

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

RENEE WISEMAN

Applicant (Respondent)

- and -

KEVIN DIGNESS

Respondent (Applicant)

MEMORANDUM OF JUDGMENT

INTRODUCTION

[1] Renee Wiseman (Wiseman) and Kevin Digness (Digness) are the parents of one child, A. They were in a brief common law relationship and have shared custody of A for the last several years but their co-parenting relationship has been difficult. While they lived together, they purchased a house which has since been sold and they had accumulated other debts.

[2] The main issues in this case are: custody, access, child support, and equalization of the family property.

[3] The trial took place over many days starting in January 2023 and continuing off and on until January 28, 2025. During the course of the trial, there were unprecedented delays for a variety of reasons including the evacuation of Yellowknife due to a wildfire.

[4] While both parties were initially represented by counsel, by the time the trial began in January 2023, Digness was self-represented. Wiseman's counsel abruptly ceased to act for her client during the course of the trial. In doing so, she failed to

seek leave of the Court to withdraw as counsel of record and left Wiseman to appear in court alone to explain this change and to represent herself with little notice.

[5] There were multiple witnesses called by each party, numerous exhibits entered and other materials like Affidavits and Documents referred to by the parties. Although I have reviewed and considered all of the evidence, I will not refer to all of it in this Memorandum.

[6] I have also kept in mind that both parties were representing themselves over the many days of this trial and while not legally trained, were doing the best they could in the circumstances. Overall, with assistance, both Wiseman and Digness ably presented their cases.

BACKGROUND AND SUMMARY OF PROCEEDINGS

[7] The parties began dating in mid-July 2015. They began to live together in February 2016 and purchased a home together in July 2017. A was born in September 2017. The relationship ended at the end of September 2018.

[8] Ms. Wiseman commenced this proceeding on February 4, 2019 filing an Originating Notice. There have been a number of applications and Orders made in this proceeding, including during the course of the trial. Many of those applications relate to A. Others related to family property such as an Order that the family home be sold. It was sold in November 2022 and the proceeds have been held in trust.

[9] An Interim Order made by Justice Browne on May 9, 2019 has guided the parenting of A since 2019. There have been some variations on conditions of Digness' access made over time. There is currently a shared parenting arrangement with each party having A for a week. There have been numerous applications brought by both parties regarding exchanges, vacations, conditions of access and other issues surrounding the parenting of A.

[10] Wiseman is seeking joint custody of A with her having primary care and control of A along with sole decision making and the majority of parenting time. She is also seeking restrictions on Digness' access and conditions to be placed on his parenting time. Wiseman also seeks child support, retroactive child support, and an unequal division of family property.

[11] Digness is also seeking joint custody of A with shared 50/50 care and control and decision-making. He is also proposing conditions to each parties' parenting

time. He is also seeking that the Court make a child support order, impute income to Wiseman on the basis that she is underemployed while attending school, and he is also seeking child support for his two children on the basis that Wiseman was *in loco parentis* to his two children, C and R, during their relationship. Digness is also seeking an unequal division of family property in his favour.

CUSTODY

[12] The overriding principle in decisions regarding custody of a child is the best interests of the child. Decisions regarding custody and access are governed by section 17 of the *Children's Law Act*, SNWT 1997, c 14 which states:

17(1) The merits of an application under this Division in respect of custody of or access to a child shall be determined in accordance with the best interests of the child, with a recognition that differing cultural values and practices must be respected in that determination.

(2) In determining the best interests of a child for the purposes of an application under this Division in respect of or access to a child, the court shall consider all the needs and circumstances of the child including

- (a) the love, affection and emotional ties between the child and
 - (i) each person entitled to or seeking custody or access,
 - (ii) other members of the child's family, and
 - (iii) persons involved in the care and upbringing of the child;
- (b) the child's views and preferences if they can be reasonably ascertained;
- (c) the child's cultural, linguistic and spiritual or religious upbringing and ties;
- (d) the ability and willingness of each person seeking custody to, directly or indirectly, provide the child with guidance, education and necessities of life and provide for any special needs of the child;
- (e) the ability of each person seeking custody or access to act as a parent;
- (f) who, from among those person entitled to custody or access, has been primarily responsible for the care of the child, including care of the child's daily physical and social needs, arrangements for alternative care for the child where it is required, arrangements for the child's health care and interaction with the child through, among other things, teaching, playing, conversation, reading and discipline;
- (g) the effect a change of residence will have on the child;
- (h) the permanence and stability of the family unit within which it is proposed that the child live;
- (i) any plans proposed for the care and upbringing of the child;
- G) the relationship, by blood or through adoption, between the child and each person seeking custody or access; and

(k) the willingness of each person seeking custody to facilitate access between the child and a parent of the child who is seeking custody or access.

(3) In determining the best interests of a child for the purposes of an application under this Division in respect of custody of or access to a child, the court shall also consider any evidence that a person seeking custody or access has at any time committed an act of violence against his or her spouse, former spouse, child, child's parent or any other family member of the person's household or family and any effect that such conduct had, is having or may have on the child.

(4) Subject to subsection (3), a person's past conduct may be considered in an application under this Part in respect of custody of or access to a child only where the court is satisfied that it is relevant to the person's ability to act as a parent.

(5) The economic circumstances of a person seeking custody or access are not relevant to the person's ability to act as a parent.

[13] In this case, there is an interim custody order in place. There have been previous custody orders, albeit all orders have been interim orders. The first order made was shortly after this proceeding commenced. An Interim Interim Order granting the parties shared custody was made on February 14, 2019. The Order also provided that Wiseman would have day to day care of A and Digness would have specified access. A further Order in March 2019 continued that arrangement and specified further access for Digness.

[14] An Interim Order was made on May 9, 2019 which split parenting time between the parties stating:

2. The parties shall make their best efforts to create a schedule that approximately splits A's time with each parent while also maximizing A's time in the care of each parent, rather than non-parental caregivers;

[15] Since the May 9, 2019 Order, the parties have shared parenting time with A. This proceeding started when A was almost 1.5 years old and she is now 7 years old. It is somewhat unusual as interim orders are meant as a temporary solution until a matter can be heard at trial or otherwise resolved between the parties. Interim orders are often made based on affidavit evidence which is not subject to cross-examination or are made on consent. While there have been multiple applications since 2019 which have dealt with conditions on Digness' access to A, the parties have continued to share parenting time on a more or less equal basis. Other than times where Wiseman has withheld access, the parties have shared custody of A on a weekly basis.

[16] The end result is that there is a lengthy *status quo* in place because the parties have been sharing custody of A for over 6 years. The *status quo* is not determinative, there is no presumption in favour of the pre-trial *status quo*. The *status quo* is a factor to be considered, along with all of the other factors, in determining the best interests of the child: *AJU v GSU*, 2015 ABQB 6 (*AJU*) at para 50.

[17] Wiseman is seeking an alteration of the shared parenting arrangement that has been in place for the majority of A's life. She cites the conflict between the parties, Digness' lack of willingness to communicate and cooperate in parenting A, the history of family violence, the controlling and coercive behaviour of Digness, the drug and alcohol problems of Digness and his deceitfulness as reasons why the parenting arrangement should be altered.

[18] The relationship between Wiseman and Digness since their relationship ended has been acrimonious and much of the evidence at the trial recounted the disputes that have arisen between them over various parenting issues since 2018. Some of the issues have been small, others more significant but they have resulted in applications or have been referred to in Affidavits filed by the parties. Additionally, there was a significant amount of evidence that focused on Digness and his lifestyle, his relationship with his current partner Sabrina Meilleur (Meilleur) and other women, his parenting and his use of alcohol and drugs.

[19] Since this matter was commenced in 2019, A has grown from a toddler, started school and is now almost 8 years old. For much of her life, her parents have been engaged in litigation over her. A was not represented by counsel on this trial. She is also still quite young and it would not be expected that she would be able to instruct counsel on some of these issues. Both parties have presented evidence about A. There have been times where one party has purported to express A's views about something but given the conflict between the parties regarding A, I have not considered that party's expression of A's views about the other parent.

[20] What I have seen and heard is that A is apparently a bright, happy child who is healthy and is developing at a normal rate for a child her age. She reportedly does well in school and has no learning difficulties. A has a close relationship with both parents, her siblings and extended family. She enjoys doing activities with both parents.

[21] There was evidence presented about A having pinworms several times and the challenge with eradicating the problem. I heard evidence from Wiseman and

Digness about the steps they took and their adhering to the medical directions to address the problem. Wiseman suggested that the pinworm infection originated in Digness' household and her evidence blamed Digness for the failure to eradicate the infection by not following the treatment recommendations of A's doctor. This was denied by Digness and he testified that he and his household followed the treatment recommendations.

[22] While I did not hear any expert evidence on pinworms, both parties appear to agree that a pinworm infection is a common infection that is contagious and easily passed among children. Childhood infections like pinworms or lice are relatively common. What parent with a child in Yellowknife has not received a notice from their child's school advising of an incident of lice being discovered on a child in their child's school or classroom. Given the nature of these types of infections, it is not possible to determine where A might have become infected. It is also not surprising that there might have been a recurrence of the infection. What is important is that both parents took steps to treat the infection and it appears were ultimately successful in doing so.

