

CANADA / JUDGMENT

D.M. v. M.M.

2020 BCSC 766

COURT

Supreme Court of British Columbia

DECIDED

21 May 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 766 D.M. v. M.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

D.M. v. M.M.,

2020 BCSC 766

Date: 20200521

Docket: E54600

Registry: New Westminster

Between:

D.M.

Claimant

And

M.M. aka M.D.

Respondent

Corrected Judgment: The text of the judgment was corrected at para. 46
on June 3, 2020.

Before: The Honourable Mr. Justice Crabtree

Reasons for Judgment

The Claimant, appearing in person:

D.M.

Counsel for the Respondent:

M.A. Verdun-Jones

Places and Dates of Trial/Hearing:

Chilliwack, B.C.

August 21, 2019

New Westminster, B.C.

December 16, 2019

April 14, 2020

Place and Date of Judgment:

New Westminster, B.C.

May 21, 2020

BACKGROUND

- [1] Mr. D.M. and Ms. M.M. each filed a notice of application seeking the interim relief pertaining to issues arising out of the breakdown of the family relationship.
- [2] Mr. D.M. and Ms. M.M. began living together in a marriage-like relationship in 1995. They were married in September 2011 and separated in June or July 2017.
- [3] There are two children of the marriage, namely: A.M., born [D.O.B.], 2012 ("A.M."); and K.M., born [D.O.B.], 2016 ("K.M."), collectively referred to as the Children (the "Children"). A.M. will be 8 years of age and K.M. will be 4, this year.
- [4] Between the time of separation and early January 2018, the Children resided with Ms. M.M. The parties agreed to and had in place a parenting schedule, on a regular basis, for Mr. D.M. and the Children.
- [5] The parenting arrangements broke down in January 2018 and Mr. D.M. applied for parenting time. On February 28, 2018, the court ordered Mr. D.M. to have ongoing parenting time with the Children, on a without prejudice basis (commencing March 12, 2018), as follows:
 - a. Wednesdays:
 - i. 2:20 p.m. to 6:00 p.m. with [A.M.]; and
 - ii. 10:00 a.m. to 6:00 p.m. with [K.M.]
 - b. Friday through Sunday:
 - i. 2:20 p.m. on Friday to 6:00 p.m. Sunday with [A.M.]; and

ii. 10:00 a.m. Friday to 6:00 p.m. Sunday with [K.M.]

[the "Parenting Order"]

[6] The Parenting Order provided a term permitting the parenting schedule to be varied with the consent of the parties. The Parenting Order also contained various conduct orders, including a term prohibiting the parties from consuming alcohol or non-prescription drugs during and in the 12 hours immediately preceding their parenting time.

[7] In or about March 2018, the parties agreed to modify the parenting schedule ordered; and since that time, the following schedule has been in place:

a) Week 1: [Mr. D.M.] has parenting time with the Children on Monday, Wednesday and Friday:

i. From 10:00 a.m. to 6:00 p.m. with [K.M.]; and

ii. From the 2:20 p.m. to 6:00 p.m. with [A.M.]

b) Week 2: [Mr. D.M.] has parenting time with the Children as follows:

i. From 10:00 a.m. Friday to 6:00 p.m. Sunday with [K.M.]; and

ii. From 2:20 p.m. Friday to 6:00 p.m. Sunday with [A.M.]

(the "Parenting Agreement")

[8] The matter was originally set for trial commencing on June 3, 2019, but the date was adjourned by consent.

[9] The parties agreed to the preparation of a s. 211 report by Dr. Ronald LaTorre. Dr. LaTorre completed the evaluation on February 13, 2020.

[10] The current applications commenced on August 21, 2019, and adjourned for continuation. The continuation was to be heard December 16, 2019, but did not proceed on that date; and the matter was rescheduled for April 14, 2020.

[11] Mr. D.M. was represented by counsel at the initial hearing. He appeared on his own behalf at the continuation.

