

CANADA / JUDGMENT

## B.M.W. v. D.D.W.

2025 BCSC 323

### COURT

Supreme Court of British Columbia

### DECIDED

27 February 2025

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2025 BCSC 323 B.M.W. v. D.D.W.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

B.M.W. v. D.D.W.,

2025 BCSC 323

Date: 20250227

Docket: 210353

Registry: Vancouver

Between:

B.M.W. also known as B.M.R.

Claimant

And:

D.D.W.

Respondent

Corrected Judgment: The text of the judgment was corrected

at paragraph 88 on March 14, 2025

Before: The Honourable Justice LeBlanc

Reasons for Judgment

Counsel for Claimant:

N. Bernardi

The Respondent, appearing in person:

D.D.W.

Place and Dates of Hearing:

Vancouver, B.C.

February 7, 10 - 11, 2025

Place and Date of Judgment:

Vancouver, B.C.

February 27, 2025

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## INTRODUCTION

- [1] The claimant (the "Mother") and the respondent (the "Father") were married in May 2007, separated in January 2021, and divorced on May 9, 2024.
- [2] The Mother and Father have five children together: N.W. (daughter) born in 2008; B.W. (daughter) born in 2010; J.W. (daughter) born in 2013; L.W. (daughter) born in 2015; and D.W. (son) born in 2017 (the "Children").
- [3] The Father is a lawyer by profession. The Mother homeschools the three youngest children three days a week and runs a blog about parenting, travel and entertainment from her home.
- [4] The Mother brings this application to vary the terms of the Final Order (as defined below) and seeks to change the allocation of parenting responsibilities and parenting schedule concerning soon to be 17-year-old, N.W. The Mother also seeks payment from the Father of s. 7 expenses that she says are due and owing pursuant to the Final Order.
- [5] The Father seeks to maintain the existing parenting responsibilities and denies responsibility for the s. 7 expenses.

## PROCEDURAL HISTORY

- [6] A notice of family claim was filed on February 16, 2021 (the "Family Law Claim"). I was provided with the amended notice of family claim filed on January 30, 2024, the amended response to family claim filed December 22, 2023 and an amended counterclaim filed December 22, 2023.
- [7] On April 8, 2024, Justice Wilson granted an order of divorce and by consent disposed of all matters in the Family Law Claim (the "Final Order"). The Final Order includes provisions relating to parental responsibilities, parenting time, education and health of the children, and appointment of a parenting coordinator. The Final Order is comprehensive, consisting of 48 paragraphs.
- [8] Between February 16, 2021 and the date of the Final Order, there were a number of interim orders respecting, among other things, parental responsibilities, parenting time and support obligations.
- [9] An evaluative views of the children report for N.W., B.W. and J.W. was prepared by Leanne Harder, RWS, MWS, M.Ad Ed. with a date of February 13, 2024 (the "s. 211 Report"). In preparing the s. 211 Report, Ms. Harder interviewed the Father, the Mother, N.W., B.W., and J.W. The s. 211 Report was made available to Justice Wilson in making the Final Order.
- [10] Craig Neville, K.C., was appointed the parenting coordinator pursuant to paragraph 30 of the Final Order:

30. BY CONSENT, the parties will jointly retain one of the following Parenting Coordinators for a period no less than one year who will be empowered to make decisions in the event of disagreement on matters related to the sharing of parenting such as special events (but not the parenting schedule), education, medical issues and activities:
- Craig Neville, KC;
  - Chantal Cattermole; or
  - Fiona Beveridge.

assuming that one of the PCs listed is able and willing to take the appointment. If not, another lawyer PC will be appointed.

- [11] On September 30, 2024 with the assistance of Mr. Neville, K.C., the Mother and the Father entered into an agreement ("Agreement #1"). Agreement #1 confirmed the provisions of the Final Order shall remain in full force and effect and the Mother and Father reached agreement on certain matters arising since the Final Order. The participation of a parenting coordinator was a common thread throughout Agreement #1.
- [12] Agreement #1 was filed with the court on December 14, 2024.
- [13] On December 31, 2024, Mr. Neville, K.C., retired and is no longer acting as the parenting coordinator. A substitute has not been put in place, leaving decision making, absent consent, at a stalemate.