[23] One of the concerns raised by Wiseman is her allegation that Digness' lifestyle is one of instability in his relationship with Meilleur due to allegations of physical abuse, substance misuse and the open nature of their relationship.

[24] Wiseman called a witness, Ms Cochrane, who testified about her contact with Digness. They met online and began messaging. Their communication was initially about her crocheting a blanket for him in exchange for him making a growth chart for her son. They communicated online for a short period of time. They met up on one evening where she said Digness had been drinking and they drove around and spent time together. During this time, they smoked and talked. Ms Cochrane said Digness talked negatively about Wiseman and Meilleur. She said that Digness had, in his messages, raised the possibility of engaging in sexual activity which she declined. At the end of the evening, they kissed for a short period of time. Later that night, she dropped Digness off and said that later that evening, Meilleur called her and insulted her. She broke off communication with Digness after the call.

[25] Digness acknowledged that he knew Ms Cochrane and described his relationship with Meilleur as an ethically non-monogamous relationship which essentially involves consensual sexual or romantic relationships with multiple partners with the knowledge and consent of everyone involved.

[26] While the exposure of the children to a parent's multiple sexual partners would be of some concern, Ms Cochrane testified that she had no contact with Digness' children and had no knowledge of his parenting abilities.

[27] Upon review of the evidence, I am not satisfied that Digness' other romantic or sexual relationships have had a demonstrated impact on his ability to parent A or his other children. There is no evidence that A is aware of or has met these other partners. There is also no evidence that Digness has failed to care for A or has neglected A to instead engage in this type of activity. There is no compelling evidence that these other relationships interfere with his parenting ability or places A at risk.

[28] The *caveat* to this conclusion is that there is no evidence that A or any of the children have been exposed to Digness' other romantic partners. A is still quite young and should not be exposed to Digness' other casual sexual partners. This might be confusing and upsetting to her given her young age. Her family dynamic is complex enough with Wiseman and Meilleur both playing a maternal parenting role to A. There will be a provision in the Order the Digness is not to expose A to any person other than Meilleur with whom he engages in a sexual or romantic relationship with while he is also in a relationship with Meilleur.

[29] Wiseman has also raised concerns about Digness' consumption of alcohol and drugs arguing that he has a substance abuse problem. Wiseman's evidence was that Digness drank irresponsibly when they were together, often staying in the garage until the early morning hours drinking and consuming drugs. She testified that he often drank to the point that he was intoxicated and would leave the responsibility for caring for the children to her. She also testified that he would be verbally abusive while drinking, yelling and calling her names. She testified that this often occurred around the children. Wiseman also testified about Digness' use of cocaine and marijuana, alleging that he consumed both to excess. She alleged that Digness would have mood swings and end up in a rage.

[30] Wiseman testified that Digness was verbally abusive and would be angry and punch the walls in their home. She testified that he was abusive and threatening and this resulted in her being anxious and it impacted on her health. She testified that she often cried, could not sleep and lived in fear. Wiseman also testified that Digness was coercive and bullying, actions she says continue in the co-parenting relationship.

[31] Wiseman also called her cousin Lucas Wiseman as a witness. He lives in Newfoundland and testified that on the family trip that Wiseman and Digness took

to Newfoundland in 2016, he met Digness and they consumed alcohol and cocaine together on two occasions. Digness denied this occurred.

[32] Wiseman's sister Amelia also testified about her observations of Digness. She testified that Digness often seemed angry at the end of the relationship with Wiseman. She testified that she had seen holes in the wall of the trailer and seen Digness in a rage. She also testified about observing him drinking and smoking weed and seeing him intoxicated.

[33] Wiseman also called Nadia Lindsay who was the former neighbour of Wiseman and Digness. Ms Lindsay and Digness had a contentious relationship and had several disputes. She testified that she did not get along with Digness. She said that he was verbally abusive and rude to her and had threatened her and her kids.

[34] Ms Lindsay testified about an incident where Meilleur was outside the Digness residence at night screaming. She testified that Digness opened the door and grabbed Meilleur, throwing her across the kitchen. She said she saw him raise his fist and lower it quickly twice. She did not see Meilleur or whether she was hit. Ms Lindsay phoned the police. The police records were obtained. The police responded and arrested Digness. Ultimately Meilleur declined to provide a statement and no charges resulted.

[35] Digness has three children, C, Rand A. He has sole custody of C and Rand their biological mother is not a part of their lives. He is also a stepparent to Meilleur's daughter S. Digness testified that he is an active father and denied many of Wiseman's allegations. He denied using cocaine and denied consuming alcohol to the extent alleged by Wiseman. He admitted consuming alcohol and smoking marijuana but denied that he did either to excess or to the point of intoxication.

[36] Digness testified that he had received a promotion at work and was supervising other employees. He noted that if he was having the problems that Wiseman alleged he did, that this promotion would not have occurred.

[37] Digness acknowledged that the end of his relationship with Wiseman was difficult but denied her allegations. He acknowledged that he had made mistakes in the past but also noted that Wiseman has not seen his parenting or daily life since 2018 so would not know what his parenting or life was like now.

[38] Meilleur, Digness' current partner, also testified. They have been together since October 2018 and she moved into Digness' residence in December 2018. She

has a child S who is close in age to A. When Digness has parenting time with A, Meilleur is involved in caring for A and the other children. A calls her "mama Bree".

[39] Meilleur testified that Digness does consume alcohol but denied that he drank to the point of inebriation. She has also seen him smoke marijuana recreationally. She denied the allegations that were made by Wiseman.

[40] Digness also called witnesses who have been long-time friends, who are close to him and have regular social interactions with him and his children. Kyle Bevan, Kelsey Bevan and Maia England are all longtime friends of Digness. Kyle Bevan and Maia England have been friends with Digness since childhood and have witnessed his relationship with his partners Ms Balsillie, Wiseman and Meilleur. Kelsey Bevan has known Digness for a shorter period of time but has more recent observations of him.

[41] Each of them testified about their observations of Digness at regular social gatherings, some of which involved the consumption of alcohol and marijuana. They have each observed Digness consume alcohol and smoke cannabis. They each described that they had not observed Digness be violent or neglect his children.

[42] They testified that they were aware of the order which prohibited Digness from consuming alcohol when he was caring for A and testified that he respected the Order. Each of them have observed Digness with A and his other children and he was described as a loving and supportive father by Ms England. She also testified that around the time Digness' relationship with Wiseman was breaking down, Digness was stressed out and there was a bad atmosphere in the family home when the relationship was breaking down. She testified that the atmosphere in the house was better after their relationship ended.

[43] I conclude that Digness consumes alcohol and smokes weed and has done so around the children and I accept Wiseman's evidence that he has consumed cocaine in the past. The more recent evidence is that Digness does not use cocaine and since the non-consumption order was made, has not consumed alcohol when he is caring for A. Wiseman has claimed that Digness has consumed alcohol during his parenting time referring to him attending a bar while someone else is caring for A and views this as a violation of the Order. I accept that he has complied with the Order since it was made and I do not view this situation as being one where Digness is non-compliant.

[44] One of the most significant incidents that several witnesses testified about was the incident on the Ingraham Trail on June 21, 2022 in which Meilleur was driving C, R and S back to Yellowknife from Digness' cabin on Pickerel Lake. She was followed by Christina and Alan Dube who both testified about this incident.

[45] Christina Dube testified that the vehicle ahead of them on the road was swerving all over the road. She said that they followed this vehicle for 15 kilometres before the vehicle pulled over to the side of the road. They pulled up beside the vehicle and she asked the driver if they needed help. She said the person looked at her and then took off before nosing into the ditch. Once this occurred, three hysterical and screaming children exited the vehicle as well as two dogs. Ms. Dube testified that Meilleur was driving and that she fell out of the vehicle. She described Meilleur as being completely drunk, that she was slurring, falling down and reeked of booze.

[46] The Dubes stopped to assist and Christina Dube ended up driving Meilleur back to Yellowknife. Her husband Alan drove Meilleur's vehicle and the children back to Yellowknife. When they got back to Yellowknife, they dropped Meilleur and the children off before calling the police.

[47] Alan Dube's evidence was substantially similar to his wife's, although he said that they followed the vehicle for only a few kilometres, 4-5 kilometres. As Alan Dube was driving the vehicle and his wife was the passenger, I accept his estimate of the distance they followed Meilleur's vehicle as likely being the more accurate of the two. In any event, they followed the vehicle long enough to observe the driving and to be concerned about it.

[48] Alan Dube's observations of Meilleur were briefer than that of his wife but he also testified that Meilleur appeared to be quite intoxicated. He described her as slurring, incoherent, stumbling and that she smelled of alcohol. The vehicle also smelled of alcohol.

[49] In her testimony, Meilleur denied driving while intoxicated and said that she was suffering from heat stroke. She said that the weather had been hot that day, up to 30 degrees Celsius, and she was out in the sun. No evidence was presented about the weather that day. Meilleur denied having an alcohol problem but admitted she did attend a treatment program as a precaution following this incident.

