
CANADA / JUDGMENT

A.E.O. v. T.K.O.

2018 BCSC 178

COURT

Supreme Court of British Columbia

DECIDED

6 February 2018

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2018 BCSC 178 A.E.O. v. T.K.O.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.E.O. v. T.K.O.,

2018 BCSC 178

Date: 20180206

Docket: E103098

Registry: Vancouver

Between:

A.E.O.

Claimant

And

T.K.O.

Respondent

Corrected Judgment: The text of the judgment was corrected throughout to anonymize the parties for publishing purposes and at paragraph 113(1)(a)(v) on October 24, 2018.

Before: The Honourable Madam Justice Murray

Reasons for Judgment

Counsel for the Claimant:

E. Chhina

Counsel for the Applicant/Respondent:

T.R. Bell

Place and Date of Trial/Hearing:

Vancouver, B.C.

August 4 and September 22, 2017,
and January 15 and 19, 2018

Place and Date of Judgment:

Vancouver, B.C.

February 6, 2018

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Introduction

[1] The respondent/applicant T.K.O. applies for protection orders against the claimant, A.E.O. also known as A.E.C. Through these orders T.K.O. seeks to refrain the claimant from having any contact with his wife K. and their children. He seeks the same for himself except for contact as permitted under previous orders of this Court.

[2] For clarity I will refer to K. as Mrs. O. and the claimant as A.E.O. or the claimant throughout these reasons.

- [3] In bringing this application the applicant takes the position that previous conduct orders of this Court have not restrained A.E.O. He argues that although her behaviour is now more nuanced, it nonetheless constitutes family violence as defined in the Family Law Act, S.B.C. 2001, c. 25, [FLA] and continues to be threatening and anxiety provoking to him and the members of his family.
- [4] He argues further that there are no consequences to A.E.O. for breaching a conduct order as she is impecunious. As protection orders are enforceable through the police, they will hopefully have a greater deterrent effect on A.E.O.
- [5] A.E.O. takes the position that protection orders are too prejudicial. She says that there are no grounds for imposing such orders claiming that the allegations are false and/or that the applicant and Mrs. O have set her up.

Background

- [6] The parties were married in 2001, separated in 2007 and divorced in 2011.
- [7] They have two sons J.O. and L.O., aged 14 and 12 respectively.
- [8] Their extremely acrimonious separation has been the subject of numerous court proceedings including a seven-day trial before Madam Justice Bruce in April 2012.
- [9] In her reasons for Judgment indexed as 2012 BCSC 708, Bruce J. detailed the background of the parties' relationship. While I will only discuss a few of the incidents, I have taken all of the background into account in reaching this decision.
- [10] Significant at trial were the unfounded allegations the claimant made to authorities regarding the applicant, including:
 - a) In 2008 she made a number of allegations to the Ministry - first that the applicant was drugging the children with cold medicine to get them to sleep, then a few months later that he was physically abusing them. The Ministry contacted the RCMP regarding the second report and an investigation was conducted. The applicant was cleared of wrongdoing but was not permitted to see the children for 19 days; and
 - b) In 2010 she made allegations that the applicant sexually assaulted one of the children. The Ministry and police investigated the allegations and concluded that there was no evidence to support the complaint. As a result of the investigations however the applicant was either denied access or had limited supervised access for a period of approximately seven months. The claimant, who refused to accept the findings of the authorities, shared her beliefs with friends and acquaintances from the children's school and at church. Consequently the applicant was unable to find parents that would allow their children to have play dates at his home and he and his family were forced to change churches. The applicant eventually moved to a different community in an attempt to escape the rumours. The claimant followed some time later, moving a short distance from the applicant and his family.

