

CANADA / JUDGMENT

A.N.H. v. L.D.G.

2021 BCSC 2185

COURT

Supreme Court of British Columbia

DECIDED

28 October 2021

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2021 BCSC 2185 A.N.H. v. L.D.G.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.N.H. v. L.D.G.,

2021 BCSC 2185

Date: 20211028

Docket: E45924

Registry: Vernon

Between:

A.N.H.

Claimant

And

L.D.G.

Respondent

Corrected Judgment: The text of the judgment was corrected at pages 28 and 48 on November 23, 2021

Before: The Honourable Mr. Justice Betton

Oral Reasons for Judgment

The Claimant appearing on his own behalf:

A.N.H.

The Respondent appearing on her own behalf:

L.D.G.

Place and Date of Trial/Hearing:

Vernon, B.C.

October 28, 2021

Place and Date of Judgment:

Vernon, B.C.

October 28, 2021

- [1] THE COURT: On March 9, 2021, I heard from the parties on four applications for leave filed by the claimant, [A.N.H.], in these matters.
- [2] On April 22, 2021, the parties were before me on other issues. Initially I had indicated that I would be providing the result and possibly reasons regarding these leave applications later that day or the next. As things emerged there was some dialogue that prompted me to indicate what my decision was, but the provision of my reasons and a full explanation for that decision has been on reserve since that time. I advised the parties that I was refusing leave on each of the leave applications.
- [3] Leave is required for [A.N.H.] to proceed with applications as a result of previous orders of this Court. As I have described in previous decisions, it has been necessary to establish specific procedural guidelines for the filing of the leave applications to try to control the volume of materials filed and allow for a clear understanding of just what he is seeking leave to pursue. In part, those guidelines require that [A.N.H.] attach to his leave applications a proposed form of notice of application setting out the nature of the orders he would seek if leave were granted.
- [4] As I indicated, there are four leave applications. For reference I will refer to the dates of filing and corresponding document numbers from the BC Supreme Court electronic filing system, sometimes referred to as "CEIS".
- [5] While perhaps unusual, it is appropriate in these circumstances to attach to these reasons as an appendix a redacted copy of each of the leave applications and the attached proposed notice of application. Here I will refer to them only in a summary way.
- [6] Document 1047 from the court document system is a leave application seeking to pursue a notice of application where the orders sought are presented as two options. They include a removal of the children from the respondent's care in Swift Current, Saskatchewan, and placing them in the claimant's care. The second option proposed as a potential order also involves removal of the children from the respondent's care, but also would order that a psychologist be retained by the claimant "to provide a professional opinion on the respondent's family violence and conduct towards the children and whether they should be removed."

- [7] Court document 1049 seeks to authorize an application for an order that a 10-week viva voce trial for permanent relocation of the children be scheduled seeking the relocation of the children from the respondent's care.
- [8] Document 1050 seeks leave to pursue an application for the children to be permanently relocated to the claimant's primary care in Armstrong, as well as a number of other orders including police enforcement; that the Court bring its own contempt application ex mero motu for the court "to uphold the authority of the court and its process".
- [9] Finally, there is court document 1052 where the proposed notice of application seeks an order for the "immediate arrest" of the respondent for contravention of various terms of various orders. It also would seek a police assist clause. Also included in the orders sought, that the claimant "shall have the sole authority to pursue whatever remedy he believes is necessary to enable for the children a transition of least conflict in the actual transfer of physical custody"; that the claimant have possession and sole control of the children's passports and birth certificates; that he be permitted to travel with the children without restriction or the respondent's consent; and that he be entitled to confiscate and prevent the children's use of cellphones, pagers, BlackBerries, computers, even if such equipment is provided by the respondent.
- [10] I will add the observation that document 1047 is a "with notice" version of a similar application that [A.N.H.] sought to make on a "without notice" basis, which I heard on February 3, 2021, and refused to hear on an ex parte basis.
- [11] It is impossible to fully appreciate the context of these applications without some knowledge of the history of these proceedings. I cannot speak for the Court generally, but in my experience and to my knowledge, the level of activity in the courts connected with this family law case by these parties is unprecedented. It has been the subject of comment by me frequently in the context of the many applications that I have heard since being assigned by the Chief Judge of this Court to this matter. I have also referenced it in several decisions. It has also been commented on by other judges in this Court and in the Court of Appeal. I pause before inserting extensive quotes but again they provide context that must be fully understood and I will not presume the reader of these reasons is aware of the background.
- [12] In 2017 BCSC 1249, Abrioux J., as he then was, provided this summary at paras. 11-17:
- [11] The CA-VLA Reasons [2017BCCA 216] succinctly summarize part of the essentials of this long standing family law proceeding:
- [5] [A.N.H.] and [L.D.G.] have been parties to "high conflict" family litigation since 2009. They lived in a common-law relationship between 2005 and early 2010 and have two children, ages six and nine. After a trial in the summer of 2012, Mr. Justice Cole in the Supreme Court dealt with most issues of support and custody of the children and in particular, granted sole custody of the children to [L.D.G.], joint guardianship to both parents, and dismissed [L.D.G.'s] application to relocate with the children to Swift Current, Saskatchewan. Cole J.

