

IN THE SUPREME COURT OF BRITISH COLUMBIA



Case: *Wood v. Wood*,
2004 BCSC 225

ORIGINAL

NOT TO BE REMOVED
FROM THIS OFFICE

Date: 20040218
Docket: E021298
Registry: Vancouver

Between:

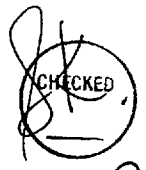
Alexander Murray Wood

Plaintiff

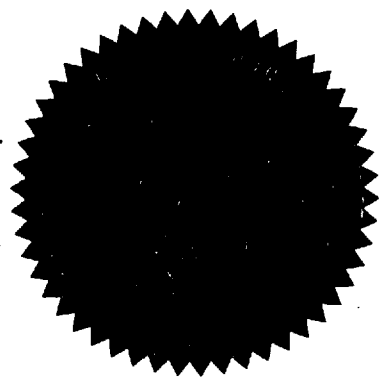
And

Ayako Wood

Defendant



Before: The Honourable Mr. Justice Hood



Reasons for Judgment

Counsel for plaintiff

F. K. Robin

No one appearing for the
defendant

Date and Place of Trial/Hearing:

February 9, 10, 11, 2004
Vancouver, B.C.

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[1] This is a matrimonial case. The primary issues are whether the plaintiff should have sole custody and guardianship of the two children of the marriage, and the formulation of an access regime having reasonable balance and certainty, and being in the best interests of the children.

[2] Other matters, including child support, the calculation of the defendant's income, the payment of extraordinary expenses and so on have not been dealt with, due mainly because of the lack of cooperation by the defendant. They were adjourned.

[3] When the trial commenced, Ms. Robin appeared on behalf of the plaintiff. The defendant did not appear.

[4] The plaintiff is a Richmond school teacher. The defendant is a flight attendant with Air Canada. They met in the early 1990s when the plaintiff was teaching English as a second language in Japan where the defendant was a citizen. They met and eventually married. He returned to Canada and she followed him later as a landed immigrant. She has been living in Canada for 11 years and speaks English.

[5] The couple have two children, a son Alexander Takara Maniwa-Wood, born May 21, 1994, and a daughter, Manami Sheona Maniwa-Wood, born January 6, 1997.

[6] At the commencement of trial Ms. Robin advised me, and it is evident, that since the couple separated, the defendant has effectively refused to cooperate with the plaintiff and to communicate with him in a proper or meaningful manner. As a result he has had to obtain some nine orders of this Court; including three orders permitting the defendant to take the children to Japan on vacation.

[7] When the parties separated in April of 2002, the defendant disappeared with the two children for about one week. She returned once she was served an *ex parte* order dated April 24, 2002, the effect of which was to require the return of the children to the plaintiff's residence. By a consent order dated April 30, 2002, the parties were granted interim joint custody and guardianship of the children. The order also provided for specified access by the plaintiff, which was effectively a one week on and one week off or shared parenting scheme.

[8] By a further order dated November 6, 2002, the parties continued to have interim joint custody and guardianship, with the primary residence of the children being with the plaintiff. The order contained basic provisions with respect to the care and parenting of the children usually found in separation agreements. Significant decisions pertaining to

the children were to be discussed. In the event that the parties could not agree with respect to a major decision, the plaintiff had the right to make the decision.

[9] The most important provisions in the order, from my perspective, were that the defendant was required to produce to the plaintiff her monthly work schedule as soon as reasonably possible but in any event within 48 hours of receiving it; that upon receiving the defendant's work schedule the plaintiff was required to draw a calendar setting out parenting time for each parent for the coming month, the primary aim being to see that the children spend equal time with both parents if possible. It will be seen that the defendant never did effectively follow or abide by this order.

[10] The children's access to the defendant has been the main problem facing the parties, and which has caused the plaintiff to continue with these proceedings. She simply will not cooperate with him. When it comes to the children's access to her and at times even with the plaintiff, she is obstructive, rather than a facilitator. The plaintiff is concerned with the financial drain of his legal fees, having to be in court on numerous occasions and, more importantly, with the defendant's erratic and stressful access to the children,

which she imposes on them and which is clearly not in their best interests.

