

CANADA / JUDGMENT

C.M.L. v. A.J.

2025 BCSC 37

COURT

Supreme Court of British Columbia

DECIDED

9 January 2025

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2025 BCSC 37 C.M.L. v. A.J.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

C.M.L. v. A.J.,

2025 BCSC 37

Date: 20250109

Docket: E51874

Registry: Vernon

Between:

C.M.L.

Claimant

And

A.J.

Respondent

Before: The Honourable Justice Hardwick

Reasons for Judgment

The Claimant appearing in person:

C.M.L.

The Respondent appearing in person:

A.J.

Place and Date of Hearing:

Kelowna, B.C.

December 2, 2024

Place and Date of Judgment:

Kelowna, B.C.

January 9, 2025

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- [1] Before the Court for judicial determination is the application of the claimant filed November 20, 2024 (the "claimant's application").
- [2] At the crux of the application is the child, B.L., born in January, 2014 (currently, age 11).
- [3] As the claimant and the respondent were never married, all orders made with respect to B.L. have been and will continue to be under the Family Law Act [FLA].
- [4] The claimant's application seeks the following orders (which relief is quoted precisely verbatim from part 1 of the claimant's application without any grammatical corrections but substituting in subparagraph letters for identification purposes):
- a) Seek Child support for 23-24 be calculated;
 - b) Seek Rears of child support be calculated;
 - c) Seek all extra expenses be collected by Family maintenance from date of order;
 - d) Seek change in parenting time to 50/50 after review of Views of child report; and

- e) Seek funds in trust at Nixon Wanger be split 50/50.
- [5] The claimant's application contains no factual basis whatsoever except that it relies on the statement that "orders have been made we seek the courts guidance". The claimant's application similarly cites no legal basis whatsoever save for relying on "orders have been provided as exhibits in affidavit 22 of [C.L.]".
- [6] In the respondent's application response filed November 28, 2024 (the "respondent's application response") the respondent takes the following position:
 - a) Consents to the relief sought in para. 1(a);
 - b) Opposes the relief sought in paras. 1(c), 1(d) and 1(e); and
 - c) Takes no position on the relief sought in para. 1(b).
- [7] The respondent's application response is entirely devoid of any factual basis or any legal basis in parts 4 and 5 of the form F32.

Factual Overview

- [8] This a high conflict family law file.
- [9] Between June 7, 2017 and November 28, 2024, there were 186 separate documents logged in this proceeding under the Court Services Online - Judicial Module. Of those 186 documents, 30 are court orders. Both parties are now on their 22nd affidavit in the proceeding.
- [10] For the purposes of these reasons for judgment, I am going to briefly summarize certain key provisions of three court orders which are material. The terms of those orders, all made pursuant to the relevant provisions of the FLA, are as follows:
 - a) Order of Mr. Justice Hori made July 30, 2020:
 - i. No variation of the parenting schedule for [B.L.] set forth in the Consent Order of Master Wilson (as he was then) on the basis there had been "no material change in circumstances" (para. 2); and
 - ii. Various ancillary orders regarding parenting time and parenting responsibilities and certain conduct orders, all made by consent of the parties (paras. 6 - 8, 10 - 12 and 14).
 - b) Order of Justice M. Taylor made August 31, 2022 after an 8 day trial (the "Final Order"):
 - i. Declaration that both parties are guardians of [B.L.] who equally share parenting responsibilities with an obligation to advise and consult with the other parent and have equal right to access to third party information regarding [B.L.] (paras. 1, 2, 3, 4 and 7);
 - ii. Final decision making on exercise of parenting responsibilities to the respondent with the claimant having a right to apply for directions (paras. 5 and 6);

