

CANADA / JUDGMENT

A.K.P. v. I.S.P.

2024 BCSC 645

COURT

Supreme Court of British Columbia

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2024 BCSC 645 A.K.P. v. I.S.P.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.K.P. v. I.S.P.,

2024 BCSC 645

Date: 20240419

Docket: E232612

Registry: Vancouver

Between:

A.K.P.

Claimant

And

I.S.P.

Respondent

In Chambers

Before: The Honourable Mr. Justice Gomery

Reasons for Judgment

Counsel for the Claimant:

S. Jamal

Counsel for the Respondent:

P. Virk

Place and Dates of Hearing:

Vancouver, B.C.

April 10 & 11, 2024

Place and Date of Judgment:

Vancouver, B.C.

April 19, 2024

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Introduction

- [1] The parties are the parents of two children, "A", aged six years, and "Z", aged two. The parents are educated people in their late thirties of South-Asian heritage who married in July 2014 and separated on August 8, 2023. The mother commenced this family action in October 2023. The litigation descended immediately into a morass of application and counter-application, in which there have been many court appearances and various interim orders. Disputes over parenting have loomed large.

- [2] There are important factual disputes, centred on the mother's allegations of psychological abuse constituting family violence on the part of the father. As she puts it, the father's conduct before and since the separation reveals "a pattern of abusive, controlling, coercive, threatening and violent behaviours". The mother attributes family violence both to the father and his parents, who live with the father. The father denies specific incidents the mother complains of and the existence of any family violence at all.
- [3] At present, the father resides in the former family home in East Vancouver. Since November 2023, the mother has lived in Abbotsford. The father has parenting time with the children from Sunday mornings at 10:00 a.m. until Tuesday evenings at 6:30 p.m., and the children spend the rest of the week with the mother. A is enrolled in grade one at a private school he has attended since kindergarten but, since the mother's move to Abbotsford in November, he only goes to school during the father's parenting time on Mondays and Tuesdays. On Wednesdays through Fridays, he is home-schooled by the mother during her parenting time.
- [4] These reasons address unresolved parenting issues raised in the mother's notices of application filed on October 26, 2023 and December 27, 2023 and the father's notice of application filed on December 19, 2023. The applications seek interim orders, pending trial. Specifically, the issues are:
- a) Allocation of the parenting responsibilities enumerated in s. 41 of the Family Law Act, S.B.C. 2011, c. 25 [FLA];
 - b) The allocation of parenting time;
 - c) A's schooling; and
 - d) Transition arrangements.
- [5] Both parents have sworn argumentative affidavits containing many statements of which they have no personal knowledge. Such statements reflect poorly on the credibility of both affiants. The affidavits veer into accusations of sexual misconduct that are irrelevant to the issues at hand. The mother has sworn seven affidavits and the father has sworn ten.
- [6] My task is to have regard only to the best interests of the children and make an order that protects, to the greatest extent possible, their physical, psychological and emotional safety, security and well-being. The volume of the materials, extent of disagreement, and unsatisfactory quality of the affidavits present a significant challenge.
- [7] The applications were heard over one and one-half days. On the morning of the second day, following inquiries of Supreme Court Scheduling and of counsel, I ordered that the parenting issues be tried separately and fixed a trial date of August 6, 2024. In my view, it is urgent that the children obtain the benefit of a more firmly founded and lasting resolution of the parenting issues than is possible on an interim application on the record I have described.

- [8] In these reasons, my task is to address the parenting issues I have described on an interim basis until they can be addressed at trial in about four months' time. To dampen the intensity of the litigation, I advised the parties that it would be a term of my interim order that there will be no further parenting applications, even on the basis of an alleged material change of circumstance, prior to trial.

