professional day during the daytime hours only;
- (d) Alternating weeks during the summer months; and
- (e) The right of first refusal to babysit ACC, if the Mother is unavailable for three hours or more.

[44] The Father also seeks the following parental rights:

- (a) Shared decision making on all major decisions;
- (b) The right to participate in any school or extracurricular activities and the right to enrol ACC in any activities, such as soccer and skiing, with notice to AC; and
- (c) The right to make appointments for ACC with her professionals with notice to AC.

[45] The Mother advises that she accepts the recommendations in the Wotherspoon Report and asks this court to adopt these recommendations in a parenting order.

[46] The following is a partial list of inappropriate behaviours that the Father has engaged in:

- (a) After his final separation from the Mother in November 2014, EC requested that AC notify him before introducing any new men into ACC's life. EC didn't believe he had such a reciprocal obligation because the Mother never requested of him that he extend the same courtesy to her. The Mother first became aware of EC's new girlfriend, DB (hereinafter referred to as "DB"), when DB testified at this trial. When interviewed by Ms. Wotherspoon, EC deliberately withheld the fact that he had been dating DB since September 2015. The Father said he didn't disclose his relationship with DB to Ms. Wotherspoon as it was immaterial. He said the relationship with DB

- was developing slowly. Furthermore, EC said that DB never stayed overnight with him when he had ACC in his care. The Mother was unaware that DB had first met ACC in August 2016. ACC currently keeps some of her toys at DB's home. The evidence is unambiguous. ACC has spent a considerable amount of time with her Father and DB at both of their homes, and DB appears to have a very close relationship with ACC. This was all new information to the Mother;
- (b) Despite being in a dating relationship with DB since September 2015, EC solicited a dinner invitation with AC for Valentine's Day 2016 in AC's home. He gave AC red roses, a box of chocolates, and a Valentine's Day card with a handwritten note inside which reads "I am blessed to have you in my life. Wherever the future takes us, I hope we share many more Valentine's Days with Love and respect, Love, Earl." EC apparently does not see anything wrong with his actions. He claims that he was merely trying to improve communication with the Mother. The Mother was confused as to EC's true intentions;
  - (c) EC was offered mediation by the Mother at her sole expense for the first few sessions very early on in this dispute, but he declined on the basis that he thought they wouldn't make any progress. EC insisted on taking this matter to trial. Court orders subsequent to LaRoche J.'s order of August 25<sup>th</sup>, 2015, have granted the Father increased parenting time with the Mother's consent. AC voluntarily gave the Father more parenting time subsequent to Burrell J.'s order of December 4<sup>th</sup>, 2015;
  - (d) The Mother was willing to accept all of Ms. Wotherspoon's recommendations. The Father was not. For example, the Father did not agree to Ms. Wotherspoon's recommendation for the appointment of a parenting coordinator until this trial was commenced. He thought a resolution of this dispute at trial would help to mitigate the stress in ACC. At trial, EC again expressed a reluctance to use of a parenting coordinator because he thought the Mother would be too reliant on the parenting coordinator. EC also disagreed with Ms. Wotherspoon's recommendation that he not attend at ACC's school unannounced. EC said he had a right to be at the school. The Father showed up at ACC's school on the first day of school in September 2015 without telling the Mother. The Father went to ACC's school in December 2015 without the Mother's knowledge and proceeded to discuss with the school administration the details of his parenting dispute with the Mother. EC volunteered at ACC's school without the Mother's knowledge. EC met with ACC's teacher in September 2016 and again in November 2016 and told the teacher about the court proceedings without prior consultation with the Mother. Ms. Wotherspoon recommended limiting ACC's overnights with the Father until there was better cooperative parenting. The Father disagreed with this recommendation. EC disagreed with Ms. Wotherspoon's conclusion that he was being too idealistic of a parent to ACC;
  - (e) While the Mother initially paid for the entire cost of Ms. Wotherspoon's services, the Father has, to date, refused to reimburse the Mother for his 50 percent share of the cost as ordered by Burrell J. on December 4<sup>th</sup>, 2015;