- [11] At the commencement of the trial the claimant acknowledged that the allegations were untrue however the applicant contends that she continues to spread rumours about them. The claimant denies doing so. Whatever the truth, the distrust the applicant feels toward the claimant arising from these false allegations persists to this day.
- [12] In her subsequent ruling on costs, reported at 2012 BCSC 1292, Bruce J. summarized her findings at trial as follows:
- [3] The issues at stake in the trial were custody, guardianship and access of the parties' two children. Both parties sought sole custody and primary residence of the children. I granted sole custody and primary residence to the respondent and ordered a limited form of joint guardianship for the reasons outlined in my judgment and, in particular, at paras. 55 to 61. The misconduct of the claimant was a compelling factor in my decision. Her repeated complaints to the Ministry of Children and Families and to the police concerning allegations of physical and sexual abuse of the children by their father were groundless and designed to undermine the respondent's relationship with the children. [Underlining added.]
- [13] The court's reasons for awarding sole custody and primary residence to the applicant are of import on this application. They are set out in the trial judgment as follows:
- [54] The question is which parent should be awarded primary residence of the children and decision-making authority about their care and upbringing. There is no doubt that both parents love their children and that the children have a close bond with both their parents. The parties are equally concerned and involved in the children's education; they both volunteer at the children's school. While the parties have enormous problems coming to decisions about the children's medical and dental care, they are equally concerned that the children receive adequate care in these areas. The real issue is which parent is more able to support the emotional well being of the children, foster a close bond and relationship with the other parent, and keep the other parent informed about matters affecting the children's lives.
- [55] Based on all of the evidence before me and applying the legal principles described above, I am satisfied that it is in the best interests of the children that the respondent be accorded primary residence and the right to make decisions about the children's welfare without the necessity of obtaining the claimant's consent. Although the respondent's distrust of the claimant and his refusal to be flexible with regard to the terms of the custody and access orders imposed by the court have fuelled the animosity between the parties, I find that it has been the claimant's conduct that has caused, by a significant margin, the most harm to the co-parenting arrangement and the relationship between the parties. In my view, the claimant repeatedly made serious allegations about the respondent's conduct regarding the children without a solid foundation for these allegations. In addition, the timing of the claimant's allegations coincides with significant increases in the acrimony between the parties over issues surrounding their co-parenting of the children. The claimant's testimony and her statements to the various professionals who investigated her complaints clearly

indicate her dissatisfaction with the joint parenting arrangement and her desire to be the sole caregiver for the children without interference from the respondent. The fact that the claimant failed to share her concerns with the respondent prior to disclosing her complaints to the Ministry and the police, in order to discuss any possible innocent explanation for whatever she had observed or heard, indicates a desire to punish the respondent rather than a real concern for the safety and well being of the children.

- [56] In addition, I find the claimant's actions in repeatedly subjecting the children to invasive investigations by professionals to support her claims of physical and sexual abuse by the respondent demonstrate that she has little concern for the children's emotional well being. The claimant has repeatedly chosen to pursue her objective of sole custody and guardianship without any regard for the impact these investigations would have on these young children. The fact that the claimant continues to believe the respondent has in the past, and may in future, cause physical and emotional harm to the children will undoubtedly have a detrimental impact on the children and their relationship with the respondent.
- [57] Further, I am satisfied that despite his distrust of the claimant, it is the respondent who is best able to foster a healthy and close relationship between the children and their mother. Based on the claimant's past behaviour and her ongoing fears that the respondent is or will in future sexually or physically harm the children, it is unlikely that she would be able to foster a strong bond between the children and their father. The email communication between the parties in the past years also illustrates that the claimant finds it very difficult to put aside her animosity towards the respondent when discussing issues that affect the children. She has often used caustic and angry language and accuses the respondent of neglecting the children's care. The respondent's emails to the claimant show that he has, for the most part, held his temper in check and focused on the children in his communications with the claimant. This is significant in light of the serious allegations the claimant has made against him. There is also no evidence that the children disclose to the claimant negative comments about her that have come from their father. The claimant's primary complaint about the respondent's behaviour is that he is not flexible with regard to the terms of the Consent Order and insists that its terms be strictly followed.
- [58] My conclusions regarding the respondent's superior ability to care for the children is also supported by Dr. Posthuma's report. While this report contains hearsay evidence, it has been recognized that an investigation by an independent person with specialized training is an invaluable tool for the court in custody/access cases and operates as the "eyes and ears of the court" in highly emotional conflict situations: *Goudie v. Goudie*, [1993] B.C.J. No. 1049 (S.C.).
- [59] Dr. Posthuma's investigation led him to believe that the claimant was not being candid about the problem behaviour she observed in the older child and that their sexualized behaviour was probably fostered by her pre-occupation with this subject. Dr. Posthuma also opined that the respondent demonstrated a more acceptable way to manage such behaviour by the

children. In particular, Dr. Posthuma says at page 8 of his report, "the father sees both sexually [sic] and physical acting out behaviour in the context of the typical demands of a parent and seeks to establish rules for acceptable behaviour without running the risk of reinforcing or exacerbating the behaviour."

- [60] Lastly, Dr. Posthuma concluded that the claimant's passive personality traits and use of indirect means to accomplish her objectives would not only make co-parenting unsuccessful, but it would be a source of confusion for the children who require consistent, clear directions and consistent emotional, cognitive and social behaviour on the part of a parent. He ultimately concluded that the respondent was better able to compensate for the problems in the claimant's care of the children.

[Underlining added.]

