

CANADA / JUDGMENT

A.K.S. v. J.T.S.

2023 BCSC 1946

COURT

Supreme Court of British Columbia

DECIDED

31 August 2023

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2023 BCSC 1946 A.K.S. v. J.T.S.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.K.S. v. J.T.S.,

2023 BCSC 1946

Date: 20230831

Docket: E66661

Registry: New Westminster

Between:

A.K.S.

Claimant

And:

J.T.S. aka J.T.D., and

L.G.S.

Respondents

Before: Master Krentz

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

S. Sandhu

Counsel for the Respondent, J.T.S.:

S. Das

K. Gill

No other appearances

Places and Dates of Hearing:

New Westminster, B.C.

June 16, 2023

Chilliwack, B.C.

August 23, 2023

Place and Date of Judgment:

New Westminster, B.C.

August 31, 2023

- [1] THE COURT: This is my decision in this family law proceeding. The claimant, A.K.S., is 31 years old and the respondent, J.T.S., is 42 years old. The claimant is employed as a pharmacy operations manager and her income is \$98,000 per year but that includes a car allowance of approximately \$12,000, as the claimant is required at times to travel as part of her employment. The respondent is employed as an electrical estimator and has been with the same employer for five years, although she is currently on maternity leave. She is in receipt of EI benefits.
- [2] The parties commenced a common-law relationship in December 2016 and were married in August 2018. They have two children: a son, H., age two; and a daughter, B., age nine months. Both children were conceived through in vitro fertilization and the respondent was the gestational carrier for both children. After H.'s birth, the respondent returned to work in November 2021.
- [3] In August 2017, the parties, with the assistance of the claimant's father, L.G.S., purchased a home in the Lower Mainland. That home is registered in their three names. The claimant's father, L.G.S., resides in the basement suite and has been named as a respondent in this proceeding.
- [4] The parties separated in September 2022. However, they continued to live under the same roof until December 2022, when the claimant moved out of the residence.

- [5] The claimant deposes that when the respondent returned to work, they used the claimant's mother, D., for childcare from November 2021 to February 2022; and then again from March 2022 to June 2022, when H. started daycare. D. still continued to provide care for H. approximately two days a week until September 2022.
- [6] The claimant further deposes that during the relationship, she had a very active role in caring for H. They shared the day-to-day responsibilities and caregiving duties. When she would come home from work, the claimant would play with H., feed him his dinner, bathe him and put him down for bed.
- [7] In November 2021, H. became very sick and ended up with a severe respiratory virus, that resulted in the child being hospitalized and transferred to BC Children's Hospital. The claimant deposes that, along with the respondent, she was with H. during this time.
- [8] The claimant says following the separation, while they still lived together in the family residence, they did not have a parenting schedule but they continued to take care of the children together. She says in November 2022, when B. was born, that they continued to share parenting responsibilities. She often bottle-fed B., as the child was on a combination of breast milk and formula.
- [9] After the claimant moved out of the residence, she then described the parenting arrangements as follows:

From December 2022 to February 2023, I continued to exercise my parenting time with the children. I would often go to the family residence at 6:00 a.m. to get [H.] ready for day care and then care for [B.] so the respondent could sleep. I would drop [H.] off to day care and then go to work. During this time, I would go to the family residence almost every day, whether in the evening or in the morning, to exercise parenting time.

- [10] The claimant deposes, that in addition to going to the family residence, she would take the children out for the day to her mother's home. She would also take the children to her own residence.
- [11] The claimant says that in January 2023, she proposed a shared parenting schedule with the respondent, but the respondent would not agree. The respondent stated she wanted a 70/30 split with occasional overnights. The claimant deposes:

The respondent said that she wanted me to think about her moving back to [Eastern Canada] with both children, and that I would be able to see them during the summer.

- [12] The claimant says she immediately disagreed with that idea.
- [13] Meanwhile, the respondent describes the parenting arrangements as follows. She says she was on maternity leave following the birth of H. from April 2021 to January 2022. With respect to the allegation that D. provided daycare, she says:

While the claimant's mother did assist me with some child care from time to time, it was

minimal.

