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— Franks & Zalev - This Week in Family Law

Aaron Franks & Michael Zalev

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How To Make Decisions About Making Decisions

S.V.G. v. V.G., 2023 CarswellOnt 8103 (S.C.J.) — Chappel J.

We don't generally like to include large block quotes in the *Newsletter*. But sometimes, a decision deals so comprehensively with an issue, that it just makes sense to do so. And we do exactly that here with Justice Chappel's decision in *S.V.G.*, a treatise on decision-making authority and parallel parenting. It is a comprehensive summary — a "restatement" if you will — of literally all of the relevant legal principles. Your research on the matter ends here.

S.V.G. also contains an interesting discussion about the benefits of parenting coordination, and whether a court in Ontario can appoint a parenting coordinator with arbitral authority without the consent from both parties. Short answer? No.

The parties in *S.V.G.* were together for 14 years, and were married for 8-1/2 of them. They had two children together, who were 12 and 9 respectively by the time of the trial.

The parties separated in 2018. They were ultimately able to resolve almost all of the issues arising out of the breakdown of the relationship, including equal parenting time pursuant to a 2-2-3 schedule. However, they could not agree on how to make decisions about the children's health and education, including how to deal with one of the children's special behaviour and attention problems at school, whether the children should be vaccinated against COVID-19, and scheduling extra-curricular activities.

For reasons that are not entirely clear from the decision, it took **15 days** spread out over **11 months** to complete the trial. But whatever the reason, this sort of thing really must stop. High conflict families must not be allowed to monopolize court resources this way. To repeat what we said in the 2023-03 (January 23, 2023) edition of *TFWL*, "if we don't find another way to deal with high-conflict cases, and stop letting high-conflict litigants monopolize a court system that is already facing enormous backlogs and delays, the system is simply going to collapse. Parties that cannot get along have no higher call on court resources than other parties." Family litigants are entitled to their day in court; but not all the days they say they need, and high conflict families are not entitled to unlimited access to trial judges: *Greco-Wang v. Wang*, 2014 CarswellOnt 12651 (S.C.J.). There is no absolute right to a trial on all issues or in all cases: *Merko v. Merko* (2008), 59 R.F.L. (6th) 439 (Ont. C.J.); *Rannelli v. Kamara*, 2011 CarswellOnt 14161 (C.J.). This must stop. But we feel we're losing you. More on this later . . .

For now, let's get back to *S.V.G.* While the decision is full of legal analysis, there are two points that are worth repeating in full.

First, in paragraph 111, Justice Chappel set out the following list of the ***twenty*** principles courts should consider when deciding whether to make an order for joint decision-making authority:

> [111] . . . 1. **There is no presumption in favour of granting joint decision-making responsibility** to both parties in some or all areas (*Kaplanis v. Kaplanis*, 2005 CarswellOnt 266 (C.A.); *Ladisa v. Ladisa*, 2005 CarswellOnt 268 (C.A)).

2. Joint decision-making in some or all areas **should only be considered as an option if the court is satisfied as a threshold matter that both parties are fit parents and able to meet the general needs of the children** (*Kaplanis*; *T.E.H. v. G.J.R.*, 2016 ONCJ 156 (O.C.J.), at para. 446; *McBennett*, at para 97).

3. In order to grant joint decision-making in some or all areas, **there must be some evidence before the court that despite their differences, the parties are able to communicate effectively** in the areas under consideration for the sake of the child. Where there is a history of significant conflict that has impacted the functioning and parenting of the parties and the wellbeing of the child, these factors will support an order for sole decision-making responsibility (*Roth v. Halstead*, 2017 ONCJ 593 (O.C.J.), at para. 299). The rationale for this principle is that the best interests of the child will not be advanced if the parties are unable to make important decisions regarding the child under a joint decision-making arrangement (*Kaplanis; Roy v. Roy*, 2004 CarswellOnt 8591 (S.C.J.), reversed in part 2006 CarswellOnt 2898 (C.A.); *Levesque v. Windsor*, 2020 ONSC 5902 (Div. Ct.); *Brown v. Brown*, 2021 ONSC 1753 (S.C.J.)).