[11] In brief, the problem is that none of the access regimes worked out by the plaintiff, on the basis of whatever information he received from the defendant, has enjoyed any success. She will not cooperate with him. She does not provide him with her monthly work schedule as required by the November 6, 2002 order of Madam Justice Martinson. She does not abide by court orders. When the defendant has the children she will suddenly appear on the plaintiff's doorstep saying that he must take the children because she has to go to work or for some other reason. Alternatively, when he has the children she will arrive at his doorstep and simply take the children for her parenting time because she is available. It will be seen that on these and most occasions the plaintiff gives into her rather than add to the observable stress she has already placed on the children.

[12] Lately the defendant has begun communicating with the plaintiff and with Ms. Robin in Japanese. Neither the plaintiff nor counsel speak or read Japanese. In this regard, the defendant emailed Ms. Robin at 1:38 a.m. on the morning of trial. The email was in Japanese. In any event at 9:30 a.m. Ms. Robin emailed the defendant reiterating that the trial was

to commence at 10:00 a.m. that morning. She also left phone messages at the defendant's number. However, she was unable to communicate with the defendant.

[13] Counsel also advised me that she had obtained a rough interpretation of the defendant's email in Japanese which was sent early that morning. Roughly translated it said that she was waiting to hear from counsel, "tell me when to appear and here is my phone number". I am unable to ascribe any air of sincerity to the email or to the defendant's conduct.

[14] I then determined that the action should proceed to trial notwithstanding the absence of the defendant. I am satisfied that she was served notice of trial through her counsel who, I am told, recently withdrew because he was unable to obtain instructions. I am also satisfied that it is more likely than not that she has received the emails and the telephone messages and knows that the trial is proceeding; that she has no intention of appearing. In layman's terms she is playing games, including the use of the email in Japanese. She continues to fail to cooperate, and to communicate in a proper manner with the plaintiff.

[15] I should have noted earlier that on two occasions the defendant failed to attend for examination for discovery; that

on January 16, 2004, Master Donaldson ordered that she attend for examination for discovery on January 21, 2004. The defendant did not attend for the discovery, and communicated no explanation for her failure to do so. She was served with notice of a pre-trial conference, and again she did not attend. At the conference on February 2, 2004, Mr. Justice Curtis ordered that the defendant personally attend at the trial scheduled to commence Monday, February 9, 2004, at 10:00 a.m. Again, the defendant did not appear and has provided no explanation for failing to do so.

[16] In these circumstances I directed that the trial proceed. I agree with the plaintiff's position that the defendant has had ample knowledge that the trial would proceed on Monday, February 9, 2004; and more importantly, that the unsettling, stressful and uncertain access forced on the children by the defendant is not in their best interests and should be stopped. Further, delay is of no benefit to the children and it is unlikely that any delay will change anything.

(I) The Plaintiff's Evidence

[17] The 37-year old plaintiff is a teacher and teaches in Richmond. His parents live nearby on one of the Gulf Islands.

He has aunts and uncles in Richmond and his children have access to their extended family on a monthly basis.

[18] He has entered into a new relationship with another teacher with whom he lives. Ms. Whitelaw is 36 years of age. She has a very positive and caring relationship with the children who respect her. The plaintiff and Ms. Whitelaw have plans to marry.

[19] The plaintiff said that when the defendant first came to Canada she studied English at Vancouver College. Initially she spoke both Japanese and English to her son after he was born in 1994. After their daughter was born in 1997, she only spoke Japanese to the children.

[20] He believed that things began to deteriorate after their son was born. The defendant did not seem to be able to care for him. She was always too tired or too sick. He therefore arranged for their son to be looked after in a daycare facility two or three days a week. This continued after the daughter was born until she was about 18 months old when the defendant returned to work. During the year and a half that the defendant did not work, she looked after the children, when they were not in daycare, until the plaintiff returned

home from work. The daycare facilities were still being used at least part-time for the son.

[21] The plaintiff says that when he returned from work he would take over. He did his chores, bringing the children with him. He cooked their dinner. He put them to bed. He got them up in the morning and dressed them. The defendant then drove them to and from the daycare facility, and school once they were of age.

[22] After the defendant returned to work, they had a live-in nanny who was there for about three years from 7:00 a.m. to 4:30 p.m. Monday through Friday. At 4:30 p.m. he would come home from work and take over as described earlier.