## ISSUES

- [14] The following issues have been raised in this application:
- Is the application properly made pursuant to the Family Law Act, [SBC 2011] Chapter 25 (the "FLA");
  - Has there been a material change in needs or circumstances of N.W. justifying a change in the Final Order, and if there has been a material change, is it in the best interests of N.W. to grant the relief sought by the Mother; and
  - Are the amounts sought by the Mother proper s. 7 expenses contemplated by the Final Order.

## DO PROCEDURAL OBSTACLES EXIST?

- [15] The Mother seeks to vary the Final Order pursuant to the FLA. The Father argues that the proceeding is subject only to the Divorce Act, (RCS, 1985, c. 3 (2nd Suppl.)) (the "Divorce Act") and that the application cannot proceed. The Father directs me to the Final Order as supporting his position.
- [16] The amended notice of civil claim filed by the Mother seeks under Schedule 2, Part 4, an order respecting parenting responsibility pursuant to the Divorce Act and the FLA.

- [17] The amended counterclaim filed by the Father seeks under Schedule 1, Part 4, an order respecting parenting responsibility pursuant to the Divorce Act and the FLA.
- [18] The Final Order grants an order of divorce pursuant to the Divorce Act; however, the remaining orders, including those respecting parental responsibility are made by consent.
- [19] If only the Divorce Act applies, as argued by the Father, the considerations for the court on this application would be the same. The Court of Appeal in *Williamson v. Williamson*, 2016 BCCA 87, at paras. 29 - 31, found that the test under s. 47 of the FLA is the same as that under s. 17(5) of the Divorce Act.
- [20] If necessary, I would have permitted an amendment to the notice of application to allow the application to proceed under the Divorce Act. For the purposes of this application, I will consider both the FLA and the Divorce Act.
- [21] I find there are no procedural obstacles to hearing this application. For the reasons expressed below a timely decision is in the best interests of N. W.

#### RELIEF CONCERNING THE CHILD, N.W.

##### The Child, N.W. and Parenting Arrangements

- [22] N.W. is turning 17 at the end of February 2025.
- [23] N.W.'s parents agree that N.W. is bright, becoming more independent and has many extracurricular activities that she likes to participate in. The s. 211 Report confirms that it is in N.W.'s best interests that she remains involved in her extracurriculars.
- [24] With respect to the Father's parenting time with N.W., the Final Order as confirmed by Agreement #1 provides that she will have the option of spending Wednesday evenings with her Father and will otherwise be in the Father's care from Friday to Sunday on the Father's weekends with the possibility of staying until Monday at her option. The Father has three weekends per month.
- [25] Paragraph 11(c) of the Final Order provides that with the consent of the "on-duty" parent, the Children or any of them are entitled to attend birthday parties, sleepovers, courses, interviews or job shifts and they will not be unreasonably prevented from participating in these activities and paragraph 11(d) provides that neither party will arrange activities for the Children during the other party's scheduled parenting time without the other party's consent.
- [26] As discussed below, the Father points to paragraphs 11(c) and (d) as grounds for refusing consent to N.W. to participate in extracurricular activities and special occasions during his "on-duty" time.
- [27] I find paragraph 11(h) of the Final Order cannot be overlooked when considering the interests of N.W. That paragraph reads as follows:

- (h) Notwithstanding the above subparagraphs, the parties will, at all times, maintain a reasonable and flexible position with respect to the Parenting Schedule and at all times the best interests of the Children will prevail. Accordingly, if special occasions, extracurricular activities, excursions or other opportunities become available to the Children, or to either party, neither party will insist that the Parenting Schedule set out herein be adhered to without exception.

### **Discipline by the Father Prior to Final Order**

- [28] The s. 211 Report speaks to the Father's discipline of N.W. prior to entering into the Final Order. N.W. explains that she feels that there is no one to defend her against her Father's discipline since the separation. When she is upset, her Father will make her stay in the room he is in while she is crying and not let her leave. She says that she tries not to cry as it will make the yelling stop faster. On one occasion, N.W. recounts trying to leave the room and her Father pulling her back into the room by her hair.
- [29] The s. 211 Report speaks to N.W.'s fear of her father's anger and that she tries to conceal her feelings of sadness and frustration to avoid conflict. It is recommended that the Father increase opportunities for N.W. to spend time with friends on his parenting time as well as plan fun activities for them to do together on a regular basis.
- [30] Notwithstanding these concerns, the Mother and Father were able to enter into consent terms on parenting arrangements, as expressed in the Final Order and confirmed by Agreement #1, with the safeguards of having a parenting coordinator to resolve disputes between the Mother and Father.