[50] Digness testified that he did not observe Meilleur drinking that day and that she did not appear intoxicated when she got into the vehicle with the children.

[51] Meilleur was never charged with impaired driving. However, whether it was a combination of being out in the sun and the consumption of alcohol or simply the consumption of alcohol, I am satisfied that alcohol was consumed by Meilleur prior to driving the children and that it impacted her ability to drive. This is not a criminal trial where proof is required to beyond a reasonable doubt, it is to the standard of a balance of probabilities.

[52] While the symptoms of heat stroke may be similar in some respects to intoxication, both of the Dube's testified that they smelt alcohol on Meilleur. Additionally, Christina Dube testified that Meilleur told her she had been drinking. This hearsay evidence was not admitted for the truth of its contents but instead as an inconsistency in Meilleur's evidence which could impact on her credibility. I accept that Meilleur made this admission to Christina Dube and there has been no denial of that conversation or explanation for that conversation. In addition, Meilleur went to pursue treatment following the incident and there were conversations about Meilleur having a drinking problem.

[53] The incident was reported to social services and in their initial conversations with Digness, he accepted and acknowledged that Meilleur had a drinking problem. The investigation by social services found the incident substantiated. No follow up was required by social services as Meilleur had pro-actively attended treatment.

[54] The approach of Meilleur and Digness to now claim this incident was solely caused by heat stroke seems like an attempt to explain away a dangerous incident as being almost accidental. While A was not present, the safety of the other children and other individuals on the road is of concern. Even if Meilleur had heat stroke, she drove several kilometers down the road swerving all over the road before stopping. It was an incredible lapse of judgment and the attempt to downplay it now is also of concern which reflects on Meilleur and Digness' credibility.

[55] Wiseman brought an application following this incident which resulted in a change in how Digness' access was exercised and prohibiting Meilleur from driving A. It is to Meilleur's credit that she has pursued treatment and has apparently maintained her sobriety. It was because of this behaviour and the lack of any further incidents that the access arrangement was changed in August 2024 to permit Meilleur to drive A to and from her day to day activities in Yellowknife.

[56] The evidence from Digness, Meilleur, the Bevans and Maia England is that Meilleur has maintained her sobriety and that Digness has also reduced his alcohol

consumption and does not consume alcohol when A is in his care. This is different from Wiseman's experiences with Digness in 2018 but there is no evidence to contradict that this is the current state with respect to Digness' consumption of alcohol and drugs.

[57] Overall, considering all of the evidence, there is clearly enmity between Wiseman and her sister, who assisted her during most of the trial, and Digness and Meilleur, who assisted Digness during the trial. Wiseman believes that Digness cannot provide a safe and stable home for A and stated that she would not ever really be comfortable while A was with Digness. This viewpoint stems from what occurred during their relationship and Digness' treatment of her since their relationship ended. Wiseman has been affected emotionally by his treatment of her and this colours how she views Digness and any of his actions, sometimes unfairly. She is unable to view him in a positive light, regardless of the circumstance.

[58] Wiseman has also made allegations against Digness to social services and in Court which were unfounded. Records from social services were introduced and there were several reports made against Digness in his care of A and his children. Several of these were made by Wiseman and were deemed unfounded other than the Ingraham Trail incident to which I have already referred. Wiseman also alleged that Digness went on a fishing trip while A was in his care. Digness presented the timesheets from his work which indicated that he was working during this period and was in Yellowknife during his parenting time with A.

[59] Wiseman is also unable to interact with Digness in a normal manner, refusing to speak to him or exchange pleasantries with him during exchanges. Digness presented a video where Wiseman came to pick up A from Digness' care. A had made cookies for Wiseman. Wiseman's interactions were only with A and she refused to take the cookies A had made for her which upset A. I recognize that this is one of what have been hundreds of exchanges the parties have made to date and may not be reflective of each occurrence. However, as A gets older, she will soon recognize, if she does not already, that this is not a normal interaction between adults. This type of interaction is not natural and does not present positive behaviour for A to model.

[60] Both parties have electronically recorded parenting exchanges at times which is a practice that should be discouraged. It puts A in the middle and creates an artificial environment for exchanges, heightening the potential for conflict. It also puts the focus more on the dynamics of the exchange than on the emotional well-being of the child in the transition between parents.

[61] Wiseman is currently inflexible in her dealings with Digness, refusing to alter the current arrangement or considered alternative suggestions made by Digness, some of which are reasonable. For example, Digness accompanied his father to Edmonton for cancer treatment and missed parenting time with A. Wiseman refused to allow Digness to make up parenting time saying he had chosen to give up his parenting time. This is an unreasonable approach to a shared parenting arrangement and does not reflect the realities of daily life. Family medical issues and other unexpected situations will arise in daily life that may require the adjustment of the parenting schedule for a period of time.

[62] There are two parents in this situation and while Wiseman may be currently inflexible, Digness' past behaviour has not been stellar. His communications in the past with Wiseman have been rude, bullying and inappropriate. Meilleur has also communicated with Wiseman disrespectfully. Digness has expressed frustration with Wiseman and made disparaging remarks about her.

[63] Ultimately, I accept that the period where the relationship broke down was a tumultuous time where Digness was unhappy, stressed and expressed his frustration verbally. Wiseman was also anxious and upset at the situation. I accept that Digness has been verbally abusive with Wiseman in the past.

[64] The nature of the relationship between the parents, including any history of conflict or domestic violence or abuse, is a factor to be considered in determining an appropriate parenting arrangement. As stated in *Ackerman v Ackerman*, 2014 SKCA 86 at para 41:

The fact parents have an acrimonious relationship is a factor to be considered in determining an appropriate parenting plan. Conflict, domestic violence and/or abuse, whether it be physical, psychological or verbal, is relevant to a person's ability to parent. Children learn what they live and it is well documented that children who live with conflict, domestic violence and/or abuse are significantly impacted by such experiences. How the existence of such experiences will affect the outcome of a custody or access hearing depends on a number of factors including, but not limited to, who was involved, when and where the incidents occurred, the context in which they arose, the number and severity of such incidents, the parties' reactions to the event, including the taking of remedial steps, whether the children were present during the incidents and/or their knowledge of such events and their reaction to them.

[65] The Supreme Court of Canada also recently addressed the effects of family violence on children and the ability to parent in *Barendregt v Grebliunas*, 2022 SCC 22 at para 143:

The suggestion that domestic abuse or family violence has no impact on the children and has nothing to do with the perpetrator's parenting ability is untenable. Research indicates that children who are exposed to family violence are at risk of emotional and behavioural problems throughout their lives: Department of Justice, *Risk Factors for Children in Situations of Family Violence in the Context of Separation and Divorce* (February 2014), at p. 12. Harm can result from direct or indirect exposure to domestic conflicts, for example, by observing the incident, experiencing its aftermath, or hearing about it: S. Artz et al., "A Comprehensive Review of the Literature on the Impact of Exposure to Intimate Partner Violence for Children and Youth" (2014), 5 *JC YF.S.* 493, at p. 497.

[66] There are indications that Digness had been verbally abusive in front of the children in the past. However, those incidents are several years old and there is no current evidence of abusive behaviour occurring in front of A or the other children. The Bevans and Maia England describe Digness as being a loving and supportive father who is involved with his children. This is starkly different from how Wiseman has portrayed Digness as a father.

[67] The relationship between Wiseman and Digness is acrimonious and while there is no longer significant personal contact between them, they have struggled to agree to sometimes basic decisions. They obviously have different personalities and parenting styles. Both have made parenting decisions without the other parties' consent, both have withheld the other parent's access to A and both have acted to undermine the other parent at some time or another.

[68] While there have been times of parental cooperation, they seem rare. While Wiseman was initially wanting to use a parenting app or a parenting book for exchanges, Digness was unwilling. Years later, when the parties could not agree on much, Digness suggested using a parenting app. By then, Wiseman had given up on the idea and was not willing.

[69] While traditionally shared parenting has not been ordered in cases where there is high conflict or where the parties are unable to communicate effectively with each other, that is not always the case:

While it stands to reason that generally, shared parenting requires a modicum of cooperation and communication, there can be no hard and fast rules. Every case must turn on its own facts with the focus always being the best interests of the child. Sometimes trial judges are faced with impossible situations and they must craft a parenting regime that they know will not be perfect but best addresses the child's needs and interests... Resolving custody issues requires a balancing of factors to

determine the best interests of the child. What those factors are and how they will be weighed will vary greatly depending on the circumstances of each case.

Ackerman, at para 48.

[70] While a high conflict relationship between the parties is not an insurmountable barrier to a shared parenting arrangement, the inability to communicate and cooperate with each other on parenting issues should be given serious consideration when determining whether shared parenting is in the best interests of the child. *AS v MS(J)*, 2018 **SKQB** 171 at para 171.

[71] While substantial conflict between the parties may militate against making a shared parenting order, the existence of conflict between parties also cannot be judged against an unrealistic standard. As stated by Pentelechuk J (as she then was) in *AJU* at para 76:

Communication issues and lack of cooperation for a couple caught in the turbulence of divorce should not be compared to an impossible standard that does not exist in the most functional of families.