[14] The respondent deposes:

In January 2022, prior to [H.] starting day care, the claimant's mother provided care for [H.] typically between 10:00 a.m. to 2:00 p.m. Then again she provided care for [H.] from May 2022 to September 2022 for about four days per month.

[15] The respondent further deposes she was always present during D.'s attendance because she worked from home.

[16] The respondent currently on maternity leave with B. Therefore, B. is not in daycare and is in her full-time care. Since May 2022, H. attends daycare three days per week from 8:30 a.m. to 3:30 p.m. She says:

I conduct and have always conducted all of the drop-offs, and I would conduct most of the pickups as well, albeit the claimant occasionally assisted me.

[17] The respondent goes on to depose:

Upon our separation, while we both continued to reside in the family home, the claimant was often absent from the home for prolonged periods of time, either staying at her friend's residence, [R.], during her free time after work, or she was out of town because of her work.

[18] She deposes the claimant travels extensively for work, about 55 percent of the time. Therefore, she says:

During my pregnancy with [B.], I also remained responsible for caring for [H.] and did so almost exclusively.

[19] The respondent disagrees with the assertion that the claimant would often be at the home to look after both children. She says:

During this period and ultimately since separation, the claimant rarely comes to the family home to provide care for the children. Instead, she would visit the home for the sole purpose of using our home office to do work.

[20] Further, she deposes:

To date, the claimant has not stayed up or woken up during the night with [B.], despite her assertions that she provided both children care during the night when she is at the home.

[21] The respondent is from Eastern Canada, and she still has roots there, which she describes as follows.

[22] She came here in 2006 and her immediate family, which she describes as her parents, her siblings, nieces, nephews, aunts, uncles, all live in Eastern Canada within a few hours from each other. She says she has visited her family since the start of the relationship, every year, up two to three times. She has taken H. five times to see her family, spending 10 to 12 days on each occasion. She also took B. to visit her family in February 2023 and spent about 12 days there. She says her parents have:

Also come to visit me during our relationship, usually twice a year, and they visited [H.] at least seven days in BC and [B.] four times in BC.

[23] Despite having D. assisting in caring for the children, the respondent does not appear to have a positive view of the claimant's family. She deposes in an affidavit the following:

The claimant's family is not close knit. While she is close to her parents, her extended family is not regularly involved with her. Her sister and I share a positive relationship and does make efforts to see the children with me. Her father struggles with alcoholism and was recently hospitalized for it. He is capable of providing care for children in a meaningful way such that an adult would also have to be present during his time with the children.

[24] The claimant deposes that she has been requesting a shared parenting arrangement but it has not been agreed to by the respondent.

[25] The claimant was allowed to have H. overnight on March 3 of this year. That same date, her counsel received a letter from the respondent's counsel that she would only agree to two afternoons during the week and one weekend day but no overnights. The next week, through counsel, the respondent complained that H. was exhausted and upset by an overnight stay.

[26] The following are some of the efforts of the claimant in 2023 to exercise parenting time. She says on March 18, she exercised parenting time with the children from 9:30 a.m. to 7:30 p.m. On March 19, the respondent agreed via text that she could pick up H. from daycare on March 21 and drop him off between 7:00 and 7:30 p.m. She asked if she could have H. for one overnight. The respondent replied saying she would get back to her on the overnight request. She says:

On March 21, the respondent texted me stating she has given it a lot of thought. She is not comfortable with [H.] spending the night until an agreement on a parenting schedule was in place. She further proposed a parenting schedule where I would have the children for two afternoons during the week and on the alternate weekend day, that is a Saturday, I could keep [H.] overnight.

[27] On March 21, the claimant picked up H. from daycare at 3:00 p.m., took him to the park, and played for a few hours:

We then went back to the house where I fed him dinner, and he fell asleep. As the respondent proposed an overnight schedule for me two days prior, I did not think it was any issue having [H.] spend the night, especially because he was already asleep. What happened is the respondent replied to my text message stating if I did not return him immediately, she would be calling the police. After staying overnight at her place, [H.] woke up at 7:00 a.m. He ate breakfast.

[28] The claimant texted the respondent at 8:00 a.m., saying:

He is having a great time. He slept well. As you know, I am on vacation, so I am going to keep [H.] until Sunday.