### **September 28, 2024 Incident & Future Permissions**

- [31] On September 26, 2024, N.W. asked her Father if she could attend a friend's house to work on some school projects. On September 26 and 27, 2024, the Father responded by telling N.W. that she was choosing not to spend time with her grandparents, and that she was required to come up with a plan to make up the time with him or he would not provide his consent to her attending. The Father proposed she stay with him on Sunday to make up for the Saturday. N.W. was advised by her Father that it was her "educated choice" to commit to staying with him or not. In response to her Father's ultimatum, N.W. agreed to stay on Sunday. N.W. attended at her friend's on September 28, 2024, as scheduled; however, returned to her Mother's that night.
- [32] On September 28, 2024 at 11:04 p.m., the Father texted N.W. to advise her that if she did not come to his house the next day she would not be going on the choir trip to the USA and then at 11:09 p.m. that if she was not at mass by 10:00 a.m. that she would not be going to her friends again on a weekend this school year.

[33] On September 30, the Father sent a further text to N.W. advising her that she had until Thursday evening to propose an agreeable plan for the following weekend or she would not have permission to attend one of her planned extracurricular activities. On October 4, N.W. responds to her Father confirming she is not attending the activity as he has made it "infeasible". The text messages continue into 2025 with the Father continuing to refuse to provide consent concerning N.W. until she meets with him in person and apologizes. The Father has refused to give N.W. her passport so that she can attend her choir trip to the USA.

[34] The Father sent a similar text message to the Mother on September 28, 2024 concerning N.W.:

Provide a time and I will come pick her up. If she does not fulfill her agreement about this weekend and the thanksgiving weekend she will have to rebuild trust. Gir [sic] greater certainty, she will not be going to any of her friends again on a weekend this school year and will not be going on the choir trip to the USA.

[35] In his 19th affidavit, the Father describes his position on providing his consent to N.W.:

12. The Respondent has never withheld consent to [N.W.] under the guise of "disciplining and giving consequences" to [N.W.] for not going to the Respondent's residence during his scheduled parenting time.
13. [N.W.] has refused to go to the Respondent's residence since September 28, 2024, after lying to the Respondent, deceiving him, and going to the Claimant's residence instead of returning to the Respondents following being driven by the Respondent to a school friend's residence to work on the friends school project. In response, the Respondent has stated that he forgives [N.W.] but that they need to discuss her choices and actions and that she will need to ask him in person if she wants anything from him, including permissions, signatures, or documents.
14. [N.W.'s] refusal to discuss her choices and actions and to apologize for her dishonesty and deceit are of her own volition and any stress, embarrassment, or prevention of attendance at certain opportunities and experiences are a consequence of her choice to be treated as an adult and have her decisions respected.

[36] When asked in court what the Father envisioned would occur during the in-person meeting with N.W., he said that she would be required to discuss her choices with him, hear about the consequences of her behaviour and write a letter of apology that was acceptable to the level of her behavior. The Father took the position at the hearing that he is entitled to discipline his children as he sees fit.

[37] N.W. has not returned to her Father's house since September 28, 2024.

## Extracurricular Activities

- [38] In October 2024, N.W. learned of a Christmas Workshop being hosted by one of the existing girl's clubs that was occurring in mid December, 2024. The Respondent refused consent until N.W. met with him to discuss her "choices and actions". The Mother requested the assistance of Mr. Neville, K.C. and he determined that N.W. should go on the trip and that the cost was a s. 7 expense. N.W. did attend this trip.
- [39] N.W. and her sister, B.W. were registered by their Mother to attend at a spiritual retreat for high schoolers in late January, 2025. The Father contacted the registrar of the retreat and advised them that N.W. did not have his permission to attend. N.W.'s registration fee was refunded and N.W. did not attend the retreat although it appears her sister did as consent was not being withheld.
- [40] N.W. wishes to attend her school choir trip in late April, 2025 in the USA. This trip is offered every other year to students in concert band and choir in grades 10 - 12. N.W. has been looking forward to this trip since grade 8 and this year is her only opportunity to attend. The Father has refused consent for N.W. to attend. N.W.'s passport is being held by the Father.