[72] The nature, extent and frequency of the conflict must be analyzed and there must be an evidentiary basis for the belief that shared parenting will be feasible. *Kopp v Burke*, 2014 **MBQB** 247 at para 46; *May-Jannizzi v Jannizzi*, 2010 ONCA 519 at para 2.

[73] Wiseman seeks to have the parenting arrangement significantly altered so that she makes all of the decisions with respect to A and has A most of the time. While Wiseman has raised many concerns about Digness' parenting, there is no evidence that A has been harmed or injured while in Digness' care. Digness has the sole custody of his other children, C and R, something which Wiseman helped him obtain. He is also co-parenting Meilleur's daughter S. He also played a significant role in parenting his former partner's child. There is no recent evidence of any significant incidents in Digness' parenting these children. Digness has also been in a relationship with Meilleur for close to 7 years now which demonstrates some stability. While there is some basis for some of Wiseman's concerns, what Wiseman seeks is a significant alteration to the current parenting arrangement. I am concerned that granting the type of order that Wiseman seeks will have the result of marginalizing Digness' involvement in A's life and minimizing his contact with her.

[74] I have no doubt that Wiseman and Digness each love A and want the best for her. Neither is a perfect parent but I accept that they each, particularly in the last

couple of years, have done the best that they can for A. Ultimately, it is A's best interests that are paramount. It is important the A have the benefit of the parenting of both parents and the love, support and guidance that can be provided by each of them. It is also important for A to spend time with her siblings whose relationship with C and R has been described as a great relationship where she is loved and supported.

[75] The communication issue and the lack of cooperation of the parties makes it difficult to continue with a joint custody arrangement when they cannot agree on many aspects of parenting A. Shared parenting or joint custody often works best when the parents cooperate and consult with each other. That does not occur here.

[76] I have considered many options for the future parenting arrangement, something that will maximize each party's parenting time with A while minimizing the conflict between them. There are several options for decision-making: granting decision-making responsibility solely to one parent; granting decision-making responsibility to both parents; granting joint decision-making responsibility to both parents in some areas but granting sole decision-making responsibility to one parent in other areas; to allocate each parent sole decision-making responsibility in separate specified areas; or require the parents to attempt to make decisions jointly but designate one parent with the final say in a specific area of decision-making. These are some of the options to consider.

[77] Based on their history, joint decision-making responsibility does not seem like it will work mainly because it has not in the past and there is nothing to indicate that will change. They cannot communicate effectively or ultimately agree on many issues which precludes joint decision-making as an option. Both parties want to be the one making decisions about issues surrounding A.

[78] Both Wiseman and Digness have been actively involved in parenting A and are interested and engaged in her life. Both are capable of and want to be able to make parenting decisions about A. The fact that Wiseman does not agree with the decisions that Digness makes regarding A does not mean that they are bad decisions or the wrong decisions; they are just decisions different from what she would have made. An example of this is Digness allowing A to have her ears pierced, a decision that Wiseman did not agree with. This is a normal parenting decision that parents frequently make for their children. Each parent may have a different view or approach to when it is appropriate to let a child have their ears pierced. This also applies to decisions that Wiseman might make without Digness' agreement. There are times that Digness does not agree with decisions that Wiseman wants to make

regarding A. However, the situation means that they will continue to be unlikely to agree on parenting A.

[79] Additionally, it is important to remember that A is 7 and she is now able to express her opinion on some decisions and that as she gets older, she will increasingly have opinions about decisions that each parent will have to consider.

[80] After careful consideration of the options and the evidence, I conclude that there should continue to be joint custody but each party will be responsible for making decisions in certain areas. I conclude that it is in A's best interests that she continue to have significant contact with each parent and her siblings and that each parent should be allowed to make decisions for A.

[81] In reaching my conclusions on decision-making for A, I have given consideration to the challenges that have arisen between the parties in the past in attempting to make joint decisions.

[82] The parties will be required to make medical and health related decisions jointly. If they are unable to agree, Wiseman will have the final say on medical and counselling decisions for A. Digness will have the final say on A's dental and vision care.

[83] Medical and health related appointments will be made based on the earliest possible date that A can attend. The parent with the final say has the right to attend the appointment. If the other parent wishes to attend and is able to make themselves available, they can also attend. However, that parent's unavailability is not a reason to cancel the appointment.

[84] With respect to education, Wiseman will have the final say on education decisions. There is no indication that A has any specific needs or deficits with respect to education or requires any educational assessments. However, if that occurs, both parties will be required to make decisions in this area jointly. If they are unable to do so, Wiseman will have the final say.

[85] With respect to extra-curricular activities, both parties are free to engage A in activities that fall within their parenting time. However, Digness will have the right to make decisions about extra-curricular activities that fall within both parties' parenting time. Both parties are permitted to attend A's extra-curricular activities and they are responsible for ensuring that their interactions with the other parent and those who accompany the other parent are respectful. The party who is parenting A

during the activity is responsible for bringing A to and from the activity and assisting A with getting ready for the activity and assisting A following the activity. Neither party will prevent or discourage A from communicating with the other parent during extra-curricular activities.

[86] With respect to religious or spiritual issues, I have not heard that this has been an issue between the parties. However, each party can engage in religious, cultural or spiritual activities of their choice with A during their parenting time. Neither party will engage A into any formal entry into a religion like baptism or communion, for example, without the other party's consent.

[87] There will continue to be a shared parenting arrangement for A with each party having A for a week as occurs under the current arrangement. Each parent will be personally responsible for driving A to and from exchanges with the other parent.

[88] While A is in the care of each parent, they can make the day-to-day parenting decisions about A. However, neither parent shall permit A to get any piercings or tattoos without the consent of the other parent.

[89] As for Meilleur's role in parenting A, she will be permitted to drive A to and from day-to-day activities. She will not be permitted to drive A on the Ingraham Trail.

[90] When A is in Digness' care, he must ensure that anyone who drives A in a vehicle is not under the influence of alcohol, marijuana or other illicit drugs and that the driver has a valid driver's licence and insurance for the vehicle A is being transported in.

[91] The parties will continue to communicate by email or by an electronic app or text message if both parties agree. This will ensure that there is a record in the event of a dispute regarding an issue. Each party will communicate respectfully toward the other and not make any disparaging remarks about the other parent. This applies to their electronic communication and in their communication with A.

[92] Meilleur will not be permitted to contact Wiseman electronically or by telephone.

[93] With respect to holidays and other special occasions, the parties shall alternate holidays with A as follows:

- 1) Christmas Eve and Christmas Day: starting this year 2025, Wiseman will parent A from 2:00 pm on Christmas Eve until 2:00 pm on Christmas Day. Digness will parent A from Christmas Day at 2:00 pm until December 26 (Boxing Day) at 10:00 am. This will alternate each year.
- 2) New Year's Eve and New Year's Day: starting this year 2025, Digness will parent A from 2:00 pm on New Year's Eve until 2:00 pm on New Year's Day. Wiseman will parent A from New Year's Day at 2:00 pm until January 2 at 10:00 am. This will alternate each year.
- 3) Easter: starting next year 2026, Wiseman will parent A from 9:00 am to 2:00 pm on Easter Sunday; Digness will parent A from 2:00 pm to 7:00 pm. This will alternate each year.
- 4) Thanksgiving: the parent who already has A on Sunday will keep her until 10:00 am on Monday. The other parent will have A from 10:00 am on Monday until the following morning where that parent will drop A off at school and the schedule will resume as normal.
- 5) Mother's Day: if this does not occur on Wiseman's parenting time, Wiseman will have A for Mother's Day from 6:00 pm the day before until 7:00 pm on Mother's Day.
- 6) Father's Day: if this does not occur on Digness' parenting time, Digness will have A for Father's Day from 6:00 pm the day before until 7:00 pm on Father's Day.
- 7) March Break: the parenting schedule will continue as normal. Each party will have A for a week over March break.
- 8) Summer Break: each party will be entitled to take A for a periods of up to two weeks for a family vacation in the summer, following which the other parent would be entitled to parent A. For example, if Digness took A for a family vacation for two weeks in July, Wiseman would be entitled to parent A for the next week.

- 9) Birthdays: each party will parent A for a period of time on A's birthday and on their own birthdays. This will ensure that each parent can see A on significant dates like birthdays. If the parent has A on their birthday, there will be no need for a transition. However, if the other parent is parenting A on a parent's birthday, the parent celebrating the birthday will parent A from 2:00 pm until 7:00 pm on their birthday. For A's birthday, the parent who already has A on her birthday will parent her until 2:00 pm on that day and the other parent will parent A from 2:00 pm until 7:00 pm.

[94] Each party may request a modification to the parenting schedule to accommodate vacations and other special events and the other party shall not unreasonably withhold consent and access. The parties will work together to create a schedule that will share A's time equally to accommodate the change.

[95] For vacations, each party will provide the other party with as much notice as possible and will share their summer vacations plans by the end of May each year. Each party is free to travel within Canada with A without obtaining the consent of the other party. For any travel plans outside of the Northwest Territories, the parent planning travel will provide the other parent with reasonable notice of their itinerary before the trip.