attributed an annual income of \$610,000 per year to [A.N.H.], who is a dentist, and on this basis, ordered child support of \$7,900 per month and spousal support of \$9,000 per month.

- [6] Two years later, [L.D.G.] was permitted to relocate, again by order of Cole J. The Court was satisfied that the move would enhance the children's quality of life and increase [L.D.G.'s] emotional well-being and financial opportunities: see 2014 BCSC 1875 at para. 138. The Court's order provided that the primary residence of the children would be with their mother, that she would be entitled to make all significant decisions relating to them, and that a child psychologist was to be engaged for the children until further order. Cole J. seized himself of any further applications.
- [7] [A.N.H.] has failed to pay the support ordered by Cole J. and vehemently denies that the income attributed to him is realistic. He says he is not capable of working the four days per week assumed by Cole J. - as opposed to the ten to 11 hours three days per week he was found to be working. By order dated May 15, 2014, Cole J. found [A.N.H.] to be in contempt for his failure to pay support: see 2014 BCSC 1784 at para. 17.
- [8] [A.N.H.] made a few support payments up to August 2014. FMEP became involved and was able to seize some of [A.N.H.'s] funds over 2013 and 2014. Cole J. ordered that he pay \$25,000 per month commencing December 2014 until a trial was scheduled to vary the earlier support order: see 2014 BCSC 1875 at paras. 21-3.
- [9] [A.N.H.'s] next step was to appeal the contempt order made in 2014. He was successful in having it set aside: see 2016 BCCA 6. Madam Justice Saunders, speaking for the Court, however, told [A.N.H.] that he "must comply with the order as varied from time to time, or he will face sanction from the court." (At para. 36.) Ms. Aucoin deposes that as of April 3, 2017, over \$448,000 was owing for child and spousal support, together with various costs orders that [A.N.H.] had failed to pay.
- [10] In June 2015, [A.N.H.] brought on an appeal of the order dealing with the primary residence of the children. This court declined to hear that appeal in the absence of any "convincing explanation" as to why he remained in arrears with respect to support: see 2015 BCCA 268. We noted that in his argument, [A.N.H.] had "said little or nothing about the interests of his children in arguing that the appeal should proceed." [A.N.H.] then filed voluminous materials containing new evidence and lengthy arguments that were, we commented, "largely irrelevant to the question of whether the appeal should be reopened." We also observed:

On March 21, 2016, the Registrar wrote to [A.N.H.] and Mr. Kahn directing that any further submissions should be of a summary nature and that although they were permitted to refer to evidence, evidence and affidavits should not be filed unless the Court agreed to reopen the appeal. Undeterred, [A.N.H.] then filed 58 additional pages of submissions including further evidence and arguments. Mr. Kahn again objected, observing that the submissions represented [A.N.H.'s] view of the evidence and had nothing to do with the underlying reasons for judgment of this court dated June 11, 2015 dismissing the mobility appeal. He added that without incurring

substantial legal fees, he was unable to rebut the new submissions of [A.N.H.].