4. **The fact that there is some evidence of communication and cooperation does not, however, dictate in and of itself that joint decision-making must be ordered.** The trial judge must carefully assess in each case whether the parties' ability to cooperate and communicate about issues relating to the child is sufficiently functional to support an order for joint decision-making (*Berman v. Berman*, 2017 ONCA 905 (C.A.), at para. 5).

5. **The court is not required to apply a standard of perfection** in assessing the parties' ability to cooperate and communicate with each other on matters relating to the children. As Quinn J. remarked in the often-quoted case of *Brook v. Brook*, 2006 CarswellOnt 2514 (S.C.J.), "the cooperation needed is workable, not blissful; adequate, not perfect." The existence of occasional conflict does not necessarily preclude an order that involves elements of joint decision-making, and the court should consider the entire record of the parties' communication to obtain a clear sense of the nature and extent of the discord (*Grindley v. Grindley*, 2012 CarswellOnt 9791 (S.C.J.); *Sader v. Kekki*, 2013 ONCJ 605 (O.C.J.), at para. 115).

6. **The fact that one party insists that the parties are unable to communicate with each other is not in and of itself sufficient** to rule out the possibility of a joint decision-making order in some or all areas. The court must carefully consider the parties' past and current parenting relationship and reach its own conclusions respecting the parties' ability to communicate, rather than simply relying on allegations of conflict by one or both of the parties (*Kaplanis*, at para. 11; *Ladisa*; *Brown*, at para. 83). The question to be determined is whether the nature, extent and frequency of the conflict between the parties is such that requiring them to decide issues jointly is likely to impact negatively on the well-being of the children.

7. **If the evidence indicates that the parties, despite their conflict with each other, have been able to shelter the child from the turmoil reasonably well and make decisions in the child's best interests when necessary, an order involving joint decision-making may be appropriate** (*Ladisa*). The issue for the court's determination is "whether a reasonable measure of communication and cooperation is in place, and is achievable in the future, so that the best interests of the child can be ensured on an ongoing basis" (*Warcop v. Warcop*, 2009 CarswellOnt 782 (S.C.J.); *Lambert v. Peachman*, 2016 ONSC 7443 (S.C.J.); *Brown*, at para. 84).

8. In addition, **where there has been some conflict in reaching decisions, the court should consider whether the differences in perspectives and the sharing of information supporting those perspectives have ultimately resulted in more positive outcomes for the child**. Evidence of challenges in working through parenting issues that result in better results for the child may support joint rather than sole decision-making (*Campbell v. Lapierre*, 2017 ONSC 1645 ONSC (S.C.J.), at paras. 48-50).

9. In analyzing the ability of the parties to communicate, the court must delve below the surface and consider the source of the conflict. The Ontario Court of Appeal has clearly stated that **one parent cannot create conflict and problems with the other parent by engaging in unreasonable conduct**, impeding access, marginalizing the other parent, or by any other means and **then justify a claim for sole decision-making in their favour on the basis of lack of cooperation**

and communication (*Lawson v. Lawson*, 2006 CarswellOnt 4736 (C.A.); *Ursic v. Ursic*, 2004 CarswellOnt 8728 (S.C.J.), aff'd 2006 CarswellOnt 3335 (C.A.); *Andrade v. Kennelly*, 2006 CarswellOnt 3762 (S.C.J.), aff'd 2007 CarswellOnt 8271 (C.A.)). Where the parties are both competent and loving parents, but one of them is the major source of the conflict, this factor may support an order for sole decision-making in favour of the other party (*Alqudsi v. Dahmus*, 2016 ONCJ 707 (O.C.J.); *Liu v. Huang*, 2020 ONCA 450 (C.A.)). Alternatively, judges have often opted for orders for joint decision-making rather than sole decision-making with one parent in these circumstances, where they have been satisfied that the best interests of the child require a balance of influence and authority between the parties in addressing important parenting decisions (*Bromley v. Bromley*, 2009 CarswellOnt 2210 (Ont. C.A.); *Hsiung v. Tsioutsioulas*, 2011 CarswellOnt 10606 (O.C.J.); *Sinclair v. Sinclair*, 2013 ONSC 1226 (S.C.J.); *Lonsbury v. Anderson*, 2019 ONSC 7174 (S.C.J.), at para. 16; *Saunders v. Ormsbee-Posthumus*, 2020 ONSC 2300 (S.C.J.), at para. 65).