[12] All parties appeared by telephone, due to the interruption of court proceedings resulting from the COVID-19 pandemic.

[13] The application record dated December 16, 2019, together with the affidavit of Ms. M.M. filed April 9, 2020, the un-entered copy of Mr. D.M.'s affidavit sworn April 9, 2020, and a letter authored by Mr. Ron Elrick of the Ministry of Children and Family Development-Mission office, were before the court at the continuation.

[14] The matter is currently set for trial for five days in July 2020; although concerns were expressed whether the matter would actually proceed due to the impact of the COVID-19 pandemic on regular court functions and the availability of Mr. D.M.'s new counsel.

[15] At the outset of the application, counsel advised several matters are now proceeding by consent. These include:

- 1) Ms. M.M. shall provide to Mr. D.M., a copy of documentation associated with the GMC pickup truck acquired in 2019;
- 2) Mr. D.M. shall provide to Ms. M.M., documents particularized in Part 1, para. 1, items a to g, of Ms. M.M.'s notice of application as follows:
 - a. T1 general income tax returns for 2016, 2017 and 2018;
 - b. Corporate income tax returns for "[the Company]" for the 2014, 2015, 2016, 2017 and 2018 years;
 - c. Notice of assessments for "[the Company]" for the 2014, 2015, 2016, 2017 and 2018 years;
 - d. Income balance sheets/statement of activities for "[the Company]" for the 2014, 2015, 2016, 2017 and 2018 years;
 - e. Income tax returns/notices of assessments for the 2014, 2015, 2016, 2017 and 2018 years relating to the Claimant's [marihuana] grow operation;
 - f. Income balance sheets/statement of activities for the 2014, 2015, 2016, 2017 and 2018 years relating to the Claimant's [marihuana] grow operation; and
 - g. A copy of all invoices, service contracts, payment documents and cheques exchanged between the Claimant and any other third; parties relating to the Claimant's grow operation for the 2015, 2016, 2017 and 2018 years.
- 3) Part 1 - para. 1, ix, of Mr. D.M.'s application is abandoned, and sought the following:
 - ix) that the order made after application dated May 16, 2019 to have Dr. Ronald LaTorre be appointed to complete a Section 211 report be set aside.
- 4) Part 1 - para. 4 of Ms. M.M.'s application seeking an order or direction requiring the parties to set a 7-day trial is abandoned.

[16] The issues for determination are as follows:

1. Mr. D.M.'s application to vary the Parenting Order regarding parenting time with the Children;
2. Ms. M.M.'s application for updated appraisals to be prepared by Campbell & Pound on the Family Residence at [address redacted], Mission, B.C. (the "Family Residence"); and the Commercial Property at [address redacted], Mission, B.C. (the "Commercial Property");
3. Ms. M.M.'s application to list and sell the former Family Residence, with both parties having joint conduct of the sale, and the net sale proceeds to be deposited in trust, pending further written agreement between the parties or further order of the court; and

4. Ms. M.M.'s application pursuant to s. 183 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], restraining Mr. D.M. from directly, or indirectly, having contact with Ms. M.M., unless it relates to discussions revolving around the Children, or during parenting exchanges; and that Mr. D.M. shall be prohibited from following Ms. M.M., or attending at the Commercial Property. In the alternative, the same terms made pursuant to s. 277 of the FLA.