[96] Each parent will facilitate communication with the other parent while they have A in their care. I understand that A has a tablet and that she has the ability to facetime the other parent. A has been able to contact the other parent when she wishes to and this practice will continue without interference with the other parent, subject to reasonable restrictions like enforcing bedtimes.

[97] Each party will refrain from being in a state of intoxication, including the use of illegal drugs, while A is in their care. Both parties will ensure A is in a safe environment and that there are not intoxicated persons in her presence.

CHILD SUPPORT

[98] The law which governs child support in this case is the *Children's Law Act*, SNWT 1997, c 14 (*CLA*) and the *Child Support Guidelines*, R-138-98 (*Guidelines*) which governs the calculation of child support.

[99] The *CLA* obligates a parent to provide support for their child. Section 58 requires a parent to provide support for their child if they are capable of doing so.

The issue of child support and retroactive child support is applicable to the parties' child, A. The parties generally agree that child support should be payable for A.

[100] Digness is also seeking child support for his two children, C and R, arguing that Wiseman acted as a parent to them during their relationship.

[101] During the course of the trial, Wiseman enrolled in a nursing program at Aurora College which means that her income is currently less than it previously was when she worked full time as an aide at the Aven Manor. Digness argues that Wiseman is underemployed and that income should be imputed to her.

Standing in the Place of a Parent

[102] Digness is seeking to have Wiseman pay child support for his two children, C, who is now 16 years old and R, who is now 14 years old arguing that Wiseman stood in the place of a parent to them during the relationship. Digness is the biological father of C and R and has sole custody of the children. Their biological mother is not currently a part of their lives. Digness claims that Wiseman stood in the place of a parent to C and R during their relationship and should be required to pay child support.

[103] Wiseman asserts that there was never a parental relationship between herself and C and R that was independent of the relationship with Digness.

[104] The issue of whether Wiseman should be required to pay child support depends on whether it is found that she stood in the place of a parent to C and R.

[105] Section 57 of the *CLA* defines a parent as:

"parent", in relation to a particular child, includes a person who stands in the place of a parent for the child, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody.

[106] The leading case in Canada on whether a person stands in the place of a parent to a child is *Chartier v Chartier*, 1999 CanLII 707 (SCC), [1999] 1 SCR 242, where the Supreme Court of Canada held (at para 36) that the determination must look at the time where the "family functioned as a unit."

[107] The nature of the relationship between the person and child must be determined by a consideration of a number of factors. Factors to be considered were stated in *Pitt v Mou/and*, 2015 NWTSC 4 (*Pitt*) at paras 6-8:

Factors relevant to the nature of the relationship include express and inferred intention on the part of the adult; whether the child participates in the extended family in the same way that a biological child would; whether the adult provides financially for the child; whether the adult disciplines the child as a parent would; whether the adult represents himself, explicitly or implicitly, to the child, the family and others as a parent; the nature or existence of the child's relationship with his/her biological parent.

Additional factors that have been considered are whether the child calls the adult Mom or Dad; whether there has been a change of surname; whether there has been discussion of adoption; whether the adult engages in activities with the child; the degree of affection between the adult and child; whether the adult gives the child gifts; whether the adult engages in decisions about education and attends parent-teacher meetings: *Widdis v Widdis*, 2000 SKQB 441 at paragraph 16 quoting Professor Carol Rogerson.

Other factors may contraindicate a parental relationship, such as a poor relationship between the adult and child, an older child, an involved biological parent and the short length of the relationship: *Widdis*, at paragraph 17.

[108] The onus of proof that the person stands in place of a parent is on the person seeking a support order: *Fair v Jones*, [1999] NWTJ 17 (*Fair*). The standard of proof has been held to be a relatively high threshold requiring a clear assumption of responsibility that can be discerned from the person's actions over a sufficient period of time for the relationship to demonstrate a commitment: *Pitt*, para 9; *Whane v Okoroegbu*, 2024 NWTSC 4 at paras 22-23.

[109] The parties' relationship was of relatively short duration, lasting 3 years and approximately 2.5 months. Their period of cohabitation was even shorter, lasting just over 2.5 years. Following the end of the relationship, Wiseman moved out of the family home with A and the relationship between her and the other children was terminated. She does not exercise access to them. While the evidence was somewhat contradictory, it appears this was a mutual decision. Wiseman did not seek to exercise access and Digness did not offer her access to C and R.

[110] Additionally, in November 2018, Digness obtained an Emergency Protection Order against Wiseman after she and her sister entered the family home, damaging

the doors and removing items from the house. This occurred while no one else was at home.

[111] Shortly after the end of the relationship, Digness began his relationship with Meilleur and she soon moved into the house on Magrum. Meilleur quickly took on the responsibility of caregiving to C and Rand has continued to do so since 2018.

[112] During the time that the parties were in a relationship, Wiseman did assume a role in caregiving to C and Rand she testified that R asked if he could call her mom. Wiseman testified that she took on full responsibility for the children with the first couple of weeks after the relationship began. Wiseman testified that she helped the children on a daily basis with getting them to school and practices, packing their lunches and made meals for them when Digness was not at home. Digness worked shift work and Wiseman cared for C and R while he was at work.

[113] Assuming parent-like duties with the children is a factor that indicates a person stands in place of a parent. In today's society, blended families are a reality and for families to function, new partners often assume caregiving roles to stepchildren to some degree or another. This was noted in *Cook v Cook*, 2000 CanLII 49243(NS SC) at para 26:

In marriages or relationships involving children of a previous relationship, the adults and children will necessarily show signs of family life together. There will be a division of labour between the adults and, inevitably the step-parent will perform certain aspects of the role previously performed by the natural parent. This should be encouraged. Re-marriage or other forms of second families should be encouraged; it is good for children that their custodial parent finds happiness in a new relationship. There must be a balance between addressing the needs of children that arise out of legitimate dependency relationships with a step-parent and a requirement that the step-parent must behave in unnaturally cold or parsimonious ways toward the children in order to avoid the inference being drawn. In finding parental status, a court must take care not to penalize a step-parent for behaving kindly or offering emotional, physical and financial assistance to the natural parent who would otherwise be raising the children alone or with some assistance from the non-custodial natural parent.

[114] It is not apparent that other factors which would indicate that Wiseman took on the role of a parent are present. There is no evidence that Wiseman or Digness contemplated Wiseman adopting the children or that Wiseman participated in decisions about education, sports, recreational activities, discipline or attended parent-teacher meetings for C and **R**.

[115] Wiseman and Digness shared expenses when they lived together and each were responsible for paying for different household expenses. For example, Wiseman testified that Digness paid the mortgage and for his truck and she paid for her vehicle, heating with Matonabee and the city taxes. There is no evidence that Wiseman took on specific financial responsibility for C and R during the relationship beyond paying for general household expenses.

[116] There was evidence about trips that Wiseman and Digness took to Las Vegas and Newfoundland. C and R went on the trip to Newfoundland but it is not apparent that there were other family trips that involved C and R. It is also not apparent that Wiseman added C and R to any health insurance or life insurance policies that she might have had or that she was ever listed as a guardian to C and R with their schools.

[117] The biological mother of C and R has had a limited relationship with the children for a significant period of time. While she may have been somewhat involved with C and R earlier in their lives, they have been in the primary care of Digness for many years now. During the parties' relationship, Wiseman assisted Digness in his application for sole custody of C and R which was ultimately granted. It does not appear to be in dispute that the biological mother of C and R has had a limited, possibly non-existent, relationship with the children for the past few years.

[118] Taking into account all of the circumstances, I find that Digness has not met the threshold of establishing that Wiseman stood in the place of a parent to C and R. I am not satisfied that Wiseman clearly assumed responsibility for C and R over a sufficient period of time to demonstrate a commitment to being a parent to C and R. While Wiseman assumed many caregiving responsibilities to C and R, I find that the relatively short duration of the relationship, the lack of evidence that Wiseman participated in decisions about C and R's life, and the lack of evidence that there was an express intention to assume the role of a parent, all leave me to conclude that Wiseman did not stand in the place of a parent to C and R.

Imputation of Income

[119] Wiseman was employed during the relationship as a Personal Support Worker at Avens senior home. She began taking a Practical Nursing Course at Aurora College in the fall of 2023. This is a 2 year full-time program and she was scheduled to be completed the program in June 2025. Following this program, Wiseman hoped to apply for higher paying positions in the health care system.

[120] Attending a full-time program has resulted in a drop in income for Wiseman. Digness argues that Wiseman's decision to return to school should not reduce her income for the purposes of child support and that income should be imputed based on her prior earning capacity, her qualifications, and the potential for future employment in her field rather than on her temporary student status.

[121] The imputation of income is determined by section 19 of the *Guidelines* which states that:

19(1) The court may impute such amount of income to a parent as it considers appropriate in the circumstances, which circumstances include the following:

- (a) the parent is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child for whom the parents are both responsible or any minor child or by the reasonable educational or health needs of the parent;

[122] The approach to this issue is to ask whether the parent is intentionally under-employed or unemployed? If so, is the intentional under-employment or unemployment required by the needs of a child for whom the parents are responsible or any minor child or by the reasonable education or health needs of the parent?