We view this situation as very unfortunate. From the material, it appears that [A.N.H.] is still in arrears (as to a very substantial amount) with respect to spousal support and the payment of certain expenses; yet, having discontinued his appeal of the support order, has not sought any variation of that order in the Supreme Court. This fact (which [A.N.H.] has not attempted to explain), together with his continued 'stonewalling' of the Court by filing obviously irrelevant material and flouting of the Registrar's directions, lead us to the conclusion that we should not exercise our discretion in favour of reopening the appeal. [At paras. 4-5.]

The application was dismissed: 2016 BCCA 159.

- [11] As noted at para. 3 of our reasons, [A.N.H.] had abandoned an appeal from the support orders. Presumably, this made it more important than ever for him to pursue a variation of the support order in Supreme Court - yet this has not happened. Instead, he has turned his attention to various other alleged wrongs on the part of [L.D.G.], including defamation and an alleged conspiracy with the Canada Revenue Agency. He also commenced two civil actions against her and her mother in which he purported to be acting as the litigation guardian of both of his children. In these actions, he claimed the defendants had acted in breach of trust in connection with certain gold coins held for the children. These actions became the focus of multiple applications, adjournments, filings and hearings. At one point (on August 15, 2016), [A.N.H.] conceded that the proceedings had been improperly commenced and that he had had no authority to bring them on his children's behalf.
- [12] The defendants in the gold coin actions sought to have them struck. In the course of a hearing, [A.N.H.] suggested that the Public Trustee might be willing to act as the children's litigation guardian - failing to disclose to the Court that the Public Trustee had already written to him declining to do so.
- [13] For reasons indexed as 2016 BCSC 1559, Abrioux J. struck the two actions and awarded special costs to [L.D.G.]. The judge urged [A.N.H.] to consider the claims "from his children's perspective" and to "recognize that it was in their best interests that their mother and grandmother not be sued by them without an independent assessment as to the merits of the claims." [A.N.H.'s] response was to seek the recusal of Mr. Justice Abrioux - a motion that has now been withdrawn.
- [14] [A.N.H.] applied in this court for leave to appeal the two orders of Abrioux J. made on August 8, 2016 in the two gold coin actions, and sought an order setting aside the Supreme Court's order declining to adjourn. He sought a new hearing and special costs. The following week, he also filed notices of appeal in respect of Abrioux J.'s orders made August 18 striking the civil actions, thus bringing to four the number of appeals filed in the gold coin actions.
- [15] Mr. Kahn scheduled his client's application under s. 29 of the Court of Appeal Act to be heard in November, but it was adjourned to December 12. On December 8, [A.N.H.] applied for an adjournment and filed seven binders of material, provided to Mr. Kahn on December 8 at

4:30 p.m. The application was set to be heard the next day but was not. At 9:06 a.m. on December 12, [L.D.G.] received an email from [A.N.H.] purporting to serve her with thousands more pages of materials. Meanwhile, in chambers, Mr. Kirkpatrick appeared by telephone as a friend of the Court and told me as chambers judge that [A.N.H.] had been hospitalized in Vernon and could not appear. I adjourned the vexatious litigant application. Mr. Kahn has since obtained records from the hospital that indicate that [A.N.H.] left the hospital at 11:10 that morning, "driving self" after having been discharged without any prescriptions or medications. The hearing was re-scheduled for May 1, 2017.