- iii. Parenting schedule for [B.L.] on a 2 week (14 day) schedule based upon the claimant's work schedule under which, in simplified terms, [B.L.] is in the care of the claimant from Tuesday morning to Tuesday morning in week #1 of the rotation and Friday evening to Monday morning on week #2 of the rotation and otherwise in the care of the respondent (paras. 8-13);
 - iv. Holiday schedule for [B.L.] based on an equal shared parenting model (paras.14 -17);
 - v. Daily phone or Facetime (or equivalent) contact daily with [B.L.] to a maximum of 20 minutes during the other parties' parenting time (para. 18);
 - vi. Conduct orders, including but not limited to the use of the "Our Family Wizard" application (paras. 19-20);
 - vii. Child support and disclosure orders (paras. 21-25); and
 - viii. Costs in favour of the respondent to be paid, once assessed, out of funds held in trust subject to certain specified adjustments and equal division of any remaining monies in trust (paras. 26 - 29).
- c) Order of Justice Betton made November 6, 2023 (the "2023 Betton Order"):
- i. No change in parenting time from Final Order pending a views of the child report (paras. 1 and 3);
 - ii. A views of the child report to be prepared under certain parameters with the costs to be born by the claimant with liberty to apply for cost sharing if an application for shared parenting is pursued (paras. 2 and 3);
 - iii. Child support effective September 1, 2023 as follows:
 - (1) Guideline income of \$96,226 for claimant (his 2022 Line 15000 income);
 - (2) Guideline income of \$143,730.50 for respondent (an average of her 2021 Line 15000 income of \$124,814 and 2022 Line 15000 income of \$162,647); and
 - (3) Payment of child support (based on a set off) by the respondent to the claimant of \$392.00 per month (para. 4).
 - iv. By no later than July 15, 2024, the claimant and respondent must exchange tax returns and notices of assessment (para. 5); and
 - v. Child support of \$392.00 per month shall continue until and including August 1, 2024 at which point child support is to be recalculated based on "those income numbers" commencing September 1, 2024 (para. 5).

Reasons for Judgment Underlying the Final Order

- [11] The reasons for judgment of Justice M. Taylor underlying the Final Order are indexed as 2022 BCSC 1537 (the "Trial Reasons").

- [12] The Trial Reasons start with an opening comment which is quite apt about the applications currently before the Court. Specifically, Justice M. Taylor said as follows at para. 3:
- [3] While the parties are of course legally entitled to represent themselves at trial, the unfortunate result in this case is that the evidentiary record, and the level of documentary disclosure, were deficient in many important respects, particularly with respect to the numerous claims and allegations made by [the claimant]. Although I gave both parties the opportunity to rectify this during the trial, they did not in many important respects. Thus, while the findings I have made in these reasons were supported by the evidence, or legally justifiable inferences, I was unfortunately placed in a position of having to dismiss many of the specific arguments made by both parties, and Mr. L. in particular, due to a lack of available evidence and documentary support.
- [13] The Trial Reasons are further quite critical of the claimant. Given that the claimant is seeking to vary a material term of the Final Order, namely the parenting schedule for B.L., I am going to highlight several portions of the Trial Reasons which I consider relevant to understanding the factual matrix:
- [43] As a preliminary matter, I note that during this lengthy trial involving two self-represented parties, I observed that the relationship between the parties remains hostile and strained. I also observed that Mr. L. in particular has great difficulties with anger management, often defaulting in open court to emotional outbursts and sarcasm, which did not assist the process.
- [44] I must also pause here to summarize my findings on credibility, taking into the analysis set out in *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296. In my view, Ms. J. was a more credible witness than Mr. L. In addition to Mr. L.'s difficulties in controlling his anger, which appeared to impede the rationality of his arguments at times, I emphasize that Mr. L. made at least three statements in open court which were demonstrably false: . . .
- [59] In determining that Ms. J. should have final decision-making authority, I have taken into account the following factors:

. . .

· I also find that Mr. L.'s positional stance at trial on obtaining sole parental responsibility (as distinct from Ms. J.'s expressed willingness at trial to accept and work with joint parental responsibility), in addition to his general approach at trial (which included multiple attacks on the character of Ms. J. and several outbursts of anger directed at Ms. J. in open court), demonstrates that he has allowed his strong animus toward Ms. J. to cloud his perception of B.L.'s best interests. He has not dealt rationally with Ms. J. concerning B.L. Specifically, it is my conclusion from his testimony that, in his desire to win at trial and to wrest all control from Ms. J. with respect to B.L., he has lost sight of whether that result would truly be in B.L.'s best interests. In my view, the opposite is true and it is in the best interests of B.L. that the parents share responsibility but make greater efforts to work together cooperatively and to manage and subdue

their anger for B.L.'s sake.

...

- [66] Ms. J. argues that, with the exception of disputes between the parents relating to vacation scheduling, the existing consent arrangement has worked relatively well for a period of three years and has the value of providing continuity and stability to B.L. I agree. The Views of the Child Report (there was unfortunately no s. 211 report in this case) indicates that B.L. appears equally comfortable with both parents and confirms that there is no issue of alienation in this case. My assessment based on all the evidence, as discussed above, is that both parents are good parents who genuinely care for B.L.'s best interests, although they clearly have very different parenting styles and personalities. I see no reason to depart from a schedule that provides continuity for B.L. while ensuring maximum contact with both parents.
- [67] For the same reason, and for the reasons I have already outlined above with respect to parenting responsibilities, I reject Mr. L's argument that the parenting schedule should be drastically revised so that B.L. would spend the majority of his time with Mr. L. This would be destabilizing for B.L. and not in his best interest.