[29] On March 22, the claimant was advised by her counsel that they received a letter from the respondent's counsel disagreeing with the proposal and insisting on her parenting time being limited to day visits only. The claimant deposes that:

On March 23, the respondent texted me asking for the address of where I am staying. She would already know where I was residing, as living with my best friend, [R.], who she knows and has dropped me off there on previous occasions. Furthermore, she has been at his home several times during our relationship.

March 24 I texted the respondent offering to take [B.] to her doctor's appointment. The respondent stated she would not agree to parenting time until there is a written agreement with the lawyers.

[30] On March 25, the claimant deposes she texted the respondent asking if she could pick up the children from 10:00 a.m. to 6:00 p.m.:

The respondent offered that I could come to the family home between 9:00 a.m. to noon the following day to see the children. I stated I was not comfortable and did not feel safe with both her and her father, who was there at the time. On March 28, my lawyer told me that her office had received a letter from the respondent's counsel insisting on parenting time to be limited to no overnights. On March 31, I texted the respondent asking to pick up the children at 3:30 p.m. She stated she would not agree to anything until there was a written agreement related to the parenting schedule. Therefore, I was unable to exercise any parenting time.

[31] The claimant further deposes:

On or about April 3 or 4, the respondent texted me to advise that she was not agreeing with the parenting schedule proposed but wanted me to see the children. She requested I have my lawyer email her lawyer guaranteeing both children no matter the circumstances will be returned no later than 7:30 p.m. with a pickup at 3:45 p.m., and if this was not done, I could not visit my children at the home.

On April 8, the respondent agreed to allow me to exercise parenting time. I picked up the children on Sunday, April 9, from 9:30 a.m. until 6:30 p.m., only after I agreed via text that I would return the children at those times.

[32] On April 14, the claimant had the children from 3:30 p.m. to 7:30 p.m. On April 15, she had the children at 8:30 a.m. and dropped them off at 11:30 a.m., as she had an appointment at noon. She then picked them up again at 2:30 p.m., brought them to her residence, played with them and had dinner.

[33] The claimant further deposes:

On April 25, the respondent would not agree with me picking up [H.] at 7:00 p.m. for an overnight as the time proposed was right before his bedtime routine. I then offered to pick up [H.] at 9:30 a.m. The respondent replied she wanted us to enjoy the children and does not want to worry about where they are or whether they'd be coming home. She further stated the children have their own bedrooms in the family residence, and she did not want them going back and forth.

[34] Lastly, the claimant deposes:

Since moving out of the family residence, I am constantly facing obstacles in attempting to exercise my parenting time with the children. The respondent often dictates what times and days that I can exercise my parenting time.

[35] After this affidavit was sworn, the claimant was allowed to take H. camping from May 17 to 19, with her family.

[36] The claimant lives with her friend R., in a three-bedroom condominium. She describes it as following:

One of the bedrooms of the condominium has been converted into [H.]'s bedroom. Inside the bedroom, I have many items such as a crib set up, stuffed animals, dresser drawers with clothes, diapers, crib sheets, blankets, toys, and books.

[37] She says she has set up in her bedroom a bassinet for B. to sleep in. She also has a set of dresser drawers with other items such as clothes, diapers, crib sheets, bibs, various bottles, soothers and blankets.

[38] In opposing this application, the respondent submits the following. The claimant travels extensively for work and when she was home, she will leave the respondent with most, if not all, of the parental responsibilities. After separation, the respondent says she has remained the primary caregiver for the children and the claimant has only spent intermittent and infrequent time with the children.

[39] With respect to R's residence, the respondent says that while the condo may be three bedrooms, only two of the bedrooms actually have beds. The third bedroom has been made into a home office. The condo is located in a Lower Mainland community, widely known on the news as having difficulties with trafficking of drugs, open drug use, property crime and homelessness.

[40] With respect to the claimant's work, the respondent says the claimant works extensive hours, well over 40 hours each week, with a workday starting at 7:30 a.m. and often ending at 8:00 to 9:00 p.m. She is required to travel all over the Lower Mainland, the Northern and Interior region of British Columbia, Vancouver Island and Alberta as her employer operates a large number of pharmacies in various cities. The claimant, being an operations manager, is often tasked with travelling to various pharmacies that they own. She often spends up to a week away.

