Review of Parenting Decisions in Canadian Family Courts Involving Children with Autism Spectrum Disorder (ASD): Eight Salient Themes for the Family Law Professional

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1. INTRODUCTION

It is now estimated that 1 in 68 children have Autism Spectrum Disorder (ASD)[1]. Although there has been a dramatic increase in prevalence rates of children with ASD over the past two decades, and children can be diagnosed as preschoolers, ASD is often not diagnosed until later childhood or even adulthood. This is particularly the case in those who are mildly affected with ASD, in females, and in parents of affected individuals.[2,3] In North America, a diagnosis of ASD is given based on criteria outlined in the *Diagnostic and Statistical Manual of Mental Disorders (Fifth Edition; DSM 5)*[4], the reference used to guide diagnosis of mental health and developmental disorders. Although there has been controversy in the last few years about the inclusion or exclusion about the label of "Asperger Syndrome" under this diagnostic spectrum, and it has been removed from the DSM 5, individuals who carry this label are still considered to have an ASD. Other previous labels now subsumed under this condition include "autism", Pervasive Developmental Disorder" and "Pervasive Developmental Disorder, Not Otherwise Specified".

ASD is widely heterogeneous in nature, but all presentations are characterized by deficits in social interaction and communication. Impairment may be substantial in those who have limited or no forms of communication, ranging in severity along a continuum to those who have excellent language skills but may not be adept at

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1 Baio, J. Prevalence of autism spectrum disorder among children aged 8 years — autism and developmental disabilities monitoring network, 11 sites, United States, 2010. *MMWR, 63*(2), 1–21. 2014.

2 Stoddart, K.P., Burke, L. & King R. Asperger Syndrome in Adulthood: A Comprehensive Guide for Clinicians. New York: Norton Publishers, 2012.

3 Stoddart, K.P., Burke, L., Muskat, B., Manett, J., Duhaime, S., Accardi, C., Burnham Riosa, P. & Bradley, E. (2013). Diversity in Ontario's Youth and Adults with Autism Spectrum Disorders: Complex Needs in Unprepared Systems. Toronto, ON: The Redpath Centre.

4 American Psychiatric Association. Diagnostic and statistical manual of mental disorders (5th ed.), Arlington, VA: American Psychiatric Association; 2013.

reading non-verbal social cues. Specific behavioural patterns such as preoccupation with certain topics of conversation, resistance to change, adherence to routines, and repetitive behaviours are also characteristic of ASD. Co-existing challenges, which may prove severe enough to receive separate diagnoses and treatment, include impulsivity, self-injurious behaviours, abnormal responses to sensory input, problems with mood regulation, an uneven profile of life skills, and intellectual disability. The complexity of ASD symptom presentation can result in difficulties functioning appropriately in school, employment, social situations, and relationships.[5]

Given this multifaceted and varied clinical presentation, the impact of ASD is substantial across many areas of functioning, the need for specialized supports and services occurs across the lifespan. We have found that in the context of some high-conflict parenting arrangements, the implications of a family court decision in childhood will continue to resound well past the child's 18th birthday, even in cases where the child has a so-called "mild" form of ASD. Gaining a different understanding of a child's needs and developmental trajectory over time, the paucity of services for older youth and adults and life circumstances may also perpetuate conflict and long-term involvement with family law professionals.

This article will provide a brief review of treatment that might be engaged for children and youth with ASD, and review of the some research regarding the risk of separation and divorce in families with an affected child. We then review eight themes that were found in our review of case law involving children with ASD: diagnosis, therapy, parent investment in therapy, stability and routine, third party supervision, children's wishes, matrimonial home, and mobility.

2. CHILDREN AND YOUTH WITH ASD AND THERAPEUTIC INTERVENTIONS

The provision of effective resources and supports for individuals with an ASD diagnosis and their families has become a priority across public and private organizations.[6,7] Children with ASD may require a range of resources and supports in order to enhance success in areas such as personal development; family life; school involvement; community engagement; access to funding; mental health service needs; and the use of diagnostic, developmental, rehabilitation and/or other health services. Individual symptoms and outcomes range widely, thus the mix of required treatments and resources varies substantially from person to person.

The nature and extent of therapy for a child with ASD depends largely upon where the child may fit within the ASD spectrum. A number of therapeutic interventions for children with ASD involve approaches based in applied behaviour

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5 American Psychiatric Association. (2013). Diagnostic and statistical manual of mental disorders (5th ed.). Washington, DC: Author.

6 Brookman-Frazee, L., Drahota, A., Stadnick, N., & Palinkas, L.A. (2012). Therapist perspectives on community mental health services for children with autism spectrum disorders. *Administration and Policy in Mental Health, 39*(5), 365–373.

7 Health Canada (2007). Government of Canada response to the report of the standing Senate committee on Social Affairs, Science and Technology, "Pay Now or Pay Later — Autism Families in Crisis". Retrieved from http://www.hc-sc.gc.ca/hc-ps/dc-ma/auti-crisis_crise-eng.php.

analysis (ABA) theory[8,9] and involve behaviour-based treatments and training improve functioning in various areas of the child's life. ABA is grounded in the concepts of skill and technique development and strengthening through repetition and reinforcement. It is critical, therefore, that parenting arrangements support a regime in which an ASD child can receive therapy in a manner that is stable and constant. In order to be most effective, ASD interventions should be consistent across environments — parents, teachers, therapists, support workers, caregivers and extended family members must work together to most effectively meet the needs of the affected child[10]. Reinforcing skill development within differing environments increases the likelihood of positive outcomes.[11] Other therapeutic interventions may include speech-language interventions, occupational therapy, music therapy, animal therapy, dietary restrictions, and vitamin therapies, among others.[12]

Active observation and participation of a parent in a therapeutic ASD intervention may serve to improve the effectiveness of that intervention[13]. Parents who meaningfully engage in therapies can gain a better understanding of how and why particular therapeutic interventions may work and can assist in promoting consistency in application, an important component to increasing successful outcomes. Therefore, positive parental involvement in therapy is likely in the best interest of the child, and actions or behaviours that effectively limit such parental participation can be a determining factor in deciding custody and access outcomes. In family law matters, sufficient clinical information and professional recommendations should be obtained and shared between the parents and their legal counsel so that consensus, ideally, can be developed as to the type and level of therapy best suited for an individual. This determination is best made outside of the court process and disputes around appropriate therapeutic approaches, if suggested, are better resolved outside of the legal context wherever possible.

3. CHILDREN AND YOUTH WITH ASD AND COUPLE BREAKDOWN

Overall, parents of children with disabilities are 3% to 6% more likely to divorce, compared to parents of children without disabilities, although the increased

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8 Lovaas, O.I., & Smith, T. A comprehensive behavioral theory of autistic children: Paradigm for research and treatment. *Journal of Behavioral Therapy and Experimental Psychology, 20*(1), 17–29. 1989.

9 Weiss, M.J. Differential rates of skill acquisition and outcomes of early intensive behavioral intervention for autism. *Behavioral Interventions, 14*, 3–22. 1999.

10 Carothers, D.E., & Taylor, R.L. How teachers and parents can work together to teach daily living skills to children with autism. *Focus on Autism and Other Developmental Disabilities, 19*(2), 102–104. 2004.