The parties' positions

- [9] The father submits that A should continue to attend his present school in Vancouver. He accepts that the mother should not be obliged to drive A from Abbotsford to Vancouver on school days. It is about a 90-minute drive each way. He seeks further parenting time in order that A may attend school more than two days a week, as follows. Until the school year ends on June 14, 2024, he proposes a two-week schedule under which the father's parenting time would begin on Sundays at 10:00 a.m. in both weeks, and end at 6:30 p.m. on Wednesdays in week one, and on Thursdays at 6:30 p.m. on week two. After June 14, he proposes shared parenting on a 2-2-3 schedule until further order of the court.
- [10] The mother submits that the present allocation of parenting time, which was established by an order of Associate Judge Robertson on January 23, 2024, should be maintained until the parenting issues are tried in August. Alternatively, on the question of schooling, she seeks an order that she be permitted to enroll A in school in Abbotsford for the balance of the school year. She asks that the court impose location requirements for pick-up and drop-off transitions to minimize conflict on those occasions.
- [11] Concerning the parenting responsibilities enumerated in s. 41 of the FLA, the parents are agreed that they should be shared equally except in two respects. One of these, as already noted, concerns A's schooling (s. 41(d)). The other is that the mother seeks an order to prevent the children from associating with their paternal grandparents (s. 41(c)).

History of the litigation

- [12] It is unfortunately necessary to review events since the separation and the course of the litigation in some detail to provide context for the present dispute.
- [13] For the purpose of this application, I assume that the parties separated on August 8, 2023. The father takes the position that the separation occurred in September but acknowledges that on August 8 he moved out of the family home to live with his parents in Surrey. By October 4, he had returned and the parties settled into an arrangement in which he occupied the ground floor and the mother occupied the upper floor of the family home. At some point, the father's parents moved into the basement of the family home.

- [14] The mother filed a notice of family claim on October 13, 2023. She filed very similar notices of application on October 24 and 26, 2023 seeking orders respecting parenting time, including an order that the father's parenting time be supervised, child support, spousal support, conduct orders, and an order for family counselling.
- [15] On November 2, 2023, Master Schwartz heard counsel for both parties and gave the mother leave to have her application filed on October 24 heard prior to holding a Judicial Case Conference ("JCC").
- [16] The mother's application came on for hearing on November 3, 2023 before Master Hughes. The Master awarded the mother exclusive possession of the upper floor of the family home and ordered the father not to disrupt the heat or utilities to the upper floor.
- [17] On November 3, the mother was seeking the removal of former counsel for the father, on the ground of a conflict of interest, and the Master gave the mother leave to pursue that application on November 16. The father changed counsel to his present counsel, Mr. Virk, and the mother's application for the removal of opposing counsel was rendered moot.
- [18] The mother's applications came on for hearing on November 24, 2023 before Justice Milman in family chambers. The hearing took the entire afternoon, continuing until 4:30 p.m., and Milman J. dealt with the matter summarily on submissions. By this time, the mother had left the family home and moved to Abbotsford, closer to her parents and siblings. Her former counsel, Mr. Perrick, advised the court that the issues now in dispute were support and the mother's wish to enroll A in a school in Abbotsford at the end of the year. The transcript includes the following exchange:

THE COURT: So I'm still not crystal clear on who's asking for what. To there's an agreement that the father should have parenting time?

CNSL K. PERRICK: Yes.

THE COURT: There's an agreement that the mother is going to be residing in Abbotsford and the father can have the family home.

CNSL K. PERRICK: Yes.

THE COURT: There's a dispute about where the older child should be going to school given the geography of that situation.

CNSL K. PERRICK: Yes.

- [19] Justice Milman ordered that the father would have parenting time with the children on Sundays until Monday after school, and on Wednesdays from 7:30 a.m. to 6:30 p.m., on an interim and without prejudice basis. He ordered the preparation of a report pursuant to s. 211 of the FLA and that the father pay child support. He adjourned the mother's application for spousal support. He made conduct orders and granted the father exclusive possession of the family home. He ordered the parents to attend family counselling for the entire family.

He was of the view that he could not address the schooling issue in the absence of an application raising it.