[123] The applicable analysis, in relation to s 19(1)(a) of the *Federal Child Support Guidelines*, SOR/97-175 which is worded similarly to the *Guidelines*, was stated in *Peters v Atchooay*, 2022 ABCA 347 at para 60:.

The following analysis will apply when the issue of under-employment or unemployment and possible imputation of income is raised under s 19(1)(a):

1. *Is the parent in question intentionally under-employed or unemployed?* Imputation of income is not available under s 19(1)(a) where the under-employment or unemployment arises through circumstances truly beyond the control of the payor, and thus involuntary. Examples include lay-offs, reduced hours, or termination without cause. (At some point, however, the continued under-employment or unemployment may become unreasonable for purposes of s 19(1)(a), making imputation of income available). Moreover, even ostensibly "voluntary" decisions to make less money than in the past will not always amount to "under-employment" where factors like age mean that present and future earning capacity is being met but is less than past earning capacity.
2. *Do the listed exceptions to imputation in s 19(1)(a) apply?* Is the under-employment or unemployment required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs

of the spouse? These exemptions are not intended to be automatic or permanent, and their availability will depend on the circumstances of the case: *Spring v Spring*, 2022 ABCA 19 at para 18. The factors set out in *Demers v Moar*, 2004 ABCA 380 at para 21 provide a useful starting point for the consideration of the "needs of the child" exemption in the context of parental leaves and child-care requirements of young children.

3. *Should judicial discretion to impute income be exercised?* If the under-employment or unemployment arises from voluntary choice and the listed exceptions to imputation do not apply, the court *may* exercise its mandate to impute income under s 19(1)(a). However, because this is discretionary, the question of *whether* to impute income (and if so, how much) involves determining if the voluntary under-employment or unemployment was reasonable, having regard to all the circumstances.

[124] Looking to the first question, Wiseman was employed full-time and was making a wage above minimum wage. She returned to school voluntarily in September 2023 taking a program with the goal of becoming a practical nurse. The program was a full-time one and this meant that she could no longer work full-time. As a result, Wiseman is intentionally under-employed.

[125] Is the under-employment related to the reasonable educational needs of the parent? Wiseman, by pursuing an education as a practical nurse is furthering her education and employment opportunities. The process of upgrading her education is not a recent decision; Wiseman testified that she began taking courses while the parties were still together. Pursuing this educational opportunity will likely have the result of increasing her future earning potential which will increase her income, ability to provide for A and impact on the amount applicable for child support and special or extraordinary expenses. While Wiseman been attending school full-time, she has also continued to work. Wiseman has worked during the summer break and has attempted to pick up shifts during the school year when she is able to. The result is that while her income has dropped, it likely has not dropped as significantly as it might have otherwise.

[126] Overall, in the circumstances, I am satisfied that Wiseman's intentional under-employment is as a result of her reasonable educational needs and I decline to impute an income to her during the period she was attending the practical nursing program.

Retroactive Child Support

[127] The parties ended their relationship at the end of September 2018. Wiseman commenced this proceeding in February 2019 and in her Originating Notice, she sought child support and retroactive child support.

[128] When the relationship ended, Wiseman had physical care and control of A. An Interim Interim Order granting the parties shared custody was made on February 14, 2019. The Order also provided that Wiseman would have day to day care of A and Digness would have specified access. A further Order in March 2019 continued that arrangement and specified further access for Digness.

[129] An Interim Order was made on May 9, 2019 which split parenting time between the parties stating:

2. The parties shall make their best efforts to create a schedule that approximately splits A's time with each parent while also maximizing A's time in the care of each parent, rather than non-parental caregivers;

[130] Since the May 9, 2019 Order, the parties have shared parenting time with A. In a shared custody situation, section 11 of the *Guidelines* guides the determination of child support:

11. Where a parent exercises an entitlement to access to, or has physical custody, of a child for not less than 40% of the time over the course of a year, the amount of support for the child must be determined by taking into account

- (a) the amounts set out in the applicable tables for each of the parents who exercises such access or custody;
- (b) the increased costs of shared custody arrangements; and
- (c) the condition, means, needs and other circumstances of each parent and of the child for whom support is sought.

[131] The calculation of child support in a shared parenting situation was described in *Bolleter v Livingstone*, 2015 NWTSC 47 at para 21:

There is a separate system for determining appropriate child support in shared custody situations. The Court must determine a *fair* level of support, taking into account the overall circumstances of the parents. This was set out by the Supreme Court of Canada in *Contino v Leonelli-Contino*, 2005 SEC 63 as follows:

27 The three factors structure the exercise of the discretion. These criteria are conjunctive: none of them should prevail. Consideration should be given to the overall situation of shared custody and the costs related to the arrangement while paying attention to the needs, resources and situation of

parents and any child. This will allow sufficient flexibility to ensure that the economic reality and particular circumstances of each family are properly accounted for. It is meant to ensure a fair level of child support. [Citations omitted]

[132] The income of a parent, for child support purposes, is determined by reference to the ss 15-20 of the *Guidelines*. The Total Income from a parent's T1 General form issued by the Canada Revenue Agency is the starting point for determining income. From that number, the Court can adjust the annual income by various methods, for example, imputing income, averaging the last three years of income, and adjusting income to account for business losses and other expenses.

[133] In this case, the parties agree that Digness' income can be determined by considering his income tax returns for the relevant years. Wiseman's and Digness' income, based upon their income tax returns for the years 2018 to 2023, and their corresponding child support obligation based on the *Guidelines* is as follows:

	KEVIN DIGNESS		RENEE WISEMAN		
Year	Total Income	Monthly Child Support	Total Income	Monthly Child Support	Setoff Amount
2018	\$109,688	\$1,026	\$43,282	\$ 404	\$ 622 to RW
2019	\$ 111,627	\$1,042	\$82,179	\$ 783	\$259toRW
2020	\$ 120,911	\$ 1,122	\$ 76,393	\$ 726	\$396toRW
2021	\$127,691	\$ 1,180	\$77,929	\$ 741	\$ 439 to RW
2022	\$ 127,873	\$ 1,182	\$ 82,660	\$ 787	\$ 395 to RW
2023	\$108,088	\$ 1,012	\$66,605	\$ 630	\$ 382 to RW

[134] With respect to the increased costs of shared custody arrangements, there is no evidence which sets out how much each party's living costs have increased as a result of the shared parenting of A. It is a matter of common sense that each parent would have increased costs associated with shared parenting and that this arrangement would require a greater financial commitment from each parent. Both parties maintain separate residences which have to have sufficient space to house A and there may be increased costs as a result of maintaining two separate households.

There may also be an increase in household expenses as a result of the need for additional groceries, costs of transportation and other expenses.

[135] An additional factor is the condition, means, needs and other circumstances of each of the parties. Both parties faced financial challenges after the end of the relationship and had debt obligations. Digness has historically earned more income than Wiseman. He also shares a household with Meilleur who is employed full-time and has the benefit of a dual income family. However, Digness is also solely responsible for the expenses of raising C and R and contributes to the care of Meilleur's daughter. Wiseman's household consists of her and A. are also a consideration.

(136) Overall, I have considered the factors referred to ins 11 of the *Guidelines* and see no reason to depart from the set off amount payable having reference to the *Guidelines*. The Child Support payable from 2018 to 2023:

Year	Monthly	Total Payable
2018	\$622 x 2 months	\$1244 to Wiseman
2019	\$259 x 12 months	\$3108 to Wiseman
2020	\$396 x 12 months	\$4752 to Wiseman
2021	\$439 x 12 months	\$5268 to Wiseman
2022	\$395 x 12 months	\$4740 to Wiseman
2023	\$382 x 12 months	\$4584 to Wiseman
		\$23, 696 to Wiseman

[137] No child support has been paid by either party to date. On this basis, there will be an Order for retroactive Child Support payable by Digness to Wiseman for the period November 1, 2018 to December 31, 2023 in the amount of \$23, 696.

[138] When this trial ended, no evidence was presented about the 2024 income of the parties and the parties likely had not completed their income tax returns for the year. In the absence of that information, child support will be calculated at the 2023 rate for the current child support payable. Therefore, effective January 1, 2024, child support is payable on the first day of the month by Digness to Wiseman in the amount of \$382 per month.

[139] For future child support, the amount of child support may be recalculated by the Northwest Territories Child Support Recalculation Service if eligible for recalculation and if the recalculation service determines that the recalculation is

allowed and appropriate pursuant to the *CLA* and the *Child Support Recalculation Service Regulations*, R-066-2022. Either party may apply to the Recalculation Service.

Special and Extraordinary Expenses

[140] Special and extraordinary expenses are usually paid proportionately to the parties share of income. There was evidence about some expenses and it does not appear that there are outstanding amounts to be re-imbursed. There does not appear to be any dispute about special or extraordinary expenses at this time.

[141] Wiseman has requested that the parties share any special and extraordinary expenses in proportion to each party's income. Digness has requested that they be shared equally. There is no reason to depart from s 9(2) of the *Guidelines* which provides that special and extraordinary expenses are shared by the parents "in proportion to their respective incomes".