11 Kubina, R.M., & Yurich, K.K.L. Developing behavioral fluency for students with autism: A guide for parents and teachers. *Intervention in School and Clinic, 44*(3), 131–138. 2009.

12 Goin-Kochel, R.P., Myers, B.J., & Mackintosh, V.H. Parental reports on the use of treatments and therapies for children with autism spectrum disorders. *Research in Autism Spectrum Disorders, 1*, 195–209. 2007.

13 Solish, A.J. "Parents' involvement in behavioural intervention for their children with autism" (PhD diss., York University, 2010).

prevalence is much smaller than many would expect[14]. Based on data from the Child Health Supplement (CHS) to the National Health Interview Survey (NHIS), Mauldon[15] found that parents of children with chronic health problems were more likely to divorce than parents of children with no chronic problems. This trend was strongest when the children were between 6 and 9 years of age. There was evidence that that the rate of parental divorce was influenced by the nature and severity of the child's health problem. Although not specific to children with ASD, these results provide support for examining the effects of marital instability among parents of children with ASD and the potential consequences of marriage breakdown and divorce.

Studies examining likelihood of separation and divorce among parents of children with ASD have found higher rates than the general population of separated families. Based on a sample of 781 parents, Hartley and colleagues found that the rate of divorce among parents of children with ASD (23.53%) was nearly twice the rate of the comparison group (13.81%)[16]. Factors predictive of divorce in the ASD group included the age of the parents (younger parents were more likely to divorce than older parents) and if the child with ASD was late in the birth order. Risk of divorce among parents of children with ASD remained high as the child with ASD grew older, whereas the parents of children with no disabilities experienced a drop in divorce rates after their child reached the age of 8. Similarly, Cohen and Tsiouris found that parents of children with ASD were more likely to experience a divorce than parents of children with no ASD diagnosis, although most of this difference was associated with the child's externalizing behaviours[17]. This suggests that the child's ASD itself is not as much a contributor to the parents' divorce as the behavioural problems associated with children with ASD.

4. CHILDREN WITH ASD AND PARENTING PLANS

A variety of parenting issues can flow from the diagnosis of ASD depending upon where a child's symptoms may fall within the autism spectrum. Therefore, an effective parenting plan requires comprehensive consideration of the particular ASD symptoms as they present within a given child and, as they are manifested across areas of that child's life. It is important to consider how a child's symptoms are understood by each parent, and how they impact all members of the family, the necessity for consistency and routine, utilization of various resources and services, and/or unique custody and parenting plans to support the well-being of the child and family.

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14 Risdal, D., & Singer, G. H. S. Marital adjustment in parents of children with disabilities: A historical review and meta-analysis. *Research & Practice for Persons with Severe Disabilities,* 29(2), 95-95-103, 2004.

15 Mauldon, J. Children's risks of experiencing divorce and remarriage: Do disabled children destabilize marriages? *Population Studies, 46*(2), 349–362, 1992.

16 Hartley, S.L., Barker, E.T., Seltzer, M.M., Floyd, F.J., Orsmond, G.I., Greenberg, J.S. et al. Divorce in families of children with an autism spectrum disorder. *Journal of Family Psychology, 25*, 371–378. 2010

17 Cohen, I.L., & Tsiouris, J.A. Maternal recurrent mood disorders and high-functioning autism. *Journal of Autism and Developmental Disorders, 36*, 1077–1088, 2006.

Establishing and maintaining stability and routine in parenting arrangements may be said to be generally beneficial for most children, but can be of particular importance when considering the parenting needs of children with ASD. Children with ASD rely on consistency and predictability, and the establishment of structure and detailed routines has been shown to be particularly beneficial for families of children with ASD.[18,],[19] Resistance to change in children with ASD (and resulting emotional and functional difficulties coping with that change) is an important consideration in making custody decisions.[20]

Children with ASD may also benefit from an Individual Parenting Plan (IPP) which "allows child access to persons and services necessary for his or her optimal development, and to protect the child from that which is harmful."[21] The IPP may address details regarding residence, education, recreation, family, medical, psychological, transportation, advocacy and finances. Facilitating parenting plans through a specific treatment plan can minimize any room for discrepancy, this facilitating a smoother transition from divorce for children with ASD. The IPP may be the preferred resource for the courts in helping to make decisions regarding custody and access, especially when the parents do not agree on the most appropriate plan for their children with ASD.

Jennings[22] suggests that an ideal parenting arrangement would include "flexible arrangements negotiated each week or month depending on the child's activities, state of distress, and rate of development". Flexible parenting plans, however, may not be conducive for high conflict families who are disputing custody and access arrangements[23]. The routine and consistency required by many children with ASD suggests that a more structured parenting plan would better meet these children's needs. The aim should be to create plans that support consistent routines, transparent and predictable schedules, and children's treatment needs.

Parenting plans for children with ASD should include details about: the specific treatment plans needed to support the child with ASD, the persons responsible for making decisions regarding treatment options, the persons responsible for working with treatment professionals to achieve treatment plans, and the persons responsible for cost associated with treatment plans and extraordinary expenses. In a low

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18 Ewart, K.H. "Parents' experiences of having a child with autism" (PhD diss., California School of Professional Psychology, 2002).

19 Larson, E. Caregiving and autism: How does children's propensity for routinization influence participation in family activities? *OTJR: Occupation, Participation, and Health, 26*(2), 69–79, 2006.

20 Dicker, S., & Marion, R. Judicial spectrum primer: What judges need to know about children with autism spectrum disorders. *Juvenile and Family Court Journal, 63*(2), 1–19, 2012.

21 Saposnek, et al., 2005, p. 575.

22 Jennings, S. Autism in children and parents: Unique considerations for family court professionals.

Family Court Review, 43, 582–596, 2005

23 Saini, M. (2012). Reconceptualizing high-conflict divorce as a maladaptive adult attachment response. *Families in Society: The Journal of Contemporary Social Services, 93(3), 2012*. DOI information: 10.1606/1044-3894.4218

conflict divorce when both parents agree with the child's treatment plan, these decisions can be made jointly. However, in cases where parents do not agree on treatment options (a significant source of conflict in this field), families would benefit from the assistance of a trained mediator and/or evaluator who specializes in ASD, and a psychological assessment of the child. The psychological report should outline the needs of the child and emphasize collaboration among professionals involved/to be involved to ensure that any proposed parenting plan addresses the child's needs[24]. Treatment plans may include: "occupational therapists, social skills therapists, behavioural specialists, speech therapists, medical assessors, tutors, psychotherapists, ASD support group facilitators, parent training teachers, respite care workers, and special education attorneys"[25].