## ADHD Testing

- [41] On September 30, 2024, Alycia Ceballos, MAMTF RRC, recommended that N.W. have an assessment for possible ADHD. A letter was provided to N.W. so that she could provide it to her parents.
- [42] The Father has maintained that if N.W. wants to proceed with an assessment that she must speak to him directly.
- [43] On December 7, 2024, the Mother took N.W. to a walk-in clinic to request a referral to a pediatrician for ADHD testing. A referral was submitted; however, as N.W. and her Mother were leaving the appointment, the Father attended at the clinic, and demanded that the doctor withdraw the referral as the Father had not provided consent. The Father told N.W. that he would refuse consent until N.W. tells him why she thinks she may have ADHD.

## Orthodontist Treatment

- [44] It has been recommended that N.W. receive orthodontist treatment for a mild class II division 2 malocclusion with severe overbite and moderate overjet. The Father refuses to provide consent for N.W. to receive this treatment explaining that he is not convinced that it is necessary as other options have not been explored and that he does not have the funds to pay for it.
- [45] N.W. has expressed to her Mother that she would like to get her braces as soon as possible so that they are off in time for her high school graduation.

## Legal Framework

- [46] Section 47 of the FLA provides that the court on an application may change, suspend or terminate an order respecting parenting arrangements if satisfied that, since the making of the order, there has been a change in the needs or circumstances of the child, including because of a change in the circumstances of another person.
- [47] Similarly, section 17(5) of the Divorce Act provides that before the court makes a variation order in respect of a parenting order or contact order, the court shall satisfy itself that there has been a change in the circumstances of the child since the making of the order or the last variation order made in respect of the order, or of an order made under subsection 16.5(9).
- [48] In considering whether to vary parenting arrangements subject to an existing order, the Court is to determine whether there has been a material change in the circumstances since the making of the prior order: *Gordon v. Goertz*, [1996] 2 S.C.R. 27 (SCC) at para. 14.
- [49] In *Williamson*, the Court of Appeal adopted the established framework by the Supreme Court of Canada in *Gordon*, in determining whether there has been a material change in circumstances under s. 47:
- [31] Although this Court has yet to consider s. 47 of the FLA, the Supreme Court has consistently interpreted this provision as requiring a material change in circumstances: see for example, *Gilmour v. Herrick*, 2013 BCSC 1591 at para. 13; *Bradley v. Bradley*, 2015 BCSC 1587 at paras. 21-23; and, *J.D.C. v. K.L.M.F.C.*, 2014 BCSC 2182 at paras. 261-262. Given the reasoning of this Court in *Boychuck* and *M. v. M.*, and the similarities between s. 47 of the FLA and s. 20 of the FRA, I conclude that a material change in circumstances is required under s. 47 of the FLA.
- [32] The first step in the analysis set out in *Gordon v. Goertz* is to "determine whether there has been a material change in circumstances since the making of the prior order": *Boychuck* at para. 14. The Court in *Gordon* explained what is necessary to establish a material change in circumstances:
- [11] The requirement of a material change in the situation of the child means that an application to vary custody cannot serve as an indirect route of appeal from the original custody order. The court cannot retry the case, substituting its discretion for that of the original judge; it must assume the correctness of the decision and consider only the change in circumstances since the order was issued....
- [12] What suffices to establish a material change in the circumstances of the child? Change alone is not enough; the change must have altered the child's needs or the ability of the parents to meet those needs in a fundamental way. The question is whether the previous order might have been different had the circumstances now existing prevailed earlier. Moreover, the change should represent a distinct departure from what the court could reasonably have anticipated in making the previous order.

[Emphasis in original.]

- [33] At para. 13, the Court summarized what the applicant must establish before proceeding on the merits of the application:
- [13] It follows that before entering on the merits of an application to vary a custody order the judge must be satisfied of: (1) a change in the condition, means, needs or circumstances of the child and/or the ability of the parents to meet the needs of the child; (2) which materially affects the child; and (3) which was either not foreseen or could not have been reasonably contemplated by the judge who made the initial order.
- [34] Absent a material change in the needs or circumstances of the child, the inquiry can go no further. It is only after this threshold is met that the judge on the new application can embark on a fresh inquiry into the best interest of the children.
- [50] In *Dedes v. Dedes*, 2015 BCCA 194, the Court of Appeal reviewed the law, and stated:
- [22] In *L.M.P. v. L.S.*, 2011 SCC 64, the Supreme Court again examined the test for variation. The Court held that "what amounts to a material change will depend on the actual circumstances of the parties at the time of the order" (para. 34).
- [23] Madam Justice Smith synthesized this decision in *Powell v. Levesque*, 2014 BCCA 33, and said, at paras. 23–27:

In *L.M.P. v. L.S.*, 2011 SCC 64, [2011] 3 S.C.R. 775, a decision that was rendered after the decision under appeal, the Supreme Court of Canada reiterated the two-fold test for variation of a support order under the Divorce Act, R.S.C. 1985, c. 3 (2d Supp.) from *Willick v. Willick*, 1994 CanLII 28 (SCC), [1994] 3 S.C.R. 670 (for child support orders) and *G.(L.) v. B.(G.)*, 1995 CanLII 65 (SCC), [1995] 3 S.C.R. 370, (for spousal support orders). The Court stated:

- [31] *Willick* described the proper analysis as requiring a court to "determine first, whether the conditions for variation exist and if they do exist what variation of the existing order ought to be made in light of the "change in circumstances" (p. 688). In determining whether the conditions for variation exist, the court must be satisfied that there has been a change of circumstance since the making of the prior order or variation. The onus is on the party seeking a variation to establish such a change.
- [32] That "change of circumstances", the majority of the Court concluded in *Willick*, had to be a "material" one, meaning a change that, "if known at the time, would likely have resulted in different terms" (p. 688). *G.(L.)* confirmed that this threshold also applied to spousal support variations.

The Court added that whether a material change of circumstances has been demonstrated will depend on the actual circumstances of the parties at the time of the order (para. 34) and in general will require some degree of continuity, not merely a temporary set of circumstances (para. 35). [Emphasis original].

The Court further confirmed that the threshold test for variation is the same whether or not the previous support order incorporated provisions from an agreement between the parties. It reiterated (at para. 36) that the question remains: "Has a material change of circumstances occurred since the making of the order? (See Willick; G.(L.); Leskun v. Leskun, 2006 SCC 25, [2006] 1 S.C.R. 920.)"

The circumstances in L.M.P. involved an application to vary a spousal support order pursuant to s. 17(1)(a) of the Divorce Act. The issue was whether the separation agreement executed by the parties before the divorce proceedings was a factor to be considered in determining the former husband's application to vary the initial spousal support order. The majority concluded that it was not because s. 17(4.1) did not include "agreement" in the list of factors to consider in determining if the threshold test of a material change in circumstances had been established.

The Court distinguished the test for variation in s. 17(4.1), which refers only to whether a "change in the condition, means, needs or other circumstances of either former spouse has occurred", from the test for an initial order in s. 15.2(4), which requires the court to consider "any order, agreement or arrangement relating to support of either spouse". If an agreement specifies or defines what type of change will or will not give rise to variation, courts should attempt to give effect to the parties' intention where those provisions are incorporated into the initial or previous order, as those provisions are presumed to have met the objectives for spousal support in s. 15.2(6) (paras. 33, 38-39). The Court further clarified:

- [39] Even significant changes may not be material for the purposes of s. 17(4.1) if they were actually contemplated by the parties by the terms of the order at the time of the order. The degree of specificity with which the terms of the order provide for a particular change is evidence of whether the parties or court contemplated the situation raised on an application for variation, and whether the order was intended to capture the particular changed circumstances. [Emphasis added in Powell.]
- [24] The focus of the chambers judge was on whether Ms. Daniel knew or reasonably foresaw that she would marry Mr. Daniel and move to Ontario. This, however, is not the question to be asked. The questions are: was the proposed move of the children to Ontario a change of circumstances that was actually contemplated at the time the agreement was entered into, and if not, is it in the best interests of the children to move to Ontario?
- [25] As articulated in L.M.P., the test for material change is based not on what one party knew or reasonably foresaw, but rather on what the parties actually contemplated at the time the order was entered by agreement. A function of the material change threshold is to prevent parties from re-litigating issues that were already considered and rejected; in such cases, an application to vary would amount to an appeal of the original order (see Gordon at para. 15). As was stated by L'Heureux-Dube J. in Willick at p. 734, "the diversity of possible scenarios in family law dictates that courts maintain a flexible standard of judicial discretion which does not artificially limit the adaptability of the Divorce Act provisions". See also G. (L.) v. B. (G.), 1995 CanLII 65 (SCC), [1995] 3 S.C.R. 370 at paras. 49–51 and Jakob v. Jakob, 2010 BCCA 136 at

para. 40.