[41] The respondent expresses safety concerns. She says that she believes the children are not safe in the claimant's extended care as the claimant has long-standing mental health issues and has attempted to commit suicide at least twice. The claimant has told the respondent she is struggling with anxiety and depression and has admitted to her closest friend, T.N., that she is struggling emotionally, that she loses her patience and is triggered by the children's behaviour.

[42] In her affidavit, the respondent has set out the extensive travel schedule of the claimant from April to October 2023 that I have reviewed. However, the claimant says this equates to about 41 percent of her working days as she has control as to when she can schedule her travel. The claimant deposes that she works from 8:00 a.m. to 5:00 p.m. with two days in the office and three days in the field within the Lower Mainland and no more than three days each month outside of British Columbia.

[43] The respondent deposes she arranges most of the appointments for the children. She says the claimant's involvement with such things is very limited. She describes it, for example, as follows:

In April 2021, the claimant attended at [H.]'s hearing test with me because I was unable to attend alone due to recently having a C-section.

[44] The respondent further deposes that in November 2021, the claimant attended at the hospital with her when H. contracted the virus. She says she stayed at the hospital the entire five days, while the claimant would spend time at the home.

[45] In May 2022, the claimant took H. to a nurse for a checkup because the child had flu-like symptoms. She had work obligations that prevented her from taking H. herself. Lastly, in May 2023, the claimant accompanied her to H.'s dermatologist's appointment. The respondent says:

With respect to [B.], in November 2022, the claimant accompanied me for [B.]'s very first medical appointment, but she did not attend the two-month shot later, as she said she was too busy working.

[46] The respondent deposes that despite having an opportunity in November 2022 to have H. two afternoons each week and one weekend day, that the claimant will simply pick up H. from daycare and then take him to the respondent for her to look after him; and for her weekends, she often spends only three hours of the day with him.

[47] The respondent says she has serious concerns about the claimant's parenting abilities. She describes this as follows.

[48] The claimant has long-standing mental-health issues and has attempted to commit suicide on at least two separate occasions. She believes the claimant will smoke marihuana and drive. She recalls an occasion when ...

... the claimant had smoked [marihuana], tried to get into the car to drive us to an amusement park. I intervened. I drove there, as I was completely sober.

[49] The respondent says:

The claimant often loses her temper when dealing with normal fights and tantrums of the children and yells at them or at me excessively, which is traumatizing and emotional damages for the children.

[50] The respondent says, in 2017, when they moved into the family home ...

... the claimant got angry at me for no apparent reason and then punched a hole in our bedroom wall.

[51] The respondent says the claimant has anger issues. She will lose her patience with the children. She is worried that they are not safe in her care. She deposes:

She will yell at them, swear profanities at me and at [H.] during her anger bursts.

[52] The respondent says that the specific incidents of family violence include the following.

[53] On November 4, 2022, while attempting to change the clothes of H., the claimant became increasingly upset and frustrated that she was unable to change H. The claimant became so upset, that she began lashing out at H. and saying things like "just fucking knock it off" and "I am going to fucking snap."

[54] The respondent says that on November 5, which would be the next day, she was in the bedroom of the family home. She woke up because she could hear from the baby monitor the claimant screaming and could hear H. crying. She says:

On the day of that incident, I can hear the claimant swearing and screaming at [H.] because she was struggling to change his clothes.

[55] The respondent deposes that on February 7, 2023, the claimant visited the family home with D. as it was her day for parenting time. She says when they arrived, the claimant immediately became irate on seeing her items had been stowed away in a spare bedroom:

She began screaming at me, saying things like the bedroom belongs to her.

[56] The respondent says the claimant became more enraged:

She pushed me aside, again moving her items back into the bedroom. As the claimant did not stop, I eventually tried to remove myself from the situation.