10. However, **where an objective review of the historical and more recent evidence clearly indicates that there has never been an ability to cooperate or communicate effectively, and that both parties are responsible for this dynamic, joint decision-making is not an appropriate order** (*Hildinger v. Carroll*, 2004 CarswellOnt 444 (C.A.); *Kaplanis; Ladisa*; *Graham v. Bruto*, [2007] O.J. No. 656, aff'd 2008 ONCA 260 (C.A.)). This principle applies even where both parties are attentive and loving parents (*Izyuk v. Bilousov*, 2011 CarswellOnt 12097 (S.C.J.), at para. 504). In these circumstances, **hoping that communication between the parties will improve once the litigation is over does not provide a sufficient basis for making an order that includes elements of joint decision-making responsibility** (*Kaplanis; Brown*). There must be a clear evidentiary basis for believing that joint decision-making would be feasible (*Iannizzi v Iannizzi*, 2010 ONCA 519 (C.A.), at para. 2).

11. **The quality of each party's past parenting and decision-making, both during the parties' relationship and post-separation, is a critical factor** in determining whether an order for joint decision-making in some or all areas is appropriate (*Milford. v. Catherwood*, 2014 CarswellOnt 7879 (O.C.J.)).

12. However, **the mere fact that both parents acknowledge that the other is a "fit" parent does not mean that it is in the best interests of the child for a joint decision-making order to issue**. The determination of the appropriate decision-making arrangement must take into consideration all factors relevant to the child's best interests (*Kaplanis*, at para. 10).

13. A party's **failure to financially support their children in a responsible manner may militate against an order for joint decision-making responsibility**, as this reflects poor judgment and an inability to prioritize the child's interests and needs (*Jama*; *L.B. v. P.E.*).

14. In some cases, the parties are clearly able to cooperate and jointly support the best interests of the child in some areas of decision-making but have a pattern of conflict and lack of collaboration in other specified areas. In these circumstances, **a hybrid type of decision-making structure that provides for joint decision-making in the areas that have never been problematic but that allocates the remaining areas out to each party for sole decision-making may be the most appropriate outcome** (*McBennett*).

15. **In situations involving children with special needs, the extent of the parties' involvement in addressing those needs and their willingness to consider reasonable recommendations from knowledgeable and experienced professionals involved with the child in addressing those needs are important considerations** (*Roth*, at para. 306; *Duclos v. Davis*, 2018 ONSC 6088 (S.C.J.), at para. 36(d); *Keown v. Procee*, 2014 ONSC 7314 (S.C.J.), at paras. 20-25; *S.A.P. v. D.M.P*, 2020 ABQB 811 (Q.B.), at paras. 20-22).

16. In addition, in situations where there is conflict regarding a course of treatment or therapy for a child, **evidence that a parent has drawn the child into the conflict by attempting to make them an ally in their position on the issue may support an order for decision-making in favour of the other party** (*Gugus v. Gilodeau*, 2020 ONSC 2242 (S.C.J.), at paras. 24 and 33).

17. Another important consideration in situations involving children with special needs is the need for timeliness in decision-making. **If the evidence indicates that efforts to reach parenting decisions has led to inappropriate delays in addressing the child's needs, with no positive outcomes for the child, this may support an order for sole rather than joint decision-making** (*S.D.H. v. T.H.*, 2016 BCSC 380 (S.C.), at para. 145; *Roth*, at para. 305).

18. **In cases involving very young children, the court must take into consideration the fact that the child is unable to easily communicate** their physical, emotional, developmental and other needs. Accordingly, the need for effective communication between the parties in a joint decision-making arrangement will be particularly pressing in such circumstances (*Kaplanis*, at para. 11).

19. **The wishes of the child will also be relevant to the determination of the appropriate decision-making disposition in cases involving older children.** Although a child's wishes in such circumstances may not necessarily synchronize perfectly with the child's best interests, "the older the child, the more an order as to custody requires the co-operation of the child and consideration of the child's wishes" (*Kaplanis*, at para. 13).