[Emphasis added.]

[51] In *T.L.M. v. J.K.B.*, 2018 BCSC 2237, Mr. Justice G. P. Weatherill referred to para. 25 from *Dedes* and stated:

[42] I take this to mean that the test is: firstly, based on what was actually contemplated at the time of the *Savage Order* (as opposed to what the parties knew or ought to have known); and secondly, that this court should have a flexible standard in considering whether a material change has indeed occurred.

[43] While the mere passage of time and the maturity of a child is not in and of itself proof of material change, it is one of the factors the court can look at in the overall assessment of the circumstances. The needs of the child changing over time as he or she matures can be a material change (*Gray v. Wiegers*, 2008 SKCA 7 at para. 25; *Legien v. Legien*, 2012 SKQB 326 at para. 65).

[Emphasis added.]

[52] If the court finds that there has been a material change of circumstances, the court can embark on a fresh inquiry into what is in the best interests of the child: *Williamson* at para. 34.

[53] If the material change threshold is reached, the court's sole consideration must be the best interests of the child, as set out in s. 37 of the *FLA* and s. 16 of the *Divorce Act*.

[54] Section 37 of the *FLA* reads as follows:

37 (1) In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only.

(2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:

- (a) the child's health and emotional well-being;
- (b) the child's views, unless it would be inappropriate to consider them;
- (c) the nature and strength of the relationships between the child and significant persons in the child's life;
- (d) the history of the child's care;
- (e) the child's need for stability, given the child's age and stage of development;

- (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
- (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
- (h) 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 child's needs;
- (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
- (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

[55] Section 16 of the Divorce Act reads as follows:

### **Best interests of child**

16 (1) The court shall take into consideration only the best interests of the child of the marriage in making a parenting order or a contact order.

### **Primary consideration**

- (2) When considering the factors referred to in subsection (3), the court shall give primary consideration to the child's physical, emotional and psychological safety, security and well-being.

### **Factors to be considered**

- (3) In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including
  - (a) the child's needs, given the child's age and stage of development, such as the child's need for stability;
  - (b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;
  - (c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
  - (d) the history of care of the child;
  - (e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;

- (f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;
- (g) any plans for the child's care;
- (h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
- (i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;
- (j) any family violence and its impact on, among other things,
- (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
- (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and
- (k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

#### Factors relating to family violence

- (4) In considering the impact of any family violence under paragraph (3)(j), the court shall take the following into account:
  - (a) the nature, seriousness and frequency of the family violence and when it occurred;
  - (b) whether there is a pattern of coercive and controlling behaviour in relation to a family member;
  - (c) whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;
  - (d) the physical, emotional and psychological harm or risk of harm to the child;
  - (e) any compromise to the safety of the child or other family member;
  - (f) whether the family violence causes the child or other family member to fear for their own safety or for that of another person;
  - (g) any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child; and
  - (h) any other relevant factor.

**Past conduct**

- (5) In determining what is in the best interests of the child, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the exercise of their parenting time, decision-making responsibility or contact with the child under a contact order.

**Parenting time consistent with best interests of child**

- (6) In allocating parenting time, the court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child.

**Parenting order and contact order**

- (7) In this section, a parenting order includes an interim parenting order and a variation order in respect of a parenting order, and a contact order includes an interim contact order and a variation order in respect of a contact order.

**DISCUSSION**

Has there been a material change in circumstances?

- [56] I must first decide whether there has been a material change in circumstances since Wilson, J. made the Final Order.
- [57] As the Final Order was made on April 8, 2024 little time has passed - 10 months. Agreement #1 was made on September 20, 2024 and less than 5 months has passed.
- [58] However, since the Final Order and Agreement #1, the following significant events have occurred:
- (a) N.W., nearly 17 years old, has refused to see her Father or stay at his house;
  - (b) the parenting coordinator has retired and not been replaced thereby leaving the Mother and Father in a stalemate concerning major decisions impacting the Children; and
  - (c) the Father has refused to provide consent to allow N.W. to participate in extracurricular events, seek testing for ADHD, or obtain orthodontic treatment.
- [59] In considering whether there has been a change of circumstances, I am not to consider one factor in isolation to another. It is important to consider the entire factual matrix to determine whether there has been a material change.
- [60] A change of the views of a mature teenager may amount to a material change in circumstances; however, not every change in the views of a child will meet the threshold for a material change of circumstances: *Cizmic v. Cizmic*, 2018 BCSC 1721 at paras. 23 - 24.