[57] She further says:

I then called the claimant's long-time friend over to the family home because I did not want to be alone with the claimant and [D.]. This was [T.N.]. When she arrived, she came straight to my room while the claimant and [D.] were bathing [H.]. [D.] became aggressive in her demeanour. Eventually she began screaming and pointing fingers at me and [T.N.], while making accusations that [T.N.] had taken my side after the breakdown of her relationship.

One point, [D.] reached out, attempted to grab and pull [B.] from the claimant's hands while she was holding [B.] at the time, after which [B.] began screaming and crying. Both me and [T.N.] and even the claimant told [D.] to stop. She eventually did. [D.] then apologized. After things calmed down, they left the residence, leaving the children with me.

[58] There is an affidavit from T.N. with respect to this incident. She starts by saying:

I have known the claimant since 2003. We both attended high school together. I saw and spoke with the claimant daily up until February 2023. At that time, there was an altercation that I witnessed involving the claimant's mother becoming aggressive with the respondent and with [H.]. Currently my relationship with the claimant is not as close, but I am not exactly clear on why. She has blocked my calls and my messages and has not communicated with me since February 2023.

[59] In her affidavit with respect to that February 2023 incident, T.N. says that the claimant did not intervene. However, according to the respondent's own affidavit that is untrue, as the respondent says the claimant did try to intervene with her mother as she told her mother to stop.

[60] T.N. says she is unclear as to why they are no longer close; however, in my view, that would be apparent from the comment of the claimant's mother at that time, as D. said they believed that T.N. had aligned herself with the respondent.

[61] In the remainder of her affidavit, T.N. attempts to paint a picture of the claimant as being an unfit parent. However, in October 2022, in a text message to the claimant, she describes her as a "great mom." I find it difficult to give much weight to the T.N. affidavit, as she has clearly aligned herself with the respondent and there are inherent inconsistencies in her evidence.

[62] The respondent's position is that during the short lives of the children, she has been the primary caregiver and that should continue. Therefore, the respondent proposes that the claimant shall have parenting time as follows:

- 1) two afternoons during the week with the dates to be selected by the claimant from 3:30 p.m. to 7:30 p.m.; and
 - 2) on each weekend, a full day for one day but not overnight. The exchanges would be at the family home.
- [63] With respect to any orders that I make, I must consider only the best interests of the children. In doing so, I must consider all of the factors set out in s. 16(3) of the Divorce Act. With respect to those factors, Justice Norell recently said the following in *J.L.M. v. G.G.M.*, 2022 BCSC 2221:
- [20] In making a parenting arrangement order, whether interim or final, the court must consider the best interests of the child only: s. 37(1). All of the child's needs and circumstances must be considered, including the factors set out in s. 37(2). 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: s. 37(3). In making a parenting arrangement order, a Court may consider a person's conduct only if it substantially affects a factor set out in s. 37(2), and only to the extent it affects that factor: s. 37(4).
- [64] The respondent has provided examples of the claimant's conduct that is suggestive of family violence and such conduct, if true, could affect a factor in s. 16 of the Divorce Act and s. 37 of the FLA. However, these allegations are denied by the claimant and although they may be corroborated in part by the T.N. affidavit, for the reasons given, I have difficulty giving that affidavit much weight.
- [65] In a decision of my colleague Master Keighley: *N.N.N. v. D.E.B.*, 2016 BCSC 1778, he made the following observations:
- [1] ... In exercising its jurisdiction to grant interim relief, the court seeks to deal with exigent circumstances and/or seeks to put in place workable arrangements which will see the parties through to trial. When dealing with interim applications, the court often has a less than panoramic view of the case. Applicants seldom are afforded more than a couple of hours for hearing and the evidence is received in affidavit form: This deprives the court of subtle nuances which are often crucial to the resolution of complex claims and makes it difficult for the court to make realistic assessments as to credibility. It has often been said, and by this writer many times, that what the court accomplishes on interim applications in family matters amounts to "rough justice" ...
 - [2] Unsatisfactory as that comment may seem in this serious context, it is probably a realistic assessment of this court's process on interim applications. We strive to put in place, after reasoned reflection, arrangements which will serve the parties until a more thorough investigation of their circumstances takes place at trial, providing the parties with some degree of short-term stability while avoiding a final determination of an issue in circumstances where that would be unfair.

