IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *M.H. v. C.S.,*
2013 BCSC 2232

Date: 20131018
Docket: E123678
Registry: Vancouver

Between:

M.J.H.

Petitioner

And

C.D.S.

Respondent

Before: The Honourable Mr. Justice Butler

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:	Mark B. Thompson
Counsel for the Respondent:	Jill L. Chapin
Counsel for the BC Parenting Coordinators Roster Society:	R. Craig Neville
Place and Date of Hearing:	Vancouver, B.C. September 25, 2013
Place and Date of Judgment:	Vancouver, B.C. October 18, 2013

[1] **THE COURT:** This is a highly contentious family matter. The parties have a four-year-old daughter, C., who lives with her mother, M.H. (the "petitioner"), in Vancouver. C. was born in Calgary in June 2009 and the parties separated before her first birthday. Following litigation in Calgary, the parties entered into a consent order on May 25, 2011, which gave sole custody and primary residence of C. to the petitioner. It was agreed that the petitioner would move to Vancouver with C. The father, C.S. (the "respondent"), lives and works in Calgary and it was understood that he would remain in Calgary.

[2] As a result of the long distance between the parties, the order provided for specific access visits in Calgary. The order set out dates for those visits in 2011 which worked out to approximately three overnight access visits per month. The petitioner was to pay all costs associated with the travel so long as the respondent's support payments through the Maintenance Enforcement Program remained in good standing. The order also appointed a parenting coordinator in Calgary to consult with and advise the parties regarding parenting concerns about which the parties could not agree so long as the jurisdiction of the court remained in Alberta.

[3] After the 2011 access visits took place, the parties had difficulty making arrangements for further access visits in Calgary. Eventually, the petitioner brought this petition to have the British Columbia court recognize portions of the Alberta order and take jurisdiction given that C.'s habitual residence is now in British Columbia.

[4] On February 25, 2013, the parties appeared before Justice Bowden. I understand that at the time of the application, there had been very limited visits in Calgary in the previous year. At the hearing of the application, the respondent sought numerous orders including an order that a parenting coordinator be appointed. He also wanted a specified access schedule established that continued the pattern set by the Alberta court.

[5] Justice Bowden made two orders, one entered and one that was never entered. The entered order provided that the B.C. court recognized certain

paragraphs of the Alberta court order, specifically paragraphs 1 to 8 inclusive and paragraphs 12, 13, and 22. The unentered order provided that a parenting coordinator would be appointed following the coming into force of the *Family Law Act*, S.B.C. 2011, c. 25. It also provided for three months of access visits to be agreed between the parties. In addition, the parenting coordinator was to perform a review of the access three months after appointment. The order was not entered because the parties did not agree to the terms of the order. The failure of the parties to agree to the terms of that order has caused considerable problems in the last few months.

[6] Pursuant to the unentered order, the parties agreed to dates for access in Calgary with two overnights on each visit. The visits were scheduled for the end of March, April and May. The last of these took place from May 31 to June 2. Pursuant to the terms of the order, the petitioner took C. to Calgary and was required to pay for her own tickets or to reimburse the respondent if he paid for the tickets. I understand that he did pay for the petitioner's tickets and that she has not reimbursed him. However, I also understand that no specific amount has been ordered or agreed. The respondent paid for the cost of C. to go to Calgary for those visits.

[7] I will take this opportunity to note that one of the difficulties of this case is the cost of the access visits. Neither of the parties has a significant income. Indeed, the petitioner is a student with no income at the present time. It is evident from the arguments before me that the party who has to pay for an access visit will want some or all of the expense paid from airline points or, if that is not possible, through use of a WestJet program for access visits. In any event, there have been no access visits in Calgary since June 2.

[8] Further to the unentered order, the parties entered into a Parenting Coordination Agreement (the "Agreement"), by which Arlene Henry, Q.C. was appointed as the Parenting Coordinator. I will refer to her throughout these reasons as the PC.