Despite our subjective perception of the high prevalence of children with ASD involved in family justice matters, little attention has been given to parenting plans that would best help families manage the unique circumstances of parenting children with ASD after separation and divorce. We reviewed Canadian case law was conducted to examine issues of child custody in disputes involving children with ASD. This review explores the factors considered when making custody and access orders for children with ASD. The sample included custody and access judicial decisions across Canada in the *LexisNexis* database. Terms used to locate these cases included: "autism", "autistic", "ASD", "Asperger" and "Pervasive Developmental Disorder". This review considers judicial decisions made within Canadian family court proceedings to determine the various approaches for addressing child custody issues for children with ASD. Judicial decisions are important to consider given even settled disputes in family law are resolved within the context of the family law system and within "the shadow of the law and judge's presumptions".[26,27] Advice to parties, for example, may be based on previous judicial decisions regardless if the case actually goes to trial.[28]

5. CHILDREN WITH ASD AND REVIEW OF JURISPRUDENCE

There are no special rules *per se* that apply to custody orders concerning children with ASD; the same legal principles apply to all custody disputes. Although minor differences exist within the codification and application of the best interest test across Canadian jurisdictions, parenting issues are decided and parenting plans are developed based on the best interests of the child. Below is a review of jurisprudence through which several themes and principals have emerged. These will be helpful to consider when addressing a family dispute involving a child with ASD.

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24 Saposnek, et al., 2005.

25 Jennings, S., 2005 (p. 588).

26 Stamps, L.E. Maternal preference in child custody disputes. Journal of Divorce and Remarriage, 37(1-2), 1–11. 2002 (p. 10).

27 Mnookin, R.H., & Kornhauser, L. Bargaining in the shadow of the law: The case of divorce, 88 YALE L.J. 950, 997 (1979).

28 Above p. 10.

(a) Seeking and Responding to a Diagnosis of ASD

The capacity and willingness to accept and respond to a diagnosis of ASD can be an important consideration in determining the parenting arrangement that is in the best interest of the child. There can be difficulty in garnering acceptance and agreement among parents (and in some cases, trained and expert professionals) about the appropriateness or validity of an ASD diagnosis. The conflict apparent in *Rapoport*[29] seems not only to have created delay and confusion in obtaining the ASD diagnosis, but the exclusion of each party by the other within the process of diagnosis served to further escalate conflict and delay an appropriate response to that diagnosis. In this case, the father's openness, awareness and appropriateness of his response to that diagnosis were significant factors in awarding custody to him:

> *On health issues involving the children, the husband was also open to the suggestions and observations of others, be they caregivers, teachers or the assessor . . .. He took the initiative on most of these matters, or was prepared to do so. On the other hand the wife generally refused to acknowledge that these matters were significant, or she ignored them . . . Since the diagnosis, the husband has continued to inform himself of the condition through reading and course work. He also tried to take advantage of other services that became available when a formal diagnosis had been made. I believe that the wife has also read up on the condition but not to the same degree because she has difficulty accepting the diagnosis.*

F. (K.C.) v. F. (A.M.)[30] concerned a custody dispute between parents of a child with ASD. Prior to the hearing, the father had gained interim custody of the child by order and the mother was only permitted supervised access. She had not seen her daughter for nearly two years prior to the proceeding. Read J. for the Alberta Court of the Queen's Bench found in favour of sole custody for the father. The chief reason for this order was the fact that the mother was unable to acknowledge her daughter's developmental problems and, as a consequence, may have been unwilling to maintain and support the treatment recommended by the child's physician that had been important to the child's recently improved functioning. In contrast, the father was very supportive of the treatment the child was receiving, and behaved consistently to medical advice.

Similarly, in *Krone v. Krone*,[31] the failure of the father to actively engage and follow up on the assessment and diagnosis of the child with ASD was viewed unfavourably. Butler, J. of the Newfoundland Supreme Court noted that the mother recognized early that her child may have developmental issues, sought a referral from her family physician, and obtained an assessment for ASD. The father, on the other hand, refused to acknowledge there was a problem and sought to have the assessment postponed for six months. It was necessary for the mother to obtain a court order before the assessment could proceed, and the father chose not to participate in the assessment process. Upon diagnosis, the mother lobbied for benefits and services for the child, including securing the assistance of a teacher's aide, and completion of therapy. The father was not familiar with ABA-based therapies and

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29 *Ibid.*

30 2011 CarswellAlta 363, [2011] A.J. No. 257 (Alta. Q.B.).

31 2011 CarswellNfld 67, [2011] N.J. No. 70 (N.L. T.D.).

could not present any evidence of any similar action or effort on his behalf to support appropriate treatment or intervention for the autistic child.

Parsons v. Parsons[32] provides another example of opposing parental behaviours with respect to the assessment and appropriate diagnosis of a child. Here, the mother's decision to refuse ASD screening when it first suggested by a speech and hearing clinic was noted and cited as one reason why a joint decision-making arrangement would serve to ensure that the best interests of the child were being met.

(b) Accessing and Advocating for Therapies

Therapeutic interventions for the child with ASD can be expensive and time-consuming. Blok, J., sitting for the British Columbia Supreme Court, gave consideration to this in *Robles v. Kuhn*,[33] noting that the formal diagnosis of ASD for the child in that case required assessment reports from a paediatrician, a psychologist and a speech-language pathologist. Blok also recognized the significant effort required to successfully obtain funding and assemble a team capable of providing ABA therapy, speech, and occupational therapy, and noted the intensiveness of ABA therapy alone which consisted of 21 hours per week. Notice was given to the extent to which parents must educate themselves in order to effectively participate and augment any therapeutic intervention.

In the *Robles v. Kuhn*[34] case, the mother actively participated in a program that taught parental interventions to improve communication, behaviour and social interactions of her autistic child. The advocacy skills of this mother, including the steps she took to properly understand the need for and extent of the therapeutic treatment required for her child with ASD were viewed favourably the judge, and resulted in awarding sole custody and ultimate decision-making authority to the mother. In addition, the father was required to provide financial support in order to assist with funding any ASD-related interventions.

Consideration of parental advocacy for services was noted in *Rapoport*[35] and its importance in addressing the best interest of the child and in awarding sole custody to the father:

> *. . . because of his academic and work background in psychology and infant development, the husband is better able to understand the nature of autism with its complex core features and secondary implications. . . . I am satisfied that the husband will not rest until he has pursued every possible avenue to better his son's chance in dealing with the disorder. The husband is determined and vigilant on this issue. I am not confident that the wife sees or understands to nearly the same extend and depth, or that she has the necessary discipline or strength to deal with in in the longer term.*

Parental advocacy was also a factor in the joint decision making outcome of *Parsons v. Parsons*[36], to ensure that the father's advocacy skills, which were noted

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32 2011 CarswellNS 731, [2011] N.S.J. No. 533 (N.S. S.C.) at para. 37.

33 2012 CarswellBC 1492, [2012] B.C.J. No. 1024 (B.C. S.C.).