The Hear the Child Report

- [14] Following the Final Order, the claimant sought to change the parenting schedule for B.L..
- [15] As set forth above, Mr. Justice Betton declined to do so but did order a views of the child report.
- [16] Pursuant to the 2023 Betton Order, Tami O'Meara, a registered clinical counsellor, prepared a Hear the Child Report (hereinafter "the Report"). The interview of B.L. was conducted on October 5, 2024, and the Report was submitted on October 13, 2024.
- [17] Having reviewed various hear the child reports both in private family practice and since my appointment to the judiciary, Ms. O'Meara's interview of B.L. and corresponding report is, in my view, well prepared and effectively achieves the objectives underlying why such reports are ordered by the court. They are of significant assistance, particularly in high conflict disputes.
- [18] Before detailing certain portions of the Report, I expressly acknowledge that B.L. was only 10.5 years of age when he was interviewed by Ms. O'Meara. However, when one reads the entirety of the Report, it is apparent that B.L. is well-spoken and quite mature for his age. This contextual analysis of maturity and the corresponding weight to be afforded to a child's views in determining a child's overall best interests is specifically contemplated in s. 37(2)(b) of the FLA which provides as follows:

(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:

... (b) the child's views, unless it would be inappropriate to consider them;

[19] Also relevant is Article 12 of the United Nations Convention on the Rights of the Child, November 20, 1989, Can T.S. 1992 No. 3. Article 12 provides that parties to the convention, which include Canada, will ensure that children capable of forming their own views have the right to express those views freely in all matters affecting them. It further provides that children impacted by judicial proceedings must have the opportunity to be heard in those proceedings.

[20] A good portion of the Report contains background information which reveals, at least presently, a generally well-adjusted child. B.L. is in grade 5. His favorite subject is PE and his least favorite subject is science, because "we don't actually do science". He loves video games and soccer, and also enjoys football, hockey and baseball. He has a strong bond with his 14-year-old sister, C., and he considers C. his real sister even though they do not share a biological father. C. plays with him. He also has a positive relationship with the respondent's partner, S., who resides with the respondent when not working out of town. B.L.'s shared criticism of both parents is the amount of time they spend on electronic devices other than for work purposes.

[21] The following quotes from the Report are instructive as to understanding B.L.'s views on the current parenting schedule:

... I asked, "OK, why do you think you're here?" [B.L.] responded, "Because my mom and dad, they fight a lot, and they try to fight over me and what days I come. Because it's like ... seven, I believe this is how the schedule goes: fourteen, seven, three so fourteen days at my mom's, seven at my dad's, three at my mom's, three at my dad's, fourteen at my mom's again and it restarts." I said, "Okay." [B.L.] continued, "So its pretty complicated especially when I go to school, you know cos then I'm changing and I'm changing, it's stressful and that's why I think I'm here."

... "That's okay. What are some of your favorite things about your dad?" [B.L.] responded, "That he's really nice and that he's hard on me because he wants me to be a better person. Another thing is he's energetic, like he even (play) fights with me and we wrestle, he always plays sports with me like soccer and football. That's probably it for my dad."

...

And for my mom, ... she usually stays home with me and my sister, we just play a lot together, you know we swim in the pool, we have a trampoline so yeah, that's about my mom."

I asked, "And can you describe your home life at your dad's house and your mom's house? What is it like there?" [B.L.] responded, "Err at my mom's house, it's probably I don't get in trouble a lot for like stuff, but I still do get in trouble. I can eat whatever I want, I can play whatever I want, technically I can do whatever I want but just only follow the rules, like no breaking stuff, no going on electronics without knowing. I do walk home by myself to my mom's. I'm usually home alone for an hour or two until I wait for my sister to come back. Then me and my sister are alone for three hours waiting for my mom to come back from work." I said, "Right. And how do you feel about that? About being able to do whatever you want but there are some rules it sounds like and then staying at home alone?" [B.L.] replied, "That feels perfectly fine to me. I don't try to boss anyone around with the rules or anything, I don't just do whatever I want, I play with my sister usually, I don't try to take advantage of those rules, or whatever." . . .