- [61] The s. 211 Report provides that opportunities to participate in extracurricular activities are in N.W.'s best interests and that the parents are to increase the Children's sense of emotional safety and security by reducing the intensity of angry responses towards the Children.
- [62] When I apply the law to the circumstances here, I find N.W.'s refusal to stay with her Father, combined by her Father's discipline strategy to isolate her from extracurricular activities is a change of circumstances. In the past, the parenting coordinator would review the circumstances and make the necessary decision. The lack of a parenting coordinator is frustrating the terms of the Final Order and Agreement #1 and is a further change of circumstances.
- [63] When I asked the Father for his position on the appointment of a replacement parenting coordinator, he was not in favour, citing the cost. I find that the Father is benefiting from the lack of the parenting coordinator as it permits him to control N.W. without the independent oversight that was contemplated by the Final Order and Agreement #1.
- [64] As N.W. will only be a minor for another year, I find that it is unlikely that the Mother and Father will be able to agree on a replacement parenting coordinator in time to further manage decisions concerning N.W.

What is in the best interests of N.W.

- [65] Having determined that there has been a material change in circumstances, I must now determine if the relief sought by the Mother is appropriate and in the best interests of N.W.
- [66] I am to consider the criteria that is established by s. 37(2) of the FLA and s. 16 of the Divorce Act.
- [67] The s. 211 Report stresses the importance of allowing N.W. to participate in extracurricular activities and spend time with friends. The Father's current position is to isolate N.W. whereas the Mother is promoting such activities.
- [68] I find it appropriate to consider N.W.'s views here. She has decided to avoid further conflict with her Father by staying exclusively with her Mother. This decision has been made notwithstanding that it may mean she misses out on school trips and/or seeing her friends. The text messages I have reviewed show N.W. as an extremely articulate mature adolescent that has made this decision understanding the position of her Father and the possible consequences to her.
- [69] N.W. is soon to be 17 and is refusing a relationship with her Father. N.W.'s lack of autonomy while with her Father combined with his discipline style is creating further ongoing conflict. The status quo is not in N.W.'s best interests. I note that the Father has not undertaken the majority of the recommendations in the s. 211 Report concerning counselling, discipline and creating opportunities for N.W. which were to be in N.W.'s best interests for their ongoing relationship.

- [70] There is presently no cooperation between the parents and the Father is able to dictate his views by refusing consent and by withholding N.W.'s passport. The Father interfered with N.W.'s desire for ADHD testing, putting his needs before that of N.W.
- [71] N.W.'s decision not to stay with her Father and his disciplinary reaction to withhold consent combined with the lack of a parenting coordinator is a change of circumstances that was not contemplated by the Final Order or Agreement #1 and is a change that has negatively altered the ability of the Mother and Father to meet N.W.'s needs in a fundamental way.
- [72] I find it is appropriate and in N.W.'s best interests to vary paragraph 3 of the Final Order and Agreement #1 by granting the Mother the exclusive parenting responsibilities for N.W. without the requirement to refer the matter to the parenting coordinator.
- [73] I further find that it is in N.W.'s best interests to vary the terms of the Final Order and Agreement #1 relating to the regular parenting schedule and holiday schedule such that N.W.'s parenting time with her Father will be on such dates and times as she wishes and arranges with the Father directly.

#### SPECIAL/EXTRAORDINARY EXPENSES

- [74] The Mother seeks reimbursement for the following expenses she says represent the Father's one-half of s. 7 expenses:
- (a) \$1,022.50 for D.W, L.W. and J.W. to attend TLA Online;
  - (b) \$12,707.03 for ACRSS for N.W. since 2021 and B.W since 2022;
  - (c) \$875.00 for the Father's portion of volunteer hours paid in lieu of volunteering;
  - (d) \$1,042.50 for D.W and L.W. to attend speech therapy;
  - (e) \$4,973.00 for counselling for N.W. and B.W.;
  - (f) \$54.19 for a dentist appointment; and
  - (g) \$644.70 for occupational therapy for D.W.
- [75] The Father says that he is not responsible to pay these expenses as they are either more than two years old or he has not been provided adequate supporting documentation to justify the expense. The Father does not dispute that the expenses are proper s. 7 extraordinary expenses.
- [76] The Final Order addresses s. 7 expenses as follows:
15. BY CONSENT, in the 2024/2025 academic year, the three younger Children will attend the two-day TLA Online Blended Program and the two older Children will continue at Archbishop Carney Regional Secondary School.