- [66] As I have already illustrated from what I have reviewed above, in this case before me there is extensive conflict in the evidence. On issues such as family violence, I do find it difficult to make a determination. However, I must give due consideration to the allegations of the respondent that she has witnessed the claimant lose her patience with H., and how the claimant may conduct herself at those times.
- [67] In addition to what I have already described, the respondent in her affidavit summarizes some other allegations of family violence. In October 2022, they were having a discussion about family funds and the sharing of expenses upon the breakdown of their relationship. At that time, she was pregnant with B. During the discussion, the respondent says her comments seemingly enraged the claimant and the discussion quickly turned into an argument:
- ... with the claimant screaming and swearing at me and saying things like "you are not the mom, I am his parent, fuck you, [J., (referring to the respondent)], fuck you, we got to figure this shit out."
- [68] That incident was recorded by the respondent and the recordings were provided to me at the hearing. I did not allow all of the recordings but I did admit some of the recordings with respect to the allegations of family violence. I have listened to that recording.
- [69] In November 2022, there were discussions about the impending birth of B.:
- During that discussion, which turned into an argument, the claimant began saying and screaming derogatory things towards me even though H. was present.
- [70] I have also listened to that recording.
- [71] There have been extensive authorities provided to me by both parties. I will now review them. The authorities that have been cited by the claimant as they relate to interim applications are as follows.
- [72] In *L.J.R. v. J.M.M.*, 2022 BCSC 1911, Master Hughes was dealing with an application to vary an order wherein the applicant already had, by way of a consent order, two overnights each week. Master Hughes noted that in the previous order, it was anticipated that parenting time would be increased, which is what she did.
- [73] In *B.J. v. R.S.B.* 2022 BCSC 2135, the court found that prior to separation both parties were equally involved in parenting of children who were ages eight and eleven and both currently had homes that provided stability for the children.
- [74] In *T.T. v. S.Z.T.*, 2020 BCSC 1628, the court ordered a gradual increase in parenting time for a one-year-old child, with increases to overnights once it was appropriate.

- [75] In *M.B.H.U. v. K.V.*, 2022 BCSC 1169, the application was to increase parenting time for a 16-month-old child. The applicant sought two overnights each week and the respondent wanted it to stay to daytime visits only. Although the court found that a gradual move to shared parenting was in the child's best interests, given the uncertainties of the applicant's drug use, the visits would not be overnight pending trial.
- [76] In *Sandhu v. Bhullar*, 2016 BCSC 59, there were allegations of family violence and for the two-year-old child, the applicant was exercising daytime parenting time pursuant to an order and he had shown he was capable of looking after the child. The application for shared parenting was denied but the court did order one overnight each weekend.
- [77] In *Beyat v. Mazinani*, 2022 BCSC 1236, the application was with respect to a three-year-old child. The court ordered increasing parenting time with the last stage being daytime access during the week in week one and then a full weekend in week two. The alleged family violence during the marriage was serious, as it included the father slamming the mother's head into paved ground and doing damage to a residence. The child was exposed to the applicant's yelling but was not exposed to the physical violence. Despite this physical violence, the court found it was not prepared to find that the applicant posed a risk to his daughter.
- [78] In *Beyat*, when the child was 17 months old, the court had already ordered daytime parenting time for the father and he was seeking increased parenting time, which the mother refused. At the time of the application, the daytime parenting time was twice each week for four hour periods.
- [79] The parenting time that was proposed by the father was a gradual increase, initially for one month, Saturdays overnight until Sunday. After that month, Friday overnights to Sunday, and then after another two months, alternate weekends from Fridays at 5:00 p.m. to Mondays at 5:00 p.m. The mother was adamant that there be no change, except perhaps an additional four hours on certain holidays.
- [80] In *Beyat*, as she was required to do, Justice Forth considered the best-interest factors and stated the following:
- [32] The child is three years old. She currently spends eight hours a week with her father broken into two four-hour sessions. I find that there is no evidence of either party neglecting the child's health and emotional well-being.
- [81] Justice Forth, at para. 38, then refers to the Supreme Court of Canada decision of *Young v. Young*, [1993] 4 S.C.R. 3, wherein the Court stated, "maximum contact with each parent is preferred so long as it is in the best interests of the child. Maximum contact gives the child the opportunity to know both parents and benefit from a relationship with each."
- [82] She goes on to say:
- [37] The two most significant people in this child's life should be her parents.