20. **Evidence as to how an interim parenting order has worked**, and in particular, whether the parties have been able to set aside their personal differences and work together in the best interests of the child, **will be highly relevant** to the ultimate decision regarding the appropriate decision-making regime. [emphasis added]

Second, in paragraph 112, her Honour provided a slightly shorter list (***twelve***) of considerations when deciding whether to make an order for divided decision-making authority (which we used to call parallel parenting):

[112] . . . 1. The **strength of the parties' ties with the child, and their historical level of involvement with the child are critical to the analysis**. These factors are now specifically referenced in section 16(3) of the *Divorce Act*. In most cases where specified areas of decision-making have been allocated to the parties, both parents have played a significant role in the child's life on all levels (see for example *Andrade*; *H.(K.) v. R.(T.K.)*, 2013 ONCJ 418 (O.C.J.); *B.(M.) v. T.(D.)*, 2012 ONSC 840 (S.C.J.); *Hoffman v. Hoffman*, 2013 ONSC 395 (S.C.J.); *Jackson v. Jackson*; *McBennett*).

2. **The relative parenting abilities of each parent and the quality of their decision-making respecting the child are also important considerations.** Section 16(3) now specifically highlights the history of care of the child and the ability and willingness of each party to care for and meet the needs of the child as mandatory considerations in carrying out the best interests analysis. Where one parent is clearly more competent, responsible and attentive than the other, this may support an order for sole decision-making in their favour rather than an allocation of decision-making areas between them (*Ryan v. Scott*, 2011 CarswellOnt 5924 (S.C.J.); *Hajkova v. Romany*, 2011 CarswellOnt 3237 (S.C.J.); *Scervino v. Scervino*, 2011 CarswellOnt 7845 (S.C.J.); *H. (K.) v. R. (T.K.)*; *Izyuk v. Bilousov*; *Hoffman; Warner v. O'Leary*, 2014 CarswellNS 319 (S.C.); *Suchanek v. Lavoie*, 2014 CarswellOnt 1236 (O.C.J.); *Jackson v. Jackson*).

3. **A desire to ensure formal equality of influence between the parents is not in and of itself sufficient** to support a claim for dividing up aspects of significant decision-making *(L.(L.) v. C.(M.)*, 2012 ONSC 3311 (S.C.J.); *Jackson v. Jackson*).

4. **A history of family violence or any evidence suggesting that there is a significant power imbalance between the parties are factors that must be considered** before allocating specific areas of decision-making responsibility between the parties, as this type of dynamic may frustrate the objective of achieving an equilibrium of influence through such an order (*Hildinger; K.(V.) v. S. (T.)*; *H.(K.) v. R.(T.K.)*; *Docherty v. Catherwood*, 2013 CarswellOnt 11366 (S.C.J.); *L.(L.) v. C.(M.)*; *Ganie v. Ganie*, 2014 ONSC 7500 (S.C.J.); *Tiveron*; *Jackson v. Jackson*).

5. An order allocating aspects of decision-making between the parties will **not be considered appropriate where the evidence indicates that one party is seeking this arrangement solely as a means of controlling the other parent**, rather than as a means of fostering the child's best interests *(H.(K.) v. R. (T.K.)*; *S.(S.) v. K.(S)*, 2013 CarswellOnt 10801 (O.C.J.); *Jackson v. Jackson*; *L.B. v. P.E.*).

6. **The extent to which each parent is able to place the needs of the child above their own needs and interests is often a compelling consideration**. Evidence that a party tends to place their own wishes and needs over the child's overall best interests will often vitiate against an order separating out aspects of decision-making, even if that party is in all other respects a loving and competent parent (*Potter v. DaSilva*, 2014 ONSC 302 (O.C.J.); *Heuer v. Heuer*, 2016 ONCJ 201 (O.C.J.); *Alqudsi*; *Jackson v. Jackson*).

