

CANADA / JUDGMENT

A.B. v. C.D.

2025 BCSC 95

COURT

Supreme Court of British Columbia

DECIDED

15 January 2025

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2025 BCSC 95 A.B. v. C.D.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.B. v. C.D.,

2025 BCSC 95

Date: 20250115

Docket: E232132

Registry: Victoria

Between:

A.B.

Claimant

And

C.D.

Respondent

Corrected Judgment: The judgment was further anonymized
throughout on February 19, 2026

Before: The Honourable Justice Doyle

Oral Reasons for Judgment

Counsel for the Claimant:

T. Luchies

Z. Burrill

Counsel for the Respondent:

R. Faber

K. Gale

Place and Dates of Hearing:

Victoria, B.C.

June 10-12, 14 & July 11, 2024

Place and Date of Judgment:

Victoria, B.C.

January 15, 2025

Overview

- [1] The parties began cohabiting in October 2007 and were married June 6, 2009. They do not agree on their separation date: the claimant says it was May 22, 2023; the respondent says June 19, 2023.
- [2] They have two children, Y (age 13) and Z (age 8).
- [3] I have two applications before me, one by each party.
- [4] In summary form, and aside from further relief and costs, the respondent seeks:
 - 1) Interim decision-making responsibility for both children, after consultation with the claimant but with authority to make decisions subject to the claimant's right to apply to the court for directions;
 - 2) Geeta Gill or another mutually agreed upon parenting coordinator, who, among other duties and responsibilities, may assist the parties as described in a s. 211 report of Dr. Snell;
 - 3) Reunification counselling, paid for by the respondent without prejudice to further order of the trial judge;
 - 4) That Dr. Snell's report be provided to all treatment providers and other professionals involved with the children;
 - 5) That Dr. Snell update her report;
 - 6) Parenting time with Z on a two-week alternating schedule, with leave to apply for further parenting time; and
 - 7) Summer parenting time with Z.

- [5] In summary form, aside from costs, the claimant seeks:
- 1) An initial determination that the respondent's conduct toward the claimant and the children constitutes family violence;
 - 2) Essentially the equivalent of Item 1 sought by the respondent, except that it would be the claimant who has the authority to make decisions after consultation with the respondent, the latter having the right to apply for directions;
 - 3) Variation of travel restrictions further to the order of Justice G.C. Weatherill on July 27, 2023; and
 - 4) That the respondent sign any travel consents or passport applications for the children within seven days of any such request.
- [6] Both applications were heard concurrently over four and a half days.

July 11, 2024 Consent Order

- [7] Ultimately, a consent order was made on July 11, 2024 that addressed an amendment of the July 27, 2023 order of Weatherill J.
- [8] The July 11, 2024 order also addressed additional parenting time over the summer months (respondent Item 7). I will presume that transpired in accordance with the order, though I have no further information in that regard. I will adjourn respondent Item 6 generally at this time.
- [9] The July 11, 2024 order resolved claimant Item 3 and, for the moment, made claimant Item 4 moot.

Dr. Snell

- [10] Dr. Snell released the s. 211 report after consultation with counsel. She describes her reasons for so doing commencing at page 133. Both counsel seem to concur that the manner and timing of the report was unusual.
- [11] Notably, Dr. Snell did not delay release of the report to await some medical records, in particular those of the children's general practitioner, Dr. Johnson. A separate application was required due to Dr. Johnson's opposition to producing her records, despite the consent of both parents to such production.
- [12] Associate Judge Harper ordered production of Dr. Johnson's records on the terms set out in that order. In her reasons for judgment for making that order (2024 BCSC 646), she noted, commencing at para. 8, that the s. 211 report "raises serious red flags" about the claimant, in particular her credibility and possible mental health issues. She further details aspects of the s. 211 report in the paragraphs to follow, and these are a convenient summary of many of the points made by the respondent on this application.