. . . "At my dad's house, there's a lot of rules, err he's strict on me. It's pretty much the same as my mom's but there's a lot of rules like electronics. I can only go on for an hour or two hours a day, maybe not even a day if I get in trouble. If I get in trouble a lot, and my dad finds out he'll ground me for a couple days which is a good lesson learnt." . . . I said, "Right, and how do you feel about the rules being stricter at your dad's house?" [B.L.] replied, "Perfectly fine to me, I'm already used to it, so it doesn't harm me." . . .

. . . Something my dad's been worrying about is when I'm at my mom's . . . wait a sec . . . erm he . . . that my mom doesn't let me talk to my dad . . . cos when he asked my mom for a phone call on this certain app, Family Wizard, he . . . sometimes she gives it to my dad, sometimes it doesn't happen." I said, "Oh, I see." [B.L.] said, "So my dad gets a little bit mad about that cos he doesn't get all the phone calls, that happens a lot." I said, "So sometimes your mom doesn't let you contact your dad?" [B.L.] said, "Yeah, she doesn't let me contact my dad." I said, "Ok, and at your dad's house, does he let you talk to your mom whenever you want?" [B.L.] answered, "Yes, yeah. Just my mom doesn't, my dad does whenever I want." I asked, "How do you feel about not being allowed to talk to your dad?" [B.L.] responded, "I don't like it. I want to try to make that better, my mom should tell me when my dad wants to talk cos, I don't know what they say on there." . . .

I asked, "Now, have either one of your parents pressured you to spend more time with them?" [B.L.] answered, "Erm I don't like saying this around my dad, but I'm not . . . yeah, I haven't told him yet, but I have told my mom 'yeah he is' and I've told my dad 'no you're not' but yes, both of them have." I said, "Both of them have? Right now, are both of them saying 'I want you to spend more time with me?'" [B.L.] replied, "Yes. So that's why I'm happy I'm here cos I want to sort that out and I don't wanna be getting pressured all the time. Like when I'm playing with my sister, my mom will come downstairs and ask me, I'm like 'bro, come on'. I said, "Oh I can see that would be very hard. So, you haven't said anything to either one of them and asked them to stop yet?" [B.L.] responded, "No." (The interviewer nodded). [B.L.] continued, "I'm just scared they'll get mad at me." I said, "Ok, and if either one of them got mad at you for saying 'stop asking or pressuring me to stay', what would that look like? So, if your dad got mad, what do you think that might look like?" [B.L.] replied, "Umm . . . disappointed, probably just disappointed and sad, a little bit mad." I asked, "What do you think he might say or how might he act towards

you?" [B.L.] said, "He would probably be like . . . I would think he would be like 'Oh really, [B.L.],' that's probably . . . in a sad, disappointed voice." I said, "Okay, yes. And what do you think it would look like for your mom? How do you think your mom would be if . . . ?" [B.L.] responded, "Same thing. . . . Same thing, just sad, probably not disappointed." I said, "Sad? Right. You don't want to make your parents to be sad, but is it also hard on you?" [B.L.] said, "Yeah." . . .

. . . "Is there anything I can do to help you feel a little bit less nervous?" [B.L.] answered, "Probably you just printing out the note and giving it to my dad and the court and all that stopping." I said, "Yes, ok." [B.L.] said, "Probably just the court stopping, just stop all of that and I can get the sadness out of the way, I can get the fighting out of the way, the phone calls will still be a problem, but I can probably fix that myself." I said, "When you get that sim card?" [B.L.] said, "Yeah, my mom said she would get it eventually, I'm hoping I get it." . . .

I said, "Now, can you tell me again how much time you spend at your mom's and your dad's house?" [B.L.] responded, ". . . I'll let you write this down, seven at my dad's, three at my mom's, three at my dad's and fourteen at my mom's and then. . ." I said, "It just keeps going?" [B.L.] replied, "When it hits fourteen, it just rewinds. That's what it's been for like eight years now." I said, "Yeah, that's a long time. Ok now, how do you feel about this schedule?" [B.L.] answered, "I think it should just be fourteen-fourteen, it would make my life at school so much easier." I asked, "Can you tell me a little bit about how it would make your life at school easier?" [B.L.] responded, "I get in trouble a lot cos of the changing and it makes me stressed out and all that so I'm like 'ugh I don't want to do this' and I get in trouble a lot cos then I don't know what to do and I'm panicking and just like all that." . . .