7. **The court should carefully consider all of the evidence in the case and determine whether allocating areas of decision-making between the parties is more likely to de-escalate the conflict between the parties or inflame it.** Section 16(3)(i) reflects the importance of this factor by specifically listing as a mandatory consideration in the bests interests analysis the ability and willingness of each party to communicate and cooperate, in particular with one another, on matters affecting the child. If an allocation of decision-making responsibility between the parties is likely to intensify the conflict, an order granting sole decision-making responsibility to one party may be more appropriate *(H.(K.) v. R.(T.K.)*; *S.(S.) v. K.(S.)*; *Suchanek; Jackson v. Jackson*; *McBennett*).

8. **The court will consider the nature and intensity of the conflict between the parties, and whether the parties are likely to at least be able to navigate basic issues such as scheduling and interpretation of the order under a regime that separates out the various aspects of decision-making.** The court should be particularly vigilant in considering **whether the dynamics between the parties are such that they are likely to have disputes regarding the scope of each of their areas of decision-making responsibility in situations where the dividing line may be unclear**. In *H.(K.) v. R.(T.K.)*, Sherr J. referred to this potential problem of unclear boundary lines between areas of decision-making as "the spillover effect." If it is unlikely that the parties will be able to manage basic issues such as scheduling and potential spillover challenges, an order that divides up aspects of decision-making will likely not be appropriate as it will simply serve as a catalyst for further parental strife *(H. (K.) v. R. (T.K.)*; *S.(S.) v. K.(S.)*; *Izyuk v. Bilousov*; *Suchanek*; *Jackson v. Jackson*; *McBennett*).

9. With respect to parental conflict, **the court should also carefully consider whether one party is the major cause of discord between the parties**. If this is the case, an order granting sole decision-making to the other party may be the more appropriate choice *(H.(K.) v. R. (T.K.)*; *Graham*; *Warner*).

10. Ultimately, with respect to parental conflict, **an order granting each party specified areas of decision-making will generally not be considered appropriate where it is clear from a careful review of all of the evidence that one or both of the parties will never be able to disengage from combat**. In such circumstances, delineating areas of decision-making will not achieve the goal of alleviating the conflict for the sake of the child but will simply provide a further breeding ground for parental dissonance (*Seed v. Desai*, 2014 ONSC 3329 (S.C.J.); *Nloga v. Ndjouga*, 2015 ONSC 5925 (S.C.J.); *Ruffudeen; Jackson v. Jackson*).

11. An order carving out areas of decision-making between the parties is by nature detailed and complex, and the success of such a regime will depend largely on the ability of the parties to respect the carefully crafted terms of the order. Accordingly, **this type of regime will typically not be granted where one or both of the parties has a history of failing to comply with court orders or processes** (*Izyuk v. Bilousov*; *Nova Scotia (Ministry of Community and Social Services) v. F. (B.)*, 2014 CarswellNS 202 (S.C.); *Jackson v. Jackson*; *McBennett*).

12. **Evidence that a party is interfering with or not supporting contact between the child and the other parent, alienating the child from the other parent or marginalizing the other parent's role will often be a significant factor** in determining whether an order allocating specified areas of decision-making to the parties is appropriate (*Lefebvre v. Lefebvre*, 2002 CarswellOnt 4325 (C.A.); *Chin Pang v. Chin Pang*, 2013 CarswellOnt 7824 (S.C.J.); *Rodriguez v. Guignard*, 2013 CarswellOnt 503 (S.C.J.); *Potter*). In *Rigillo v. Rigillo*, 2019 ONCA 548, at para. 12, the Ontario Court of Appeal emphasized that "[d]ecision-making authority assists in ensuring that a parent's relationship with his or her child is not marginalized." Section 16(3)(c) now specifically establishes that the court must as part of the best interests analysis

consider each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse. Further to these considerations, the caselaw reflects the following:

a) Where the parent with primary care has engaged in this type of conduct, but that parent is otherwise very loving and competent, the courts have often considered a reversal of decision-making responsibility as too drastic a measure and have opted for a division of areas of decision-making as a means of protecting the other parent's role and influence in the child's life. In *Grindley*, the court emphasized that the goal of this type of order in these circumstances is not to protect the interests of the parent, but rather to foster the child's respect for both parents and their sense of security in the care of both parents. (For other cases in which areas of decision-making have been divided between parties in these circumstances, see *Plugers v. Krasnay*, 2014 ONSC 7078 (S.C.J.), aff'd 2016 ONCA 279 (C.A.); *Cox v. Stephen*, 2003 CarswellOnt 4554 (C.A.); *Andrade; Batsinda*; *Sgroi v. Socci*, 2007 CarswelllOnt 8526 (O.C.J.); *Suchanek; McBennett*).