34 *Ibid.*

35 Above note 5 at para 140.

36 Above note 10.

as critical for providing adequate care for the child with ASD, could mesh with parenting strengths of the mother. Similarly, Forgeron, J. for the Nova Scotia Supreme Court found in *Parsons* that the father did not have the same level of advocacy skills as the mother and noted that *"a strong advocate is essential for any special needs child*. The concept of a joint decision making arrangement and amalgamation of the decision making strengths of two parents is also reflected in the joint custodial arrangement that was awarded in *Csecs v. Csecs*.[37]

(c) Parental Endorsement of Therapies

It was concluded in *Jensen v. Mains*[38] that the prevention by one parent of another's meaningful involvement in therapy (by preventing attendance at therapy sessions and limiting communication and contact with therapists) impeded effective therapeutic outcomes and therefore was contrary to the best interests of the child with ASD. This was a contributing factor in the reversal of custodial arrangements in that case. To ensure that both parents could effectively participate, Metzger, J. ordered in *Jensen* that half of all therapy sessions be held in a neutral location to facilitate the involvement of both parents. In *Parsons v. Parsons*[39], the judge directed specifically within the joint custody and shared parenting regime order that each parent cooperate with all professionals to learn strategies and assist their child with ASD with any special learning requirements. The parental efforts to actively participate in the therapeutic interventions of the child with ASD in *Hoffart v. Hoffart*[40] were also viewed favourably by the trial judge in determining a custody variation application:

> *Mr. M.A.H. has undertaken considerable efforts to educate himself about autism generally and about MJ's needs in particular. I was impressed by Mr. M.A.H.'s evidence that when he learned the . . . school district had a five-day education course on teaching autistic children he lobbied hard to attend the course himself.*

In *Krone v. Krone*[41] the mother was found to have taken all steps necessary to educate herself about ASD and the appropriate strategies necessary to assist in parenting, including the importance of establishing routine. The father, however, was found to lack insight and to be inattentive to the needs of the child, particularly in relation to ABA-based therapies. In awarding sole custody to the mother and scheduled access to the father, the judge ordered that the father complete specified ABA training and, further, that no application for increased access would be entertained until such time as the ABA training had been completed (among other stipulations).

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37 2001 CarswellOnt 1306, [2001] O.J. No. 1424 (Ont. S.C.J.).

38 2007 CarswellBC 769, [2007] B.C.J. No. 760 (B.C. S.C.); additional reasons 2007 CarswellBC 2225 (B.C. S.C.).

39 2011 CarswellNS 731, [2011] N.S.J. No. 533 (N.S. S.C.).

40 2005 CarswellBC 1116, [2005] B.C.J. No. 1058 (B.C. S.C.) at para. 27 [M.A.H. v. B.L.H.].

41 2011 CarswellNfld 67, [2011] N.J. No. 70 (N.L. T.D.).

Similarly, in *Navratil v. Navratil*,[42] the father's lack of insight and empathy in relation to his child with ASD and the resulting inability to appreciate the degree of care required to meet the child's special needs was a contributing factor in awarding sole custody to the mother. This decision was made even though the judge noted a concern about the mother's failure to keep the father fully apprised of medical appointment details related to the child. Provisions in the order that followed promote the engagement of the father in the treatment for his child:

> *The mother shall, prior to any medical, dental, or other professional appointment for the children, including counselling appointments, advise the father in writing of the particulars of such appointment. This may be done in the communication book, or by any other written means. While Mr. P.N. shall not attend at these appointments without the consent of Ms. E.N., or the request of the caregiver, he shall be entitled to contact the caregiver after the appointment . . . Mr. P.N. shall, however, be entitled to attend at any meetings regarding the children's schooling, including their individual program planning . . . Mr. P.N. shall direct any questions he has concerning the children's care which cannot be answered by professionals involved with the children to Ms. E.N. in writing, and she shall provide a complete and timely reply, also in writing*.

When there is parental disagreement over a treatment plan, awarding joint custody may lead to poor emotional and psychological outcomes for the child.[43,44] Children may feel pulled into parental conflict and adopt various active and passive coping methods in order to reduce the conflict between their parents, including attempts to manage and mediate the conflict.[45,46] This has been taken into consideration most notably in the case of *Kaplanis v. Kaplanis*,[47] where a joint custody order was reversed after recognition that a history of effective cooperation and communication between the parents was not existent and that implementing a joint custody plan would not serve to improve the parental relationship nor serve in the best interests of the child.

In *Jessome v. Jessome*,[48] Bourgeois, J. from the Nova Scotia Supreme Court (Family Division) declined to order joint custody noting that the parents did not have the ability to jointly confer in relation to the children and, in fact, found it advisable that the parents, at least in the interim, not interact with each other at all in the presence of their children. Nevertheless, and perhaps in recognition of the

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42 2002 CarswellOnt 1626, [2002] O.J. No. 1978 (Ont. S.C.J.) at para. 31 [PN v. EN].

43 McIntosh, J., & Chisholm, R. (2008). Cautionary notes on the shared care of children in conflicted parental separation. *Journal of Family Studies, 14*(1), 37–52.

44 Whitehead, D.L. (2012). *The shared custody experience: The adult child's perspective on transitions, relationships, and fairness* (Unpublished doctoral dissertation). The University of Guelph, Guelph, Ontario, Canada.

45 2005 CarswellOnt 266, [2005] O.J. No. 275 (Ont. C.A.).

46 2009 CarswellNS 710, [2009] N.S.J. No. 614 (N.S. S.C.) at para. 65.

47 2005 CarswellOnt 266, [2005] O.J. No. 275 (Ont. C.A.).

48 2009 CarswellNS 710, [2009] N.S.J. No. 614 (N.S. S.C.) at para. 65.

importance of the parental role in ASD advocacy and treatment, directed the following in spite of the highly acrimonious milieu of that case:

> *As the sole custodial parent, Ms. Jessome shall have the right to make all decisions pertaining to the children, including those relating to (the autistic child)'s care and educational programs. That being said, I encourage Ms. Jessome to consult Mr. Jessome where appropriate, as he has obviously taken an interest in better understanding how individuals with autism can lead rich lives, notwithstanding this diagnosis. He may have very valuable information and opinions to consider, which may ultimately be to (the autistic child)'s benefit.*

Dispute can also result from both parents being actively involved with the treatment plan for the ASD child but disagreeing upon which intervention is most appropriate. In *K. (R.K.) v. M. (B.M.)*[49], the parents of a child with ASD agreed that ABA therapy and nutritional adaptations (the adoption of a gluten and casein free diet) had resulted in remarkable improvement in their son's progress. Conflict eventually arose, however, about the validity and necessity of other ASD interventions such as vitamin therapy, chelation and helminthic treatments. The mother wished to pursue these interventions and felt an urgency to implement them in order to increase efficacy. The father questioned whether such interventions were required, was unconvinced that evidence existed to support the effectiveness of these therapies, and was concerned that harm may arise as a result of pursuing these interventions. In this case, L.F. Gower, J., of the Yukon Territory Supreme Court, was asked to make an interim order deciding which parent should have final decision making authority regarding treatment of their child's ASD. The judge determined that a legitimate difference of opinion existed between the mother and father over the best interests of their child, and noted that he (the judge) was not tasked with determining which medical approach was most appropriate but only with deciding how medical decisions should be made.