- [16] On that date, [A.N.H.] did not address directly his record of misconceived applications and appeals, repeated adjournments, and voluminous and irrelevant filings in both courts. On this occasion, he was preoccupied with his belief that Mr. Justice Cole has committed "fraud" in his dealings with [A.N.H.]. Mr. Justice Cole is said to have "blocked" several of his applications and "targeted" him, but more importantly, is said to have "fabricated" oral "declarations" made by [A.N.H.'s] previous lawyer and another so-called "phantom lawyer" in some manner that I must admit is not clear to me. [A.N.H.] says he has launched complaints about the conduct of Cole J. to the Canadian Judicial Council and to the R.C.M.P., and said he was sure Cole J. would be "indicted". [A.N.H.] seemed to suggest as well that [L.D.G.] had "participated" in the "fabrications".
- [17] As I told [A.N.H.], until any "fraud" is proven on the part of a judge of the Supreme Court, I assume that the judge is speaking honestly and is not a fraudster. I also advised [A.N.H.] that if an order were to be made under s. 29, and it later turned out that [A.N.H.'s] allegations against Cole J. were correct, it is very likely he would obtain the permission of this court to reopen or appeal any orders of the lower court that were affected by such "fraud".
- [18] In his reply submissions, Mr. Kahn on behalf of [L.D.G.] admitted that [L.D.G.] has not always been the model of patience and has sometimes reacted strongly to [A.N.H.'s] conduct. Mr. Kahn also noted that because Cole J. is a supernumerary judge, his seizing himself of the family litigation has created problems in terms of scheduling applications. Overall, however, Mr. Kahn emphasized the extreme demands put on his client in terms of responding and attending to the constant stream of (misconceived) applications, the legal fees associated therewith, and the stress of attacks on her status as the primary caregiver to her children, not to mention financial pressure due to [A.N.H.'s] continued failure to pay his support obligations. I accept that [L.D.G.'s] feeling of stress is certainly justified by [A.N.H.'s] conduct, and I expect that the children also feel strain as well.
- [12] To this summary I would add the various actions which [A.N.H.] has taken in this court including those to which I referred in the Gold Coins Reasons being 2016 BCSC 1559 and the Adjournment Reasons being 2017 BCSC 952.
- [13] I refer to [A.N.H.'s] allegations of fraud in this court in the Adjournment Reasons (2017 BCSC 952) at paragraphs 15 and 33.

- [14] At last count, [A.N.H.] has filed 98 affidavits in this court, some exceeding 2,500 pages (including exhibits).
- [15] He has also, on several occasions, filed requests to appear or reappear either before Justice Cole or myself. These pertain to such matters as documentary disclosure and reconsideration of prior decisions made. A request to reappear before Justice Cole submitted in July 2016, for example, sought 64 orders.
- [16] It is beyond the ambit of these reasons to outline any further the numerous applications, requests to appear, affidavits etc. that have been filed or sought by [A.N.H.]. They are all a matter of record.
- [17] Outside the ambit of the family law proceeding, [A.N.H.] has also commenced the Gold Coins proceedings and brought an action against [L.D.G.] for damages arising from alleged defamatory conduct. He has also sued counsel who acted for the province's Family Maintenance Enforcement Program in its attempts to enforce [A.N.H.'s] support obligations arising from the 2012 proceedings.
- [13] For perspective and in reference to para. 14 in the above quote, the affidavits filed by [A.N.H.] personally now, I believe, number 203.
- [14] Later in 2018 BCSC 2184, Abrioux J. stated:
- [27] First of all, the court has a duty to protect L.D.G. and the children, to the extent possible, from further oppressive and egregious conduct from A.N.H.
- [28] I make this observation within the context of the recently completed Variation hearing. I have no doubt that the next "Western Front" in A.N.H.'s "scorched earth war" against L.D.G., and by extension the children, will focus on parenting issues, in particular, the relocation of the children from Saskatchewan to Vernon, British Columbia.
- [29] I have also taken into account that, in so far as my involvement in this proceeding is concerned, A.N.H. has raised issues regarding the children when he considers it to his tactical advantage to do so.
- [31] This conduct is entirely consistent with what has occurred in the past, as demonstrated by Justice Newbury's comment in [H] BCCA, which I emphasised at para. 21 above.
- [32] Since the completion of the Variation hearing in early October 2018, A.N.H. has made numerous filings which appear to be using alleged concerns relating to the children and the need for a further report from Mr. Stewart to provide a basis for the re-hearing of the Variation hearing.
- [33] In that regard, I note that Exhibit C to A.N.H.'s Affidavit #134, sworn November 26, 2018, is a 15-page document described as "Table showing no material change in the Respondent's statements, concerns, feelings, opinions and assumptions about the Claimant. From 2010 to 2018".