CONDUCT ORDER

- [17] During the continuation of the hearing, it was submitted that a mutual conduct order restricting contact and prohibiting non-attendance would be appropriate in the circumstances.
- [18] Section 222 of the FLA provides that at any time during a proceeding, a court may make an order to assist in the management of behaviours to reduce and minimize the effect of conflict upon the children of the relationship, and to ensure that the focus remains on their best interests. In that regard, s. 227 of the FLA provides that the court may make an order requiring a party to do, or not do, anything as the court considers appropriate, in relation to the purpose specified in s. 222. In this regard, having considered the evidence of each of the parties in regard to the post-separation contact and conduct as between themselves, together with the commentary of Dr. LaTorre, it is appropriate in the circumstances to order a mutual conduct order requiring the parties to focus and limit their communications between themselves as follows:
1. neither party shall have contact directly or indirectly with the other party, unless it pertains to addressing matters relating to the Children during parenting exchanges. All other communications relating to the Children shall be by email, save and except in the case of an emergency, when the parties are permitted to contact each other by telephone. The parties are to be respectful and civil in their communications with each other;
 2. neither party shall attend at the other party's place of residence, as such location is or may become known to them; and,
 3. Mr. D.M. shall not attend at the Commercial Property; and
 4. the balance of the conduct terms set out in paras. 3, 4, and 5 of the order dated February 28, 2018, remain in effect.

SALE OF THE FORMER FAMILY RESIDENCE

- [19] Rule 15-8(1) of the Supreme Court Family Rules provides that in a family law case where it is necessary or expedient, the court may order the sale of a property, and for the person in possession to deliver up possession to the purchaser or person designated by the court.

- [20] In *L.M.R. v. J.F.R.*, 2009 BCSC 1332 [L.M.R.], the court held the rule confers a discretion on the court to order the interim sale of a family asset of real property where it is necessary or expedient to do so.
- [21] L.M.R. provides that in the event there is no necessity, expediency becomes the sole basis for determining whether or not such an order ought to be made (para. 47).
- [22] At para. 48 of L.M.R., "expedient" is defined "in the Shorter Oxford English Dictionary [to mean] advantageous ; fit, proper; suitable to the circumstances of the case ... [and involves a balancing of the interests of both parties, as] the rule requires that [any] proposed sale be advantageous to both parties."
- [23] Mr. D.M. and Ms. M.M. are joint owners of the former Family Residence. Since the separation, Mr. D.M. has continued to occupy the former Family Residence. The property is located on a small acreage, and has two outbuildings: a 2,400 ft.² workshop and one oversize bay garage; and a three-car garage, attached to the Family Residence.
- [24] The former Family Residence was appraised in October 2018, when it was valued at \$1,100,000. Ms. M.M., in her most recent affidavit, attached a letter from Mr. Gerbrandt, of Royal LePage Brookside, of Maple Ridge, suggesting a list price of \$1,375,000-\$1,475,000 is more realistic, subject to taking a view of the interior and exterior condition of the home.
- [25] Mr. D.M. complains that Mr. Gerbrandt's suggested list price is biased, that his connection with Ms. M.M. is influencing his assessment of the property. Mr. D.M. also points to the 2020 assessed value of the property at \$1,146,000, to support his assertion the current value is more consistent with the 2018 appraisal.
- [26] Prior to the separation, a licensed marihuana grow operation was contained in the outbuilding situated on the property; however, this operation has since ceased.
- [27] At present, Mr. D.M. continues to reside at the former Family Residence and has made all necessary payments associated with the property since separation. In addition, the property is used to store the equipment associated with Mr. D.M.'s business.
- [28] Ms. M.M. submits that it is inevitable that the former Family Residence will need to be sold in order to fairly and equitably divide the family assets; and to account for support arrears.
- [29] Mr. D.M. submits that it is his intention to purchase the property for fair market value, as he wishes to remain in the Residence and continue to operate his business from this location.
- [30] Mr. D.M.'s has experienced a reduction in his income at present, due to the nature of the business and the loss of business brought about in response to the COVID-19 pandemic.