The judge strongly suggested that both parties consider a process whereby differences of opinion in relation to medical treatment be submitted to an independent third party expert (such as a physician) for determination. The judge noted that this process would likely be ". . . *substantially quicker, more economical and ultimately wiser than coming to this Court for such determinations*". The judge ultimately agreed with the father's proposal that all medical decisions be made jointly, rejecting the position of the mother that she have sole decision making authority in this regard, and that recourse be made to the court should the parties reach an impasse. The term of the Interim Order in this regard stipulated:

> *Each major medical decision to be made for M., and more specifically those relating to his Autism Spectrum Disorder, shall be jointly made by the mother and father following a good-faith discussion between them, during which they will make their best efforts to come to a resolution. Failing such agreement, either the mother or the father may apply to this Court to have the matter determined.*

It is ideal that parents actively support continuity and consistency in the delivery of therapeutic interventions for their child with ASD. The failure of the custo-

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49 2009 CarswellYukon 38, [2009] Y.J. No. 54 (Y.T. S.C.) at paras. 53, 57.

dial parent in *Jensen v. Mains*[50] to maintain a consistent therapy regime and to "permit large gaps in . . . therapies" for their child with ASD was a significant factor in reversing a previous custody order. In this case, these inactions were found to have reduced the effectiveness of the interventions in question, resulting in delayed improvements in the day-to-day functioning of the child.The inability to effectively and appropriately communicate decisions with the appropriate parties, relating to interventions for ASD can impact legal decisions regarding custody. This was also a deciding factor in *Jensen*[51] when the judge reversed custody to the parent whom he felt was:

> *. . . more likely to make timely and appropriate decisions regarding (child)'s therapy in keeping with (child)'s best interest and is more likely to ensure that (the other parent) is informed and consulted with respect to significant matters affecting (the child)*

Similarly, in *Rapoport*[52], the finding that the father generally attempted to communicate and consult with the mother in relation to concerns related to their child's ASD, and the corresponding finding that the mother failed to consult and attempted to block communication in this regard, were significant factors that the judge considered when awarding custody to the father. Also significant in this case was the fact that the father was consistently and deeply involved with every aspect of the children's lives, particularly as they were affected by his son's ASD.

In *Robles v. Kuhn*[53] the father accused the mother of deliberately filling up the child's schedule with therapy so as to frustrate access. The father was found to have intimidated the behavioural consultants and therapists, thereby hindering the child's treatment progress, another factor that was given consideration in the decision to award sole custody to the mother and to allow her to relocate with the child with ASD to another jurisdiction.

In *Radons v. Radons*[54], Ottenbreit, J. of the Saskatchewan Queen's Bench was prepared to award joint custody, but the medical concerns of the child with ASD and the father's disregard of the prescribed course of medical treatment was cause enough to direct that the mother have final decision making authority with respect to all of the child's health issues. The judge noted that the father blamed the mother for the child's medical issues which he believed were being used to frustrate access, finding:

> *There is . . . a great likelihood that (the father) would question steps being taken by (the mother) or professionals with whom she consults respecting (the child)'s health issues and either minimize those issues or try to substitute and implement his own views of what is necessary while at the same time blaming (the mother) for some of them.*

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50 2007 CarswellBC 769, [2007] B.C.J. No. 760 (B.C. S.C.) at para. 136, ; additional reasons 2007 CarswellBC 2225 (B.C. S.C.).

51 *Ibid.*, para. 140.

52 Above, note 5.

53 2012 CarswellBC 1492, [2012] B.C.J. No. 1024 (B.C. S.C.)

54 2008 CarswellSask 116, [2008] S.J. No. 116 (Sask. Q.B.) at para. 50 ; additional reasons 2008 CarswellSask 629 (Sask. Q.B.)

(d) Stability and Routine for the Child or Youth with ASD

In *Wallace v. Pilloud*[55], it was recognized the academic and behavioural challenges experienced by the child with ASD within that family necessitated a parenting provision to adequately prepare the child for access visits. Adherence to a strict dietary regime was found to improve behavioural issues, as was consistent compliance with an established access schedule. Bruce, J., of the British Columbia Supreme Court, directed that the father was to provide the following information two days in advance of every access visit so that the mother could have the detail necessary to better prepare the child with ASD for an access visit and any cancellation thereof, or more particularly, any change in routine:

> *Where the children will be staying and a contact telephone number. A general description of the activities, if any, that have been planned. The names of any new persons the children may have come into contact with during an access visit*.

The needs for stability of the ASD child in *Hoffart v. Hoffart*[56] was considered by the trial judge when determining custody and access. Rogers, J., of the British Columbia Supreme Court noted:

> *. . . (the child) has autistic spectrum disorder and requires a number of therapeutic programs. Most particularly, (the child) needs a reliable and predictable routine. He needs helps socializing and developing appropriate interpersonal skills*.

Indeed, the judge in this case refused to vary the existing custody arrangement, even while giving the full benefit of the doubt by assuming the environment that the non-custodial parent would be at par with the status quo, because the child

> *. . . clearly requires the benefit of a stable, relatively unchanging environment. He needs a predictable routine*" and that "*forcing (the child) to change his residence and primary parent would produce no demonstrable benefit that could outweigh the price to be paid for making that change*.

The importance of a stable and predictable routine for the child with ASD in *Yeates v. Yeates*[57] was considered by the Greer, J. of the Ontario Superior Court who refused to award the mother sole custody noting "*this is a family that requires the input of both parents into the lives of their children*" but did recommend a specified access schedule stating:

> *. . . the parties must set the schedule down on paper and the father cannot simply cancel these access arrangements on a whim. The children will come to rely on regular access visits with their father and, in my view, this is very important to their stability*.

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55 2008 CarswellBC 2101, [2008] B.C.J. No. 1890 (B.C. S.C.) at para. 30.

56 2005 CarswellBC 1116, [2005] B.C.J. No. 1058 (B.C. S.C.) at paras. 22, 45, 47 [M.A.H. v. B.L.H.].

57 2007 CarswellOnt 2107, [2007] O.J. No. 1376 (Ont. S.C.J.) at paras. 76, 79, ; affirmed 2008 CarswellOnt 3842 (Ont. C.A.); leave to appeal refused 2009 CarswellOnt 339, 2009 CarswellOnt 340 (S.C.C.).

In *McLennan v. McLennan*[58], in granting sole custody to the father, Catliff, J. of the British Columbia Supreme Court found the maintenance of a stable environment to be of the utmost importance in dealing with children with ASD. Due consideration was also given to the fact that the father had provided a caregiver for the child and had taken serious endeavours to become educated on ASD and the child's particular needs.

In *F. (K.C.) v. F. (A.M.)*[59] the judge awarded sole custody to the father, in part due to a concern that the mother would change the child's school situation if she gained custody. The child was shown to benefit from the routine of the school program and found change difficult. The mother did not believe her child with ASD needed a special needs program and testified she wished to remove the child from the current educational program. On the other hand, the father supported the program and was willing to have the child continue to participate, and thus the judge believed that it was in the child's best interests for the father to have sole custody.

While the court readily accepted the need for consistency and stability for children with ASD in *Droit de la famille — 09415*[60], the Quebec Superior Court found that the children would always have trouble adapting to new situations and that this should not be used as a basis to limit access to the father. Furthermore, although the trial judge noted that the educational activities were even more critical and easily disrupted for the child with ASD in this case compared to other children, and that everything must be done to favour success in this area, a balance should be struck with regard to educational endeavours to allow the father a reasonable degree of access. The assessor involved in this case had recommended that the father's access be limited to one of the three children with ASD at a time. Riordan, J.S.C. found no reasonable basis for this recommendation and chose not to accept this suggestion, noting that the father was a trained caregiver and companion for persons with ASD.