- [14] A.E.O. was awarded access with the children every Wednesday evening and alternating weekends from Friday after school to the start of school Monday morning. That arrangement remains.
- [15] As A.E.O. has made repeated allegations that the applicant is bringing this application in an effort to attack her credibility to ensure the court does not change the custody arrangements, it is of significance that the applicant is not seeking to vary access. It is of equal import that the claimant has not applied to increase her access.
- [16] In addition to the orders outlined above, Madam Justice Bruce made a number of conduct orders designed to minimise contact and therefore conflict between the parties as much as possible.
- [17] According to the applicant, while it dissipated for periods of time, conflict remains and the applicant's new family has been drawn into it.
- [18] T.K.O. married Mrs. O. in July 2012. Together they have two daughters - K.O., 4 and O.O., 2 and Mrs. O's son from a previous marriage, J.L., 15, lives with them full-time.
- [19] In February 2015 the parties filed cross-applications seeking amendments to the parenting regime imposed in the 2012 order and conduct orders. Issues addressed in that ruling, indexed as 2015 BCSC 401, include the following:
- a) the claimant set up a secret email address through which she was communicating with the children;
 - b) the applicant refused to share the name of the children's counsellor with the claimant; and
 - c) the children's library cards were cancelled and contact information at the health professional's office was changed from the applicant's to the claimant's.
- [20] Regarding the last issue Bruce J. found that the cancellation and changes likely happened through misunderstanding rather than an act of the claimant.

- [21] With respect to the name of the counsellor, the court held that T.K.O. was entitled to keep that from the claimant for the following reasons:
- [28] There is no doubt that in the past the claimant has repeatedly subjected the children to invasive investigations by health professionals to support her unfounded claims of sexual and physical abuse by the respondent. This behaviour demonstrated a lack of concern for their emotional wellbeing. As part of the Order, I directed the parties to agree upon a counsellor for the children and, failing agreement, the respondent was to decide upon a counsellor. While the respondent has taken a short cut and selected a counsellor without the claimant's involvement, I find his reasons have considerable merit. The respondent maintains, and I agree, that the children require a safe place to discuss the concerns they have that stem from the acrimonious relationship between their parents. The claimant has a past history of interfering with counsellors. Further, the claimant's decision to include in her affidavit materials an allegation that the respondent physically abused his stepson when this evidence is irrelevant to the issues in dispute and ultimately unfounded raises a concern that she still harbours thoughts that the children are being abused by the respondent.
- [29] For these reasons, I find the children's counsellor should be treated differently than the other health professionals. The respondent is entitled to keep the identity of the children's counsellor from the claimant and the claimant shall not question the children about their counsellor. The respondent shall inform the counsellor of the claimant's name and telephone number. If the counsellor finds it is in the children's best interests that she or he communicate with the claimant, he or she may do so. The claimant shall not otherwise attempt to contact the counsellor or interfere with his or her relationship with the children.
- [Underlining added.]
- [22] The behaviour of the parents while attending the children's activities was also in issue, with the applicant alleging that the claimant followed him and his family around at events. The claimant denied doing so.
- [23] Madam Justice Bruce addressed this issue as follows:
- [17] The respondent maintains the claimant causes distress and discomfort to the children and his family when she attends the children's activities when he has the care of the children. The claimant says the respondent precludes any contact between her and the children during their activities and denies that she has behaved improperly. Based on the respondent's testimony, which is corroborated by the affidavit filed by his spouse, I am satisfied that the children become distressed and embarrassed when they participate in activities when both their parents are in attendance. While it is natural that the claimant misses the children, she is unable to control her emotions and tends to be very demonstrative in her affections for them in a way that causes discomfort and stress to them. I accept the respondent's testimony that the claimant interferes with his parental role when she attends the children's activities during his parenting time.