. . . So, what is hard for you with school when you make that change from going to your mom's to your dad's then from your dad's to your mom's? Can you tell me a little bit about that? What is hard for you?" [B.L.] replied, "Probably just that I'm stressed out. My mom tells me to leave stuff at school cos she'll pick it up; she doesn't pick it up and then it's like 'oh no, do I bring it home' and then on weekends, if I wanna bring it home and there's no food in it anyways, it's not gonna get rotten. And then I'm panicking cos I have to go to my other house and I'm gonna get all changed up rules, all changed up bedtime, changed up pretty much everything." . . .

. . . You would like to switch to a fourteen day-fourteen day schedule; make the switch on a weekend, Saturday or Sunday, so it would be easier for you to kind of get settled and be able to go to school without . . ." [B.L.] said, "The fuss." I said, "The fuss." [B.L.] said, "I'd like it to be Saturday so one day to actually settle in, yeah." I said, "Okay, change it to a Saturday for the switch over, okay." [B.L.] said, "It's fine if it's a Sunday, at least it's a Sunday, it's not actually a school day." . . .

I said, "You've talked about this a little bit already, is there anything else that you would like to say around how your parents talk to each other and talk about each other?" [B.L.] said, "My dad doesn't usually talk bad about my mom, but my mom usually talks pretty bad about my dad, and she usually just doesn't act . . . she doesn't like him, we could just say that and she yells at him. That's pretty much what I've heard at least, and that's what I've told my dad cos that's usually what happens." . . .

... And what you would like is to have fourteen-fourteen all the time because the changeover during a school day is stressful for you." [B.L.] said, "Yeah, but fourteen-fourteen is not as stressful because I'll know when I'm going to change and all that." I said, "Exactly. So it would be better with the fourteen-fourteen, and you're hoping for a Saturday changeover." [B.L.] responded, "Saturday or Sunday." I said, "And you're totally happy with having equal time with your mom and your dad?" [B.L.] answered, "Yes."

Material Change of Circumstances

[22] The Final Order established a parenting schedule for B.L. after a quite lengthy and contested trial.

[23] This order shall not, by law, be varied absent a material change in circumstances. Specifically, s. 47 of the FLA provides as follows:

On application, a court 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.

[24] Section 47 of the FLA has been considered and applied by the court on various occasions. I will refer back to the decision of the British Columbia Court of Appeal in *Williamson v. Williamson*, 2016 BCCA 87, where Justice Stromberg-Stein, writing for the majority, said as follows starting at para. 32:

[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.
- [25] As a starting point, many things have not changed since the Final Order. B.L. spends considerable time with both parents. B.L. has a strong relationship with both parents and is accepting of their differing parenting styles. B.L. is generally happy in both households and in the case of the respondent's home, has a strong bond with the other members of the household. Apart from feeling caught in the middle of the dispute between the parties about him, the fact that his only identified criticism is about his parents' time spent on electronic devices is indicative of the fact that both parents are, at present, providing a sufficiently stable environment which meets B.L.'s physical and emotional needs.
- [26] On this basis alone, there is an insufficient basis to vary the parenting schedule in the Final Order.
- [27] However, the parenting schedule set forth in the Final Order has been in place for some eight years. An increase in the chronological age of the child alone is not generally a material change in circumstances, but when the time span in place takes a child from a toddler to a pre-teen it becomes a relevant consideration in the overall analysis.
- [28] More significantly, however, is that with the increase in age has been a demonstrable increase in maturity such that B.L.'s views are, in my opinion, also a material change in circumstances.
- [29] B.L. now has specific views on the parenting schedule and has maturely articulated them clearly to a neutral third party. Specifically, to paraphrase the above quoted portions of the Report, B.L. believes that a 14-day-on/14-day-off rotation will work better for him, particularly in respect of reducing the number of transitions, increasing consistency and reduce stress that the current schedule places on him at school. The last point I think is particularly significant as school does typically get more challenging as a child progresses and reducing outside stressors helps maximize the positive benefits of education.
- [30] I also consider it significant that while B.L. reports a very positive relationship with his sister C., he does not express any concern about that relationship being negatively impacted by spending several more days per month at the claimant's home.

- [31] Moreover, while B.L. indicates a feeling of pressure from both parents on the issue of the parenting schedule and expresses a desire not to disappoint either of them, I am not satisfied from the Report that B.L.'s views have been inordinately influenced by one parent or the other.
- [32] Accordingly, in accordance with s. 47 of the FLA and as directed in Williamson, I shall now conduct a fulsome best interest analysis under s. 37 of the FLA.