- (f) The Father has refused to pay his share of some of the Mother's section 7 Special or Extraordinary expenses as required by Burrell J.'s child support order of December 4<sup>th</sup>, 2015. The Mother has taken out extended health and dental plans for ACC and has paid for the entire cost of these plans, as well as any excess costs not covered by the plans. At trial, the Father refused to pay his share of ACC's recent \$252 dental bill;
- (g) EC historically deferred to AC when it came to decisions regarding the Daughter's upbringing. The use of a nanny, choice of school, and medical and dental appointments were all arranged by the Mother. The Father decided to assert his parental rights and become involved after their dispute worsened. For example, the Mother was at fault for not advising the Father of a change in ACC's family doctor. AC also did not advise EC that she had made a request for a referral of ACC to an allergist. Despite the Mother's omissions, EC took it upon himself to attend at the clinic where ACC's doctor practiced and created such a fuss that ACC's family doctor summoned the Mother to her office and told AC that EC had come to the clinic, made staff uncomfortable, and discussed the court proceedings with the walk-in doctor. The Mother was warned by ACC's family doctor to only make future appointments with her so as to avoid any more uncomfortable situations. In yet another example, the Mother was at fault for not advising the Father that he had been put on a school list authorizing him to pick up ACC at the end of class. EC again took it upon himself to attend at ACC's school with a court order to prove to the school administration that he had the right to pick-up ACC from school. EC also went to ACC's current school on a number of other occasions without the Mother's knowledge. EC was insulted when it was suggested to him by AC that they initially attend together at ACC's school so the Mother could make introductions;
- (h) The Father acknowledged that AC had advised him of her concerns with respect to ACC's possible allergic reactions to pets. EC said he never observed any allergic symptoms in ACC while she was around dogs. Nevertheless, when EC took ACC to his sister's home to see his sister's dog, EC gave ACC an antihistamine ahead of time; and
- (i) The Father went to HB without the Mother's knowledge in an attempt to elicit information about AC. The Mother had been in a conflictual parenting relationship with HB concerning SB after AC became pregnant with ACC. EC said he did so in order to get a better understanding of AC's issues because he was frustrated in his dealings with the Mother. The Mother feared that both HB and EC were conspiring against her.

[47] The following is a partial list of inappropriate behaviours that the Mother has engaged in:

- (a) Despite agreeing with the Father to use Our Family Wizard for communication, the Mother has not always communicated with the Father utilizing this method of communication because she finds Our Family Wizard to be technologically cumbersome. The Mother has also not entered all of ACC's activities into this communication tool;



- (b) Notwithstanding Burrell J.'s order of December 4<sup>th</sup>, 2015, permitting the Father to pick-up ACC at her school, the Mother never did communicate to the Father that she had put his name on the school list for this purpose. As a result, EC took the Burrell court order into the school to prove to school administration that he had the right to pick-up ACC from school;
- (c) Pursuant to Burrell J.'s December 4<sup>th</sup>, 2015 order, the Mother was prohibited from incurring any additional section 7 expenses with a cost greater than \$100 without consent of the Father, such consent not to be unreasonably withheld. The Mother proceeded to register ACC in a number of extracurricular activities without first seeking the Father's approval. The Father only found out about these activities after he received the bills from the Mother;
- (d) The Father was advised by the Mother that one of his scheduled weekends with ACC would need to change because of plans made by the Mother. What the Mother did not disclose to the Father until later was that ACC was participating in a dance recital;
- (e) ACC made a craft at school for her Father and told EC. EC had to make several requests of AC to send the craft with ACC when she went to her Father's home for his parenting time;
- (f) The Mother has attempted to collect from the Father section 7 nanny and private school tuition expenses authorized in Burrell J.'s December 4<sup>th</sup>, 2015, order without first factoring in the tax advantage that she obtains by being the primary day-to-day parent to ACC;
- (g) The Mother changed family doctors for ACC in July 2016 and did not tell the Father;
- (h) The Mother didn't inform the Father that she was advised at a parent-teacher meeting on November 24<sup>th</sup>, 2016, that the teacher was concerned with ACC and was recommending ACC be referred to the school psychologist. The school psychologist in turn recommended that ACC see a private psychologist;
- (i) The Mother advised the Father that ACC should not be around pets due to suspected allergies. ACC never saw an allergist until January 2017. The Mother made an appointment with one allergist, then changed ACC's appointment to another allergist without telling the Father. AC obtained a letter from the allergist that the Father was not made aware of until this trial resumed; and
- (j) AC did not tell EC that their Daughter had been prescribed a fast-acting inhaler by ACC's doctor on December 14<sup>th</sup>, 2016 due to having a virus. The Father wasn't informed of this until December 22<sup>nd</sup> by e-mail. The Mother repeatedly sent ACC to the Father's home on a number of occasions during the 2016 December school break without her inhaler.