- [18] To minimize the stress caused to the children, it is necessary to minimize contact and communication between the parties during activities that both parents attend. While both parents have a right to attend the children's activities, whether or not they are school-related, each parent must respect the other's parenting time by keeping their distance and not forcing contact with the children. When the children attend activities during the respondent's parenting time, the claimant must refrain from communicating with the respondent and his family members and shall not initiate any contact or communication with the children. When the children attend activities during the claimant's parenting time, the respondent shall not communicate with the claimant and her family members and will not contact or communicate with the children. The children may initiate contact with the other parent, in which case the party having the care of the children at the time shall not interfere with that decision.
- [24] On March 13, 2015, as a result of her findings, Madam Justice Bruce made extensive conduct orders including those described in the passage above for the extra-curricular activities.
- [25] Those orders have not had the desired effect; problems persist.
- [26] The present application for protection orders began in August 2017 and continued in late September 2017. In September the matter was adjourned for written submissions.
- [27] When we adjourned on August 4, 2017, I made interim conduct orders against A.E.O. restraining her from having any contact directly or indirectly with any of the at risk family members("ARFM"), Mrs. O, K.O., O.O. and J.L. and from being within 20 metres of them at school or extracurricular events.
- [28] At that time as T.K.O.'s father was dying, I also ordered that A.E.O. was prohibited from being within a two block radius of any funeral, memorial service or gathering of any kind being held in his honour.
- [29] On September 22, 2017, when we adjourned for written submissions I extended the interim conduct orders until judgment was rendered.
- [30] According to submissions of her counsel on January 19, 2018, A.E.O. was aware that these interim orders gave her an opportunity to prove that she could and would abide by conduct orders.
- [31] On December 22, 2017, while the Court was still in reserve, T.K.O. filed a new application to adduce further evidence to show that A.E.O. had breached the conduct orders on four occasions. That application was heard January 15 and 19, 2018.
- [32] A.E.O. consented to further evidence being adduced as long as both parties were entitled to do so.
- [33] The allegations of breach are that A.E.O. failed to abide with the 20 metre range of ARFM and that she sent T.K.O. a dozen black roses after his father passed away.

[34] A.E.O. denies the breaches.

[35] Before considering the substance of this application I will review the legislation and law regarding protection orders.

Protection Orders - The Law

[36] Section 183(2) of the FLA provides that the Court may make a protection order if it determines that family violence is likely to occur and that the other family member is an at-risk family member.

[37] An application for a protection order may be made by a family member claiming to be an ARFM, by a person on behalf of an at risk family member, or on the court's own initiative: FLA s. 183(1).

[38] "At-risk family member" is defined to mean a person whose safety and security is or is likely at risk from family violence carried out by a family member.

[39] "Family violence" is defined in s. 1 to include physical and sexual abuse, but also the psychological or emotional abuse of a family member, including acts of intimidation, harassment, coercion or threats, and stalking.

[40] In the case of a child, "family violence" includes direct or indirect exposure to family violence.

[41] Family violence does not need to be overt; it can be a subtle pattern but nonetheless violence: *M.W.B. v. A.R.B.*, 2013 BCSC 885 at paras. 199-211.

[42] In determining whether to make a protection order, the Court must consider the risk factors set out in s. 184(1), including:

- any history of family violence by the family member against whom the order is to be made;
- whether any family violence is repetitive or escalating;
- whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at the at-risk family member;
- the current status of the relationship;
- the at-risk family member's perception of risks to his or her own safety and security; and
- any other circumstances that may increase the at-risk family member's vulnerability.

[43] Mr. Justice Fitch framed the inquiry regarding the ARFM's perception of risk as follows in *S.M. v. R.M.*, 2015 BCSC 1344 at para. 52:

I am obliged to consider the claimant's perception of risks to her own safety. Having done so, I am compelled to the conclusion that her experience of intimidation, harassment, coercion, and thinly-veiled threats at the hands of the respondent, and her perception of the risks flowing therefrom, are grounded in the evidence. Collectively viewed, I am satisfied that the communications were designed to, and did, instill fear.

- [44] As in any case involving children the court must take into consideration the best interests of the child. In doing so I must consider the impact of any family violence on the children's safety, security or well-being, and whether the family violence is directed toward them or another family member: FLA s. 37(2)(g).
- [45] In addition to the factors set out in s. 184, under s. 185 of the FLA, the Court must also consider whether the children in the family may be exposed to family violence if a protection order is not made.
- [46] An order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being: FLA s. 37(3).
- [47] Where oppositional behaviour and interference negatively impact a parent, this directly impacts the psychological and emotional well-being of children: M.W.B. v. A.R.B., at para. 204.

[48] As Justice Schultes noted in *Morgadinho v. Morgadinho*, 2014 BCSC 192:

The purpose of these provisions is obvious -- to recognize the danger to vulnerable family members that can arise in these often-volatile relationships and to ensure that courts have the means of ensuring the safety of those who are at risk. The broad and inclusive definition of "family violence" recognizes that the kinds of harm that can be inflicted in this situation extend beyond the infliction of physical violence.

- [49] The Legislature has made clear that judges hearing applications of this kind must approach the issue from a broad and contextual perspective, taking into account a variety of factors that frame the risk analysis in determining whether family violence is likely to occur. The inquiry is future oriented, but it takes its shape from past conduct and present circumstances that inform the assessment of risk: S.M. v. R.M.
- [50] This is important as A.E.O. claims that she faces bias in this Court because of determinations made in the s. 211 report and the trial findings of Bruce J. and asks that this Court consider the case objectively.
- [51] In essence what the claimant seeks is to put past rulings and findings of fact behind her and start anew.