- [39] Maximum contact between this child and her father requires that the father be given the opportunity to spend time with his daughter in-person on a regular basis.
- [41] I accept the claimant's evidence that she has a very close bond with her daughter. However, this child should be given the opportunity to develop a close bond with both of her parents.
- [83] With respect to the history of the care of the child, Justice Forth found that since the separation, the claimant has been the most involved parent in caring for the child. She accepted that she has been the primary caregiver of the child since birth. Yet she goes on to say:
- [45] I accept that it is now appropriate to begin the change to a shared-parenting regime. I see no reason why the father should be precluded from starting to care for his daughter on overnight visits.
- [84] Justice Forth then considered the allegations of family violence. She considered the factors enumerated in both the Divorce Act and the FLA. She noted that she does not have the benefit of hearing viva voce testimony from the parties. She stated that if the alleged family violence in this case did occur, it is serious as it includes the father slamming the mother's head into the pavement.
- [85] In referring to the allegations of family violence, she stated it appears to be fairly sporadic and does not seem to be a pattern of controlling behaviour directed at a family member. It does appear to her that the child was exposed to some of the respondent's alleged yelling but not the alleged physical violence. She stated that there is no evidence before me the child has suffered physical, psychological, or emotional harm as a result of the alleged violence.
- [86] Finally, she stated:
- [54] On balance, I find that A.M. is safe with the respondent and that he is capable of addressing and meeting all of her needs. I am not prepared to find on the evidence before me that the father poses any risk to his daughter.
- [87] In the result, after reviewing those factors, Justice Forth immediately initiated overnight visits. Then after 14 overnights, she had it increased to three overnights on alternate weekends.
- [88] I have also reviewed the authorities cited by the respondent. Much of them involve allegations of family violence or mental health issues. In *J.S. v. S.S.*, 2018 BCSC 355, following a lengthy trial with serious allegations, including allegations of sexual touching of a ten-year-old by the father, the judge described that case as a high-conflict case. I do not find that case of much assistance in this application.

- [89] Both the *S.M. v. R.M.*, 2015 BCSC 1344, and the *Morgadinho v. Morgadinho*, 2014 BCSC 192 cases were applications for protection orders that were made against a background of family violence wherein the court found that the applicant and children were at-risk family members. No such application is before me and I find these cases of little assistance.
- [90] *Hokhold v. Gerbrandt*, 2014 BCSC 1875, was a relocation case wherein the father's financial control and threatening behaviour was a factor in allowing the mother's relocation to Saskatchewan. I do not find that case of any assistance.
- [91] In *C.D.A. v. P.R.B.*, 2020 BCSC 1337, an interim order was made granting primary residence of a young child to the father on the basis that the mother suffered from anxiety, depression, suicidal ideation and an eating disorder that had been longstanding and not properly treated. The mother applied for a review and sought primary residence or equal parenting time. The father countered with an application seeking supervised parenting time.
- [92] In that case, the mother had sought counselling. Although Justice N. Smith concluded that she continues to experience chronic depression, he found her condition cannot be grounds for restricting her parenting time and that there was nothing in her clinical records that suggested she posed a risk to a three-year-old child. Smith J. ordered daytime parenting time as there had to be first a restoration of the relationship and the child had shown some anxiety in going with his mother. However, he ordered that after a month, the mother would then have two overnight visits each week.
- [93] After reviewing all of these authorities, I find the *Beyat* and the *C.D.A.* cases the most instructive. In both of those cases, although there were serious allegations of family violence and mental-health issues, the court granted overnight parenting time. I do not find it is in the best interests of these children to maintain a parenting arrangement wherein the claimant's parenting time is sporadic and largely unscheduled. In order for the children to have a strong relationship with the claimant, the parenting time must be regularly scheduled and consistent. Ultimately, the children are entitled to a stable and loving relationship with both parents.
- [94] I will now refer to the recordings that were made by the respondent. In Exhibit R, the claimant took offence when she believed the respondent was accusing her of stealing her money. Over the course of that nine-minute clip, one could describe the discussion as largely civil but then the claimant did get upset when the respondent stated to her that she must "protect the children" and was accusing the claimant of not being around for H. I do not find that particular incident meets the threshold of family violence. Nor do I find the screaming was as alleged in the respondent's affidavit. I will say it appeared to me that both parents found it appropriate to argue in the presence of H.