- [13] The claimant takes substantial issue with the report of Dr. Snell. She criticizes Dr. Snell for making no determination of whether family violence did or did not occur (claimant's application response, para. 57).
- [14] Dr. Snell recommends an initial determination by the Court of that issue. The claimant criticizes Dr. Snell's methodology and other aspects of the preparation and contents of the s. 211 report.
- [15] As set out at para. 62 of her application response, the claimant says that she "does not accept the s. 211 report, has significant concerns about the conclusions of the report and information relied upon by the assessor, and seeks to cross-examine the report writer at trial".
- [16] The claimant says it is clear, even from the respondent's own materials, that some of the respondent's actions constitute family violence pursuant to both the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) and the Family Law Act, S.B.C. 2011, c. 25.
- [17] The respondent seeks that Dr. Snell further investigate and prepare an updated report for the trial judge. That report could take account of various materials not available at the time the report was written, including the records of Dr. Johnson.
- [18] Though acknowledging that Dr. Snell's report does not include a review of various materials, the claimant seeks to cross-examine upon it at trial and resists an updated report from Dr. Snell.
- [19] In *KFE v. JR*, 2022 BCSC 328, the Court was faced with an application by the father that neither party provide or reference a s. 211 report to an already appointed parenting coordinator (who, by the time of that decision, had told the parties he was no longer willing to serve in that capacity).
- [20] In that case, the father alleged that the s. 211 report writer was biased and used incorrect methodology.
- [21] The Court noted that the s. 211 writer had not yet been subject to cross-examination, and that the exclusion or limitations upon such reports is based upon findings of fact made at trial after there has been an opportunity for cross-examination of the report author. The Court noted that the decision in relation to the s. 211 report would be appropriately considered by a future parenting coordinator, bearing in mind the process, powers and limits of parenting coordinators set out in sections 14 to 19 of the Family Law Act.
- [22] The Court noted at para. 31:
- [31] Further, the father makes serious allegations of bias and incorrect methodology verging on incompetence against the author of the s. 211 report. These, in themselves, are serious attacks on the author's professional reputation. It would be, in most cases, precarious for the Court to make determinations with respect to that author's findings without the author being present to defend herself and respond to the specific allegations of bias and flawed

methodology put to her in cross-examination. The Court can then assess the author's explanation and denial of those allegations, and have a proper evidentiary base on which to consider these serious allegations.

[23] The Court also noted at paras. 34 and 36:

[34] That leads to another concern. Any comments now made on the s. 211 report at this early interlocutory stage will necessarily, to some extent, tie the hands of a future trial judge about what use he or she might make of this report. To use the language used in the jurisprudence, my findings today might well embarrass a future court, specifically the trial judge, who will not only be in a better position to assess the s. 211 report in its full context, after having heard the mother and the father and other witnesses. Further, the court will be hearing evidence that is temporally more proximate to the trial judge's decision than the report. I will not embark upon this precarious exercise that would impinge on the trial judge's better vantage point to assess the s. 211 report.

[36] I will now make a few observations with respect to the s. 211 report, in response to the father's complaints. First, the author is a professional. She is *prima facie* expected to comply with her statutory and ethical duties. She has delivered a report that is over 67 pages in length. The father may perceive the report as unfairly unfavourable to him *vis-à-vis* the mother, but the report does, in fact, set out pros and cons of each parent with respect to the various issues considered by the author.

[24] In this case, Dr. Snell recommends, starting at page 134, that the court must first make a determination of whether there is, or is not, family violence. In my view, that determination cannot be made prior to the upcoming trial of this matter, with full development of the facts, including cross-examination of witnesses.

[25] Though the claimant points to portions of the respondent's materials which she says demonstrate family violence on their own, there are allegations made by the claimant beyond those alleged admissions. A full hearing of that evidence is required to determine if there was family violence, and if so, what it was.

[26] I am in a position similar to that of the Court in KFE. I cannot adjudicate upon the s. 211 report at this stage. That is a matter for the trial judge, upon a full examination of all of the evidence and what will no doubt be fulsome testimony from all the witnesses, including Dr. Snell.

[27] Dr. Snell's report will be approximately one year old by the time of the trial. The parties will have the additional materials accumulated in the meantime through discovery and review of third party records now available. The trial judge will hear *viva voce* evidence that is proximate to the time of trial, and will have the testimony of Dr. Snell, including that which is responsive to the exceptions taken to her report by the claimant and, perhaps, by the respondent.

- [28] In my view, the appropriate manner to proceed in relation to the s. 211 report is for the matter to proceed for trial, and for the trial judge to assess Dr. Snell's evidence along with all the other evidence. The trial judge will be in the best position to assess and determine the allegations of family violence, and to address issues that flow from that determination.

Evidentiary Issue

- [29] Attached to affidavit #7 of the claimant, made May 28, 2024, is a transcript of the last of several marriage counselling sessions the parties had with a marriage counsellor, Daniel Hughes. The transcript is of a recording surreptitiously made by the claimant of that marriage counselling session on June 12, 2023, and is also part of the record.
- [30] The claimant sought to introduce this as evidence on these applications. The respondent objected on common law grounds (see, for example, *Fleury v. Budd*, 2023 BCSC 1749, at paras. 23 to 25).
- [31] I raised with counsel that if this was a marriage counselling session, there may also be an admissibility issue based upon section 10(5) of the Divorce Act, which states that "evidence of anything said or of any admission or communication made in the course of assisting spouses to achieve a reconciliation is not admissible in any legal proceedings."
- [32] This evidence was not considered in Dr. Snell's February 20, 2024 s. 211 report, since it had not yet been disclosed by the claimant at that time.
- [33] The claimant points to discrepancies between the recording and the evidence of Mr. Hughes upon which Dr. Snell relied in her report. In addition to the respondent not knowing that he was being recorded, it appears likely that Mr. Hughes did not know that either.
- [34] The trial of this matter, and Dr. Snell's evidence, is upcoming. Dr. Snell will provide evidence as outlined above, including answering the challenges set out by the claimant.
- [35] Given my conclusion above regarding the assessment of the s. 211 report being a matter for the trial judge, I will leave it to the trial judge to determine if this surreptitious recording evidence is admissible at trial, and if so, for what purpose.