- [20] On December 19, 2023, the father filed a notice of application seeking orders pertaining to schooling with a view to A continuing to go to school in Vancouver, and an order increasing his parenting time. On December 27, the mother filed a notice of application seeking orders with a view to permitting her to enroll A in school in Abbotsford. She also sought orders permitting her to attend at the family home to recover personal belongings, and a \$5,000 fine for an alleged contravention of Milman J.'s order.
- [21] Both applications came on for hearing before Master Hughes on December 29, 2023. The Master was told that a full day hearing on parenting time had been scheduled to take place in January. She ordered that A's school not be changed without further order of the court or agreement of the parties and, while the mother continued to reside in Abbotsford and the parenting arrangements set out in Milman J.'s order continued, the mother was not required to take A to school on Tuesdays, Thursdays and Fridays. Master Hughes reasoned as follows:

What I am considering is whether to require the mom to bring [A] to school in Vancouver on Tuesday, Thursday, and Friday, or to let it go for it's really only two more weeks. Your day is on the 23rd, which is the Tuesday, so two weeks where he would only be attending school a couple of days a week. And I know that is not ideal and it is not sustainable on a long term basis. On the other hand, he is six years old, he is in Grade 1. It is not the end of the world if a six-year-old misses a little bit of school. And I appreciate that he has already missed three or four weeks of full time school.

[Emphasis added.]

- [22] On January 16, 2024, the parties attended a JCC before Associate Judge Dick and agreed to a process for determination of the person to conduct the s. 211 assessment ordered by Milman J., and that they would agree on a counsellor for the children.
- [23] On January 23, 2024, the outstanding applications came on for hearing before Associate Judge Robertson. Lead counsel for the mother was ill and unable to attend, and another lawyer attended and sought an adjournment. Judge Robertson granted the adjournment on being advised that two days were available for a full hearing of the outstanding issues commencing on February 28. The judge also varied the allocation of parenting time to the present arrangement, so that the father would have parenting time continuously from Sunday mornings until Tuesday evenings and appointed a s. 211 assessor by consent. The schooling arrangement continued to be that ordered by Master Hughes on December 29, 2023.
- [24] In late February 2024, the mother changed counsel to her present counsel, Ms. Jamal. On February 28, when the outstanding applications came on for hearing before Justice E. McDonald, Ms. Jamal appeared for the mother and sought and obtained an adjournment. The mother was ordered to pay costs thrown away as a result of the adjournment.

- [25] The outstanding applications were rescheduled to the two-day hearing at which I presided on April 10 and 11, 2024. The mother had brought a further application for an interim distribution that I heard together with other issues on April 11, after the parenting issues were addressed. I allowed the interim distribution application and ordered the father to pay spousal support and to give the mother supervised access to the family home so that she might recover her belongings. I reserved judgment on the parenting issues addressed in these reasons.
- [26] The point to be taken from this lengthy review of the proceedings to date is that, while the applications before me date back to October and December, 2023, and have been before the court five times previously, the hearing before me presents the first time they were fully argued on their merits. Further, the schooling arrangement ordered by Master Hughes, under which A attends school in Vancouver two days a week and is home-schooled by the mother in Abbotsford three days a week, has continued for much longer than was contemplated by the Master, who described it as "not ideal and not sustainable on a long term basis".