[23] After the nanny left and they were both working full-time, he would take his daughter to daycare and his son to school, on the way to work, and he would pick them up on the way home. She would do so if she was not working. He continued to take over, and look after the children, when he was at home, as described earlier. He did the shopping, the house cleaning, and he cooked dinner. He got the children up and ready for school, fed them and so on. He also arranged for the children's medical and dental appointments. When asked what the defendant did in the evenings he said that

basically she seemed to enjoy sitting on the couch cross-stitching and being on their computer. When asked whether she ever engaged with the children, he said that periodically she would have dinner with them but that was pretty well it. He said that she "took little responsibility in terms of taking care of the children".

[24] I will pause at this point to observe that I am satisfied that the children's primary caregiver has always been the plaintiff. I am also satisfied on the evidence that he is a good, loving and caring father who is only interested in what is in the best interests of the children. The defendant has made no effort to communicate with or see the children since December 25, 2003. Since then the children have lived in a stable and happy environment with the plaintiff and his partner, Ms. Whitelaw.

[25] He describes their ten-year old son as a cautious, careful and thinking boy. He is alert to what is being said and what is going on around him. He is sensitive and tries to resolve problems of others. In particular, he is aware of the conflict between the parties and he takes it on himself to try and resolve them. He constantly explains his mother's conduct when it is inappropriate. He makes excuses for her. However, his relationship with his mother is not good. She is critical

of him. She was quite emotional over the fact that the son was slow to learn to speak. She blamed this on the stress that she experienced when she was carrying him, and which she blames on the plaintiff. The plaintiff is also concerned that the defendant tells their son lies about him. In any event, the son is doing well in school.

[26] He describes the daughter as more outgoing, the opposite of the son. She excels in school as well. At the moment she can read and write in both English and Japanese. At present, the children go to Lord Byng Elementary School in Steveston. The school is just across the street from the defendant's residence, the former family home. His present plans are to have the children remain at that school until he is able to obtain a permanent residence and determine what school is best for them.

[27] The plaintiff says that he promotes the children's Japanese heritage. He takes them to Japanese school every Saturday and sees that they do their homework. He talks to them about their grandparents and the value of their heritage.

[28] The present problem involves the defendant's sporadic access as described above. He believes that the children should see both parents as much as possible. All of his

attempts to work out an access regime for the defendant, based on what information he has been able to obtain from her with regard to her work schedule, have failed. The suggestion is that things could be better if she was more cooperative in setting up and in exercising a proper access regime.

[29] He is also concerned about the defendant belittling him with the children, and the fact that she tries to communicate with him "using the children". He described an incident where the children were having a dance recital which they had worked towards for about a year. The defendant insisted that he must not come to the recital or the children could not go. He could not persuade her to the contrary so he did not go.

[30] He recalled an occasion when his daughter told him that she hated him because her mother hated him. When he tried to explain the situation to her, his son said "no, mom is mad at you". He recalled another incident when he told his son to eat up and be big and strong like his dad. His daughter told him that the son "did not want to be like you - you are a liar".

[31] On the second day of trial, counsel advised me of her further attempts to communicate with the defendant by email

and by telephone which were unsuccessful. The trial continued.

[32] The plaintiff recited problems which he encountered after the consent order dated April 30, 2002, of Master Patterson was obtained. He said again that he was concerned about the welfare of the children as a result of the lack of any form of reliable and workable access regime for the defendant, as well as the defendant's conduct in front of the children. The problems continued throughout the summer of 2002. When asked "why not just go to court", he said that at the time he did not think a court order would be helpful in the circumstances. What he wanted was for the defendant to take responsibility for caring for their children when she was in town, as he would do when he was not working.

[33] In September of 2002, he had his counsel set up a judicial case conference with the hope that a reasonable access regime could be worked out. At the conference before Madam Justice Martinson, an agreement was reached, the provisions of which were set out in a consent order, that the defendant would establish an email account on the Hotmail to be used for communication between the two of them with regard to the children. The defendant was to forward the address to him as soon as possible. In fact, he received it three weeks

later by mail from the defendant's counsel. The pre "@" part of the address was written in Japanese. He found out later that it meant "for the person that I hate". It was also agreed at the judicial case conference that they would only use the phone for emergency purposes. In this regard, he agreed that he was phoning her quite often in an attempt to obtain information from her about her work schedule. On the other hand, she was phoning him repeatedly, generally in the middle of the night, when she would either start yelling at him, voicing previous grievances during the marriage, or she would just hang up.