Finally, the child in *Rapoport*,[61] was found needing of structure, routine, consistency and predictability. Whalen, J., for the Ontario Superior Court of Justice, in determining a variation of custody issue, examined the particular needs of the ASD child and the corresponding ability of each parent to meet that need, within a multidimensional analysis that gave consideration to education, social relations and recreation, as well as health and development.

(e) Third Party Supervision

Third party supervision may be implemented as a part of a parenting arrangement in order to reduce the impact of parental conflict on the child[62]. In this case, third party supervisors must be skilled in assessments of parental relationships and competencies, and skills in intervention and psycho-education in order to actively

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58 1980 CarswellBC 90, [1980] B.C.J. No. 1590 (B.C. S.C.).

59 2011 CarswellAlta 363, [2011] A.J. No. 257 (Alta. Q.B.).

60 2009 CarswellQue 1604, [2009] Q.J. No. 1450 (C.S. Que.) [L.G. v. W.B.].

61 2011 CarswellOnt 14814, [2011] O.J. No. 5607 (Ont. S.C.J.).

62 Saini, M., Van Wert, M., & Gofman, J. (2012). Parent-child supervised visitation within child welfare and custody dispute contexts: An exploratory comparison of two distinct models of practice. *Children and Youth Services Review*, 34, 163–168.

and effectively support and enhance healthy parent-child relationships[63]. In cases where the child has an ASD diagnosis, it may also be beneficial to ensure that supervision is carried out by a third party who is educated on ASD symptoms and behaviours and can effectively intervene to foster parental independence.

Evidence was adduced in *Fraser v. Boden*[64] from teachers, a community support agency worker, and a psychologist to demonstrate that the child with ASD in question required continuous and skilled supervision as well as consistency in routine and schedule. It was determined that any adult designated to care for the child with ASD in this case would need to be attuned to the child's idiosyncratic means of communicating, the failing of which may increase the risk of injurious or aggressive behaviour on behalf of the child. While Judge Gove of the British Columbia Provincial Court conceded that physical safety issues could be addressed through supervised access, he was not convinced that such an arrangement could adequately assure the emotional health and well-being of the child. Access was denied to the father whose ability to provide proper supervision had been called into question as a result of his mental health issues. It is interesting to note in this case that the judge also appeared to be moved by the tremendous amount of effort and resources that the mother was expending in caring for her son and was reluctant to disrupt that balance and add an additional challenge associated with the imposition of access by the father finding:

> *It is only in exceptional circumstances where a parent will be denied access to a child. I am satisfied that if Mr. Boren were to have access to (the child) it would tip the delicate balance being maintained by Ms. Fraser to be responsible for her son and would therefore be contrary to (the child)'s best interests and out-weigh any advantage that reinstating the relationship with his father would have.*

In *Gagnon v. Petke*,[65] the needs of the child with ASD were so great that the mother sought a condition in the order that a respite worker be present at all times during the father's access. The mother in this case was unable to return to work as the extreme behaviour of the child demanded that she devote all of her time to providing care, arranging for treatment and keeping the child safe. The father failed to consistently exercise access visits due to conflicting personal and business obligations. As a result C.J. Bruce, J. of the British Columbia Supreme Court, found:

> *The severity of (the child)'s autism and the requirement for two full-time caregivers to meet his needs and ensure his safety is unchallenged. Thus I accept Ms. Gagnon's submission that even in ideal conditions (the child) requires two people to supervise him. It is also apparent that Mr. Petke is unable to maintain regular visits with (the child) because of his business and person commitments. In this regard, I accept Ms. Gagnon's evidence that Mr. Petke is unlikely to be sufficiently cognizant of (the child)'s ever changing behavioural issues to properly ensure his safety during access visits without the assistance of a respite worker. For these reasons, I agree*

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63 Saini, M., Van Wert, M., & Gofman, J. (2012). Parent-child supervised visitation within child welfare and custody dispute contexts: An exploratory comparison of two distinct models of practice. *Children and Youth Services Review, 34*, 163–168.

64 1992 CarswellBC 1321, [1992] B.C.J. No. 1193 (B.C. Prov. Ct.).

65 2008 CarswellBC 964, [2008] B.C.J. No. 879 (B.C. S.C.) at para. 65.

> *that a respite worker must be present during all Mr. Petke's visits with (the child).*

F. (K.C.) v. F. (A.M.)[66] concerned a custody dispute between parents of a child with ASD. The father had interim custody of the child and the mother was permitted supervised access but has not seen her daughter for nearly two years prior to the proceeding. The judge ordered that supervision of access be continued in part because the judge was concerned about the mother's unwillingness to acknowledge issues related to ASD, trust medical expert opinions related to her child, and provide appropriate care accordingly.

The issue of supervised access was also considered in *Navratil v. Navratil*[67]. Pierce, J. of the Ontario Superior Court, refused the mother's request for a continuation of supervised access. The judge found that the father had demonstrated suitable sources of assistance to meet the needs of his child with ASD, had taken parenting courses, had practiced modelling more effective parenting techniques, and had demonstrated a willingness to work with professionals involved in therapeutic interventions with the child. These behaviours were seen by the judge as an improvement from the father's past behaviours which the judge felt demonstrated a lack of appreciation related to the level of care required by his child. An order was issued that contained the following clauses, which while not constituting supervision per se, provided requisite support for the father:

> *During the periods of access, Mr. P.N. shall ensure that he is assisted by at least one other adult approved by the Lakehead Regional Family Centre, or more, should the needs of the children require it. The purpose of this assistance is not supervision, but to model for the father effective parenting in relation to the children's needs, and, to the extent possible, to ensure there is consistency of routine and approach between the parents' households. Any cost shall be borne by the Father . . . With the consultation and approval of Lakehead Regional Family Centre, assisted access may be reduced or withdrawn as the needs of the children and the skills of Mr. P.N. in parenting the children dictate*.

Bourgeois, J. of the Nova Scotia Supreme Court (Family Division) also refused the custodial mother's application for supervised access for the father to the children in *Jessome v. Jessome*[68], one of whom had ASD. The mother specifically asked that supervised access be provided by an access facilitator trained in and knowledgeable regarding ASD. The judge determined that supervised access was not necessary and found that the father may not be sufficiently familiar with the child with ASD's current behaviour patterns and reactions, due to the amount of time that had passed without any access transpiring (resulting from the expiry of a previous supervised access authorization order). It was decided that it would be to be prudent to provide a period of reintroduction between father and children under the benefit of supervision, that term being used broadly and referred to in quotations by the judge, by a person and at a place of the father's choosing. The judge ordered a gradual increase in parenting time within a specified access schedule, but

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66 2011 CarswellAlta 363, [2011] A.J. No. 257 (Alta. Q.B.).

67 2002 CarswellOnt 1626, [2002] O.J. No. 1978 (Ont. S.C.J.) at para. 97 [PN v. EN].

68 2009 CarswellNS 710, [2009] N.S.J. No. 614 (N.S. S.C.).

she did not order overnight visits with the children, despite indicating a strong preference to do so, because she did not believe that she had the necessary information to determine when that might be appropriate, noting that much would depend on how the child with ASD fared with visits away from her usual environment given her special needs.