Evidentiary issues

- [27] During the hearing, Ms. Jamal objected to the inclusion of three affidavits included in the application record prepared by the father on the basis that they were sworn on March 24, 2023 and filed on March 27, after the hearing before McDonald J. She relied on Supreme Court Family Rule 10-6(13) which prevents reliance on supplementary affidavits to those expressly contemplated under the Rules unless all parties consent or with leave of the court. I granted the father leave to make use of the affidavits and rejected the objection.
- [28] The affidavits of N.B. and P.M. were made by family friends who speak to their observations of the father's parenting abilities. In my view, it is in the interests of justice that this evidence be available to the court. The parenting issues engage an assessment of the children's best interests and this is a question that transcends a strictly adversarial analysis. Moreover, the timing does not give rise to substantive unfairness. The mother had the affidavits two weeks in advance of the hearing. She is not caught by surprise. She could have sworn a responsive affidavit to be admitted as a condition of an order admitting these affidavits. I raised this possibility with Ms. Jamal on the first day of the hearing, and even then, it was not too late to have prepared a responsive affidavit to be tendered on the second day.
- [29] The third affidavit was made by the father's mother, R.D., who responds to allegations in the mother's first, fourth and fifth affidavits concerning the grandparents' (R.D. and her husband's) conduct vis-à-vis the mother and the children. The mother relies on these allegations in support of her application that the grandparents be prevented from associating with the children. To the extent that R.D.'s evidence bears on an assessment of the children's best interests, it is in the interests of justice that it be available to the court. As with the other affidavits, the timing does not give rise to substantive unfairness.

- [30] In admitting these affidavits for use on this application, I do not condone their late delivery. The affidavits could and should have been provided in accordance with the Rules. I will return to this consideration in addressing costs.

Legal framework

- [31] The parenting issues might have been addressed under the FLA or the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.). The parties have pursued their applications only under the FLA.
- [32] The parents are both guardians of the children pursuant to s. 39(1) of the FLA. Neither seeks an order pursuant to s. 39(2) divesting the other of guardianship.
- [33] Parents who are guardians are each entitled to exercise all parental responsibilities with respect to the child in consultation with each other, unless consultation would be unreasonable or inappropriate in the circumstances; s. 40(2). No particular allocation of parental responsibilities is presumed to be in the best interests of the child; s. 40(4). However, parental responsibilities may be allocated by court order; s. 45(1)(a).
- [34] Section 37(1) sets out the general principle that, in making an order under Part 4, the court is to consider only the best interests of the child. Section 37(2) provides a list of specific considerations that must be taken into account in determining the best interests of the child. I address those considerations later in these reasons. Sections 37(3) and (4) set out two important general principles, stating:
- (3) An agreement or 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.
- (4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.
- [35] To summarize, in deciding what order to make in this case, I must determine what parenting order is in the children's best interests, protecting, to the greatest extent possible, their physical, psychological and emotional safety, security and well-being. I must weigh the considerations listed in s. 37(2) of the FLA. Pursuant to s. 37(4), I may take a parent's conduct into account only if it substantially affects a consideration set out in subsection (2), and only to the extent that it affects that consideration.
- [36] Subsection 37(2)(g) directs me to consider the impact of any family violence on the children's safety, security or well-being, whether the family violence is directed toward the children or another family member, and at sub-s. (h), to consider whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the children's needs. Family violence is defined broadly in s. 1 to encompass both physical abuse and psychological or emotional abuse of a family member. Section 38 states:

Assessing family violence

38 For the purposes of section 37 (2) (g) and (h) [best interests of child], a court must consider all of the following:

- (a) the nature and seriousness of the family violence;
- (b) how recently the family violence occurred;
- (c) the frequency of the family violence;
- (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
- (e) whether the family violence was directed toward the child;
- (f) whether the child was exposed to family violence that was not directed toward the child;
- (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- (i) any other relevant matter.

[37] Emotional or psychological abuse amounting to family violence may be constituted by demeaning remarks, communications to third parties, threats of physical force, threats to cause financial hardship, or delay and refusal to cooperate with reasonable requests for information necessary to dispose of a family business in a mutually beneficial way; R.W. v. P.C., 2017 BCSC 998 at paras. 36-41; C.L.M. v. M.J.S., 2017 BCSC 799 at paras. 361-365; E.J.M. v. J.R.M., 2019 BCSC 2466 at paras. 66-68. It is important not to label conduct as family violence in the absence of evidence of harm to the child; C.L.M. at para. 365; E.J.M. at para. 68. It is equally important to bear in mind that a child may suffer indirect harm from family violence that was not directed at the child; K.M.N. v. S.Z.M., 2024 BCCA 70 at paras. 99-101.