[48] The Father alleges that AC has been an unfriendly parent who has been acting as a 'gatekeeper' with respect to his parenting time. He points to an e-mail exchange in December 2013 wherein the Father requested five consecutive overnights in a row with ACC. The Mother refused and said that ACC was too young at the time. AC then told EC to have his lawyer contact her lawyer. EC asserts this is proof that the Mother is the uncooperative parent. ACC

was then only four months past her second birthday. While the Mother's response was acerbic in nature, it was the correct response at the time. The evidence indicates that it wasn't until March 2015 that the Father got his first overnight with the Daughter without the Mother being present.

[49] I reject the argument that the Mother has been a gatekeeper with respect to EC's parenting time. Each time this matter returned to court after the initial appearance, and in between court appearances, the Father was given more parenting time with the Mother's consent. ACC has a very close relationship with her Father. If gatekeeping or alienation of affection had been present, this would have manifested itself in a strained relationship between the Father and ACC.

[50] To his credit, the Father acknowledged in cross-examination that communication with the Mother has not improved despite the recommendations of Ms. Wotherspoon. In my opinion, it has gotten much worse. EC also admitted that AC gets anxious when intimidated, but denied any intent on his part to intimidate the Mother. EC believes that he has been and is the parent attempting to cooperate with the Mother.

[51] EC finally acknowledged at trial that he has been too idealistic of a parent to ACC. When this topic was first broached with him by Ms. Wotherspoon, he thought it wasn't important.

[52] The Mother has repeatedly told ACC's doctors that ACC has trouble breathing at night with asthma-like symptoms as well as coughing episodes. These breathing difficulties and coughing episodes have not been substantiated by ACC's family doctors. Since March 2015, the Father has never observed these reactions in ACC while she has slept at his house. ACC is involved with gymnastics, dance and swimming and has never exhibited any breathing difficulties in any of these extracurricular activities. The spectre of hypochondriacal behaviour on AC's part with respect to ACC's health is a concern, especially where such behaviour by AC has a negative impact on EC's parenting time with ACC.

[53] The Mother convinced a doctor to make a referral for ACC to an allergist. As a litmus test to determine whether the Parents could cooperate, I allowed both to recently attend together at the office of ACC's allergist. ACC saw Dr. Lyttle on January 13<sup>th</sup>, 2017. In Dr. Lyttle's report of January 13<sup>th</sup>, 2017, he indicated that ACC had a positive reaction to cat dander and a borderline reaction to dog dander. All other tests were negative. While Dr. Lyttle recommended that neither Parent should have any pets in their household, he opined that it would be advisable for their Daughter to be around dogs to help her develop immunities. The Father took a picture of ACC's test results and left Dr. Lyttle's office before the Mother. After the Father had gone, the Mother obtained a second letter without the Father's knowledge which indicates that ACC has allergic rhinitis and significant respiratory problems. The Father was first made aware of this letter at the trial. The Father testified that Dr. Lyttle advised the Parents that he would make a referral to a respiratory specialist only if the Parents wanted this to be done.

[54] But for the incident on December 14<sup>th</sup>, 2016, involving the fast-acting inhaler and the incident on January 13<sup>th</sup>, 2017, with Dr. Lyttle, I would have permitted the Mother to attend all medical/dental/therapeutic professional appointments for ACC without the Father being present in order to minimize conflict between the Parents. I now have some doubt about the Mother's willingness to convey both timely and accurate medical information to the Father about their Daughter.