- [34] The table is, in my view, quite the document. It essentially places under the microscope all of the alleged lies, inconsistencies and allegations against L.D.G. for an 8-year period, including references to the Stewart report. It must have taken much of A.N.H.'s waking hours to compile this exhibit between when he received the Stewart report on November 23, 2018 and the swearing of the affidavit on November 26, 2018.
- [35] If there was any doubt that A.N.H.'s purpose in proceeding with a relocation application is to re-litigate any and all issues surrounding the children from 2010 to 2018, it is laid to rest by this exhibit.
- [41] Accordingly, it is my view that it is for A.N.H. to provide a "compelling explanation" as to why he should be permitted to continue with the litigation against L.D.G. in the face of the non-payment of the Outstanding Costs. In the circumstances of this proceeding, this should only be if the best interests of the children require that he be permitted to do so.
- [42] Central to A.N.H.'s submission is that the Stewart report has fundamentally altered the landscape, with the children essentially being in danger and/or alienated if they continue to be exposed and influenced by what A.N.H. described in his oral argument on November 28, 2018 as L.D.G.'s "heinous" conduct.
- [43] I do not accept this submission. When the Stewart report is considered in its entirety and proper context, the following conclusions can be drawn:
- (a) as noted at p. 4, Mr. Stewart, notwithstanding reservations regarding the information available to him, had enough relevant information "to formulate an adequate understanding of the issues that W. and E. are facing and in order for this psychologist to make appropriate observations regarding the ongoing parenting and upbringing of W. and E".
 - (b) there is nothing indicating Mr. Stewart's need to prepare a "supplementary report" as requested by A.N.H. in his November 28, 2018 notice of application. In fact, Mr. Stewart's concluding remarks are to the effect that he hopes that his report "can assist the trier of fact [to] reach a conclusion regarding the primary parental contributions for the causes and maintenance of the chronic and anger. Only then can W. and E. be parented in a manner that is truly in their best interests";
 - (c) "both parents have a need to 'win at all costs', which has caused both of them to lose sight of their priorities as parents to the point where one or both of them are unable to meet the needs of their children";
 - (d) while acknowledging some issues the children may have which, in my view, is not surprising due to the history of this matter, including what L.D.G. describes as a "hatred" between the parties, Mr. Stewart indicates they are succeeding at school and sports, are well adjusted and have, for the most part, a healthy relationship with both parents; and

- (e) there is nothing in the Stewart report demonstrating that the children have a desire to leave their mother's primary care and return to British Columbia to be with their father. To the contrary, W. acknowledges that his father has discussed certain benefits in coming to British Columbia, in particular educational opportunities, "but [he is] also just trying to figure out if it will be better for [him] if [he] live[s] in B.C. or Saskatchewan", an entirely appropriate reaction from a child who will turn 11 years old in January 2019.
- [44] The main conclusion I draw from the Stewart report is that all things considered, the children are remarkably well adjusted and content living in Saskatchewan with their mother.
- [15] Most recently in the Court of Appeal DeWitt Van-Oosten, J.A. has provided a summary of more recent activity at 2021 BCCA 325 pars 24-39.
- [16] Since my assignment to this matter, the claimant's efforts through various applications and means has been punctuated by three specific focuses:
- a) a vehement disagreement with the orders of Justice Cole in 2012 and 2014 that granted, initially primary residence of the children to the respondent, and then laterally, approval for her to relocate with the children to Saskatchewan;
 - b) efforts to demonstrate that the respondent has and continues to alienate the children from him, highlighted by allegations of discussions of the litigation; and
 - c) efforts to reduce his financial obligations established in various orders.
- [17] In addition to defending the claimant's efforts to alter the status quo for the children, the respondent has persistently and actively pursued increasing the claimant's support obligations.
- [18] Each party in the process has made many accusations of contempt by the other and either threatened to and/or actually made contempt applications.
- [19] Through this process there has been media attention, including information posted on the internet. There have been corollary claims filed by [A.N.H.] and police engagement.
- [20] The claimant in the process has been declared a vexatious litigant in both this Court and the Court of Appeal.
- [21] New applications are a frequent occurrence, and it is exceedingly difficult to manage the demands for court resources. As can be seen from these applications, there is frequently overlapping claims and elements of redundancy in the various applications made.