Analysis

Overview

[38] Central to the mother's argument are her allegations of family violence (sub-ss. 37(2)(g) and (h)) in the guise of a pattern of coercive control. Secondly, the mother stresses the children's need for stability (sub-s. (2)(e)). The stability argument is that the children's lives should not be disrupted by a further change in the parenting arrangement only four months before a trial is to take place.

- [39] The father stresses his role as a significant person in his children's lives (sub-s. (2)(c)). His argument engages the importance of stability from another perspective, emphasizing the disruption to A's formal schooling since November 2023.
- [40] The parties present divergent perspectives concerning the children's emotional health and well-being (sub-s. (2)(a)) and the history of the children's care (sub-s. (2)(d)). The mother says that she has always been the primary parent and describes the father as unengaged. She maintains that A presents behavioural issues she is better positioned than the father to address. There are some concerns that the younger child exhibits developmental delays and a speech language pathologist has been engaged. Here, too, the mother maintains that she is in a better position than the father to address the issue.

The mother's allegations of family violence

- [41] I begin with the mother's allegations of family violence. Ms. Jamal submits that it does not matter that all of the mother's allegations are contested. She says that the court must err on the side of caution and it is sufficient that family violence could be present.
- [42] In the abstract, this submission causes me some difficulty. I do not think it can be that, on an interim application in which the court cannot resolve questions of credibility and make findings of fact, contested allegations of family violence carry weight simply by virtue of the fact that they are made. They must be subject to substantive assessment. It is sometimes the case that the court must err on the side of caution, but the force of the argument in favour of a precautionary approach depends on the nature and gravity of the allegations. How significant is the possible risk that the children will suffer direct or indirect harm from the family violence alleged?
- [43] In the particular circumstances of this case, and having regard to the issues at hand, for the reasons that follow, I do not view the risk that the children will suffer direct or indirect harm from family violence due to the behaviour of the father or his parents as significant.
- [44] To start with the father, the mother details two episodes of physical violence on the part of the father. One is that he is said to have snatched a phone from her hand and thrown it across the room during an argument. The other is that he is alleged to have thrown a bucket of cold water over the mother's nephew.
- [45] Since the hearing before Milman J. in November, the mother has accepted that the father should have parenting time with the children. Apart from the question of his parents' presence, at the hearing before me, she did not contend that the children are unsafe in the father's care.
- [46] In his recent affidavit, N.B. describes his observations of the father's dealings with the children during visits with the family in the period from March to October 2023. He describes the father as nurturing and caring and says that, throughout N.B.'s friendship with the father since 2005, he has never seen the father display anger or aggression.

- [47] P.M. is an old friend of the father who has a child who is A's age. In his affidavit, P.M. describes his observations of A's interactions with the children during playdates in the period from January 2023 through February 2024. He describes the father as kind, nurturing, and caring towards A, the younger child, and his own children. He says that he has never seen the father be physically violent or emotionally abusive towards anyone.
- [48] The real burden of the mother's allegations is that the father yells, physically towers over her, intimidates, and manipulates her. She says that he recorded her in the family home with secret hidden cameras and microphones, and threatened to circulate embarrassing recordings of her in their community. She maintains that the father's posture in the litigation, in particular his failure to agree to pay spousal support until it was ordered, is a further instance of his coercive control over her.
- [49] If the mother's account of events is accurate, most of the father's conduct would not have been apparent to children aged two and six years, especially after the mother moved to Abbotsford. Unless the parents are speaking inappropriately in the children's presence - contrary to a conduct order made by Milman J. - the children's experience of their parents' interactions is and will be limited to parenting time transitions.
- [50] Transitions have been a problem. I am advised that the mother has repeatedly called the police during transitions, most recently in the evening before the hearing began. Police have attended and have never taken action. I view the mother's repeated calls to the police as troubling. There is nothing in the evidence to suggest that the father has threatened physical violence during transitions. The police are not equipped to address her allegations of coercive control. Bringing the police into the picture in the children's presence sends the children a powerful message of fear and distrust. Absent good cause, it is not at all in the children's best interests.
- [51] Some of the evidence given by the mother reveals a reconstruction of past attitudes and events to conform with her current narrative of her relationship with the father. A case in point involves the mother's evidence concerning the private school that A attends in Vancouver. In her affidavit #5 made on December 22, 2023, the mother asserts that sending A to this school was exclusively the father's doing. She says that "I had no choice" and the father "forced this school for [A] upon me, I did not choose to send [A] to a private school". She says that she always had concerns about this particular school and lists reasons, criticizing the school's amenities, its location, the motivations of its owners, its standards, and alleging "a lack of transparency and accountability to the parents" and excessive staff turnover.
- [52] Contemporaneous email correspondence tells a different story. It shows that the mother participated in interviews at the school before A was enrolled there. A began in kindergarten and it was not clear at first that the school would have space for him in grade 1. On October 26, the mother replied to an email the school sent to both parents advising that there would be space. The mother replied:

This is all great news. I am happy to read you see progress with his eating since September and happy to read he can be there for grade 1!

[53] Both parents signed a contract of enrollment for A's grade one year. The mother's signature is dated January 26, 2023, and the father's is dated January 29.

[54] The father showed the mother's affidavit #5 to a school official and obtained a letter and affidavit in response, refuting the mother's criticisms of the school. Ms. Jamal criticizes the father for doing so, submitting that he inappropriately brought the school into a private dispute. This is not a fair complaint. The parties are engaged in litigation and, faced with the mother's affidavit, it was inevitable that the father would respond and entirely appropriate for him to do so by seeking evidence from the school.

[55] The mother states, in her affidavit #7 made on March 26, 2024:

There has been a breakdown in my relationship with the staff with [the school] given the correspondence they provided to the [father]. The [father] provided my Affidavit to the School and they felt the need to respond on his behalf in Affidavit form. It was so inappropriate for the school to infuse themselves in our litigation. I no longer feel comfortable corresponding with them. They used to communicate with me directly with frequent updates about [A's] behaviour and now they do not provide the same frequency of updates or detail about his eating and behaviour. They do not communicate with me the way they used to prior to the seeing my Affidavit.

[Emphasis added.]

[56] There is nothing in this account of recent events to lead a fair-minded observer to conclude that the school is behaving unprofessionally, is refusing to report to the mother, or will not respond to communications from her. She begins by asserting a breakdown in communication with the school and objects to the school involving itself in the litigation. I do not think that the school can be criticized for addressing what it clearly viewed as unfair criticism contained in an affidavit. Notably, the mother does not assert that the school no longer communicates with her. She says that she is no longer communicating with the school, and the frequency of the school's updates to her has reduced. There is nothing to stop her from requesting more frequent updates.

[57] I turn to the mother's allegations against the father's parents. She says that the grandfather (his father) suffers from mental illness and is violent, temperamental, and easily triggered. She describes, in general terms, violent fights during which the grandfather chased the grandmother who would come to her for protection. She says that "there is a sick twisted culture of violence towards insects and animals in the [father's] family" and expresses concern that A has mirrored that behaviour. She says that she has overheard the grandmother yelling and swearing at A.

[58] The father acknowledges that the grandfather suffered from mental illness that lead to his treatment in a psychiatric ward in 2017. The father says that, before the grandfather received treatment, he did not like dog barking and loud music, but this has not been a problem since 2017. The father denies the allegation of a sick and twisted culture of violence in his family. He says that A killed bugs a few times and no longer does so, but captures and observes them in a plastic container instead. The grandmother denies that the grandfather still suffers from mental health issues described by the mother, and says that he is not taking medication for mental health issues. She describes the mother's allegations concerning her behaviour towards A as false, fabricated, and hurtful.

[59] The mother's submission that the grandparents, particularly the grandfather, pose a risk to the children must be evaluated in the light of the mother's acceptance of the grandparents' role in the children's lives until very recently.