[52] Following the above, the claimant's history of behaviour is an essential consideration; one that gives this Court a lens through which to view and gauge the alleged actions of the claimant. Previous findings of fact cannot be ignored.

[53] Before turning to the issues, I must address an evidentiary issue raised by the claimant.

Assessing the Evidence

[54] The claimant argues that this Court, in the face of conflicting affidavit evidence, cannot make findings of fact. She stresses the need for independent evidence. By that I take her to mean that there must be evidence of an unbiased third party regarding an incident before I can find that it happened.

[55] That question was dealt with by our Court of Appeal in *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202, where it held that the court should not decide an issue of fact or law solely on the basis of preferring one conflicting affidavit over another.

[56] That principle was recently restated in *Cory v. Cory*, 2016 BCCA 409 at para. 10 as follows: there must be documentary evidence, evidence of independent witnesses or undisputed evidence that undermines the affidavit of one of the parties on critical issues or some other basis for preferring one affidavit over another.

[57] Given the above I conclude, that on critical issues, the Court may prefer one parties' affidavit over another but must have a reason for so doing.

[58] I note that in advancing this argument the claimant does not seek a trial of the issues or to have viva voce evidence called, only to have allegations dismissed.

[59] I turn now to consider the issues.

Issues

[60] The issues to be decided are as follows:

- (1) Whether A.E.O. breached the interim conduct orders;
- (2) Whether family violence is likely to occur; and
- (3) Whether protection orders should be made restraining A.E.O.'s contact with the applicant and the other ARFM.

Analysis

1. Whether the claimant breached the interim conduct orders

[61] The applicant alleges four breaches of the interim conduct orders, causing fear and discomfort to his family:

- a) October 4, 2017 - J.O.'s football game. The claimant sat in the bleachers within the 20 meters of the applicant and his daughter. Photographic evidence;
 - b) October 18, 2017, L.O.'s volleyball game at school. After the first game the claimant walked from across the gym to the side that the applicant and his daughters were and sat a few seats away from one of the girls. Photographic and video evidence;
 - c) October 24, 2017, the morning after T.K.O.'s father passed away, a dozen black roses were delivered to the applicant as he was leaving the house with his daughters. The card said "To you from A.[E.C.] ". The applicant told the courier to take them back from where they came; and
 - d) December 8, 2017, knowing that the applicant and his family would be attending L.O.'s school Christmas concert (the claimant had purchased tickets for the second performance the next night), the claimant volunteered to help and was within the required distance of the ARFM on several occasions. Photographic evidence.
- [62] In response the claimant argues that the conduct orders were overly broad and vague and either denies the allegations or says that it was the applicant or Mrs. O. that created the breach in an effort to set her up.
- [63] Dealing with the first argument, I disagree that the conduct orders were overly vague or broad. There is nothing before me to indicate that the claimant did not understand what was expected of her.
- [64] The conduct orders did not specify that each party was to stay away from the children's events when they occurred on a non-parenting day. In fact, it was contemplated that both parties and their families would continue to attend the children's events. The support and interest by them and their extended families in their events is clearly in the best interests of the children.
- [65] What the conduct order did was place an onus on A.E.O. to keep her distance from Mrs. O. and/or her children while they were all at an event. Nothing more, nothing less.
- [66] I do not accept the claimant's argument that she is not expected to keep track of all the places frequented by the applicant and his family. The order specified that she was refrained from being within 20 meters of the ARFM, at school or extracurricular events. All breaches of this order are alleged to have occurred at either J.O.'s or L.O.'s sporting or school events - occasions where she would expect them to be.
- [67] There was no expectation that A.E.O. would leave an event when the ARFMs were present, only that she would keep a watch out for the people she was to stay away from and keep her distance.