[9] The Agreement was signed by the parties and the PC. The petitioner was the last to sign the Agreement on June 13, 2013. Paragraph 14.1 of the Agreement provides: "This Agreement is made effective on the date it is signed by the last party."

[10] The Agreement is in the form of the generally accepted precedent for a parenting coordinator's agreement endorsed by the BC Parenting Coordinators Roster Society. The provisions that are relevant to this application include the following:

> 1.5 Subject to this agreement, further court order or any provisions to the contrary in the Authorizing [agreement], the Parenting Coordinator is appointed for a term of 24 months.
>
> …
>
> 1.7 … If the Parenting Coordinator was appointed by a court order, then termination must be by a further court order.
>
> …
>
> 2.2 The Parenting Coordinator will help the Parents to resolve parenting issues in a way that helps to promote the best interests of the child(ren) and minimize parental conflict.
>
> …
>
> 2.4 In the course of her term of appointment, the Parenting Coordinator may:
>
> …
>
> (e) attempt to resolve by consensus a dispute referred to the Parenting Coordinator by either or both Parents; and
>
> (f) if agreement cannot be reached on that dispute, resolve the dispute by making a determination binding on the Parents.

[11] Paragraph 3 sets out the services to be performed by the parenting coordinator and includes the following:

> 3.1. In the course of her term of appointment, the Parenting Coordinator:
>
> (a) may provide any of the following services:
>
> i. assist with the implementation, maintenance and monitoring of an agreement, order or written decision concerning children ("Parenting Plan");
>
> ii. settle anticipated or actual conflicts in children's scheduling;

…

vi. assist the Parents in communicating more effectively with one another;

…

ix. assist the Parents in resolving disputes between them respecting parenting responsibilities;

x. subject to paragraph 3.2, these additional services:

A. three months following the effective date of this agreement, or earlier by consent of the Parents, review and assess parenting time arrangements contained in the Order;

…

[12] Paragraph 3.1(b) provides that the parenting coordinator:

> … may make determinations in respect of:
>
> (i) a child's daily routine, including a child's schedule in relation to parenting time or contact with the child;
>
> …
>
> (vii) the transportation and exchange of a child for the purposes of exercising parenting time or contact with the child;
>
> (viii) parenting time or contact with a child during vacations and special occasions;
>
> (ix) subject to paragraph 3.2, these additional matters
>
> A. parenting arrangement schedule as contemplated by the Order;
>
> …

[13] Paragraph 3.2 provides that:

> 3.2 The Parenting Coordinator will not make determinations in respect of:
>
> …
>
> (d) a substantial change to the parenting time or contact with a child;
>
> …
>
> (f) any matters excluded by this agreement, or by court order; …

[14] Paragraph 3.3 permits the parenting coordinator to consult with, meet with, or obtain information from a wide variety of third parties who may have relevant information.

[15] Paragraph 4.1 provides as follows:

> 4.1 During the term of the Parenting Coordinator's appointment, the Parents agree that they will not initiate or renew court proceedings on matters which are within the scope of the Parenting Coordinator's Services as defined by this Agreement.

[16] Clause 5.1 provides for the consensus-building process and permits the parenting coordinator to consult with and meet with the parents to try to resolve disputes. It states as follows:

> … The timing, frequency, location and format of meetings and consultations, and the persons involved in such meetings and consultations, will be determined by the Parenting Coordinator.

[17] Clause 6.1 provides that the parenting coordinator may make determinations to resolve an issue if agreement is not reached or a parent does not participate in the process or time constraints make it impossible to reach agreement. Clause 6.2 provides that determinations are binding, but may be reviewed by the court. Determinations can be conducted formally or informally, but pursuant to 6.5, the parenting coordinator is to deliver a written and signed determination, although she can make a verbal determination, but it must be put in writing as soon as practicable, and then clause 7.1 provides that a parent may ask the court to review a determination.