Best Interests Analysis Generally

- [33] The only consideration for this Court in addressing the parenting and guardianship arrangements for the children is the best interests of the children: See s. 37(1) of the FLA.
- [34] Given I already addressed the significance of a child's views under s. 37(2)(b) of the FLA, the other relevant factors I consider applicable under a s. 37(2) analysis in this case for B.L. are:
- a) the child's health and emotional well-being;
 - b) . . .
 - 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;
 - . . .
- [35] Each case turns on what is in the best interests of the child in the particular circumstances: J.F.C. v. A.O.C, 2022 BCSC 294 at para. 33. While J.F.C. considered both the Divorce Act and the FLA, this principle is just as apt where only the FLA applies (see para. 26).
- [36] In this case, many of the considerations I noted in determining that the material change threshold had been met under s. 47 are the same considerations to factor into the best interest analysis under s. 37.
- [37] Since he was a toddler, B.L. has resided with both parents in a shared parenting regime, with the greater portion of time being spent at the respondent's residence. Under that shared parenting regime, B.L. has had certain challenges, specifically addressed by Justice M. Taylor in the Trial Reasons. Ultimately, despite the high conflict nature of this dispute between his parents, B.L. has generally done quite well.

- [38] I further have concluded that I must consider the circumstances raised by the respondent with respect to ongoing criminal proceedings in which the claimant is charged with offences arising from what I understand to be an incident involving his former partner. It is important to do so even though I am not satisfied it falls within the scope of s. 37(2)(j) of the FLA because there were allegations of family violence made against the claimant at the trial before Justice M. Taylor.
- [39] Ultimately, I consider these allegations involving a third party to be of very marginal probative value to my analysis of B.L.'s best interests in this case. Firstly, they do remain allegations at this juncture. This is not said to minimize the significance of intimate partner violence but an individual charged with criminal offences is entitled, pursuant to the Charter, to a presumption of innocence. That presumption is particularly significant here where the respondent does not have any first-hand knowledge of the allegations beyond providing documentary evidence confirming there are charges currently before the courts in this regard. More significantly though, the respondent was aware of these matters since February 2024. She acknowledged this to me in oral submissions and it is further confirmed in a court filing she made regarding B.L.'s passport on or about February 29, 2024. That was well before the Report was prepared and before the hearing in front of me in December 2024.
- [40] Had the respondent considered B.L. to be at risk of harm in the care of the claimant, I expect she would have brought the matter before the courts in a timely way. Instead, B.L. has continued in a shared parenting regime wherein he spends significant, albeit not equal, time in the care of the claimant.
- [41] Ultimately, for the reasons articulated, B.L. desires a modification of the parenting schedule. When B.L.'s views must be factored into the overall s. 37 analysis, I am satisfied that a transition to an equal shared parenting regime on a 14-day-on/14-day-off schedule is in B.L.'s best interests at this time.
- [42] Specifically, on this basis, I am satisfied that the parenting schedule for B.L. set forth in the Final Order (namely paragraphs 8-13) shall be varied to provide that:
- a) The parties shall equally share parenting of B.L. on an alternating 14-day-on/14-day-off schedule;
 - b) The transition day shall be alternating Sundays at 5:00 pm;
 - c) The claimant shall be responsible for picking up B.L. at the commencement of his parenting time and the respondent shall be responsible for picking up B.L. at the commencement of her parenting time, unless otherwise agreed in writing; and
 - d) The transition location shall be the parties' respective residences or such other location that the parties shall agree upon in writing.

- [43] With respect to my decision to utilize Sundays as the transition day versus B.L.'s initial preference of Saturdays, this is for practical purposes. Specifically, if Saturday is the transition day, that leaves both parents with only one full interrupted weekend with B.L. out of every 28 day cycle. I can also potentially foresee, particularly given B.L.'s reference to enjoying various sports, some conflict with respect to games, tournaments or other such events which typically occur on weekends. In recognition of B.L.'s request for some time to settle in and adjust into each parents' respective household before the school week, I have imposed a 5:00 pm transition time. This is also consistent with the historical transition time under the Final Order.
- [44] It remains open to the parties, if they mutually agree, to consent to adjusting the transition day to Saturdays, perhaps with a post-dinner transition time.
- [45] Finally, I have not set a start date for the shared parenting schedule as I anticipate that it will need to be based around the claimant's work schedule which involves travel and, I was advised, is scheduled long in advance whereas the respondent works locally. In the event the parties cannot agree on a commencement date, which I hope is not the case, they have liberty to bring that sole issue back before me for determination. I am expressly not otherwise seized of any other aspect of this matter.