[55] At this time, I am convinced beyond a shadow of a doubt that the conflict between the Parents will be ongoing. I have mentioned but a few of the chronic and often petty disputes between the Parents.

[56] As to the efficacy of ordering a parenting coordinator, section 32(2)(c) of the *FLA* poses a potential barrier to this alternative form of dispute resolution. The section reads as follows:

“A parenting order may contain any or all of the following:

...

(c) a dispute resolution process for any or all future disputes regarding guardianship or parenting arrangements, if the process has been agreed to by the persons who are bound by that process; ...”

[57] In *Kostin v. Eaket*, 2012 ABQB 756, Jones J. stated at paragraph 103:

“Paragraph 32(2)(c) of the *FLA* allows the Court to order a dispute resolution process for future disputes between the parties if the parties agree to be bound by that process. The parties clearly do not agree upon the need for such a process. Requiring joint decision making would be to set the parties up for failure. Decisions regarding Haley need to be made.”

[58] In *Rensonnet v. Uttl*, 2016 ABQB 95, Poelman J., at paragraph 198 came to the same conclusion.

[59] The Parents consented to the appointment of a parenting coordinator during their evidence and confirmed their agreement to same in written argument. They have not yet agreed on whether this coordinator can have binding arbitration powers, and if so, the extent of these arbitratative powers. Both have mentioned Dr. Larry Fong as a potential parenting coordinator. Dr. Fong will be appointed as the parenting coordinator with non-arbitration powers.

[60] I will leave the decision of appointing a parenting coordinator with arbitration powers up to the Parents. I would strongly recommend that such occur, as this was one of only two parenting options recommended by Ms. Wotherspoon to lessen the conflict between the Parents.

[61] In my opinion, neither Parent would, at this point in time, likely follow non-binding recommendations made by the parenting coordinator which they are not in agreement with.

[62] Dr. Fong must be provided with a copy of the Wotherspoon Report as well as a copy of this decision.

[63] The inability of either the Mother or Father to put their Daughter’s well-being ahead of their own selfish interests, intertwined with the extreme level of conflict between them is, in my opinion, only resolvable in ACC’s best interests at this time by awarding the Mother sole decision making on all major decisions affecting ACC. The Mother has been the primary caregiver of ACC since her birth.

[64] The Alberta Court of Appeal in *Richter v. Richter*, 2005 ABCA 165, confirmed the appropriateness of such an approach in a divorce case where high conflict was present. At paragraph 11, Fraser CJA stated:

“First, as a general proposition, joint custody and shared parenting arrangements ought not to be ordered where the parents are in substantial conflict with each other, and certainly not before trial especially when there is also significant disagreement on the evidence. The best interests of a child are not well served by imposing regimes which invite continued court applications on all matters, big and small ...”

[65] This approach was also utilized by Jones J. in *Kostin v. Eaket*, *supra*, and Poelman J. in *Rensonnet v. Uttl*, *supra*. Both of these cases are ‘best interests of the child’ decisions pursuant to section 18 of the *FLA*.

[66] Section 18 of the *FLA* sets out the factors to be considered in determining the ‘best interests of the child’.

[67] The comments of Poelman J. in *Rensonnet v. Uttl*, *supra*, are worth noting. At paragraphs 199, 202, 203, 204, 205, 206 and 207, Poelman J. stated:

199 “Mr. Uttl proposes that parenting time be shared equally between the parties, while Ms. Rensonnet submits that she should have primary care with limited, specified access to Mr. Uttl. He submits that the court must not rely on any presumptions, such as maintaining the status quo under which primary care and responsibility is with Ms. Rensonnet: *Cavanaugh v. Balkaron*, 2008 ABCA 423, [2008] A.J. No. 1393 (Alta C.A.); and *Botticelli v. Botticelli*, 2009 ABQB 556, [2009] A.W.L.D. 4199 (Alta Q.B.). He also relies upon the “maximum contact principle,” where the court strives to maximize the time children spend with each parent and indicating that shared parenting is the preferred arrangement: *Botticelli v. Botticelli*; and *Gordon v. Towell*, 2010 ABQB 396, 29 Alta. L.R. (5<sup>th</sup>) 141 (Alta Q.B.)”