[18] I should note that the terms of the Agreement are consistent with the provisions of ss. 15-18 of the *Family Law Act*. There is no suggestion that they are not.

[19] Shortly after the Agreement was signed, the PC began working with the parties to establish an access schedule. Progress on the schedule was slow. The PC asked the parties to provide a description of what they were hoping to achieve with the coordination process, and in particular were asked what access would look

like for the summer and for ongoing regular parenting time from September onwards. A summer vacation access schedule for the respondent was the main focus of the PC's initial work as it was evident to her that the parties could only realistically focus their attention on one contentious task. Towards the end of July, no consensus had been reached on summer vacation access. This was unfortunate as the PC had a two-week vacation scheduled starting in late July. The PC asked the respondent to provide a detailed proposal for a summer access visit in emails of July 15 and 22, but did not receive any effective response. She then left on vacation, but asked that he provide a proposal for an August visit.

[20] When the PC returned from vacation in August, no agreement had been reached between the parties for any summer access visit. She notified them on Thursday, August 15 that the consensus-reaching process was at an end and the determination process had begun. She asked them to assume that the vacation period would commence on the following Monday, August 19, and would terminate on Friday, August 23. She asked the parties to give submissions dealing with the details of the visit. The respondent's submission changed the location of the access visit from Kelowna, which had previously been discussed, to Calgary and so the petitioner was granted a further opportunity to respond to his submission.

[21] On August 16 at 6:16 p.m., the PC delivered her determination in short form. A very detailed determination order was delivered on August 23, 2013. The determination order required the respondent to pick up C. in Vancouver and return with her to Calgary for the parenting time. He was then required to return to Vancouver on Friday to return the child to the petitioner. He was to bear all the costs of the access. Prior to the issuance of the formal determination, but after the notification on August 15, the respondent advised through counsel that he objected to the determination as it imposed a significant expense on him. Further, he took the view that it provided him with a very limited amount of parenting time and preferred the child's involvement in extracurricular activities established by the petitioner to parenting time with him.

[22] The respondent did not exercise parenting time with C. for the summer vacation period as determined by the PC. Rather, he brought this application to set aside the appointment of the PC and to set aside the determination. The petitioner opposes the application to set aside the appointment of the PC and the determination.

[23] Before setting out the position of the parties, I should indicate that the parties appeared before Bowden J. last week to settle the terms of the unentered order. I understand that the terms of the unentered order made on February 25, 2013 are:

1. The respondent, C.S. shall have access to the child in Calgary, Alberta, each month for two nights commencing March 1, 2013 until a review by the parenting coordinator. The review is to be undertaken three months after the appointment or at an earlier time if agreed by the parties.

2. The parties shall agree to the dates for access in the interim period.

3. A parenting coordinator shall be appointed on or after March 18, 2013, as soon as that is permitted under the *Family Law Act* and associated Regulations.

[24] I pause to state that this is my understanding of the settled order. Obviously, the correct order will be as settled by Bowden J.

[25] Before turning to the substance of the application, I note that the respondent seeks six orders. The application was set for two hours. The estimate of time was a gross underestimate. In the circumstances, I indicated I could not hear all of the matters set for the application. Indeed, the orders sought at paragraphs 3, 4, and 5 of the notice of application would require consideration of a large volume of evidence which was not covered in detail by the parties in their submissions before me. I indicated to the parties that I would consider only the first two orders sought by the respondent: 1) to set aside the parenting coordination agreement; and 2) to set

aside or vary the determination made by the PC on August 16, 2013. The hearing of those matters occupied more than three hours.

Respondent's Position

[26] The respondent says that where a parenting coordinator has failed to implement any regular parenting time either by consensus or determination in a timely manner, the agreement should be terminated. Further, he says that the PC approached the determination of a summer access visit in a way that failed to make the process work. She attempted to get the respondent to make a comprehensive proposal which covered minor details rather than to get confirmation of dates of the visit prior to working on the necessary further arrangements.