b) Where the non-primary parent is loving and attentive but has engaged in undermining or alienating behavior, this is often a factor that tips the balance in favour of sole decision-making responsibility to the other parent if they are also competent (*Griffin v. Bootsma*, 2005 CarswellOnt 4702 (C.A.); *Perron v. Perron*, 2010 ONSC 1482 (S.C.J.)).

c) If both parties are involved in severe alienating and undermining conduct, the court may conclude that neither can be trusted to exercise sole decision-making responsibly. In such circumstances, if both parties are equally competent and loving parents, allocating the incidents of parental decision-making between the parties may provide an effective means of keeping both of them in check, protecting the child from exposure to damaging parental conflict and ensuring that the child benefits from the contributions that both parents can make to decision-making. The concern in these types of situations is that an award of sole decision-making responsibility to one of the parties may result in that party using their decision-making authority as "an instrument of oppression" in a manner that undermines the child's best interests (see *Hart v. Krayem*, 2016 ONSC 5754 (S.C.J.); *Desjardins v. Desjardins*, 2013 ONSC 2283 (S.C.J.)).

d) The geographical distance between the parties is another factor that may impact on whether an order dividing the various areas of decision-making responsibility between the parties is in the child's best interests (*(H.(K.) v. R. (T.K.)*). [emphasis added]

And then, at paragraph 116, her Honour considered whether she had jurisdiction to order the parties to retain a parenting coordinator. While many of you are likely already familiar with parenting coordination, for those of you who are not, according to the Guidelines for Parenting Coordination that were published by the Association for Family and Conciliation Courts ("AFCC") in 2019, and are available on the AFCC's website:

Parenting coordination is a **hybrid legal-mental health role that combines assessment, education, case management, conflict management, dispute resolution, and, at times, decision-making functions.** Parenting coordination is a child-focused process conducted by a licensed mental health or family law professional, or a certified, qualified or regulated family mediator under the rules or laws of their jurisdiction, with practical professional experience with high conflict family cases. The parenting coordinator ("PC") **assists coparents engaged in high conflict coparenting to implement their parenting plan by: (1) facilitating the resolution of their disputes in a timely manner; (2) educating coparents about children's needs; and, (3) with prior approval of coparents or the court, making decisions within the scope of the court order or appointment contract.** A PC seeks to protect and sustain safe, healthy, and meaningful parent-child relationships. [emphasis added]

After reviewing the relevant legislation, including the *Divorce Act*, R.S.C., 1985, c. 3 (2nd Supp.) and Ontario's *Arbitration Act, 1991*, S.O. 1991, c. 17, Justice Chappel concluded that under the *Divorce Act* a court can order parties to engage in the parts of a parenting coordination process that include facilitation of resolution (mediation) and education (coaching) — or, in the words of the *Divorce Act*, a "Family Dispute Resolution Process" — ss. 2(1) and 16.1(6)) [see also *L. v. B.* (2021), 63 R.F.L. (8th) 382 (Ont. S.C.J.)]. But it ***cannot*** order them to submit to arbitration with a parenting coordinator. [See also *SSG v. SKG* (2022), 78 R.F.L. (8th) 401 (Alta. C.A.)]. Interestingly, she also was of the view that if the court is going to include a term requiring

the parties to engage in this type of dispute resolution process, it "should always be subject to the right of either party to bring a motion at the relevant time for an order that the requirement should not apply based on the prevailing circumstances at that time." That way, the court can ensure that it will not be forcing parties into a process that may no longer be appropriate given subsequent events or for the particular issue in question.