(f) Children's Wishes

In child custody disputes, it is important to include the voices of the children themselves and prioritize the recognition of the children's wishes[69]. Children often report a desire to have their wishes heard by the courts, at times utilizing both formal and informal resources and supports for assistance in having their wishes heard[70]. Although children with ASD may have communication challenges, an attempt to understand their desires is no less important than for children with no ASD diagnosis. Some strategies that have been recommended previously in health care settings include reducing sensory input when attempting to engage with a child with ASD, and being creative about alternate methods of communication, such as pictures or text[71].

In *Godin v. Godin*[72] the issue of whether children with ASD should have their wishes considered and determined in a manner different to children without ASD was contemplated. Lynch, J. of the Nova Scotia Supreme Court (Family Division) declined to make a finding on this issue, noting that there was no evidence presented in relation to how ASD would affect the child's expression of wishes. Justice Lynch refused to take judicial notice that ASD would affect the children's wishes and would not assume that the wishes of children with ASD should be given less or different weight than children without ASD.

(g) Matrimonial Home

The issue of continued dependence as a child with ASD ages necessitates contemplation of considerations such as ongoing guardianship and maintenance arrangements within a parenting plan, taking into consideration the value and tax implications of government funding that may be available to dependent adults with ASD. Due to the preference of adherence to routine and scheduling, a child with ASD may have difficulties transitioning from one home to another, as may be the cases in custody arrangements. Disruption of a routine or frequent environment changes have been shown to exacerbate externalizing behaviours in children with

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69 Birnbaum, R., & Saini, M. (2012). A qualitative synthesis of children's participation in custody disputes. *Research on Social Work Practice, 00*(0), 1–10.

70 Johnson, N.L., & Rodriguez, D. (2013). Children with autism spectrum disorder at a pediatric hospital: A systemic review of the literature. *Pediatric Nursing, 39*(3), 131–141.

71 Johnson, N.L., & Rodriguez, D. (2013). Children with autism spectrum disorder at a pediatric hospital: A systemic review of the literature. *Pediatric Nursing, 39*(3), 131–141.

72 2010 CarswellNS 647, [2010] N.S.J. No. 524 (N.S. S.C.).

ASD[73]. Thus the matrimonial home has been considered in cases involving children with ASD given the particular need to provide ongoing stability, predictability and security for these children.

The issue of future care of an 18-year-old child with ASD was considered in *Forbes v. Forbes*[74], in which the mother was granted interim exclusive possession of the matrimonial home to ensure an environment where continuing care could be provided for the son with ASD as he developed into adulthood. Huddart, J. of the British Columbia Supreme Court declined to order an end date to the exclusive possession arrangement on the basis that the needs of the child with ASD were currently being met and that it was not possible to predict with sufficient certainty how this may change in the future. Similarly, in *Gagnon v. Petke*[75] the judge ordered an unequal division of assets in favour of the mother caring for a severely dependent child with ASD because the demands associated with providing such care made it unfeasible for the mother to become economically self-sufficient.

In *Harding v. Harding*[76] the mother applied for an order delaying the sale of the matrimonial home until the daughter with ASD was able to reside independently, or in the alternative, an order for an unequal reapportionment of the matrimonial home 100 percent in her favour. This order was rejected largely because no evidence was provided related to prospective alternative assisted living arrangements for the child, and because the indefinite delay on the sale of the home was contrary to the father's right to an equal share in the division of this asset.

In *Yeates v. Yeates*[77] the judge awarded exclusive possession of the matrimonial home to the mother for a specified period of time (3 years), in part to provide stability and continuity for the child with ASD in the family. An application to force the sale of the matrimonial home was also denied in *McLennan v. McLennan*[78] in order to ensure continued stability and routine for the child with ASD in that case.

In *Csecs v. Csecs*[79] the judge agreed that the children should be permitted to continue to reside in the matrimonial home because both parents conceded that it would be stressful for the custodial mother and the children if they were required to leave the home. This decision was also influenced by the presence of a number of supportive and protective neighbours who were aware of the special needs of the children involved, including one child with ASD, and who were willing to assist with the care of those children. Exclusive possession of the matrimonial home and

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73 Reese, R.M., Richman, D.M., Belmont, J.M., & Morse, P. Functional characteristics of disruptive behaviour in developmentally disabled children with and without autism. *Journal of Autism and Developmental Disorders*, 35(4), 419–428. 2005.

74 1992 CarswellBC 1196, [1993] B.C.J. No. 2 (B.C. S.C.).

75 2008 CarswellBC 964, [2008] B.C.J. No. 879 (B.C. S.C.) at para. 90.

76 2009 CarswellBC 1015, [2009] B.C.J. No. 772 (B.C. S.C.).

77 2007 CarswellOnt 2107, [2007] O.J. No. 1376 (Ont. S.C.J.); affirmed 2008 CarswellOnt 3842 (Ont. C.A.); leave to appeal refused 2009 CarswellOnt 339, 2009 CarswellOnt 340 (S.C.C.).

78 1980 CarswellBC 90, [1980] B.C.J. No. 1590 (B.C. S.C.).

79 2001 CarswellOnt 1306, [2001] O.J. No. 1424 (Ont. S.C.J.).

contents was granted to the custodial mother so long as there were children residing in the home who were dependent due to age, school or physical disability.

(h) Mobility

Relocation of a child with ASD is an area that deserves attention in custody cases. Many factors can affect the success of relocation including a child's ability to cope with change and transition to a new environment, the parent's ability to meet the needs of the child in the new environment, and access to appropriate resources, services, and supports in the new area[80].

While not the primary factor, some consideration was given by the British Columbia Provincial Court to the availability of existing resources in various provinces to adequately address the health and development needs of a child with ASD when determining a mobility issue in *R. (S.) v. S. (C.)*[81].

Failure to provide sufficient evidence regarding the availability of services to assist the ASD child was a contributing factor to the decision to disallow an application for relocation in *J. (J.A.) v. J. (J.L.)*[82] as well as in *M. (K.M.) v. F. (A.M.)*[83]. Similarly, in *F. (T.) v. D. (S.)*[84] the unilateral removal of a child with ASD by the father who neglected to put into place any supports or arrangements with either school officials or health care providers in the new jurisdiction was viewed by the trial judge as being contrary to the mental, emotional and physical health of the child. This was a significant factor in ordering that the child be returned to the mother in the jurisdiction of origin.

The maximum contact principle and the challenges experienced by children with ASD in response to change was considered within the context of mobility and a corresponding application to relocate in the acrimonious case of *Andrade v. Kennelly*.[85] The mother in this case from the Ontario Superior Court argued that she should have sole custody, having been the primary caregiver, and also be permitted to relocate with the three children, one of whom was diagnosed with ASD. The mother felt that the father was unable to "heed to signals" and respond appropriately to the special needs of their daughter with ASD and insisted upon supervised access, which continued until an independent assessor reported that such supervision was unnecessary and the court ordered that it be discontinued. The judge relied on the recommendation of the assessor who recommended that the needs of the children in this case were best met through maximum contact with both parents. The mother's arguments about the limitations of her daughter to respond well to change, as she put forth in support for her bid for sole custody, were considered

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80 Kogan, M.D., Strickland, B.B., Blumberg, S.J., Singh, G.K., Perrin, J.M., Dyck, P.C. A national profile of the health care experiences and family impact of autism spectrum disorder among children in the United States, 2005-2006. *Pediatrics, 122*(6), e1149–e1158. 2008.