EQUALIZATION OF FAMILY PROPERTY

[142] The *Family Law Act*, SNWT 1997, c 18 (*FLA*) governs the equalization of family property. The equalization of family property starts with a presumption in favour of equal entitlement to the net family property.

[143] The process of determining the net family property involves calculating the net family property of each party. Pursuant to s 35, this is the value of all of the property of the party, except for specifically excluded property, on the date of separation (the "valuation date") after deducting the party's debts and other liabilities, and the net value of the property owned on the date that the parties began cohabitation (the "commencement date").

[144] There are other deductions available under the *FLA* for things like gifts or inheritance or the proceeds of a life insurance policy but those are not applicable in this case.

[145] Section 36 states that the party whose net family property is the lesser of the two net family property is entitled to an amount equal to one-half the difference in value between them.

[146] An unequal division of the net family property can occur, pursuant to s 36(6) where the court is of the opinion "that it would be unconscionable not to do so".

There are a number of factors to consider in determining whether it would be unconscionable not to do so. The factors listed under s 36(6) are:

- (a) a spouse's failure to disclose to the other spouse debts or other liabilities at the commencement date;
- (b) the fact that debts or other liabilities claimed in reduction of a spouse's net family property were incurred recklessly or in bad faith;
- (c) a spouse's intentional or reckless depletion of his or her net family property;
- (d) the fact that the amount a spouse would otherwise receive under subsection (1), (2) or (3) is disproportionately large in relation to the duration of the spousal relationship;
- (e) the fact that one spouse has incurred a disproportionately larger amount of debts or other liabilities for the support of the family than the other spouse;
- (f) a written agreement between the spouses that is not a domestic contract;
- (g) the needs of the children of a spouse and the financial responsibility related to the care and upbringing of the children;
- (h) a substantial change, occurring after the valuation date, in the net family property of either spouse and the circumstances of the change;
- (i) a substantial decrease, occurring after the commencement date, in the value of property claimed in reduction of a spouse's net family property under paragraph 35(1)(b) or a substantial loss on the disposition of such property after the commencement date, and the circumstances of the decrease or loss, or
- G) any other circumstances relating to the
 - (i) acquisition, disposition, preservation, maintenance, improvement or use of property, or
 - (ii) the acquisition, maintenance or disposition of debts or other liabilities.

[147] Both parties are seeking an unequal division of the net family property. The onus is on the party who is seeking an unequal division to establish that the requisite standard has been met.

[148] The unconscionable criterion is a high standard. It requires something more than being merely unfair or inequitable: *Fair* at para 44. The standard was described in *Chambers v Chambers*, 2010 NWTSC 76 at para 59:

Even if the court finds evidence of circumstances relating to any of [the s 36(6) factors], the party seeking the unequal division has to satisfy the court that it would be unconscionable not to order it. Unconscionability is a high threshold. It has been held to mean "outrageous", "shocking", "shockingly unfair" and "repugnant to anyone's sense of justice". It does not mean unfair or inequitable. [citations omitted]

[149] Wiseman argues there should be an unequal division of property because she claims that she has incurred a disproportionately larger amount of the debts from the relationship and that she made the full \$27,000 downpayment on the home from her savings prior to the relationship. She argues that she has been left with a disproportionate share of the family debts and has had to pay interest on that debt since separation. She also refers to Digness' purposefully delaying the sale of home which impacted on her financially.

[150] Digness claims there should be an unequal division of property because Wiseman has not contributed to the mortgage, bills or maintenance of the family home since separation and has left him with debts to pay for the home which he has been solely responsible for.

[151] Both parties filed a Statement of Property. At the beginning of the relationship, each party had some assets. Both parties had their pensions. The maximum transferable amount of Digness' pension for the period between February 1, 2016 and September 30, 2018 was \$28,941.32. According to Wiseman's Statement of Property, the increase in her pension from February 2016 to October 2018 was \$23,005.62. Wiseman also had approximately \$31,126.76 in savings, RRSPS and a TFSA account while Digness had \$943.33 in a chequing account.

[152] Wiseman also had a 5th Wheel Trailer and Bombardier Ski-doo when she entered the relationship with a total value of approximately \$24,000. She also had a scooter that she paid \$2,349 for his May 2015 prior to the relationship.

[153] Digness had a vehicle when the relationship began that he traded in in April 2016. It is unclear of the value of the vehicle but \$41,544.53 was outstanding on the vehicle. He received \$42,000.00 on the trade in for the 2016 Dodge Ram that he leased on April 13, 2016, for \$97,275.83.

[154] They each entered the relationship with some debt as well as Wiseman owed approximately \$8232.82 on her Visa and Digness owed \$4256.90 on two credit cards. By the end of the relationship, the parties had purchased additional vehicles and accrued significant debt between themselves.

[155] The major asset shared by the parties was the family home. The parties purchased the family home in July 2017 for a purchase price of \$380,000. The family home at was sold in November 2022 at a price of \$375,000. Following the payout of the mortgage and other expenses associated with the sale, \$29,796.85 is being held in trust by the solicitor who handled the real estate transaction.

[156] The parties had an appraisal conducted of the family home in January 2021 by Stewart, Weir, MacDonald Ltd. The appraised value of the home was \$365,000. The appraisal noted the house was in average condition and that the original finishes in the house (from 1994) were not well maintained and showed considerable signs of wear.

[157] A further appraisal was conducted of the family home in January 2023 by the same appraiser. The appraisal at that time was \$360,000. The appraisal noted the following:

The subject was inspected for a previous appraisal with an effective date of January 14, 2021. Furthermore, the analysis conducted herein considers a retrospective effective date of September 30, 2018. Since a proper inspection at the effective date of the appraisal is impossible, it has been assumed that the physical condition and configuration of the home at the effective date of the appraisal was similar to that found during the inspection on January 14, 2021.

[158] Wiseman also called Kim Knutson, the realtor involved in the purchase and sale of the family home, to testify. Ms. Knutson testified that the market has generally gone up since the parties' purchased the home. She felt the home was not in good condition and had it been properly maintained, it could have been sold for significantly more than the ultimate sale price. She noted that maintenance had not been done and that there was damage to various areas of the home. While Ms Knutson is familiar with the real estate market, she was unable to provide a value for the house at the valuation date.

[159] The appraisal completed in January 2023 by the professional appraiser is the most realistic amount for the value of the home at the valuation date. While it is completed in January 2023, it specifically contemplates the value of the home as of the valuation date and takes into account the previous valuation in January 2021. I find that the value of the family home on the valuation date was \$360, 000.

[160] The parties do not agree on the value or attribution of some assets. Wiseman claims that her scooter was stolen around the end of the relationship. She suspects that Digness was responsible however there is no evidence that he was responsible.

[161] Wiseman also claims that Digness rented out her Fifth Wheel Trailer to his friend and he kept the rent money. She claims that when she got the vehicle back it was damaged which has impacted on its value as she has been unable to repair the trailer. The vehicle was apparently lent to a co-worker of Wiseman and left in the

bush for her to later locate. It is unclear why Wiseman could not have attempted to arrange with the co-worker to return her trailer. Ultimately, it is the person who rented the vehicle who would be responsible for the damage to the trailer.

[162] Digness argues that after Wiseman left the family home, he was left to pay the mortgage and other bills of the home without any financial contribution by Wiseman. Wiseman acknowledges that she did not contribute to any of the expenses of the home. That was a significant expenditure that Digness was responsible for but he could have agreed to sell the family home earlier rather than waiting for the court to order the sale in late 2022. Digness did not do so and he had the benefit of residing in the property for an additional 4 years without have to find another place to rent or buy.

[163] Wiseman meanwhile had to obtain a consolidation loan to consolidate the debt she accumulated during the relationship and because of her financial situation, was unable to rent accommodation and had to live with family when the relationship ended.

[164] The Commencement Date valuations for each party are as follows:

	Wiseman	Digness
Household Items and Vehicles	\$26,349	\$42,500
Savings	\$31,126.76	\$943.33
Pension	\$46,287.57	
Debts	-\$8,232.82	-\$4256.90
Total	\$95,530.51	\$38,686.43

[165] Digness' pension value is unclear from his Pension Benefits Report but the increase in value is referred to on the Report and will be accounted for in the Valuation Date information.

[166] The Valuation Date amounts for each party are as follows:

	Wiseman	Digness
Land	\$180,000	\$180,000
Household Items and Vehicles	\$19,000	\$69,247
Savings	-\$1925.81	\$197.20
Pension	\$69,293.19	\$28941.32
Debts	-\$85,879.81	-\$86407.48
Mortgage	-\$177,500	-\$177,500
Edge Insurance	\$8346.76	
Total	\$11,334.33	\$14478.04

[167] There is no specific evidence about the amount of the mortgage at the valuation date. Wiseman has provided a statement as of June 2019, approximately 9 months after the parties separated. The amount owing at the time was \$351,817.76. After the parties separated, Digness continued to pay the mortgage and the amount outstanding at the time of separation would have been higher. Wiseman also provided the end of the year statement which indicates that the mortgage was \$357,328.32 in January 2019. I conclude that the outstanding mortgage as of October 1, 2018 was approximately \$355,000.