- [22] Hearings have been set and frequently occur (although I believe the parties would argue more time is required), and time estimates, even with my efforts to manage the time requirements, are frequently exceeded. This results in continuations. At the continuations adjournment applications often arise and/or new materials are presented. With the seemingly inevitable new applications, case management is very difficult.
- [23] Over the years of this litigation there have been multiple reports and/or assessments of the children and the parties. By my count they number six.
- [24] The most recent of those reports was a Views of the Children report dated September 4, 2020. I ordered that report and made every effort to manage the parties' conduct and communications with the report writer to try to ensure its validity and utility. Despite that, its preparation has spawned contempt applications by the respondent with responses from the claimant threatening or indicating the potential for his own contempt applications.
- [25] I reference this history as context. My decision is made in the context of that history, but it is based on the merit of the proposed applications and my conclusions regarding the best interests of the children.
- [26] As noted, the claimant's complaints regarding the respondent's communications with the children is not new. Directly relevant to these applications is the fact that the claimant, [A.N.H.], applied for and was granted leave by me to pursue an application for a finding of contempt by the respondent for her alleged communications with the children about the litigation. That leave was granted in early February of 2020 and it was leave to pursue an application that the respondent is in contempt for breaching a 2014 order that the parties not discuss the litigation with the children at any time, nor will they inquire of the children where they want to live or what access they would like to their parent. And further, with respect to the term, neither parent will speak unkindly of the other parent or their family or allow anyone else to do so in the presence of the children.
- [27] Despite having been granted leave, that application has never been pursued by the claimant.
- [28] I note as well that there is in place an order made by Mr. Justice Abrioux, as he then was, at a point in time when he had been assigned management of these matters. It was made in the reasons referenced above indexed at 2018 BCSC 2184. It ultimately is the decision finding [A.N.H.] to be a vexatious litigant and constraining his access to the courts.
- [29] He said this in paras. 55 to 57 of that decision:
- [55] What follows is not the court preventing a vexatious litigant from accessing justice, but rather limiting that access in accordance with his conduct, including breach of prior orders, while considering the interests of others who are or who may be affected by that conduct. This is done within the context of the court's attempts to "protect the administration of justice by avoiding circumstances where the Court could be held in disrepute by assisting a party who has exhibited disdain for the judicial process": Larkin, para. 31

- [56] It also bears repeating that the negative effect of A.N.H.'s conduct on the children's best interests has been the subject of comments of this Court and the Court of Appeal: see the Variation Reasons and in particular Appendix A.
- [57] In attempting to find the appropriate balance in this case, there is, on the one hand, the need to protect L.D.G. and the children from the next stage of the litigation war, which A.N.H. is clearly focussed on advancing. On the other hand, there is the need to provide A.N.H. with an avenue, notwithstanding the failure to pay the Outstanding Costs and support obligations, for bona fide applications which raise legitimate issues regarding the children's best interests, as opposed to those being advanced for tactical or oppressive purposes. A.N.H.'s recent attempts to use the Stewart report to re-open the Variation hearing, which dealt only with support and financial issues, is yet another example of that conduct.
- [30] Justice Abrioux went on to make a number of orders in para. 58, of which I will refer to only to para. 58(b):
- [58] (b) A.N.H. is permitted to seek leave to bring or continue an application(s) relating to parenting issues and which raise the children's best interests, including relocation, if that application is supported by an affidavit and/or current report(s) at the time leave is sought, from independent third parties including, but not restricted to, physicians, psychologists or other mental health professionals or teachers.
- [31] No such report or affidavit was presented in support of these leave applications.
- [32] When I gave my decision or the results in April, I expressed that the applications were, in my view at least, in part a collateral attack on the order of Mr. Justice Cole reported at 2014 BCSC 1875, which allowed the respondent to relocate with the children to Saskatchewan.
- [33] It is relevant and helpful in my view to reference the opening paragraphs of that decision, specifically paras. 1 to 3. There Justice Cole says:
- [1] This is a summary trial. The respondent, mother of E, born , and W, born , applies to vary the order of September 6, 2012 (the "First Trial"). This order granted the respondent sole custody of the infant children and granted the respondent and the children's father, the claimant, joint guardianship. This order also dismissed the respondent's application to move the children to Swift Current, Saskatchewan where she was born and raised and where her parents own and operate a large farm and a gravel business. The respondent applies again to move the children to Swift Current, Saskatchewan. The claimant opposes the move and asks for an order that the children live primarily with him or in the alternative that the parenting time be on a 50/50 basis.