16. BY CONSENT, the cost of the Children's education will be shared as a s. 7 expense and the respondent will contribute to this expense.
17. BY CONSENT, the claimant will pay for the Children's tuition (the "Education Costs") and provide the respondent with receipts/invoices for the Education Costs. The respondent will promptly reimburse the claimant for one-half of the Education Costs.
18. BY CONSENT, the parties will each contribute to half of the required volunteer hours for any school that the Children may attend. If one party does not meet their portion of the required volunteer hours, that party will pay the required fee.
- ...
20. BY CONSENT, the respondent will, forthwith, pay the claimant his share of Education Costs and any costs assessed for volunteer hours not completed from September 2021 to present.
- ...
27. BY CONSENT, [D.W.] and [L.W.] will continue to take speech therapy for as long as they continue to require it according to the speech therapist and there is funding and/or insurance to cover the cost of same. Once school funding and/or benefits to cover speech therapy have been exhausted the cost of speech therapy is a s. 7 expense and the respondent will forthwith reimburse the claimant for what she has paid to date net of any coverage provided by the Respondent's Extended Health Insurance.
28. BY CONSENT, [N.W.] and [B.W.] will continue to see their counsellors for as long as they or their counsellor feel it is helpful to them. This cost is a s. 7 expense and the respondent will forthwith reimburse the claimant for what she has paid to date net of any coverage provided by the Respondent's Extended Health Insurance.
29. BY CONSENT, the parties will pay all section 7 expenses equally.
- [77] Paragraph 12 of Agreement #1 provides as follows:
12. In respect of expenses pursuant to s. 7 of the Child Support Guidelines, the parents agree not to incur expenses they seek to have shared by the other parent pursuant to s. 7 without prior consent or a determination by the PC.
- [78] The invoices supporting the expenses were in the chambers record before me and I find that the Father's position in this regard to be disingenuous.
- [79] Payment of the TLA in the sum of \$1,022.50 by the Father is required by para. 15 of the Final Order.
- [80] Payment of ACRSS in the sum of \$12,707.03 by the Father is required by para. 20 of the Final Order.

- [81] Payment of volunteer hours in the sum of \$875.18 by the Father is required by para. 18 of the Final Order
- [82] Payment of the speech therapy expenses in the sum of \$1,042.50 by the Father is required by para. 27 of the Final Order.
- [83] Payment of the counselling expenses in the sum of \$4,973.00 by the Father is required by para. 28 of the Final Order.
- [84] Payment of the dentist in the sum of \$54.19 and occupational therapy in the sum of \$644.70 by the Father is required by para. 29 of the Final Order as the Father has confirmed these are proper s. 7 expenses.
- [85] I was not provided with any authority to support the Father's position that the passing of time isolates him from the requirement to pay and comply with the Final Order.
- [86] I find that the sum of \$21,318.92 is payable by the Father as s. 7 expenses contemplated by the Final Order. The Father shall have 60 days to make payment.
- [87] The Mother seeks a further payment of \$5,000.00 by the Father for non-compliance with the Final Order pursuant to subsections 228 and 230 of the FLA. In the circumstances, I choose not to exercise my discretion with respect to ordering a fine.

#### SUMMARY OF ORDERS MADE

- [88] In summary, the following are my orders:
1. Paragraph 3 of the Final Order is varied to provide the Mother with the exclusive parenting responsibilities for N.W. without any requirement to refer matters concerning N.W. to the parenting coordinator.
  2. The Final Order is further varied such that N.W.'s parenting time with her Father will be on such dates and times as she wishes and arranges with the Father directly.
  3. The Father will immediately deliver N.W.'s passport to the Mother and N.W. can travel, including crossing international borders, without the consent of the Father.
  4. The Father shall pay within 60 days of the date of this Order the sum of \$21,318.92 representing his one-half of s. 7 extraordinary expenses incurred; and
  5. The Mother shall have her costs of this application.

"LeBlanc, J."

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