[27] In addition, the respondent says there are three fundamental grounds that justify termination:

1. The PC attempted to interpret an unentered order based on transcripts from the court rather than referring the order back to the court to be settled;

2. The PC interpreted the order and comments of Bowden J. to give her authority outside of the statutory limits set out in s. 18(a) of the *Family Law Act* and Regulation 6(4)(b)(iv). Specifically, she viewed her appointment as ending the requirement for monthly parenting time with the child and the respondent and granting her wide ambit to work with the parties towards an unclear parenting arrangement.

3. The PC granted herself the authority to determine her date of appointment despite a lack of clarity in the contract. The respondent says this issue is of significance because the three-month review stipulated by the unentered order as to scheduling of parenting time is dependent on the date of appointment.

[28] The respondent relies in part on a paper by Craig Neville titled "*Parenting Coordination: Making it Work for your Clients under the New Family Law Act*." The

respondent notes that Mr. Neville says it will not be possible to appoint a parenting coordinator where there is no parenting arrangement in place. Here, the respondent says the PC approached the access issue as if there was no parenting plan in place. He further notes that guidelines of the BC Parenting Coordinators Roster Society provide that a parenting coordinator: "should not initiate providing services until the PC has received the fully executed and filed court order appointing the PC, or the parents, their counsel … and the PC have signed a consent agreement, if any." Here, he notes that the PC proceeded without a filed court order.

[29] The respondent also says that the PC incorrectly criticized the interjection of counsel to the parenting coordination process. The PC stated in the determination that one of the barriers to success of the process was the involvement of the respondent's legal counsel. By taking that position, he says the PC committed an error in law. The parenting coordinator process is supposed to be transparent and it should be open to review by counsel for a participant.

[30] With regard to the determination, the respondent argues that the PC made errors of fact and law such that the determination should be set aside.

Position of the Petitioner

[31] The petitioner says once the PC was appointed, she worked in good faith to come to a determination of the access issues. She says the difficulties encountered in attempting to reach consensus were caused by the delay as occasioned by the respondent's approach to the process. She says the situation was complicated by the fact that he was not clear or forthright in his dealings with the PC. She says this is confirmed by the PC's findings as set out in the report and recommendations issued on September 23, 2013. The petitioner argues that the appointment of the PC was for 24 months and says she should be permitted to continue to deal with the parenting time issues.

[32] The petitioner submits that the PC did not exceed her jurisdiction by interpreting the unentered order or in issuing her review after September 13, 2013, when the three-month review period ended. She says that the PC was correct in her

assumption that she was appointed on June 13, 2013 rather than as of March 18, 2013, the date that Justice Bowden's order for the appointment of a parenting coordinator became effective.

[33] The petitioner submits there is no justification in fact or law for dismissal of the PC. With regard to the determination, she says it is now a court order and the respondent's disagreement with it is not a basis for setting it aside or dismissing the PC.

Issues

[34] As I have already indicated, I directed the parties to restrict their submissions to the first two orders sought by the respondent. Accordingly, the two issues I will consider are:

1. Should the Agreement made between the parties and the PC be terminated pursuant to s. 15(6)(a) of the *Family Law Act*?; and

2. Should the determination of August 16, 2013, be set aside or varied?

[35] For the reasons that follow, I am dismissing the application to terminate the Agreement. I dismiss the application to set aside or vary the determination as that matter is effectively moot.

Issue 1: Should the Agreement made between the parties and the PC be terminated pursuant to s. 15(6)(a) of the *Family Law Act*?

[36] Parenting coordination is a relatively new process that involves aspects of settlement negotiation, mediation, and adjudication. It developed initially in the United States as a way to give families experiencing high levels of conflict an option other than court to assist in the management and implementation of a parenting agreement or order. It was being used somewhat sparingly in British Columbia prior to the implementation of the *Family Law Act*. This was because parenting coordination cannot work effectively without the coordinator having adjudicative powers. Legislation was required to give that power. The provisions in Part 2, Division 3, of the *Family Law Act* now give parenting coordinators formal status and

adjudicative powers. It should be noted that parenting coordination is not intended to establish or change parenting arrangements, but rather to assist parents in resolving disagreements that arise with regard to how parenting arrangements or orders are put into effect.