- [68] I accept that the photographic and video evidence filed by the applicant of the claimant at the sporting events and the Christmas concert are accurate depictions. As such I find that they are proof that the claimant was in breach of the condition that she stay 20 metres away from the ARFM.
- [69] I do not accept A.E.O.'s assertion that she did not see the respondent or his daughters at the volleyball game when she changed sides. The video clearly shows the situation in the school gym. The gym is small. The crowd was not large. The spectators were standing or sitting in a single row against the gym wall. A.E.O. looked down the side of the gym in the direction of the applicant and his daughters before she proceeded to a chair. It would be impossible to miss the people that she was required to keep a lookout for.
- [70] I also reject her explanation for being close to the ARFM at the Christmas concert. The claimant knew the ARFM and their extended family would be there when she volunteered to help at the event. Her justification that she was just planning to stay in the band room away from where they would be does not ring true. Photos show A.E.O. standing outside the door of the band room in the hallway that all concert goers have to enter.
- [71] The claimant's explanation about looking for a lost trumpet and helping a parent, if accepted, do not justify her breaching the court order. It was her obligation to ensure that she would stay the required distance from the ARFM.
- [72] That same obligation extended to her choice of seat at the football game. Given all of the other evidence of the claimant's pattern of behaviour, I prefer the applicant's evidence that he was sitting in the bleachers first then the claimant sat within 20 meters of him. How close is clear from the photographs.
- [73] In coming to that conclusion I have considered the affidavit of the claimant's sister. She arrived during the second quarter of the game so was not present to see who sat in the bleachers first.
- [74] With respect to sending black roses, A.E.O. denies responsibility. Even if it was proved that the claimant sent them, that action, while cruel, is not a breach of the conduct orders.
- [75] In summary, I find that the claimant failed to comply with the conduct orders on three occasions.
- [76] Section 228 of the FLA deals with the enforcement of conduct orders. It reads as follows:
- 228 (1) If a party fails to comply with an order made under this Division, the court may do one or more of the following:
- (a) make a further order under this Division;
 - (b) draw an inference that is adverse to the party, and make an order based on the inference;
 - (c) make an order requiring the party to pay

- (i) the other party for all or part of the expenses reasonably and necessarily incurred as a result of the non-compliance, including fees and expenses related to family dispute resolution,
 - (ii) an amount not exceeding \$5 000 to or for the benefit of the other party, or a spouse or child whose interests were affected by the non-compliance, or
 - (iii) a fine not exceeding \$5 000;
 - (d) make any other order the court considers necessary to secure compliance.
- (2) If a party fails to comply with an order made under section 225 [orders restricting communications], the court must consider whether it would be appropriate to make an order under Part 9 [Protection from Family Violence].
- [77] After considering all of the evidence, I draw the inference that the claimant seeks to cause anxiety and fear to the applicant and Mrs. O., and conduct orders are not enough to protect them and the other ARFM as she is unwilling to abide by them.
- [78] I will return to this inference later in my reasons.
- [79] In addition, I order, pursuant to s. 228(1)(c)(ii), that the claimant shall pay to the applicant \$200 for each breach for a total of \$600, to be paid at the rate of \$200 per month commencing February 15, 2018 and continuing on the 15th of each month until the fines are paid in full.
- [80] I will address costs at the end of this judgment.
- [81] I turn now to the application for protection orders. Such orders can only be made if the court is satisfied that family violence is likely to occur. That then is the next issue.
2. Whether family violence is likely to occur
- [82] The application for protection orders is grounded on two contentions:
- a) that the claimant has engaged in psychological and emotional abuse of family members in the past and is likely to do so in the future; and
 - b) that conduct orders have not deterred the claimant so something more is required.
- [83] The applicant submits that the claimant has engaged in a pattern of behaviour toward him going back to 2007 and his wife since 2012 that includes false allegations, stalking, harassment, invasions of privacy, breaches of boundaries, breaches of court orders, and intimidation. In support the applicant relies primarily on happenings since the making of the 2015 conduct orders. Some additional pre-February 2015 incidents have also been raised by the applicant that were not addressed in the February 2015 application.
- [84] The numerous affidavits filed by the applicant and Mrs. O. outline incident after incident which they attest has caused them to be anxious and fearful for their safety and the safety of the other ARFM.

[85] Among the incidents alleged to have occurred since the 2015 conduct orders were imposed are the following:

- a) April 2015 - claimant parked her car on the street during the applicant and his family's move and watched them;
- b) Claimant failed to keep her distance at a number of the children's events including the science fair (April 15, 2015), L.O.'s track meet (June 2, 2015), and at a school event she followed the applicant and his family around videotaping them (October 2015);
- c) June 2015 - claimant called L.O.'s psychiatrist saying she was Mrs. O.;
- d) October 7, 2015 - claimant changed the children's contact information at the dentist;
- e) July 11, 2016 and April 1, 2017 - claimant sent nasty emails to the applicant regarding his father's cancer;
- f) November 7, 2016 - the claimant hacked the applicant's cell phone and switched her profile with Mrs. O.'s; and
- g) December 2016 - the claimant attended the Christmas concert. Two men that she talked to from time to time followed the applicant and his family around taking photos of him and his two young daughters.