Medical and other professional records

- [36] Both parents are concerned about the health, notably the mental health, of both children. Based on the materials before me, the concern is understandable.
- [37] The respondent notes that both children have been diagnosed with mental health issues. He is particularly concerned with Y, with whom he has essentially no contact. He is also concerned about Z, with whom he has parenting time four days out of fourteen (alternating weeks of: Wednesday after school to Friday morning; and the next week Friday after school to Sunday evening).

- [38] The respondent is particularly concerned about the children's general practitioner, Dr. Johnson. He submits that Y had mental health issues prior to June 2023, but that they have been exacerbated since then. He submits that Y has been prescribed multiple psychiatric medications. He submits that, without his knowledge, Z was also prescribed fluoxetine in early 2024 for "significant and functionally impairing anxiety and trauma symptoms".
- [39] The claimant submits that Dr. Johnson is doing her best to care for the children, and is in consultation with specialists.
- [40] The respondent seeks ultimate control of the decision making in relation to the medical and other treatment of both children, subject to the claimant seeking directions from the court. In essence, the claimant seeks the same in her favour.
- [41] Some important background behind the respondent's position was the refusal of Dr. Johnson to disclose notes and records in relation to her treatment of the children. This led to the order of Harper A.J. referred to above. Counsel for the respondent actually appeared as agent for counsel for the claimant at that hearing, since the parties were ad idem that the records be produced. Dr. Johnson was opposed.
- [42] The respondent seeks that Dr. Johnson be no longer be involved. On the material before me, and while I am concerned about Dr. Johnson's views with respect to orders of this Court, she is a treating physician.
- [43] The order made with regard to her records, and other records, remains extant. I assume the parties and the treating professionals are complying with it, and that accordingly, each party continues to receive those records.
- [44] Counsel for the claimant takes no issue with the respondent's right to disclosure of the medical, other professional treatment and educational records with regard to the children.
- [45] Given the earlier order, there is arguably no need for me to make a further order in this regard. The claimant suggests such an order; the respondent notes that this is already required pursuant to the Family Law Act. So that it is abundantly clear, I make the following order:
- 1) The parties will share all parental responsibilities, including that each party is able to request medical, counselling, health care and educational records and information regarding the children from any third-party provider or institution;
 - 2) To give effect to that order, the parties will instruct their counsel to provide a joint letter to the children's medical, counselling, health care and education providers and institutions confirming that both parties are entitled to request and promptly receive records and information regarding the children from those providers and institutions; and
 - 3) This order is applicable to all records and information regarding the children up to today's date and, going forward, until further order of this Court to the contrary.

Decision Making

- [46] Each party seeks control over decision making in relation to the medical and other professional treatment of the children, the resort to this Court to be the fallback in the event one disagrees with the other.
- [47] The suggestion that a neutral third party, perhaps an agreed upon psychiatrist, was raised. The claimant suggested that this be a person to consult and collaborate with Dr. Johnson. The respondent does not trust Dr. Johnson.
- [48] The order above with regard to the parties receiving ongoing records and information from the children's medical, counselling, health care and education providers and institutions in a prompt fashion will permit interim and ongoing evaluation by the parties of these issues. The issue about whether one or the other parent has prima facie decision making authority, and upon what conditions, is for the trial judge.

Parenting Coordinator

- [49] In this case, there is not currently a parenting coordinator.
- [50] The parties agree in principle on the utility of a parenting coordinator to assist them in general terms by improving communications and resolving disputes regarding educational and medical decisions.
- [51] The respondent suggests Geeta Gill; the claimant has thus far not accepted that person.
- [52] The claimant seeks that the parenting coordinator consult with treating professionals and educational institutions; the respondent resists this due to his concern over the views of some of those professionals, most notably Dr. Johnson.
- [53] There is also dispute about the payment of the parenting coordinator. Notably, the claimant does not want the parenting coordinator, or any treating healthcare professionals, to review the s. 211 report. The respondent rejects this.
- [54] In my view, the appointment of any parenting coordinator is a matter to be left to the trial judge, based upon determinations at the trial. The findings of fact and consideration of the evidence at trial, including the court's assessment of the s. 211 report after consideration of the evidence, are all required for the trial judge to address the matters a parenting coordinator could attend to, some of which are recommended commencing at p. 142 of Dr. Snell's report. Those recommendations will likely be the subject of evidence at the trial.

Reunification Counselling

[55] The respondent expresses the intention to enter reunification counselling, with the ultimate cost determination to be made by the trial judge. This expression of intent is consistent with the s. 211 report of Dr. Snell, where she recommends that he do so, but that neither child should initially be involved. Given that recommendation, and his position set out at Item 3 of his application that he will do so forthwith, no order need be made by me at this time.

"Doyle J."

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