81 2006 CarswellBC 99, [2006] B.C.J. No. 8 (B.C. Prov. Ct.).

82 2007 CarswellBC 3045, [2007] B.C.J. No. 2721 (B.C. S.C.).

83 2007 CarswellBC 2004, [2007] B.C.J. No. 1926 (B.C. S.C.).

84 2012 CarswellNB 136, [2012] N.B.J. No. 66 (N.B. Q.B.).

85 2006 CarswellOnt 3762, [2006] O.J. No. 2457 (Ont. S.C.J.); affirmed 2007 CarswellOnt 8271 (Ont. C.A.).

also by the trial judge who denied the application to relocate. The judge reported that this decision was partly due to the major change and disruption that this would entail for the children, but also because the judge was not satisfied that the mother would take the steps necessary to ensure meaningful access between the father and the children.

In *Parsons v. Parsons*,[86] in support of an application to relocate with her children, including a son with ASD, the mother argued that services were better and more readily available in the area to which she had unilaterally moved and wished to permanently relocate. The judge reviewed the services that had been available to the child in the originating jurisdiction including: a behavioural interventionist team, speech language services, consults from an occupational therapist, social programming and school services. While the court had no difficulty with the level and nature of services being provided in the new location, the judge remained unconvinced on the basis of the evidence offered, that the services were better in the new location as opposed to the previous. The mother's application to relocate with the children was denied.

McArthur v. Brown[87] involved a mobility application on behalf of the custodial mother, who sought to move the parents' triplets, one of which was a child with ASD, from British Columbia to London, England. Given the fact that custodial mother was the primary caregiver and had been the driving force behind the progression of the child with ASD, Ballance J. of the British Columbia Supreme Court found it to be in the best interests of the children to permit the proposed move to England. Aside from diminished contact with their father, the evidence did not establish that there would be any lingering negative consequences triggered by the move. Due to frequent trips to London, the mother was aware of many therapies and schools available to her daughter and, as such, the move to London was not found to pose a developmental set-back for the child with ASD. Concerns about the loss of contact with the father were also tempered as the judge ordered joint custody and mandated generous minimum visitation periods.

In a similar mobility case, the judge in *Robles v. Kuhn*[88] permitted the mother to relocate to a different country because, among other stipulations, the mother provided evidence related to the availability of therapeutic services and schools in the new jurisdiction and the father did not lead any evidence to the contrary. The argument advanced by the father that the move would disrupt the child's ASD-related therapy and necessitate the creation of a new therapeutic team was dismissed because a significant change in the provision of therapy was due anyways, as a result of an impending change in the funding structure available to the family for therapy.

In *Taglienti v. Rodriguez*[89] objections by the father to the mother relocating with their daughter with ASD were dismissed by the Ontario Court of Justice as it was determined that the mother had fully researched and made the necessary arrangements for the provision of the various programs that offered special care for their daughter, including the continuation of an existing treatment program in the

86 2011 CarswellNS 731, [2011] N.S.J. No. 533 (N.S. S.C.).

87 2008 CarswellBC 1699, [2008] B.C.J. No. 1578 (B.C. S.C.).

88 2012 CarswellBC 1492, [2012] B.C.J. No. 1024 (B.C. S.C.).

89 2006 CarswellOnt 2796, [2006] O.J. No. 1823 (Ont. C.J.)

new location. The arguments put forward by the father to deny relocation were found to be grounded more in resistance to the role of the mother as primary caregiver as opposed to being reflective of concern about the special needs of the child with ASD being met.

6. CONCLUSIONS

The results of this review of the Canadian case law related to custody decisions in disputes involving children with ASD provide a summary and implications for future legal considerations for these families. It is beneficial for lawyers, mediators, and judges to be aware of the unique outcomes of having a child with ASD and the impact it can have on the family.

A custody decision or parenting plan that may work well for a typical family may not necessarily be the best decision for a family who has a child with ASD. Courts are likely to give custody to the parent who is most able to recognize, meet, and advocate for the medical and emotional needs of the child with ASD. Usually, this means maintaining the status quo, so as to not disrupt current treatment plans or cause turbulence in the child's life. Joint custody is often refused where there is general hostility and animosity between the parents. When parents can cooperate, joint custody seems to be the preferred arrangement with children with ASD since it fosters the involvement of both parents in the care and support required.

Therapeutic interventions for children with ASD and the parenting responsibilities associated with different interventions can change over the course of a child's life. It may be appropriate for courts to revisit custody decisions and parenting plans as the needs of the family and child change over time. ASD is a complex diagnosis with complex outcomes for families, and collaboration or consultation with various professional experts in the field of ASD can provide for a more comprehensive understanding of the complexity of these cases.

When addressing familial disputes involving children with ASD, it is important to recognize the impact of ASD on the effectiveness of potential legal decisions. Enhancing awareness of ASD and outcomes for families will allow lawyers, mediators, and judges to adhere to a framework that takes into consideration the best interests of the child and family, ultimately benefiting the families involved.

If your child has been diagnosed with autism spectrum disorder, you may feel overwhelmed and unsure about their future. But with the right tools and information, you can help your child and your family thrive.Â Tips for Parenting a Child on the Autism Spectrum. Medically Reviewed by Renee A. Alli, MD on December 06, 2020. Articles On Parenting a Child With Autism. Parenting Tips. Self Care for Parents. Preparing Kids for School. As a parent, youâ€™ve probably spent a lot of time thinking about your childâ€™s future. Even more so if they have an autism spectrum disorder, or ASD diagnosis. Apart from the medical care and therapies that you may line up to help your son or daughter, there are simple, everyday things that make a difference. 1. Focus on the positive. Social skills can help your child with autism spectrum disorder (ASD) know how to act in different social situations â€“ from talking to grandparents to playing with friends at school. Social skills can help your child make friends, learn from others and develop hobbies and interests. These skills can also help with family relationships and give your child a sense of belonging. And good social skills can improve your childâ€™s mental health and overall quality of life. What social skills do children with autism spectrum disorder need? Itâ€™s good for your child with autism spectrum disorder (ASD) to...Â problem-solving skills â€“ for example, dealing with conflict or making decisions in a social situation. Strategies for developing social skills in children with autism spectrum disorder. and mindreading abilities in children with autism spectrum disorder (ASD). Results demonstrated that children with ASD tended to perform worse than neurotypical children on both social orienting and theory of mind tasks. Prefer-ence for human faces and motion tended to be related but only for the neurotypical children.Â For example, when asked where the protagonist will look for the marble, children may process the â€œwhereâ€ and look where the marble is actually located, thus failing the explicit false belief task [Csibra & Southgate, 2006]. Moreover, the explicit false belief task involves several executive func-tions, such as working memory to remember the story sequence, and inhibitory control to prevent oneself. INSAR. Burnside et al./Social motivation and implicit ToM.