[37] At the hearing of this application with the consent of the parties, I had the benefit of brief submissions from Mr. Neville on behalf of the BC Parenting Coordinators Roster Society and was provided with a copy of the Society's guidelines. I have also reviewed Mr. Neville's paper that was presented to the CBA Family Law Subsection on April 4, 2013, titled, "*Parenting Coordination: Making it Work for your Clients under the New Family Law Act*."

[38] Parenting coordination is intended to be a cost-effective process to enable parents to resolve parenting challenges. When issues are resolved through the process, it should be less costly to the parties than the litigation process. The intent is to allow the parties to build consensus and obtain determinations without the involvement of counsel, although counsel may still be useful for parents in a consulting role. As Mr. Neville notes in his paper, "the clearer and more detailed the parenting plan, the less costly my work as a parenting coordinator." In other words, it is difficult for a coordinator to be asked to assist the parties in the creation of a parenting plan. The process is more effective when the coordinator's role is limited to assisting the parties with the implementation of a clear plan.

[39] As I will indicate later in these reasons, the difficulties in this case arose from a misunderstanding as to the unentered order and the lack of clarity in the parenting plan. The combination of these difficulties put the PC in a difficult position and made the parenting coordination a very difficult task indeed.

[40] The starting point for the analysis of the issue is s. 15(6) of the *Family Law Act* which provides in part:

> 15(6) Despite subsection (4), a parenting coordination agreement or order may be terminated at any time as follows:
>
> > (a) in the case of an agreement, by agreement of the parties or by an order made on application by either of the parties;

> (b) in the case of an order, by an order made on application by either of the parties; …

[41] Counsel were unable to provide me with any authorities setting out the test for removal of a parenting coordinator. This is not surprising as the parenting coordination process is so new, both in British Columbia and elsewhere. The respondent framed his arguments for removal of the PC by suggesting that she "exceeded her jurisdiction" or made errors of law. I will deal with each of the arguments individually, but will preface my decision with my observation as to the proper approach to such applications. The intent of the legislation in formalizing parenting coordination is to create a cost-effective alternative process to litigation and dispute resolution. It would be counterproductive to the entire coordination scheme to adopt an overly technical approach to applications to terminate coordination agreements. On an application to terminate a coordination agreement, it is important to examine all of the circumstances to determine if the parenting coordination process is generally being carried out in accordance with the provisions of the *Family Law Act* and the terms, if any, of the agreement. If it is, then a court should be reluctant to terminate an agreement for a minor or technical or temporary misapplication or breach of an agreement or order.

[42] The respondent has put forward a number of reasons for removal of the PC and I will deal with each of them.

i. The PC failed to implement any regular parenting time either by consensus or determination in a timely manner.

[43] This argument is without merit in the circumstances of this case. It is possible that a coordinator could be subject to removal if he or she does not undertake the coordination task as ordered or agreed. However, it is evident that the PC was faced with difficult negotiations and parties who do not work well together. She attempted to move forward with the consensus-building process, both towards establishing regular access and summer vacation access. She focused on the summer vacation access as that was the immediate concern. She did so in a timely way. Both of the parties contributed to the failure to reach an early consensus. The

difficulties encountered are noted both in the determination and the report. The fact that the parties did not achieve a consensus is not a reason to discharge the PC. I fail to see how such a failure could be a reason to terminate an agreement where the circumstances show that reasonable efforts were being taken by the coordinator to achieve a result either through consensus or determination.