[34] Matters did not improve. Hence, the plaintiff then arranged for a further "four-way meeting", a meeting between the parties and their counsel. During this meeting they discussed how the defendant would provide him with information which would enable him to draw up an access regime on a monthly basis. One was worked out for the month of October. However, immediately it was worked out the defendant did not abide by it.

[35] The next incident he recalled occurred in October on the Thanksgiving weekend when he had the children. He had made arrangements to take the ferry to Gabriola Island so that the children could spend the weekend with his parents. When he

arrived at the defendant's house on Friday afternoon as scheduled, she told him that she in fact was not working the next day, and that she intended to keep the children until she had to go back to work again. When he told her that he had made arrangements to spend the weekend with the children at his parents, she told him that he needed to be more fluid, that he should go away or phone the police. His daughter then yelled through the door slot "go away", and so he left.

[36] On the following day, a Saturday, he went to Victoria for the day with a friend. Since he did not have the children he wanted to preview a film to see if it was appropriate for his class. Since the defendant had not given him any indication when she was going back to work (and he would have to take the children), he left messages for her by phone and by email to see if she would tell him. He did not receive any response. When he got home, he found that she had left him a phone message that she would be dropping the children off at his apartment at 9:15 a.m. the next morning, which was a Sunday, whether he was there or not.

[37] He was not sure what she would do so he got the early ferry home the next day and arrived home at 9:00 a.m. When he phoned the defendant she told him to come and get the children.

[38] When his request for a further four-way meeting was denied by the defendant, he then asked his lawyer to apply for interim sole custody and guardianship. At that hearing, Madam Justice Martinson continued the earlier order that the parties have joint custody, as opposed to what he had asked for. I have already reviewed the important provisions of the order, which was a consent order, with particular regard to the regime worked out by Madam Justice Martinson: the defendant was required to provide the plaintiff with information regarding her work schedule. The plaintiff was then required to make up the access regime, deliver it to her for her comments and then integrate her comments with his access regime. The aim was to see that the children spend an equal amount of time with each parent if possible. In addition the order provided, for the first time, that the children's primary residence would be with the plaintiff.

[39] It appears that little changed as a result of the order. It provided that she would be allowed to take the children to Japan for a holiday pursuant to the terms therein set out. When she returned from her holidays, the access problem returned as well.

[40] She returned on a Friday and she kept the children until Sunday. The order required her to take the children to

Japanese school on Saturday morning and to register them for school. She did neither, that is she did not take them to the school and she did not register them.

[41] On the following weekend he had the children. He attended an educational conference at UBC and left them with his mother. On the Friday, the defendant phoned him saying that the children needed to go to the Japanese school on the following Saturday morning and that she had not registered them. When he told her that neither he nor his mother could take them to the school that morning, she became very agitated and told him that he was in breach of the court order. Eventually she hung up on him.

[42] Later when he, his mother, his sister and the two children were getting ready to eat dinner the defendant arrived at the sliding glass door of their kitchen where they were just sitting down to dinner. Again the defendant was extremely agitated. She began yelling at him and at his mother, demanding that he take the children to the Japanese school the next day. When he told her again that neither he nor his mother could take the children to the school that morning, she told him that she would take the next day off and she would take them to the school. At that time the children were in their bedroom where they had been taken by

Ms. Whitelaw. The defendant began yelling at the children to come out so that she could take them to the Japanese school, and out they came.

[43] The defendant was still agitated and began looking around his apartment. When she saw anything which they had shared when they lived together she demanded that it be returned to her. He says that when he left the family home he took only a few items with him. When she spotted some cookbooks she demanded the right to take them. He told her that she could not have everything, and that the books were staying.

[44] The defendant then told their daughter to go to the book shelf, pick up the books and bring them to her. He then told her that she could not do that with their daughter, that if she wanted the books so badly she could take them and leave.

[45] The defendant then went into the kitchen, stacked up a pile of books and put some china serving dishes (which he had inherited from his aunt) on the top of them. He said it was obvious that there was no way that she could carry them out in that fashion and that once outside the door she dropped the books and smashed all of the china.

[46] He said that because the children were watching he stayed calm, and went out to help the defendant pick up the books.