202 “Further, the maximum contact principle has been given particular significance in divorce proceedings because, as the Supreme Court of Canada has pointed out, its codification in section 16(10) of the *Divorce Act* “stands as the only specific factor which Parliament has seen fit to single out as being something which the judge must consider “in determining a child’s best interests”: *Young v. Young*, [1993] 4 S.C.R. 3, [1993] S.C.J. No. 112 (S.C.C.), para. 204. That specific section does not apply in this case, although it is well established that maximum contact with each parent is an important factor. As with every other factor, it must give way to the overriding best interests consideration ...”

203 “Thus, as with the *status quo*, there is no presumption in favour of equal parenting time. In fact, the cases caution against equal parenting in high conflict relationships. Fraser C.J.A. held that “as a general proposition, joint custody and shared parenting arrangements ought not to be ordered where the parents are in substantial conflict with each other,” and joint custody requires a sincere and genuine willingness by both parents to work together to ensure the success of the arrangement: *Richter v. Richter*, 2005 ABCA 165, 371 A.R. 1 (Alta C.A.), para 11 ...”

204 “The authorities that caution against an order of joint custody or shared parenting where the parents cannot cooperate are, in effect, applying principles identified in section 18(2) of the *Family Law Act*, such as sections 18(2)(a),(b)(ii),(vii)(B), and (viii)(B).”

205 “Where shared parenting and joint custody are not indicated because of the parents’ demonstrated inability to work cooperatively, without conflict, the court must determine who should have primary care and decision-making responsibility ...”

206 “One factor is the child’s need for stability under section 18(2)(b)(i), which is also implied in the need to consider the history of care for the child under section 18(2)(b)(ii). The cases recognize stability and the status quo, to the extent it provides a positive environment, as an important consideration: *Mcinulty v. Dacyshyn*, 2013 ABQB 538, [2013] A.W.L.D. 5030 (Alta Q.B.), para 13; *S.(V.) v. S.(G.)*, 2011 ABQB 818, [2012] A.W.L.D. 3828 (Alta Q.B.), paras 17 to 20.”

207 “Having regard to the existing arrangement, particularly when it has been in place for some time, is not to defer to a presumption. Rather, “*status quo* is a factor to be considered when determining the best interests of the child”: *Ackerman v. Ackerman*, 2014 SKCA 86, [2014] 10 W.W.R. 429 (Sask. C.A.), para. 32”

[68] The decision of Poelman J. was upheld by the Alberta Court of Appeal at 2016 ABCA 196. At paragraph 25, the Court of Appeal stated:

“Rather the trial judge correctly understood that the maximum contact principle cannot be followed on some occasions, including in many high conflict situations where the parents’ ongoing inability to put their children’s interests ahead of their own have demonstrated that it is impossible to impose any scheduling scheme which requires regular, even daily, cooperation and coordination ...”

## DECISION

[69] The evidence presented at this trial is unequivocal. Neither Parent is morally superior to the other. ACC will continue to suffer stress absent a marked change in the level of cooperation and communication between them.

[70] The parenting order set forth below is, in my opinion, in ACC’s best interests at this time taking into account the evidence that I have heard and the factors outlined in section 18 of the *FLA*.

[71] This parenting order which is effective today, will replace all prior parenting orders between the Mother and Father. This order will have the following terms.

[72] Both the Mother and Father will be recognized as guardians. The Mother is a guardian by virtue of sections 20(2) and 3(f) of the *FLA*. The Father is a guardian by virtue of Burrell J.’s order of December 4<sup>th</sup>, 2015.

[73] The Daughter will ordinarily reside with the Mother.

[74] The Mother shall have parenting time and responsibility for the Daughter at all times except for when the Father has parenting time.