[168] Shortly after the parties relationship ended, Wiseman's vehicle was written off in November 2018. This vehicle was in both parties' names and Wiseman received an insurance payout of \$8346.76 which she retained herself. This should be accounted for as an asset she held at the valuation date but this was not included in the vehicles she had at the valuation date in her Statement of Property. Rather than consider the value of the vehicle, I have included the insurance payout to Wiseman in her family property as of the valuation date.

[169] Overall, I do not find that either party has met the standard of unconscionable to justify an unequal division of family property. They were in a financially difficult situation when the relationship ended because of their actions that occurred during the relationship. While it may have been one person's idea or another, they jointly incurred debt during the relationship. Following the end of the relationship, they each took steps to address their financial situation to their own benefit.

[170] The net family property for Wiseman and Digness is negative for both parties. For Wiseman, it is $\$11,334.33 - \$95,530.51 = -\$84,196.18$. The net family property for Digness is $\$14,478.04 - \$28,686.43 = -\$24,208.39$. The difference

between them is -\$59,987.79 and the difference between the parties respective net family property values would result in an equalization payment from Digness to Wiseman of \$29,993.90 to equalize the net family property. While the net family property for each is negative, the equalization payment represents the equalization of the debt the parties accumulated during the relationship.

[171] The amount held in trust from the sale of the family home is \$29,796.85. I am ordering the solicitor holding those funds in trust release them to Wiseman in full. This will be considered as in full satisfaction of the equalization of the net family property between the parties.

CONCLUSION

[172] For these reasons, I make the following Order:

Custody and Access

- 1) The parties will share joint custody of A but each party will be responsible for making decisions in certain areas;
- 2) The parties will be required to make medical and health related decisions jointly. If they are unable to agree, Wiseman will have the final say on medical and counselling decisions for A. Digness will have the final say on A's dental and vision care;
- 3) Medical and health related appointments will be made based on the earliest possible date that A can attend. The parent with the final say has the right to attend the appointment. If the other parent wishes to attend and is able to make themselves available, they can also attend. However, that parent's unavailability is not a reason to cancel the appointment;
- 4) With respect to education, Wiseman will have the final say on education decisions. There is no indication that A has any specific needs or deficits with respect to education or requires any educational assessments. However, if that occurs, both parties will be required to make decisions in this area jointly. If they are unable to do so, Wiseman will have the final say.

- 5) With respect to extra-curricular activities, both parties are free to engage A in activities that fall within their parenting time. However, Digness will have the right to make decisions about extra-curricular activities that fall within both parties' parenting time. Both parties are permitted to attend A's extra-curricular activities and they are responsible for ensuring that their interactions with the other parent and those who accompany the other parent are respectful. The party who is parenting A during the activity is responsible for bringing A to and from the activity and assisting A with getting ready for the activity and assisting A following the activity. Neither party will prevent or discourage A from communicating with the other parent during extra-curricular activities;
- 6) With respect to religious or spiritual issues, each party can engage in religious, cultural or spiritual activities of their choice with A during their parenting time. Neither party will engage A into any formal entry into a religion like baptism or communion, for example, without the other party's consent;
- 7) The parties will share parenting of A with each party having parenting time for one week. Transitions will take place every Sunday at 5:00 pm;
- 8) Each parent will be personally responsible for driving A to and from exchanges with the other parent;
- 9) While A is in the care of each parent, they can make the day to day parenting decisions about A. However, neither parent shall permit A to get any piercings or tattoos without the consent of the other parent;
- 10) Meilleur will be permitted to drive A to and from day-to-day activities. She will not be permitted to drive A on the Ingraham Trail;
- 11) When A is in Digness' care, he must ensure that anyone who drives A in a vehicle is not under the influence of alcohol, marijuana or other illicit drugs and that the driver has a valid driver's licence and insurance for the vehicle A is being transported in;

- 12) The parties will continue to communicate by email, or by an electronic app or text message if both parties agree. Each party will communicate respectfully toward the other and not make any disparaging remarks about the other parent. This applies to their electronic communication and in their communication with A;
- 13) Meilleur will not be permitted to contact Wiseman electronically or by telephone;
- 14) With respect to holidays and other special occasions, the parties shall alternate holidays with A as follows:
 1. Christmas Eve and Christmas Day: starting this year 2025, Wiseman will parent A from 2:00 pm on Christmas Eve until 2:00 pm on Christmas Day. Digness will parent A from Christmas Day at 2:00 pm until December 26 (Boxing Day) at 10:00 am. This will alternate each year;
 11. New Year's Eve and New Year's Day: starting this year 2025, Digness will parent A from 2:00 pm on New Year's Eve until 2:00 pm on New Year's Day. Wiseman will parent A from New Year's Day at 2:00 pm until January 2 at 10:00 am. This will alternate each year;
 111. Easter: starting next year 2026, Wiseman will parent A from 9:00 am to 2:00 pm on Easter Sunday; Digness will parent A from 2:00 pm to 7:00 pm. This will alternate each year;
 - 1v. Thanksgiving: the parent who already has A on Sunday will keep her until 10:00 am on Monday. The other parent will have A from 10:00 am on Monday until the following morning where that parent will drop A off at school and the schedule will resume as normal;
 - v. Mother's Day: if this does not occur on Wiseman's parenting time, Wiseman will have A for Mother's Day from 6:00 pm the day before until 7:00 pm on Mother's Day;

- v1. Father's Day: if this does not occur on Digness' parenting time, Digness will have A for Father's Day from 6:00 pm the day before until 7:00 pm on Father's Day;
 - vn. March Break: the parenting schedule will continue as normal. Each party will have A for a week over March break;
 - v111. Summer Break: each party will be entitled to take A for a period of up to two weeks for a family vacation in the summer, following which the other parent would be entitled to parent A. For example, if Digness took A for a family vacation for two weeks in July, Wiseman would be entitled to parent A for the next week;
 - 1x. Birthdays: each party will parent A for a period of time on A's birthday and on their own birthdays. If the parent has A on their birthday, there will be no need for a transition. However, if the other parent is parenting A on a parent's birthday, the parent celebrating the birthday will parent A from 2:00 pm until 7:00 pm on their birthday. For A's birthday, the parent who already has A on her birthday will parent her until 2:00 pm on that day and the other parent will parent A from 2:00 pm until 7:00 pm;
- 15) Each party may request a modification to the parenting schedule to accommodate vacations and other special events and the other party shall not unreasonably withhold consent and access. The parties will work together to create a scheduled that will share A's time equally to accommodate the change;
 - 16) For vacations, each party will provide the other party with as much notice as possible and will share their summer vacations plans by the end of May each year;
 - 17) Each party is free to travel within Canada with A without obtaining the consent of the other party. For any travel plans outside of the Northwest Territories, the parent planning travel will provide the other parent with reasonable notice of their itinerary before the trip;

- 18) Each parent will facilitate communication with the other parent while they have A in their care. A will be permitted to use her tablet or other electronic device to contact or facetime the other parent, subject to reasonable restrictions like enforcing bedtimes;
- 19) Each party will refrain from being in a state of intoxication, including the use of illegal drugs, while A is in their care. Both parties will ensure A is in a safe environment and that there are not intoxicated persons in her presence;
- 20) Digness is not to expose A to any person other than Meilleur with whom he engages in a sexual or romantic relationship with while he is also in a relationship with Meilleur;

Child Support

- 21) Retroactive Child Support for the for the period November 1, 2018 to December 31, 2023 will be payable by Digness to Wiseman in the amount of \$23, 696;
- 22) Effective January 1, 2024, child support is payable on the first day of the month by Digness to Wiseman in the amount of \$382 per month;
- 23) The parties will exchange their income tax information for the previous year by June 30 of each year;
- 24) For future child support, the amount of child support may be recalculated by the Northwest Territories Child Support Recalculation Service if eligible for recalculation and if the recalculation service determines that the recalculation is allowed and appropriate pursuant to the *CLA* and the *Child Support Recalculation Service Regulations*, R-066-2022. Either party may apply to the Recalculation Service;
- 25) Special and extraordinary expenses will be paid proportionately to each party's respective share of income;

Family Property

26) The net family property for Wiseman -\$84,196.18. The net family property for Digness is -\$24,208.39. The difference between them is -\$59,987.79 and the difference between the parties respective net family property values would result in an equalization payment from Digness to Wiseman of \$29,993.90 to equalize the net family property;

27) The amount held in trust from the sale of the family home is \$29,796.85. The solicitor holding those funds in trust will release them to Wiseman in full and this will be considered as in full satisfaction of the equalization of the net family property between the parties.

[173] Given the divided success on this matter, I decline to make an order of costs.

Chief Justice

Dated in Yellowknife, NT this
13th day of, August 2025

Counsel for the Applicant(Respondent):	Self-Represented
Counsel for the Respondent(Applicant):	Self-Represented

S-1-FM-2019-000015

**IN THE SUPREME COURT OF
THE
NORTHWEST TERRITORIES**

BETWEEN:

RENEE WISEMAN

Applicant (Respondent)

- and -

KEVIN DIGNESS

Respondent (Applicant)

**MEMORANDUM OF JUDGMENT
OF
THE HONOURABLE
CHIEF JUSTICE S.H. SMALLWOOD**