In the meantime, the children were going in and out of the house following their mother's instructions as to what items she wanted them to bring. At one point in time he was using a flashlight to try and find an object on the driveway which their son had dropped. During this time the defendant stood by her car yelling "I hate you, I hate you".

[47] The plaintiff said that he finally got the children and what they needed into the vehicle, while staying calm. While he was saying goodbye, the defendant "took off" and he had to jump back in order to avoid being hit by the car. When asked how the children were reacting throughout this scenario he said that their faces were simply blank; that they had no idea how to deal with it.

[48] The plaintiff noted that Martinson J.'s order also provided that they were obligated to speak to each other with regard to any major matter or decision which was required. When his son needed orthodontic work for an unsightly front tooth which was sticking straight out, he made an appointment with an orthodontist, which involved a six-week delay, and advised the defendant about it. Because the appointment was during a time when the defendant had the children, she refused to take their son to the dental appointment. Her position was that any appointments he made had to take place during a time

when he had the children. The result was that there was a delay of several months before the boy had the unsightly tooth removed.

[49] She would make decisions on her own as well, but of a different kind. On one occasion she signed the children up for riding lessons without consulting him. She told the children about it and they were very excited. She then told him to pay for the lessons or she would stop them and tell the children that their father would not pay for them.

[50] A similar incident occurred involving a kitten. On his birthday in December of 2002, the children arrived at his home with their present for him, which was a kitten. The mother knew that he was allergic to cats or knew from living with him that he did not want to have a cat in the house. He had to tell the children that he could not keep the cat and they were really upset. He took the cat back to the store and mailed the \$200 credit voucher to the defendant.

[51] The plaintiff says that the defendant never followed the system set out in the November 6 order to enable the parties to work out an access regime for the coming month. She never gave him her work schedule. While at times she did give him some information, often it was incomplete or inaccurate.

[52] She would also change the access arrangement without any notice to him. Because of the nature of her work she has guaranteed days off each month. However, even those days were not guaranteed. He recalled an incident when she left a message on his phone that she wanted him to pick up the children because she was going to have to work on her guaranteed days off. He tried to phone her and find out whether she was working or not. He said that rather than give him that information, she phoned his aunt in Richmond, told her that he would not pick up the children when he was supposed to, and dropped them off at the aunt's.

[53] There were, according to him, many other similar incidents. He recalled one when she had the children on her guaranteed days off. He was helping a friend move and happened to be home. She drove into the driveway, dropped the children off and left. On another occasion when she was supposed to take the children, she phoned and asked to speak to them. When the children hung up, they told him that their mother was not coming to pick them up, "she was going off with a friend".

[54] He next recalled at length an incident which occurred in October 2002. The children were at home with him. They were going to go with their mother on the following day. He had

made plans to go to a friend's home for dinner and the children were looking forward to it because their friends had children as well.

[55] Shortly before getting ready to go, the defendant phoned to say that she was coming to pick the children up immediately. He did not feel that he could leave with the children before she arrived. Further, the son knew that she was coming. He thought the best that he could do would be to meet her outside and tell her that he would bring the children over after dinner. The son suggested that they should do "what mummy wants". He told them no, they would go to dinner and he would take them over to her place after.

[56] When the defendant arrived, he went outside to talk to her. She walked right past him to the sliding glass door of the kitchen. She told the daughter to open the door and she did. The defendant walked into the kitchen and then brought the daughter outside. He told her then that she could not do this to people who were expecting them for dinner; "you just can't take Manami" (the daughter) "like that".

[57] She was very agitated and he knew that there was nothing he could do. She then said "fine, I'll just take Manami". The son was standing right there, and the plaintiff told her

that she could not leave him behind. The plaintiff observed that here was a young boy who was looking after his mother and being abandoned by her. The boy was devastated by the fact that his mother would leave without him.

[58] He then suggested to the daughter that she should go back into the house and get her brother, and she agreed. When he attempted to help the daughter out of the car, the plaintiff grabbed her daughter's arm and would not let her out of car. The daughter then began to cry. By this time the son had come out of the house and the plaintiff was able to put him in the car, suggesting that everything was fine in order to calm the boy.