[60] In the period from late September until mid-November, 2023, the mother established schedules allocating parenting time between the parents. She set out the schedules in emails to the father to which he would reply, sometimes proposing amendments. In the emails, the mother made it clear that she viewed the scheduling of parenting time as her prerogative. For the most part, the father seems to have accepted this. In an email exchange on November 11 and 12, 2023, the father protested and the mother responded:

I have been making the schedule since we separated in August. You cannot unilaterally now start dictating how this will work.

You need to learn to stop trying to control me.

[61] In an email on November 6 and 13, 2023, the mother acknowledged that the grandparents were involved in caring for the children during the father's parenting time. On November 6, she stated:

Please note - there is no need to continue to harass me with stating you want more time - when it is clear your parents are the ones looking after our children - on your time.

On November 13, she stated:

Again, please stop making things up. I know your parents are taking care of [Z] and [A] mostly, and you are just around.

[62] The mother's acknowledgement of the grandparents' role in caring for the children detracts substantially from her current assertion that the grandparents' presence puts the children at risk.

[63] All in all, in the absence of more cogent evidence than the mother has presently provided, I am not persuaded that the risk that the children will suffer harm from family violence is significant.

Assessment

- [64] On the record on these applications, the evidence does not persuade me of the existence of a significant risk that the children will suffer direct or indirect harm from family violence due to the behaviour of the father or his parents. This conclusion does not resolve the dispute at hand.
- [65] The issues of parenting time and schooling are tied together because, contrary to the mother's alternative submission, I do not think it would be right to permit the mother to move A from his present school to a school in Abbotsford at this time. There are only two months left in the school year. A has classmates, a teacher who knows him, and a familiar environment at his school in Vancouver.
- [66] I share Master Hughes' assessment that an arrangement under which A attends school only two days a week is unsuitable and unsustainable over the long term. I agree with the father's assessment that it would be unreasonable to expect the mother to transport A back and forth between her home in Abbotsford and the school in Vancouver on her parenting days. The ultimate resolution of this conundrum is a problem for the trial judge. For the present, the only way to give A more days in school would be to increase the father's parenting time, which is the father's proposal.
- [67] Subsection 37(2)(d) of the FLA directs me to consider the history of the children's care. I accept that the mother played a greater role than the father in caring for the children during the marriage and in the period after separation until the mother's departure for Abbotsford. The father was working full-time at a well-paying and undoubtedly demanding job. The mother was working at a slower pace, and was on maternity leave after Z was born. I accept the father's evidence that he participated in child-rearing activities, though I think it was to a lesser degree.
- [68] Subsection 37(2)(c) directs me to consider the nature and strength of the relationships between the children and significant persons in their lives. I think it is clear that the children are bonded with both parents and are comfortable with both sets of grandparents. This is a neutral consideration.
- [69] In my view, the children's health and emotional well-being (sub-s. 37(2)(a)) is also a neutral consideration. Their health and emotional well-being are unlikely to be affected by whatever adjustment to the allocation of parenting time is made for the period until the conclusion of the trial in August. I come to this conclusion because I think the evidence establishes, for the purpose of this interim application, that both parents are essentially competent (sub-s. (2)(f)).

- [70] I must consider the extent to which any arrangement I order will require the parties to cooperate, and any risks stemming from a need for cooperation (sub-s. (2)(i)). Cooperation is plainly an issue, because the parents do not communicate well and bring radically different perspectives to bear in their perceptions of the children and each other's behaviour. This argues in favour of minimizing personal interactions between the parents and opportunities for confrontation in necessary interactions.
- [71] The remaining important consideration is the children's need for stability, given their ages and stages of development (sub-s. (2)(e)). Stability cuts both ways, but it favours most strongly not making a change. The children's lives have been upended by the breakdown of their parents' marriage and the move to Abbotsford. They are both young. It is possible that further changes will come after the trial.
- [72] I remind myself that I must make an order that protects, to the greatest extent possible, the children's physical, psychological and emotional safety, security, and well-being.
- [73] Taking everything together, I think that A should have more time in school, and the parenting arrangement for Z should be the same as for his brother. A modest change in the allocation of parenting time is in A's best interests, at the cost of some disruption in the children's lives.
- [74] I am influenced to a degree by the unfortunate delay in bringing this issue to resolution. It should have been resolved on January 23 or, failing that, on February 28, when court hearings were booked but the mother's counsel was not ready to proceed. This is perhaps not entirely the mother's responsibility - she had nothing to do with her former counsel's illness in January, and I do not know the reasons for the change of counsel that motivated the February adjournment - but it is certainly not the father's, and A has suffered the consequences.