- [31] In terms of his ability to acquire the Residence, Mr. D.M. points to the fact that he has the support of his parents, who are prepared to assist with the purchase. He produced an expired mortgage commitment letter, prepared last fall by the Bank of Nova Scotia, approving Mr. D.M. and his parents for a mortgage in the sum of \$630,000. While the Scotia Bank commitment letter has expired, Mr. D.M. submits he has the ability to follow through with the purchase.
- [32] Returning to the question whether the court should exercise its discretion to order the interim sale of the former Family Residence, in these circumstances it would not appear that such a sale is necessary. In *Leask v. Leask*, [1994] B.C.J. No. 1821 (S.C.), the court held that it was not necessary to order the sale of the property, as there was no threat to it. The property could easily be maintained by the parties pending trial.
- [33] In this circumstance, Mr. D.M. has covered all expenses related to the former Family Residence since the parties separated; and he appears to be in a position to continue to do so pending trial.
- [34] There appears to be no threat to the property; and on this basis, I find it unnecessary to order the sale of the property.
- [35] In the event there is no necessity to sell the property, it will still be ordered in the event it is advantageous to both parties.
- [36] Here, Ms. M.M. submits that the sale will promote early settlement. The parties separated in the summer of 2017, at which point Ms. M.M. moved out of the Residence. Mr. D.M. has continued to live in the Residence since then. He has continued to operate the business from this location and the Children stay there when parenting time occurs.
- [37] Mr. D.M. has expressed a desire to acquire the property and took the step to obtain a mortgage commitment letter in order to fund the purchase of it. These steps have not resulted in any tangible results, to this point. However, his position remains unchanged. During this time, he has had the benefit of remaining in the Residence, while making the necessary payments in order that the Residence is maintained.
- [38] Ms. M.M. submits we are entering into a period of possible economic instability as a result of the COVID-19 pandemic which may negatively impact residential real estate values. This would suggest that steps should be taken reasonably quickly to sell the property.
- [39] It is also submitted that the trial is currently scheduled to be heard two months from now, in July 2020. Any decision in regard to the sale of the former Family Residence should be deferred to that date.
- [40] In determining whether a sale is advantageous to both parties, I take into account the following considerations:
1. the current trial date is scheduled for July 2020, two months from now;

2. I am not satisfied that the sale of the property is inevitable-particularly if Mr. D.M. continues to have the support of his parents in acquiring sufficient financing to buy out Ms. M.M.'s share;
 3. Ms. M.M. has exclusive use of the Commercial Property where she continues to operate the business from. There is sufficient equity in this available in the event there are matters to be offset, or accounted for in the context of a division of the assets and debt;
 4. the former Family Residence, at present, provides accommodation for the Children during parenting time with their father, which provides some degree of continuity to them pending resolution of the issues;
 5. the site is the location from which the business operates-although operations are currently suspended at this time; and
 6. the possible impact of economic instability, brought about by the current health concerns.
- [41] Balancing the foregoing factors, I am satisfied that the status quo should remain in place at present, as I do not see a clear advantage to both parties. In the event the property is sold, monies will remain in trust pending a court order of agreement of the parties. I agree with M.M.'s submission that a sale could promote resolution of the family assets claim. However, a sale could also restrict business operations of the company in the short-term, without a place to store the equipment and a base from which the business can operate.
- [42] Given the uncertainty of the current times, should there be a change in circumstances and the trial not proceed, Ms. M.M. would have liberty to reapply.

UPDATED APPRAISALS

- [43] Mr. D.M. applies pursuant to R. 13-4(3), for updated appraisals of the real property owned by Mr. D.M. and Ms. M.M. Rule 13-4(3) states:
- (3) If the parties do not agree that a joint expert is required or do not agree on any matter relating to the appointment of a joint expert, any party may apply to the court in accordance with Rule 10-5 for an order
 - (a) appointing a joint expert, and
 - (b) settling any matter relating to the appointment of the joint expert.
- [44] Previously, the parties agreed to retain Campbell & Pound, as a joint expert for the purpose of determining the best the values of the Commercial Property and the former Family Residence. The existing appraisals were completed in 2018, and are dated. Updated appraisals are necessary to assist the parties and/or the court, in determining the current value of the properties.

[45] For this reason, updated appraisals shall be ordered for the two properties; the cost of which shall be shared equally between the parties. Having heard no objection to the proposal that the firm which undertook the initial appraisal provide the update, I direct they undertake the appraisal update.