- [2] Dr. Waterman prepared a Section 15 Report for the First Trial and I agreed with him that the respondent and claimant had created a dysfunctional environment for these children, mainly because both the respondent and claimant had a need to be in control. The claimant's centre of control was his money, and the respondent's centre of control was the children.
- [3] The claimant opposes the move to Saskatchewan and says that there has been no change in circumstances since the First Trial. I disagree, and I am satisfied that there has been a material change. The order that I put in place was to attempt to find a way to have decisions made without the necessity of constantly applying to the Court. The parties agreed to retain Craig Neville, a family lawyer, as a parenting coordinator ("PC"). In addition, I ordered that We Care would be retained to exchange the children at the residence of the respondent and that the claimant would remain in his car during the exchanges. Finally, I provided that the order would be reviewed in one year's time.
- [34] And he goes on in the reasons that follow to make the decision that the children could relocate to Saskatchewan. They have been resident there with the respondent since then.
- [35] The underlying object of these applications, it would appear, is to obtain an order that the children be returned to the care of the claimant in Armstrong, British Columbia. It is based on allegations that the respondent engages the children in litigation. I say that by way of a summary. A review of the applications which I have indicated would be appended provide greater detail.
- [36] I have stated many times to the parties that their collective actions must certainly be having some adverse effects on the children. There have been many suggestions and recommendations on ways that the parties could move forward to improve those circumstances.
- [37] [A.N.H.] openly acknowledges, indeed enters into evidence, recordings he has made of the children for litigation purposes. The respondent rationalizes communications with the children on the basis of their age and their entitlement to know. Neither has to my recollection ever acknowledged that they could or should modify their own behaviours.
- [38] It is patently obvious that this litigation whether in this Court or what has spawned from it in the Court of Appeal consumes a major portion of these parties' lives. They each reference the demands that the litigation has had on them frequently.
- [39] I will make some brief reference to aspects of the reports that have been generated in respect of the children. These are my summaries or interpretations, not quotes from the reports.

- [40] In 2012, Dr. Waterman expressed concern about the amount of litigation material that was produced as it is indicative of a high degree of conflict between the parents which risks impacting the children. He noted that most of the material he had was produced by [A.N.H.] and that in his 20 years of conducting assessments, he had never been asked to review that volume of material.
- [41] In his recommendations he noted the degree of acrimony between the parties made co-parenting impossible, and observed that [L.D.G.] had done a lightly better job of putting the kids' needs ahead of her own.
- [42] Mr. Francis Stewart, who prepared therapy progress reports in 2016, 2017 and in 2018 made observations that strong and long-term hostilities between the parents is a major source of stress for the children. He observed that the parents need to put aside their personal differences and focus on the needs of their children. In 2018, he noted that the parents are involved in intense and chronic conflict, which will likely have long-term adverse consequences on the children. These reports are also referenced in the decision of Abrioux J. quoted in para. 4 above.
- [43] In a Views of the Children report to which I referred from September of 2020, W, the eldest child, is quoted or his comments summarized in part as follows:
- W noted he wanted people to know he wanted it to stop. When asked what he meant by "it," W noted he wanted the court battling between his parents to stop. He wanted them to have separate talks. When asked who he meant by "them," W noted he wanted himself and his sister to have separate conversations with both his parents. He wanted his parents to listen to what he and E want, including no battling in court and for his parents to just talk about things when they disagree. W stated he felt like an object when his parents disagree. He expressed a desire for greater notice when parenting time was to occur.
- [44] In his application materials, [A.N.H.] found in this Views of the Children report support for his assertion that the respondent discusses the litigation. While I understand the genesis of that, there is no apparent acknowledgement by either party of the underlying pleas by [W] to end the fighting in court. I will note that almost immediately after the Views of the Children report was obtained in September 2020 there were new applications filed.
- [45] There is much that might be done to improve the circumstances between these parents for the benefit of the children, now age 13 and 11, as I calculate it. An application for relocating the children at this stage is not in my view one of them. There are applications that could perhaps be made or that could perhaps have previously been made that, if the parties were less entrenched in litigation and acrimony, might serve to assist all parties involved and especially and including the children. I have tried on numerous occasions to impress upon each of these parties that there are much better ways to ensure that their children thrive and to enhance their respective relationships with the children.