- [95] In Exhibit S, at times both parties were prepared to raise their voices and argue in H.'s presence. The only discernible difference I could find is the claimant likes to pepper her argument with profanities. Again, I did not find as alleged by the respondent in her affidavit, that the claimant was screaming.
- [96] In Exhibit Q, it is clear the claimant was losing her patience with H., and I am concerned about that. I do not know if he was being difficult when she was trying to change his clothes but that can happen with young children. The claimant said so herself in the clip that she was about to snap. Of course, even if I order just daytime parenting time for the claimant, these incidents can happen and it is not restricted to something that could happen just during overnights.
- [97] I am concerned about the claimant's potential of losing patience with the children, particularly given their young ages as they are quite vulnerable. Perhaps what I heard was an isolated incident but my concern is that if the claimant has the children for lengthy periods of time without the assistance of the respondent to care for them, does that pose a risk to the children? Nonetheless, I still believe it is in the best interests of the children for them to have regular and consistent time with the claimant.
- [98] While I am prepared to immediately increase the claimant's parenting time, even on a gradual basis, I am not prepared to order equal parenting time. This is a similar approach that was taken by Justice Forth.
- [99] I have taken into consideration that the respondent may no longer be breastfeeding B. and she will likely be returning to her employment in November 2023.
- [100] I will first make an order that the application by the claimant for equal parenting time is dismissed.
- [101] I will order that the primary residence of the children shall be with the respondent. I make that order as I find that the status quo is with the children being in the primary care of the respondent and that should continue until further order of the court. However, as I indicated earlier, I do not find it is in the interests of the children to continue the status quo as it relates to the claimant's parenting time.
- [102] Therefore, I order that the claimant's parenting time will be as follows as it will start for short periods of time in this manner. On September 2 and 4, 2023, she will have parenting time with both children from 10:00 a.m. to 5:00 p.m.; then again, with both children on September 5 from 3:30 p.m. to 7:30 p.m.; then again, with both children on September 9 from 8:00 a.m. to 7:30 p.m.; and then, commencing September 11, each Monday and Tuesday from 3:30 p.m. to 7:30 p.m., again with both children.
- [103] Then commencing on September 16, with B. from 8:00 a.m. to 7:30 p.m.; and with H. for an overnight from Saturday at 8:00 a.m. to Sunday at 7:30 p.m., and then each alternate week thereafter in the same manner. Then commencing September 23, for that weekend with both children from 8:00 a.m. to 7:30 p.m.; and that will continue each alternate week

thereafter in the same manner. I believe this will provide a consistent and regular pattern of parenting time for the claimant that ensures she has the children at least three occasions each week, and she will have an overnight with H. on alternate weekends.

[104] At this stage, I am not prepared to order overnights with B. The overnights should start with H. only but once the claimant has demonstrated an ability to look after him for overnights, then the issue of overnights with B. can be considered.

[105] If a trial had been scheduled within a reasonable period of time from now, I would simply leave this as an order pending trial but as there is no trial date, I further order that the parenting arrangements can be reviewed without the necessity of demonstrating a change of circumstances any time after November 30, 2023, at which time B. will be one year old.

[106] I am not being asked to make any orders with respect guardianship or parenting responsibilities, so I will make no orders. There is no formal application before me for a s. 211 report, so I will make no order and I am not prepared to make that order on the Court's own motion.

(SUBMISSIONS ON COSTS)

[107] THE COURT: I do not find that either party was particularly successful in their positions that were taken at the hearing. This is a matter where I am going to leave it to the trial judge to ultimately determine how costs will be paid. I will leave costs of the applications in the cause.

"Master Krentz"

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