[59] The plaintiff went on to recite a number of other similar incidents involving even more disturbing conduct by the defendant in the presence of the children and causing them to cry, and of the plaintiff attempting to pacify the defendant and protect the children as best he could; these incidents occurred at the plaintiff's premises, at the children's school and at the mother's home on Christmas day, and which I do not propose to detail. It is suffice to say that the incidents are simply further evidence of misconduct on the part of the defendant, generally in the presence of the children, conduct not in the best interests of the children, conduct

demonstrating that joint custody and guardianship has not and can not work.

[60] The plaintiff was asked how the children were during the past six weeks since they last saw or heard from their mother. He said that the consistency of their lives has had a stabilizing effect, and they seem more settled. However, not knowing what their mother is doing has caused a lot of anxiety to them. He knows this because they ask about her. At one time she apparently emailed her lawyer that she was enroute to Japan. When the children were told this the boy expressed concern that she was not coming back.

[61] The children were introduced to Ms. Whitelaw in the summer of 2002. They all moved in together in the summer of 2003, after the plaintiff had consulted with a counsellor on how to manage the separation in the best interests of the children, and how to introduce a new person into the family. He says that the children have a wonderful relationship with the Ms. Whitelaw. He describes her as a very thoughtful and caring person who is really concerned about the children. The daughter has demonstrated her affection for Ms. Whitelaw by hugging her, saying she is her best friend and so on. The boy is more reserved but clearly enjoys her company.

(II) The Evidence Of The Plaintiff's Mother, Marilyn Wood

[62] The plaintiff's mother, the grandmother of the children, Marilyn Wood, a retired teacher, described a very strained relationship with the defendant, which began soon after the boy, Takara, was born. The witness had promised the defendant's parents, at the wedding in Japan, that she would look after the defendant but she found this to be "quite a bit of work". In the early years they all lived in the same house. The witness and the grandfather lived upstairs while the parties lived downstairs. The defendant's English was not strong then and of course she was new to the country. The witness felt that the defendant became depressed after the daughter, Manami, was born. She said that from that point on the defendant "withdrew from us, not wanting much to do with me and my husband or any of the family." The defendant did not encourage their relationship with the children. She felt that the defendant came to hate her and in fact she has told her so on a number of occasions. While they lived upstairs there could have been daily contact but there was not.

[63] When asked how she felt the children were doing she said that she worries about them. She said that the boy, being the oldest, and who was closer in the beginning, seemed to take on the responsibility to care for his mother since he was about

two years old. He is the more serious of the two children and wants to protect his mother. She did not feel as close to the daughter who was "very distant from me" although she "bounced along in life." She sees the children more often since the separation, and the relationships are getting much better. She feels that her initial strained relationship with the children was a result of the defendant's attitude toward her, which she described as "an intense dislike for me."

[64] She was asked if she had ever witnessed any angry outbursts by the defendant in the presence of the children. She described the incident which occurred on November 29 at the plaintiff's home when the witness, her daughter, the plaintiff and the two children were getting ready to go out to dinner at some friend's home. It was early because it was a school night. This was the incident when the defendant forced her way into the kitchen, took the books and china, and eventually the children, and left. When asked what the children were doing when the defendant was in the house she said they were "just moving around in nervous energy." When they left she described the children going out the door "stiffly with little masked faces - like little robots walking along behind the mother." At the time she was concerned about the children getting into the car with the defendant because

she was clearly in a rage. When she asked the plaintiff about it he said that it would be okay once the defendant got out of sight.

[65] She tries to promote the defendant's relationship with the children, although there is not much that she can do. She talks to them about their grandparents and their heritage, about the Japanese school and so on.

[66] Mrs. Wood feels that the children have become more settled, "a little easier" since December 25 when they last saw their mother. The boy will now give her a hug sometimes, and the daughter always would in recent years. She describes her son as a loving, caring father. She feels that he and Ms. Whitelaw have a very good relationship between them and with the children. She said that Manami "glues herself to Whitelaw". She describes Takara's relationship with Ms. Whitelaw as developing because he is not getting an attitude from his mother.

**(III) The Evidence of the Plaintiff's Companion,
Ms. Whitelaw**

[67] Ms. Whitelaw also testified. She is a 35-year old well qualified teacher. She has known the children since 2002, and has lived with them for some time. She has witnessed the

defendant's conduct in the presence of the children and described it as "heart breaking at times." She describes the plaintiff as being patient, kind and fair in all of this. It is a difficult situation. On the other hand, she has an emotional bond with the children and they have many nice family times together. Manami is quite attached to her and calls her her best friend. Takara is also attached to her, although he is harder to get to know. She sits down and talks to both of them before they go to sleep at night. On occasions Takara will hug her and ask her not to leave.