[86] The claimant denies all of these allegations.

[87] With respect to the emails about the applicant's father's illness, I do not accept A.E.O.'s evidence that her email account was hacked. That defies logic. Plus, while the comments about his father are clearly intended to hurt T.K.O., the emails are about her.

[88] For example, in the July 11, 2016 email after a description of how painful and fast moving the cancer of T.K.O. Sr. is, it is written:

It has taken too long but now you might comprehend on a very small scale the feeling of pain and torment your callous lies and deceitful words and actions have caused me and my parents and family for the last decade

[89] The April 12, 2017 email entitled "Pay Close Attention" begins with a comment about "the void" that has been left in the boys lives since "you absconded with the boys to Alberta and divorced me". It then goes on to say how the boys need her "motherly love" in their lives and how he, the applicant, is inflexible in giving her more parenting time.

[90] It then ends with:

I have seen at the last several public events that your dad is looking very healthy. It was over a year ago that he allegedly was diagnosed with an aggressive cancer and I still see him at all the transfers and school events. If he really had an aggressive cancer he would be gone by now or at least look sick. I expect you and your family will stop lying to the boys by telling them your dad is dying. It is abusive to lie to the boys about this just to alienate them from me.

- [91] That the applicant is inflexible, that he is a bad father and that she has been wronged have been common themes of A.E.O.'s over the years. The references to events, what the boys were told and who is at transfers is knowledge only she and perhaps the applicant would have. It is inconceivable that the applicant would write such messages about his dying father. I am satisfied on all of the evidence that A.E.O. wrote them.
- [92] I am further satisfied that A.E.O. was responsible for hacking into the applicant's phone and switching her profile with Mrs. O.'s so when Mrs. O. texted the applicant, A.E.O.'s photo and the word "Mom" popped up on the applicant's screen. While A.E.O. claims that she does not know how to hack a phone, it is unfathomable that anyone other than A.E.O. was responsible - whether she did it herself or had someone else do it. It is consistent with her pattern of behaviour of inserting herself into the lives of the applicant and his wife. The suggestion that it was the applicant himself is implausible. The text conversation when this profile appeared show clearly that the applicant and Mrs. O. were shocked and alarmed and took immediate steps to change all of their passwords.
- [93] The incident at the 2016 Christmas concert was almost identical to what occurred at the 2017 concert. A.E.O. volunteered on the night she knew the applicant and his family were attending and found ways to cause them discomfort. I am satisfied that this incident occurred as described by the applicant.
- [94] Regarding the allegations of following the applicant and the ARFM at events and watching as they moved, I accept that these incidents happened as described by the applicant and Mrs. O. These behaviours are consistent with the claimant's pattern of behaviour both before the 2015 conduct orders and after the interim conduct orders. Further there are photographs from some of the events that corroborate the applicant's accounts.
- [95] In reaching this conclusion I have considered the affidavits of the claimant's friends and have found them to be of little weight for several reasons. First A.E.O.'s behaviour is so subtle that it is likely they would not have noticed; second it is inconceivable that these women were watching A.E.O.'s every move during the events they were present for; and last both women attest that they do not believe the allegations against the claimant and therefore are not objective.
- [96] With respect to the allegation that the claimant contacted the optometrist posing as Mrs. O., I am not satisfied that this occurred. Following the instructions set out in the letter sent to the medical professionals by Mrs. O., anyone introducing themselves as the mother of J.O. or L.O. would have been asked the secret questions.

- [97] I am however satisfied that A.E.O. changed the contact information of the applicant and his wife and family at the recreation centre. There is no other reasonable explanation for how their address could become a combination of theirs and the claimant's.
- [98] The question then becomes whether the behaviour, as found above constitutes family violence under the FRA.
- [99] As stated previously, family violence includes psychological and emotional abuse through intimidation, harassment and stalking.
- [100] Taken all together and viewed in the context of the past ten years, I am satisfied that the claimant's behaviour is designed to cause the applicant and Mrs. O. to feel anxious and fearful. As such I conclude that it constitutes psychological and emotional abuse, and so meets the definition of family violence.
- [101] Because the pattern of behaviour is long standing and clearly entrenched, I am satisfied that it will likely continue. A.E.O. shows no sign of stopping.
- [102] I am further satisfied that the applicant and Mrs. O. fit the definition of ARFM. A.E.O. is aware through these protracted proceedings of the effect her conduct has on them, yet she persists.
- [103] Following the principle in *M.W.B. v. A.R.B.*, at para. 43 above, I conclude that the three children, K.O., O.O. and J.L. fit the definition as well.