Ultimately, Justice Chappel found that both parties in *S.V.G.* were loving and committed parents, they had both generally put the children's best interests first, and they had been able to resolve the vast majority of the parenting issues that had arisen by agreement. Nevertheless, she had concerns about both of them, including: (a) the mother's history of marginalizing the father's role and lack of insight into the role she had played in the conflict; and (b) the father's tendency to deny that the children's problems and reluctance to taking positive steps to address them (e.g. he refused to acknowledge that one of the children was having difficulties in school that needed to be addressed in the face of clear and objective evidence to the contrary).

To minimize the risk of the mother being able to marginalize the father's role in the future, Justice Chappel ordered the parties to "engage in all reasonable efforts and take all reasonable steps to attempt to make significant decisions" respecting the children's health and education jointly, and set out a detailed process that they were required to follow when an issue arose, including attending mediation or parenting coordination ***without*** arbitration. She also ordered that if a particular dispute arose and one of the parties did not think parenting coordination would be an appropriate way of dealing with it, they could bring a motion to address the issue.

However, given the father's prior reluctance to deal with the children's various issues proactively, Justice Chappel determined that if the parties were still unable to make a decision after following the process she had laid out, the mother would then be able to make the decision. She also gave the mother primary responsibility for scheduling appointments relating to the children's educations and health care needs.

This is an eminently sensible result. It ensures that both parties will be able to have meaningful input into important decisions about the children, while providing a clear and simple way to break an impasse should one arise, and while preserving access to the court — *but only when necessary*.

We would also suggest that when dealing with a dispute about decision-making authority, you should consider trying to craft a dispute resolution process similar to the one Justice Chappel used in this case, but that you do so ***before*** the parties have spent hundreds of thousands of dollars to have a judge decide the issue for them.

You can design whatever process you think would be appropriate in each particular case, but we would suggest that it must include, at a minimum, details about: (a) how the process can be invoked; (b) how long the other party will have to respond once it has been invoked; (c) how long the parties will have to resolve the issue through negotiation; and (d) how the issue will be resolved in the event of an impasse.

For example, here is a basic framework for a quick and efficient decision-making dispute resolution process that we have used with some success in prior cases (if you are going to use this type of process, however, you will need to make sure to comply with the requirements for a binding arbitration agreement in your jurisdiction):

> 1. If a major decision must be made regarding the child's education (e.g. school selection, school class placement, psycho-educational testing, remedial assistance, enrichment, etc.) and/or non-emergency health care (e.g. major physical and psychological health needs), the parent who wants to initiate the dispute resolution process shall email the other parent [insert email address] and inform them of the decision s/he wants to make (the "initiating party's decision").
>
> 2. The responding party shall have 48 hours, from the time the initiating party's decision was sent, to object by reply email, and invoke the dispute resolution process set out below. The responding party shall also provide any necessary retainer to the Arbitrator within the 48-hour period.
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> 3. If the responding party does not object to the initiating party's decision and/or provide the necessary retainer to the Arbitrator within the 48-hour time frame set out above, they shall be deemed to have agreed with the initiating party's

decision, and, if required, the initiating party shall be entitled to obtain a consent Award from the Arbitrator incorporating the terms of his or her decision.

4. If the responding party objects to the initiating party's decision within the 48 hour time frame set out above, the parties shall submit the issue to the following summary arbitration process:

a. The parties shall submit written submissions of up to ..... pages double spaced to the Arbitrator by 5:00 p.m. within five (5) business days of the dispute resolution process having been invoked.

b. Responding submissions by either party shall be limited to ..... pages double spaced and submitted to the Arbitrator by 5:00 p.m. within two (2) business days of receiving the other party's initial submissions.

c. The Arbitrator's Award and brief reasons shall be delivered within five (5) business days of receiving the responding submissions.

d. Written cost submissions, limited to ..... pages double spaced, may be submitted to the Arbitrator within three (3) days of receiving the Arbitrator's Award, and the Arbitrator shall decide the issue of costs summarily and shall do so forthwith.

e. The process and the timelines that are set out above may be lengthened, abridged, or otherwise adjusted by the Arbitrator as needed on a situation-by-situation basis. However, at all times the process that will be utilized shall remain a summary process that can be completed expeditiously and efficiently.

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