[75] The Father shall have parenting time with the Daughter and responsibility for her as follows:

- (a) Alternating weekends from after school on Friday to Sunday at 6:30 p.m. As the Parents are already on this cycle, the next alternating weekend for the Father has been determined;
- (b) If the Friday or Monday on the Father's weekend is a statutory holiday or school professional day, the Father's parenting time shall begin on the Thursday after school or end at 6:30 p.m. on the Monday, as the case may be;
- (c) Until the end of the current school year, every Tuesday and Thursday from after school at 11:30 a.m. until 4:00 p.m. the same day. If the Daughter is not in school, pick-up shall occur at the Mother's home at 11:30 a.m.;
- (d) Commencing September 2017, each Tuesday from after school until 7:00 p.m. If the Daughter is not in school, pick-up shall occur at the Mother's home at 3:30 p.m.;
- (e) Commencing September 2017, alternating Thursdays on those weeks when the Father does not have upcoming weekend parenting time with the Daughter. Pick-up shall be after school until 7:00 p.m. If the Daughter is not in school, pick-up shall occur at the Mother's home at 3:30 p.m.;
- (f) Such other parenting time as the Parents may agree; and
- (g) During his parenting time, the Father shall ensure that the Daughter attends all of her dance, gymnastic and swimming classes in which she is currently registered.

[76] The following special occasions shall override the regular parenting time schedule mentioned in the preceding paragraph:

- (a) If Father's Day does not occur during the Father's scheduled parenting time, then EC shall have the Daughter in his care from 9:30 a.m. Sunday until 6:30 p.m. that evening. If Mother's Day does not occur during the Mother's scheduled parenting time, then AC shall have the Daughter in her care from 9:30 a.m. Sunday onwards;
- (b) If Thanksgiving does not occur during the Father's scheduled parenting time in odd-numbered years, then EC shall have the Daughter in his care from 9:30 a.m. Monday until 6:30 p.m. that evening. If Thanksgiving does not occur during the Mother's scheduled parenting time in even-numbered years, then AC shall have the Daughter in her care from 9:30 a.m. Monday onwards;
- (c) If Halloween does not occur during the Father's scheduled parenting time in even-numbered years, then EC shall have the Daughter in his care from after school until 8:00 p.m. if on a school day, and if on weekend, from 4:00 p.m. until 8:00 p.m. If Halloween does not occur during the Mother's scheduled parenting time in odd-numbered years, then AC shall have the Daughter in her care from after school on Friday until 8:00 p.m., and if on a weekend, from 4:00 p.m. until 8:00 p.m. on a Saturday, and from 4:00 p.m. onwards if on a Sunday;
- (d) If ACC's birthday does not occur during the Father's scheduled parenting time in odd-numbered years, he shall have the Daughter in his care from 9:30 a.m. until 9:30 a.m. the next day. If ACC's birthday does not occur during the Mother's scheduled

parenting time in even-numbered years, she shall have the Daughter in her care from 9:30 a.m. until 9:30 a.m. the next day. FaceTime will be facilitated by the Parent with whom ACC is staying on her birthday. This paragraph 76(d) shall not apply if the Daughter is in summer camp;

- (e) Notwithstanding (f) and (g) below, the Daughter will always be with the Mother overnight for parenting time during the following religious holidays which commence the evening before: the two days for Rosh Hashanah, the one day for Yom Kippur, and the two Seders for Passover. As the Daughter's current school will definitely be closed for these religious holidays, this time will commence at 4:30 p.m. the evening before and end at 9:30 a.m. the day after Rosh Hashanah ends, the day after Yom Kippur ends, and the day after the second Seder. As for Hanukkah, this time will commence at 4:30 p.m. the first night of Hanukkah and end the next morning at 9:30 a.m.;
- (f) The Mother will have the Daughter in her care from the beginning of the December school break for one-half of the break in odd-numbered years and for the last half of the December school break in even-numbered years. The Father will have the Daughter in his care from the beginning of the December school break for one-half of the break in even-numbered years and for the last half of the December school break in odd-numbered years. The school break commences 4:30 p.m. on the last day of school before the break. The exchange shall take place at noon at the midway point of the break. The Father shall return the Daughter to the Mother by 7:00 p.m. the day before school resumes when ACC is in his care for the last-half of the December school break;
- (g) The Mother will have the Daughter in her care from the beginning of the Spring school break for one-half of the break in every year. The school break commences at 4:30 p.m. on the last day of school before the break. The exchange shall take place at noon at the midway point of the break. The Father shall return the Daughter to the Mother by 7:00 p.m. the day before school resumes; and
- (h) For summer 2017, the Father shall have the Daughter in his care from Tuesday July 4<sup>th</sup> at 9:30 a.m. until Sunday July 9<sup>th</sup> at 8:00 p.m., and from Tuesday August 1<sup>st</sup> at 9:30 a.m. until Sunday August 6<sup>th</sup> at 8:00 p.m. Commencing summer 2018 and onwards, the Father shall have the Daughter in his care for 10 days in July and for 10 days in August with the same hourly start times and end times as above. If the Mother proposes to send the Daughter to summer camp in either July or August, she shall register the Daughter for camp as soon as registration opens up, and then shall immediately notify the Father of the conflicted dates. The Father shall not be obligated to take the Daughter to her dance, gymnastic and swimming classes during his summer parenting time.