- [46] As to the specific applications for leave, as I indicated, I am denying leave on each of them. Document 1049 which seeks to have a 10-week trial for the relocation is not something I would be prepared to order in any event. There has been a trial and a final determination. Procedurally there would need to be an application and the presider would determine and provide directions as to the procedure for introducing evidence, or perhaps placing the matter on the trial list. In any event, I have made my observations regarding the merit of an application for relocation and leave is refused.
- [47] With respect to what is court document 1047, it again essentially seeks the same practical result, that is, a relocation of the children, with or without a psychologist's intervention. It is of note that the proposed psychological intervention would be by a psychologist retained by the claimant to obtain a professional opinion on the "respondent's family violence" and conduct towards the children. A very narrow and focused proposed evaluation that presumes key facts and would be designed to achieve a specific end. This is not something in either alternative forms of relief that justify leave in my view.
- [48] With respect to document 1050, it is the application for permanent relocation. I have already made my comments in that regard. Leave is refused.
- [49] Finally, his document 1052 which seeks an arrest of [L.D.G.]. This proposition is untenable in all of the circumstances and also a matter on which I would not grant leave.
- [50] Those are my reasons on those matters.
- [51] Now, we are in the circumstances at the end of the court day, or very near it. Obviously we are not going to conclude the matter. Madam clerk, just so we are clear, we are going back to the hearing matter that began earlier today. We are not going to conclude that. It needs to be set for continuation. At this stage, subject to comments from the parties as to how much time would be required, my inclination is to direct the parties to find one day for that continuation. Any comment on that time estimate for continuation?
- [52] A.N.H.: Two things, My Lord. Those leave applications haven't proceeded because we haven't got an entered order. You said an order has to be entered for February 6th, 7th before they can be heard.
- [53] THE COURT: I expressed to the parties on April 22nd that I would not be granting leave.
- [54] A.N.H.: No, no, I'm not talking about that. We're talking 2020. You're expressing in your judgment, you're saying that you allowed a contempt of court application to proceed, but I haven't brought it on. There's two things that are holding it up. Number one, February 6th and 7th, 2020 order has to be entered before the contempt of court hearings can be heard. That's your direction. That's number one. And the second observation is I've been asking -- I asked you to be able to consolidate all those contempt of court applications into one hearing to expeditiously use the time, and you haven't responded, though you've said, I'm leaning that way.

[55] THE COURT: Well, there has been a great deal of dialogue on that, and I am not going to try to recap all of what took place. The fact of the matter is it has not been set. That history is not something that I can say that I specifically recall all of the details on to engage in that dialogue, nor am I going to endeavour to do so. My reasons are my reasons. They are what they are, and I have expressed that is the end of that matter.

[DISCUSSION RE CONTINUATION]

[56] THE COURT: Madam clerk, just so you have it, the application which began earlier today, and your predecessor I think made some fairly careful notes on which matters those were, but that is now adjourned generally to fix a two-day continuation.

[57] The reserve judgment on the matters that I have identified by court document, which hopefully is of assistance to the registry, is now concluded, and we are concluded for the day. Thank you.

"Betton J."

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