[44] The difficulties I have already identified – the unentered order and the unclear parenting plan – contributed to the failure of the parties to negotiate a plan for regular parenting time. The respondent was of the view that there was an order in place for monthly visitation. The petitioner was of the view that the PC was to work on a plan for regular access visits. Now that the Bowden order has been settled, it is clear that there was no ongoing plan in place for regular parenting time. The task of putting such a plan in place was left to the PC. In other words, the parenting plan was unclear. There is no question that the parties intended that the respondent should be able to exercise continued regular access which would give him a similar amount of parenting time to what he had enjoyed. But how this was to be accomplished was not specified. The PC was to review the situation and to work towards a consensus or determination. She attempted to do so and, when consensus was not possible, she issued a determination with regard to the summer vacation and sought to move towards a consensus or determination of regular parenting time in accordance with the assignment to her.

ii. The PC approached the determination of summer access in a way that failed to make the process work.

[45] This is a critique by the respondent of the process followed by the PC in attempting to get the parties to arrive at a consensus for summer access. He submits that it was an error for her to get detailed proposals from the parties at an early stage of the process. This critique is also unfounded. It is trite, but accurate, to say that each parenting coordination situation will require a coordinator to use judgment as to the best way to approach the particular impasse or conflict. Coordinators in this province are required, pursuant to the *Family Law Act* Regulations, to take appropriate training and be a member of the Law Society or one

of the other associations qualified to act as a coordinator. Anyone who is qualified to act will be well qualified. However, there is no right way to approach a parenting coordination situation and two coordinators may well take different approaches to any given situation. It is not for the court to second guess the approach taken by a coordinator. It would defeat the intent of the legislation if a coordinator could be terminated simply because a court was of the view that a different approach might have been able to achieve a consensus.

[46] In short, this is not a valid basis for a termination of an agreement.

iii. The PC attempted to interpret an unentered order based on transcripts from the court rather than referring the order back to the court to be settled.

[47] The gist of this submission is that a coordinator should not be involved in interpreting the authorizing instrument which is the foundation of the appointment. Here, the Agreement specifies at clause 1.1 that the Bowden orders and the Agreement are the authorizing instruments. The respondent argues that if the terms of the authorizing instruments are not clear or there is disagreement about those terms, the coordinator should decline to act and should require the parties to return to court to clarify the order or to their lawyers to clarify terms in the Agreement.

[48] The difficulty with the position taken by the respondent is that, as a practical matter, this is a situation that may well arise with some frequency for parenting coordinators. Coordinators will likely be appointed by court orders that are not crystal clear or by way of agreements that have some room for interpretation. If coordinators could not act unless there was clarity and agreement as to the terms of the authorizing instruments, it is likely that many references to parenting coordinators would be held up in the first instance.

[49] Here, the Agreement is clear as to the scope of work to be performed by the PC. The difficulty that arose came out of the lack of clarity in the orders and, in particular, the unentered order.

[50] The PC was aware of a difference of opinion between the parties. The PC, to the knowledge of the parties, obtained copies of the transcript from the hearing before Bowden J. in order to determine the intent of the unentered order. If the parties did not agree that she should take that step, they could have raised that objection. The object of the coordination process is to resolve contentious parenting issues in a non-adversarial process and to do so at reduced cost to the parties. Having the PC attempt to clarify the order in the fashion she undertook was potentially beneficial to the parties and they did not object when she undertook the task. The objection came later. As it turns out, her interpretation of the Bowden order was correct. The court did not order monthly visits beyond the months specified and the regular access visits were to be the subject of the PC's review.

[51] There was certainly a danger in the approach taken by the PC. If she interpreted the Bowden order to give her jurisdiction beyond that which was granted by the court, any determinations made by her would be subject to being set aside and there would be a risk that the Agreement could be terminated. Her attempt to interpret the court order is not a recommended practice. Indeed, the materials provided to me by the BC Parenting Coordinators Roster Society emphasize that a clearly defined scope of authority and responsibility is important. Guideline 7 of the Roster Society provides:

> A [parenting coordinator] shall serve by parent stipulation and/or formal order of the court, which shall clearly and specifically define the [parenting coordinator]'s scope of authority and responsibilities.