[77] ACC shall be permitted to request FaceTime with either Parent when in the care of other Parent, if she requests to do so.

[78] Unless another location is otherwise specified herein, or the Parents otherwise agree, the pick-up and drop-off of the Daughter at the beginning and end of the Father's parenting time

shall occur at the Mother's home. The Father shall be responsible for pick-up and drop-off of their Daughter unless the Parents otherwise agree.

[79] The Mother shall be entitled to make all major decisions affecting the Daughter, including those related to educational, medical (including therapeutic), dental and religious upbringing; provided, however, that the Mother shall not be able to change schools from the current private religious school without the Father's express approval unless it is to the public school system.

[80] The Mother shall always keep the Father informed of the names, phone numbers, and e-mail addresses (if available) of the Daughter's doctors, dentists, schools, psychologists, therapists and counsellors, and any other professionals involved with ACC.

[81] The Mother shall sign all necessary forms with the Daughter's school(s) and health care providers, (if not already done), including, but without limitation, doctors, dentists, psychologists, therapists, counsellors, and any other professionals involved with ACC so that EC may obtain written reports from them should he choose to do so.

[82] The Father shall be named as a parent on ACC's educational records and any other school records requiring parent information. The Father is free to volunteer, participate or observe any school activity by himself that ACC is involved with no more than once every two months, but shall notify AC ahead of time if he is intending on doing so.

[83] The Mother shall be permitted to schedule all appointments for ACC at her convenience with respect to educational (including parent-teacher interviews), medical, psychological, therapeutic, and dental matters. The Mother shall immediately notify the Father of the appointment. The Father shall immediately advise if he intends on attending the appointment. The Father shall be permitted to be present at the same time as the Mother. If the Father attends the appointment, the Parents shall leave from the appointment at the same time.

[84] The Father is prohibited from scheduling any appointments unilaterally with any school, and any doctors, psychologists, counsellors, therapists and dentists with whom ACC is involved. The Father is further prohibited from providing court documents or discussing court proceedings involving ACC with the aforementioned unless with the prior consent of the Mother.

[85] Both the Mother and Father shall notify the other of any concerns with respect to their Daughter including, but without limitation, health concerns and school concerns. All medications and treatment protocol shall always accompany the Daughter to either of the Parents' homes.

[86] The Mother and Father are each entitled to take their Daughter for emergency medical treatment and shall forthwith advise the other by phone.

[87] The Mother shall provide the Father with their Daughter's Alberta Health Care number as well as the benefit plan coverage that the Mother has on ACC.

[88] The Mother and Father shall always keep the other informed of their current home telephone number (if available), cell phone number, home address, and e-mail address.



[89] Only the Mother is entitled to register the Daughter in any extracurricular activities; provided, however, that she shall not register the Daughter in any more extracurricular activities (other than dance, swimming, and gymnastics) without the express approval of the Father to the extent that such additional extracurricular activities will encroach on the Father's parenting time. The Mother shall always advise the Father of all extracurricular activities including dates, locations, and times, and shall provide the Father with notices of any special events. The Father shall be permitted to attend these extracurricular activities without the Mother being present.