Child Support

- [46] Unlike the parenting schedule for B.L. which required establishing a material change in circumstances, child support is before the court on the basis of a review pursuant to paragraph 5 of the 2023 Betton Order.
- [47] Significantly, the 2023 Betton Order clearly provides that for the period commencing September 1, 2024, child support shall be calculated based on each parties' Line 15000 incomes on their respective income tax returns as confirmed by their T1 personal income tax return and, as applicable, corresponding notice of assessment and/or reassessment. That same methodology for support calculation continues, absent further court order or written agreement, for each subsequent year commencing effective September 1, 2025.
- [48] The use of an averaging approach for determining the respondent's Guideline income was an anomaly that Justice Betton considered appropriate, under the discretion available to him at law, for determining support for the period of September 1, 2023 to and including August 1, 2024.
- [49] The claimant's Line 15000 income for 2023 was, I accept, \$124,341. This is his 2024 Guideline income.
- [50] The respondent's Line 15000 income for 2023 was, I accept, \$192,790. This is her 2024 Guideline income.

- [51] Based on the parties' respective Guideline incomes as determined pursuant to the 2023 Betton Order and continuing to use the set off formula pursuant to s. 9(a) of the Guidelines, the child support payable for B.L. is as follows:
- a) Commencing September 1, 2024 and continuing on the 1st of each month until adjusted by written agreement or court order, the respondent shall pay to the claimant child support for B.L. in the amount of \$1,690 per month;
 - b) Commencing September 1, 2024 and continuing on the 1st of each month until adjusted by written agreement or court order, the claimant shall pay to the respondent child support for B.L. in the amount of \$1,149 per month; and
 - c) Offsetting the amounts payable by the parties pursuant to subparagraphs (a) and (b), the net payment of child support payable from the respondent to the claimant for B.L. for the period commencing September 1, 2024 and continuing on the 1st of each month until adjusted by written agreement or court order is \$541 per month.
- [52] To be expressly clear in these reasons for judgment for the purposes of any potential enforcement by the British Columbia Family Maintenance Agency ("BCFMA") under the Family Maintenance Enforcement Act, 1996 R.S.B.C. 127, the financial disclosure obligations and annual review of child support under the 2023 Betton Order remain in full force. However, until such time as the quantum of child support for B.L. is adjusted pursuant to written agreement or court order, BCFMA shall continue to collect the sum of \$541 per month from the respondent and distribute same to the claimant.

Phone Calls

- [53] As it pertains to phone and or video calls with B.L., the Final Order is clear on its terms at para. 18. That remains the governing order and court orders are not mere recommendations: See *E.F.K. v. R.J.*, 2024 BCSC 1112 at para. 72 and *L.C.H. v. L.J.K.*, 2024 BCSC 1299 at paras. 40 and 76.
- [54] However, as I stated to both parties on the record at the December 2, 2024 hearing, this realistically no longer needs to, practically speaking, be a dispute as between them. B.L. clearly has access to technology already and some understanding of the responsibility associated with the use of same.
- [55] It would be appropriate, in my strong suggestion, for B.L. to have an electronic device at each parents' residence where he has the ability, on his own, to contact the other parent. The parent who has primary care of B.L. should be entitled, in exercising their day-to-day parenting responsibilities, to put reasonable limits on when the device can be used and for what duration but if B.L. wishes to contact either parent while in the care of the other, he generally appears mature enough to be given that *prima facie* responsibility. I further expect that giving B.L. this ability will take away an unnecessary point of conflict between the parties, particularly if B.L. can simply advise either parent when he prefers to have a short

text message exchange versus a phone call/video chat on a specific day.

- [56] If the parties cannot sort this out between them by agreement, both must comply with para. 18 of the Final Order.