[52] While the approach taken by the PC had the risks I have outlined, the fact that she undertook that task is not, in and of itself, a reason to terminate the Agreement. As I have already indicated, given the way in which coordinators will be appointed, it is likely that there will often be some uncertainty. It would undermine the potential benefits of the parenting coordinator process if a coordinator could not attempt to clarify the scope of his or her work without referring the parties back to court. There will always be a risk that such a determination may be subject to attack at a later date. A coordinator should not undertake the task of attempting to clarify his or her authority without some appreciation of that risk. In some circumstances, it

will be appropriate to refer the matter back to a court. However, the attempt to specify the scope of authority of the coordinator is not only a permissible part of the scope of work of a coordinator; it is an important step that a coordinator must take at the commencement of each assignment. The fact that a coordinator attempts by examination of the court transcripts or otherwise to clarify the scope of her work is not a reason to terminate the coordination agreement.

iv. The PC interpreted the order and comments of Bowden J. to give her authority outside the statutory limits set out in s. 18(1)(a) and Regulation 6(4)(b)(iv).

[53] The relevant statutory and regulatory provisions raised by this argument are as follows:

> 18(1) A parenting coordinator
>
> (a) may make determinations respecting prescribed matters only, subject to any limits or conditions set out in the regulations …

Regulation 6(3):

> The following are matters in respect of which a parenting coordinator may make determinations:
>
> (a) parenting arrangement;
>
> (b) contact with a child.

Regulation 6(4):

> For the purposes of subsection (3), a parenting coordinator
>
> …
>
> (b) must not make determinations in respect of
>
> …
>
> iv) a substantial change to the parenting time or contact with a child …

[54] The respondent says that by considering the issue as to monthly parenting time without a clear parenting arrangement, the PC was making determinations outside of the prescribed matters. Specifically, he says that the PC was considering a substantial change to the parenting time or contact with the child.

[55] I have already dealt with the substance of this issue. As I have indicated, the respondent's view that the PC did not have the authority to consider the ongoing regular access frequency and timing was not correct. The Bowden order did not specify the manner in which the ongoing regular access was to be accommodated. That issue was delegated to the PC. There is nothing in the Agreement that limits the PC from considering such issues. Indeed, there is no question that the Agreement provides that the PC can make such determinations. In that regard, I refer to subparagraphs 3.1(b)(i), (b)(vii), (b)(viii), and (b)(ix) of the Agreement.

[56] The difference of opinion as to the terms of the Bowden order is the source of difficulty about this issue. This problem raises the issue I have noted above. It is important that there be a clear parenting plan with which a coordinator can work, especially where the parties, like those in this case, are in a high-conflict situation. Here, the court assumed it would be beneficial for the issue to be delegated to the PC. There was good reason for doing so. The cost of a resolution by the parenting coordinator would be less and the buy-in from the parents working with a parenting coordinator would be greater. Further, the parties had worked with a parenting coordinator in the past. This undoubtedly gave the court reason to believe that they could work with the PC to resolve the terms as to what the regular access would "look like" moving forward. Unfortunately, that has not happened.

[57] However, the PC did nothing that was outside of her authority in attempting to work on regular access terms with the parties. She did not exceed her authority. She did not purport to determine matters that were not prescribed.

iv. The PC granted herself the authority to determine her date of appointment despite a lack of clarity in the contract.

[58] The argument is based on the proposition that the PC was appointed as of the date of the effective order, March 18, 2013. There is no merit to this argument. No coordinator was appointed on that date. The parties had a court order which authorized the appointment of a coordinator, but they had to agree as to a coordinator to act in that role and agree with that person as to the terms of the appointment. This was done with Ms. Henry by way of the Agreement. Clause 14.1

of the Agreement is clear as to the date of the appointment of the PC: "This Agreement is made effective on the date it is signed by the last party." That date was June 13, 2013. Accordingly, the three-month period following which the PC was to issue a review of the parenting time ended on September 13, 2013. The PC issued her report shortly after that date.

vi. The PC committed an error of law by stating that the involvement of legal counsel was a barrier to success.