[90] Unless otherwise authorized herein, the Parents shall only communicate with respect to matters concerning their Daughter using Our Family Wizard. All relevant information to which each Parent is entitled to be informed of pursuant to this order shall always be entered into Our Family Wizard. Text messaging shall only be permitted in the event of the internet not working or Our Family Wizard not working.

[91] Neither the Mother nor the Father shall speak negatively about the other in the presence of their Daughter. Neither Parent shall ever communicate to the other through their Daughter.

[92] Neither Parent will have any dogs nor cats reside in their homes. Neither Parent will allow ACC to sleep over in any home which has dogs or cats present.

[93] Neither the Mother nor the Father shall permanently remove ACC from the City of Calgary without a prior court order confirming same, or without the prior written consent of the other.

[94] Either the Mother or Father shall be allowed to travel with their Daughter in Alberta, inside Canada, and outside Canada and shall provide an itinerary to the other. Such travel shall be permitted during the December school break, the Spring school break, and the summer vacation. Neither shall unreasonably withhold their consent to such travel plans, and both shall provide the necessary consent required to facilitate such travel. In all cases, an itinerary and contact information shall be provided to the other.

[95] When required, the Father shall sign the Daughter's passport application. The Daughter's passport shall accompany that Parent travelling with the Daughter, but shall always be returned to the Mother at the conclusion of the vacation.

[96] The Father shall forthwith reimburse the Mother for his 50 percent share of the cost of Ms. Wotherspoon's services. If not paid by March 15<sup>th</sup>, 2017, the Mother may recover this cost through the Maintenance Enforcement Program.

[97] The Wotherspoon report shall be released in its entirety to the following:

- (a) any elementary school attended by ACC, and any education experts that the school(s) may refer the Daughter to;
- (b) ACC's family doctor;
- (c) any doctor, psychologist, therapist or counsellor that ACC may attend at where such attendance stems out of the conflict between the Parents; and
- (d) the parenting coordinator.

[98] Dr. Larry Fong is appointed as the parenting coordinator to help resolve any disputes between the Parents concerning ACC. The cost of Dr. Fong's professional services shall be shared equally between the Parents. Dr. Fong will not have arbitral powers to resolve matters unless both Parents agree.

[99] The parenting coordinator will have the authority to modify any term of this order dealing with parenting time, decision making with respect to major decisions, participation by the Father in ACC's school activities, booking of and attendance at appointments with professionals involved with ACC, registration of ACC in extracurricular activities, and method of communication between the Parents, with the consent of both the Mother and the Father.

[100] Notwithstanding the authority given to the Mother in paragraph 79 herein, the Mother shall enrol the Daughter with any psychologist, counsellor or therapist if so recommended by the parenting coordinator. The parenting coordinator shall have the authority to communicate with ACC's psychologist, counsellor, or therapist if deemed necessary by the parenting coordinator. The cost of ACC's psychologist, counsellor, or therapist shall be shared equally between the Parents.

[101] As a parenting coordinator has been appointed, this matter shall not return to court until at least March 1<sup>st</sup>, 2018, unless it is for the sole purpose of changing parenting coordinators; provided further that the Father shall be prohibited from filing any variation applications to this order without first paying to the Mother his 50 percent share of the cost of Ms. Wotherspoon's services.

[102] No ex parte applications are permitted by either the Mother or the Father.

[103] Both counsel have requested that I make no order with respect to court costs at this time. Should counsel wish to pursue this issue further, I would ask that they attend at the trial coordinator's office to set a court date to hear argument on the issue of costs only.

[104] I wish ACC good mental health. In furtherance of this objective and in order to protect ACC's well-being, I am issuing a publication ban pursuant to section 100 of the *FLA*.

Heard on the 10<sup>th</sup> day of November, 2016, the 5<sup>th</sup> day of December, 2016, the 10<sup>th</sup>, 11<sup>th</sup>, and 18<sup>th</sup> days of January, 2017, and the 24<sup>th</sup> day of February, 2017.

Dated at the City of Calgary, Alberta this 24<sup>th</sup> day of February, 2017.

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S.E. Lipton  
A Judge of the Provincial Court of Alberta

**Appearances:**

R. Joshi, Esq.  
for the Applicant Father

J. Hoffman, Ms.  
for the Respondent Mother