3. Whether protection orders should be made

- [104] Having found that family violence has occurred and is likely to continue to occur and that the applicant, Mrs. O. and the three children are ARFM, I must go on to determine whether a protection order should be made.
- [105] Addressing the risk factors set out in s. 184(1):
- the history of family violence spans a decade;
 - it is repetitive;
 - the psychological/emotional abuse constitutes a pattern of coercive behaviour directed at the applicant and the ARFM;
 - The applicant and Mrs. O. perceive themselves to be in danger as they do not know what the claimant is capable of. Their sense of security is affected as a result of the claimant's behaviour. Both the applicant and Mrs. O. are suffering from anxiety and have been for some time to the point that Mrs. O. has sought medical help; and
 - The children of the applicant and Mrs. O. are young and vulnerable. Mrs. O.'s son has issues, known to the claimant, that make him vulnerable as well.

- [106] A.E.O. refuses to take responsibility for her actions, instead blaming the applicant and Mrs. O. for "entrapping" her.
- [107] A.E.O. continually refers to the applicant's "suspicious nature" as if it is irrational. Given what he has gone through as a result of her false allegations it would be naïve for him not to be distrustful of her.
- [108] The claimant's imputation of malicious intent on the applicant and Mrs. O. is without basis. The applicant is not seeking to change access. He has primary parenting. The only thing he is trying to do is enable his family to live without the constant harassment and anxiety the claimant causes. To bring these applications costs money they can ill afford to spend.
- [109] In sum I am satisfied that the actions of the claimant were designed to do exactly what they accomplished: instill fear. The applicant and his family are suffering.
- [110] I return to the inference I drew in finding that A.E.O. breached the interim conduct orders: conduct orders have not and will not deter her.
- [111] Pursuant to s. 228(1)(d) of the FLA, if a party fails to comply with a conduct order, the court may make any other order it considers necessary to secure compliance.
- [112] Given the circumstances of this case, it is clear that the only way to protect this family including the children is through protection orders.

Conclusion

[113] I make the following orders:

- (1) Pursuant to s. 183 of the FLA, the claimant, in respect of the applicant:
 - a. is restrained from
 - i. except as set out herein or as permitted under previous orders of the court, directly or indirectly communicating with or contacting the applicant;
 - ii. except as set out herein or as permitted under previous orders of the court attending at, nearing or entering a place regularly attended by the applicant, including the residence, property, business, school or place of employment of the applicant;
 - iii. at school or extracurricular events, from being within twenty (20) meters of the applicant;
 - iv. following the applicant or attending at public places where the applicant attends if solely for the reason of being in the proximity of the respondent;
 - v. communicating with or contacting the at-risk family member save and except in writing and in respect of matters directly affecting J.O., born July 22, 2003, and L.O., born May 13, 2005;

- vi. Committing any act intended to affect or alter the settings, account parameters, billing information, contact information or attributes of any account, registration, utility, service or benefit in the name of the respondent;
- (2) That pursuant to s. 183 of the FLA, that the claimant, in respect of the other ARFM ("OARFM"), Mrs. O, K.O., O.O. and J.L.;
- a. be restrained from
- i. directly or indirectly communicating with or contacting the OARFM;
- ii. attending at, nearing or entering a place regularly attended by the OARFM, including the residence, property, business, school or place of employment of the OARFM;
- iii. following the OARFM or attending at public places where the OARFM attends if solely for the reason of being in the proximity of the respondent;
- iv. at school or extra-curricular events, from being within twenty (20) meters of any OARFM;
- v. committing any act intended to affect or alter the settings, account parameters, billing information, contact information or attributes of any account, registration, utility, service or benefit in the name of any of OARFM;
- (3) Pursuant to s. 228(1)(c)(ii) of the FLA, the claimant shall pay to the applicant \$200 for each breach for a total of \$600, to be paid at the rate of \$200 per month commencing February 15, 2018 and continuing on the 15th of each month until the fines are paid in full;
- (4) Pursuant to s. 228(1)(c)(i) of the FLA, the claimant shall pay to the applicant \$1,000 toward the cost of the breach application, to be paid at the rate of \$200 per month commencing June 15, 2018 and continuing on the 15th of every month until paid in full; and
- (5) The claimant shall pay to the applicant \$2,000 toward the cost of the protection order application to be paid at the rate of \$200 per month commencing November 15, 2018 and continuing on the 15th of every month until paid in full.

Other Matters

[114] A number of outstanding applications remain. I consider myself seized of those matters.

"The Honourable Madam Justice Murray"

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Prepared on 29 October 2026 · Esheria