[59] The PC was justified in setting out the difficulties that were encountered in the attempt to build consensus. The introduction of adversarial positions by legal counsel is certainly a barrier to success at the consensus stage of the process. Further, by s. 4.1 of the Agreement, the parties agreed that they would not initiate or renew court proceedings over matters which are in the scope of the PC's services as set out in the Agreement. The PC was correct that once the respondent took the position that the PC was acting in a way that was beyond her authority, success was impossible. Her statement to that effect was not contrary to law or reason to terminate the Agreement.

[60] That concludes my analysis of the first issue. There is no basis on which to terminate the Agreement.

Issue 2: Should the determination of August 16, 2013 be set aside or varied?

[61] I do not propose to consider this issue. The issue is moot given the events that transpired at the time of the issuance of the determination. The respondent made it clear even prior to the formal issuance of the determination that he was not going to follow it. He did, however, immediately give notice that he objected to the determination and that the Agreement should be terminated. Hence, the hearing of this application.

[62] I do not see that any point would be served by analyzing the arguments of the respondent as to why the determination was based on errors of fact. Similarly, I do not see any reason to examine the PC's determination to decide if her assessment

as to the actions of the parties and the reasons for the determination are valid in fact or law. The determination dealt with a single vacation access which was to take place in August 2013. It is not of precedential value for the parties. The time for the access visit has passed and no purpose would be served by ruling on the application to set aside or vary the determination. Accordingly, I decline to do so.

Summary

[63] The application to terminate the Agreement is dismissed. The parties entered into the Agreement to have the benefit of a parenting coordinator for 24 months. There is no basis to terminate the Agreement.

[64] I decline to make any order as to the application to set aside or vary the determination other than to dismiss that application.

[65] With regard to the other issues raised by the respondent, I adjourn each of those applications. The orders sought at paragraphs 3, 4, and 5 were not effectively argued. The order sought at paragraph 6 is premature for the reasons outlined by the petitioner's counsel.

[66] The adjournment of the applications, and in particular the order sought at paragraph 3, is of some significance to the order I have made today because of the recommendations contained in the PC's report and recommendations. The respondent asked the court on this application to make an order for specified parenting time. The PC's recommendations touch on that issue and I will refer to them. She made the following recommendation in her report at paragraph 129, subparagraphs (e), (f), and (g):

> (e) That if Clark is to be granted parenting time on a regular basis that he provide Marissa with 14 clear days [of] notice of any decision to designate the parenting time to be in Vancouver and that the parties develop and agree upon a child transfer protocol at least 10 clear days prior to the first such trip to Vancouver;
>
> (f) That a detailed parenting time schedule be negotiated by the parties or ordered by the court.
>
> (g) That the Parents continue working with the parenting coordinator, and that for continuity's sake, that parenting coordinator be Arlene H. Henry, Q.C.

[67] Recommendation (f) is particularly important for the next step in these proceedings. The PC indicated that she is not prepared in the current circumstances to continue to attempt to work to a regular parenting time schedule by consensus, the process which she had started on immediately after appointment. She recommends that the parties either negotiate a schedule or that the court order a schedule. Those are the two options facing the parties. They have not managed to work out a schedule with the PC, although she is still appointed pursuant to the Agreement and will be able to work with the parties once a detailed parenting time schedule is negotiated or ordered. Accordingly, the option for the parties is to attempt to settle on an agreement as to the outline for regular access visits or to take that matter to court. I will leave it up to the parties as to how that will be accomplished and I am not seized of that application.

[68] The petitioner has been substantially successful on this application and shall have her costs at Scale B. Those should be payable forthwith upon taxation or agreement. I think that covers all of the matters arising from the issues I have considered.

"Butler J."