Transitions

- [75] The mother seeks directions concerning transitions of parenting time. She suggests that it might assist if she were able to pick up A from school or, on days when that is not possible, that transitions should take place in a safe location. She suggests a police station.
- [76] Transitioning at school would make sense for A, but not for Z who is too young to go to school. I do not think that transitions should take place at a police station because of the message that would send, particularly to A, that the police are somehow involved in his parents' relationship.

Conclusions

- [77] I conclude as follows concerning the issues identified at para. [4] above, all on an interim basis, pending trial of the parenting issues:

- a) All of the parenting responsibilities enumerated in s. 41 of the FLA should be equally shared except that the responsibility to enroll A in school or change A's schooling should be reserved to the father;
- b) The father should not be prevented from permitting the children to associate with their paternal grandparents;
- c) Parenting time should be allocated according to the father's proposal, except that there should be no change after June 14, 2024. The father's proposal of a 2-2-3 schedule after June 14 would increase the number of transitions, and that is to be avoided;
- d) The parties should agree in writing on a public location that is not a police station at which transitions will take place, failing which the location should be settled by further order of the court;
- e) All of these arrangements should remain in place until the parties agree otherwise or further order of the court.

Disposition

[78] For these reasons, I order as follows, on an interim basis until further order of the court:

- a) The order of Justice Milman made November 24, 2023, so far as it concerns parenting time only, paragraphs 1 to 3 of the order of Master Hughes made December 29, 2023, and paragraphs 2 and 3 of the order of Associate Judge Robertson made January 23, 2024 are all set aside and replaced by the following;
- b) The parents are both guardians of the children under s. 39(3) of the FLA;
- c) The guardians will share equally all of the s. 41 parental responsibilities for the children under s. 40(2) of the FLA except for the responsibility to make decisions respecting A's education pursuant to s. 40(d);
- d) The father will be responsible to make decisions concerning A's enrollment in school or a change of school, but the mother is not obliged to take A to school during her parenting time;
- e) Pursuant to s. 45(1)(b) of the FLA, the father will have parenting time on a two week schedule beginning on Sundays at 10:00 a.m. in both weeks and ending on Wednesdays at 6:30 p.m. on week one and on Thursdays at 6:30 p.m. on week two, and the mother will have parenting time for the balance of each week;
- f) Transitions of parenting time will take place at a public location to be agreed between the parties, failing which the location will be settled by further order of the court;
- g) I am seized of any application to settle the transition location;

- h) Any application to settle the transition location will be resolved in writing on the basis of written arguments not to exceed three pages in length, to be submitted through the Registry according to a schedule to be agreed between the parties;
 - i) There will be no further applications concerning parenting time, schooling, or the allocation of parental responsibilities prior to August 6, 2024, even on the basis of an alleged material change of circumstances;
 - j) The parties may agree in writing to vary any of the arrangements settled by this order without further order of the court.
- [79] The father has achieved substantial success on this application and would ordinarily recover costs. In view of his late delivery of affidavits, there will be no order as to costs.
- [80] This order resolves all the remaining issues raised by the mother's notices of application filed on October 26 and December 27, 2023, and the father's notice of application filed on December 19, 2023, except the mother's application for the order sought in paragraph 5 of part 1 of her notice of application filed December 27, 2023, which is adjourned generally.

"Gomery J."

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