The Trust Funds

- [57] As a result of certain provisions in the Final Order, funds remain held in trust by the law firm, Nixon Wenger LLP, in Vernon (the "Trust Funds").
- [58] The basis for the claimant's application to pay out the Trust Funds is that Nixon Wenger had advised in writing that there would be a fee for continuing to hold the Trust Funds.
- [59] As it turns out, that was an innocent misunderstanding of certain legislative changes and Nixon Wenger does not intend to charge the parties a fee for continuing to hold the Trust Funds.
- [60] Nonetheless, the issue of assessing the respondent's costs needs to be attended to in a timely way. The Final Order was entered on December 20, 2022, more than two years ago.
- [61] Accordingly, while I am dismissing paragraph 1(e) of the claimant's application, I do so with liberty to reapply in the event that the respondent has not provided a draft bill of costs within 30 days of these reasons for judgment, or if a draft bill of costs is provided but the parties cannot agree upon same, the respondent has not filed an appointment to assess her bill of costs before the registrar on a mutually agreeable date within 60 days of these reasons for judgment. For clarity on the latter point, the date before the registrar to assess costs is not required to occur within 60 days as that is very likely logistically impossible. However, the appointment securing a date and attaching the relevant supporting materials must be filed within 60 days unless the parties otherwise agree in writing.

Costs

- [62] Costs are always in the discretion of the presiding justice, whether in chambers or at trial.
- [63] Pursuant to R. 16-1(7) of the Supreme Court Family Rules, the general principle is that costs are awarded to the successful party:

Costs to follow event

- (7) Subject to subrule (9), costs of a family law case must be awarded to the successful party unless the court otherwise orders.
- [64] The standard of "success" required to be awarded costs of an action under R. 16-1(7) is "substantial success": See *Harras v. Lhotka*, 2016 BCCA 246 at para. 48.
- [65] In this case, the claimant's application is manifestly not in compliance with the Rules: see *Zecher v. Josh*, 2011 BCSC 311 at paras. 29-34, cited with approval in *Dupre v. Patterson*, 2013 BCSC 1561 at paras. 45-56.

- [66] I could have dismissed the claimant's application summarily on the basis of this non-compliance but elected not to do so since the relief sought was substantially all matters which relate to the best interests of B.L., both in terms of a parenting schedule and in terms of his financial support. Moreover, the respondent's application response was equally non-compliant with the Rules.
- [67] As may be apparent from these reasons for judgment, however, the Court has generally not been overly impressed with the claimant's conduct as a litigant.
- [68] For this reason, I am exercising my discretion to order that the parties bear their own costs of the claimant's application subject to the below order regarding the cost of the Report.
- [69] Under the 2023 Betton Order, the claimant paid for the cost of the Report at first instance but was given liberty to seek contribution from the respondent in the event he pursued an application for equal shared parenting, which he did and which I, as set out herein, have adjudicated upon.
- [70] Ultimately, the change in the parenting schedule for B.L. is, for the reasons articulated, because I conclude that it is in B.L.'s best interests. The Report was critical in making that determination as I would not have made the variation in the parenting schedule on the basis of the claimant's affidavit evidence alone.
- [71] Accordingly, the costs of the Report shall be born equally by the parties. The respondent's share of the cost of the Report is not payable forthwith but shall instead be offset against the costs owing by the claimant to the respondent pursuant to the Final Order once said costs are assessed.

Summary of Orders

- [72] With respect to the claimant's application, the orders I have made can be summarized as follows:
- a) Paragraph 1(a) - I have made an updated order regarding child support as set out at para. 50 of these reasons for judgment;
 - b) Paragraph 1(b) - this relief is dismissed as unnecessary. BCFMA can do the simple mathematical calculation as to what was paid since September 1, 2024, versus what was required to be paid pursuant to my order;
 - c) Paragraph 1(c) - this is dismissed on the basis that the evidence provided by the claimant is unsatisfactory for the court to determine what expenses are proper special and extraordinary expenses for B.L. in accordance with s. 7 of the Guidelines. Such evidence is critical in light of the wording of para. 22 of the Final Order which simply refers to "any s. 7 expenses". To the extent the parties agree on what said expenses are, the proportionate sharing for the period commencing September 1, 2024, is based on their Guideline incomes as determined at paras. 48 and 49 of these reasons for judgment as \$124,341 and \$192,790 per annum, respectively;

- d) Paragraph 1(d)- the parenting schedule for B.L. is varied to a 14-day-on/14-day-off alternating schedule on the terms set forth in para. 41 of these reasons for judgment with liberty to apply for a commencement date per para. 49;
- e) Paragraph 1(e) - the application to release and distribute the Trust Funds is dismissed on the terms specifically set forth in para. 59 of these reasons for judgment; and
- f) The parties shall bear their own costs of the claimant's application except that the claimant is entitled to reimbursement from the respondent of one half of the Report, to be offset in due course against the costs owing by the claimant to the respondent pursuant to the Final Order.

"Hardwick J."

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