[68] She was present on May 3 during the car alarm incident, one of the incidents which I have not detailed. She described the defendant as being very very angry and agitated. Because of this she took the children to the bedroom. She also described how upset Takara was, and wanted to go out and "maybe stop things".

[69] She was also present on July 7, 2003, another incident which was not detailed, when the defendant arrived unannounced, stood on their neighbour's property and began yelling to Manami to come out and go with her. When she asked the defendant to leave she said "fuck you" and called her a bitch. The defendant knocked on all the windows and doors and finally left. Manami had gone to her bedroom.

[70] The defendant returned to the plaintiff's home that evening, the neighbours became involved and the police were called. I need not deal with the incident further.

[71] When asked if she noted any changes in the children since they last saw their mother six weeks ago she said that they seemed much more settled, although they still want to know where she is. Manami sent the defendant an email in Japanese asking "Mommy are you home yet?" She did not receive a response. Manami wonders why. The witness feels that Manami is now more concerned and not as carefree as she once was.

[72] When the trial resumed the following day counsel told me that further attempts to communicate with the defendant were unsuccessful.

(IV) Should The Plaintiff Have Sole Custody And Guardianship Of The Two Children?

[73] I have no doubt that the answer is in the affirmative. I am satisfied that the plaintiff has always been the primary caregiver for the two children, and that in any event it is in their best interests that he have sole custody and guardianship of them. The plaintiff is a loving and caring father whose only interest is in that which is in the best interests of the children, and he has the means and skills to

meet their needs in every way including love and affection, their emotional well being, education and training. He provides for them alone, but even more so together with Ms. Whitelaw, a stable, safe and secure environment in which to be nurtured.

[74] On the other hand, the defendant has demonstrated that she is not willing or capable of parenting responsibly and in the best interests of the children. All efforts by the plaintiff to share parenting with her have failed. Her own interests take precedence over those of the children. She cannot cooperate with the plaintiff sufficiently to make important decisions or to take appropriate steps in the children's best interests. She will not even communicate with him in a manner appropriate to her duty. She simply does what she wants, generally contrary to prior arrangements and even to orders of this Court. She undermines the plaintiff and his efforts on behalf of the children and on behalf of her as well, and contributes nothing in return. Her injurious misconduct in relation to the children must come to an end.

(V) Is An Access Regime Possible?

[75] The real problem here is to work out an access regime which will provide the children with maximum contact with

their mother and which is not contrary to their best interests. In this regard my task might have been easier if the defendant had appeared and provided me with particulars of her usual work schedule with particular regard to her days off when she will be available to provide access to her children. The frustration which the plaintiff experienced for some time in attempting to work out an access regime without her cooperation and without the full information required is understandable. I do not propose to repeat the plaintiff's admirable attempts to try and perform a task made difficult, if not impossible by the defendant.

[76] Ms. Robin has presented a draft order containing access provisions which I understand have been drafted by the plaintiff in light of his limited knowledge of the defendant's work schedule. It is difficult to respond to these provisions or to suggest alternatives since everything will turn on the defendant's work schedule, and more importantly, whether she is prepared to fully cooperate with the plaintiff, to communicate with him properly, to encourage his relationship with the children, and to act in an appropriate manner in the presence of the children, all in their best interests.

[77] I propose to adopt most of the provisions recommended by the plaintiff in the circumstances, while giving the parties

liberty to apply in the event that for practical reasons the regime does not work, or on the cooperation of the defendant it is ascertained that she has more access time available or if the defendant demonstrates and satisfies the plaintiff or this Court that she has changed her ways and will conduct herself only in the best interests of her children. The primary aim, to give them as much access to their mother as is reasonably possible provided it does not clash with their best interest, remains.

[78] As I have said the plaintiff has drafted the order. He has persuaded me that his interests are only those that are best for the children and to that end he believes that they should spend as much time as possible with their mother provided the access is not disruptive of their day to day routine during the week or otherwise in conflict with their best interests. While agreeing with most of the provisions in the order, I have deleted the police clause authorizing peace officers to apprehend the children in the event that they are wrongly taken by the defendant. There is no evidence before me that there is a real risk of such conduct on her part; and in any event, the police can take such steps without the specific provision being in the order.

[79] The order will be as follows:

THIS COURT ORDERS THAT:

1. The Plaintiff will have sole custody and guardianship of ALEXANDER TAKARA MANIWA-WOOD, born May 21, 1994 and MANAMI SHEONA MANIWA-WOOD, born January 6, 1997 (the "Children").
2. The Defendant will have reasonable access to the Children only if the following occur:
 - a. The Defendant must produce to the Plaintiff, by the second last day of each month, her exact, complete monthly work schedule for the following month; and
 - b. Upon receipt of the Plaintiff's schedule setting out the Defendant's access for the following month (the "Schedule of Access"), the Defendant must confirm, in writing and in English, and deliver the confirmation to the Plaintiff within 48 hour, by email, that she will exercise the access as set out in the Schedule of Access.

If the Defendant does not comply with either Paragraph 2(a) or (b), there will be no access for that month.

3. When setting the Schedule of Access, the Plaintiff will do the following:
 - a. Each month assign to the Defendant a minimum of one weekend or a maximum of two weekends per month of access ("Weekend Access"), in accordance with the Defendant's schedule, except for the months in which the Defendant will have Christmas Break or Spring Break access or the Children will be on vacation with the Plaintiff or the Defendant;

- b. Each month assign to the Defendant two mid-week days when she can spend the hours between 4:00 p.m. and 7:00 p.m. with the Children. These days will be assigned in accordance with the Defendant's schedule and the Children's extra-curricular activity schedule. The Plaintiff will drop off the Children at the home of the Defendant at 4:00 p.m. and the Defendant will drop off the Children at the home of the Plaintiff at 7:00 p.m.;
 - c. In the month of December, assign to the Defendant access every day from December 27 until 7:00 p.m. the night before the Children return to school at the end of the Christmas break ("Christmas Break Access"), in accordance with the Defendant's schedule;
 - d. In the month of March, assign to the Defendant as much of the Spring Break as possible on odd years ("Spring Break Access"), in accordance with the Defendant's schedule;
 - e. In the month in which Easter falls on each even year, assign to the Defendant the Easter Weekend, in accordance with the Defendant's schedule.
4. The Children will telephone the Defendant twice a week at their bedtime. The Children will telephone the Defendant on her cell phone on those days when she is not at home. If the Children are unable to reach the Defendant by phone, they will send her an email.
 5. The Defendant will have three (3) consecutive weeks of holiday with the Children each year, of which only two (2) of those weeks can occur when school is in session so that the Children do not miss more than 10 consecutive days of

school. The Defendant must provide the Plaintiff with written notice, in English, of her intention to take those holidays by March 30 of each year. If the Defendant receives notice that the process of awarding holiday time changes, she will advise the Plaintiff immediately of that change.

6. Weekend Access will commence at 5:00 p.m. Friday evening when the Plaintiff drops the Children at the home of the Defendant and end at 7:00 p.m. Sunday evening when the Defendant drops the Children at the home of the Plaintiff.
7. The Defendant must not contact the Children or retrieve the Children at any time not specified by the Schedule of Access.
8. The Defendant, AYAKO WOOD, born June 2, 1968, shall be restrained and enjoined from harassing, annoying, or communicating with the Plaintiff or the Children when the Children are in the presence of the Plaintiff or attempting to do so.
9. The Defendant is not to attend at the Children's school except for the express purpose of attending the Children's sporting events and school special events. School special events shall be defined as school concerts and school plays.
10. The Defendant will not remove the Children from the jurisdiction of the Lower Mainland or British Columbia at any time without written permission of the Plaintiff or order of this Honourable Court.
11. The Defendant, AYAKO WOOD, born June 2, 1968, is restrained from attending at the home of the Plaintiff for any reason other than returning the Children to the Plaintiff as according to the Schedule of Access for that month.
12. The Plaintiff and Defendant shall each take all reasonable steps to encourage the relationship between the Children and the other party.

Neither the Plaintiff or the Defendant will speak disparagingly of the other party in the presence of the Children.

13. The Defendant will pay to the Plaintiff the costs of this proceeding.

Sir Hood J.

Hood J.

Certified a true copy according to the records of the Supreme Court at Vancouver, B.C.

This 14 day of DEC 20 04


Authorized Signing Officer