PARENTING TIME WITH THE CHILDREN

[46] Parenting time was originally ordered by Blok J., in February 2018. Shortly thereafter, the parenting arrangement was modified by agreement of the parties, as evidenced by an email exchange. The parenting time schedule has been followed for approximately two years; although some concern was raised with respect to the extent of parenting time available, by Mr. D.M.

[47] Ms. M.M. takes the view that the status quo should remain in effect until trial, particularly in light of the fact that the current trial date is scheduled for later this summer. Mr. D.M. seeks expanded opportunities to spend more parenting time with the Children. Mr. D.M.'s ultimate position is to seek a co-parenting arrangement at trial.

[48] Ms. M.M. submits that the appropriate parenting arrangement is that which has been expressed by Dr. LaTorre, in the recent s. 211 report.

[49] Preservation of the status quo pending trial is generally considered to be in the best interests of the Children, unless there is a compelling reason to change the interim arrangement.

[50] The matter is governed by s. 44 of the FLA, which provides as follows:

44(1) Two or more of a child's guardians may make an agreement respecting one or more of the following:

- (a) the allocation of parental responsibilities;
 - (b) parenting time;
 - (c) the implementation of an agreement made under this section;
 - (d) the means for resolving disputes respecting an agreement made under this section.
- (2) An agreement respecting parenting arrangements is binding only if the agreement is made
- (a) after separation, or
 - (b) when the parties are about to separate, for the purpose of being effective on separation.
- (3) A written agreement respecting parenting arrangements that is filed in the court is enforceable under this Act as if it were an order of the court.

- (4) On application by a party, the court must set aside or replace with an order made under this Division all or part of an agreement respecting parenting arrangements if satisfied that the agreement is not in the best interests of the child.
- [51] There is considerable affidavit evidence presented by Ms. M.M. and Mr. D.M. focused on the Children, the time spent by each parent with the Children, and concerns identified over the actions of each parent by the other and the impact of those actions on the Children.
- [52] There is conflict in the evidence, to the point to where the court cannot properly assess the evidence in an interim proceeding and such issues must be resolved at trial.
- [53] Having reviewed the report of Dr. LaTorre, I am satisfied that the Children are not at risk in either parent's care; however, Dr. LaTorre's comments are worthy of reflection at this juncture. At p. 76, Dr. LaTorre notes:

The most significant issue noted is the hostility of the parents, particularly how they are allowing it to impact their Children and exposing their Children directly to the verbal and physical consequences of their poorly modulated emotional responses to the frustration that is typical in highly conflicted divorces.

[54] Dr. LaTorre also notes:

- a) the Children should be insulated and protected from such behaviour and both parents have failed to do this consistently (p. 76);
 - b) parenting time is a responsibility (p. 78);
 - c) there is research supporting the idea that it is typically best for the Children if a healthy and ongoing relationship with both parents can be preserved, unless special circumstances exist to contraindicate that (p. 76).
- [55] I am satisfied there ought to be variations to the Parenting Agreement, based on the evidence and the submissions made during the course of the proceeding.
- [56] A cautious approach is warranted at this point, until each party has the ability to fully address their concerns identified. In the interim, the court is assisted by the recommendations and considerations of Dr. LaTorre, as set out in the report he prepared earlier this year.
- [57] Issues raised for consideration on this interim application include: parenting access on a regular ongoing basis; summertime arrangements; arrangements for special occasions including: Mother's Day, Father's Day, and the Children's birthdays; and finally, the pickup and drop-off of the Children.
- [58] Based on a consideration of the material filed and the submissions of counsel, I find that the following modifications to the current schedule are in the best interests of the Children.

- [59] Ms. M.M. will have parenting time with the Children on Mother's Day, from 10:00 a.m. until 7:00 p.m. Mr. D.M. will have parenting time with the Children on Father's Day, from 10:00 a.m. to 7:00 p.m.
- [60] Each party will have parenting time with the Children on the party's birthday, from 10:00 a.m. to 7:00 p.m.
- [61] Each party will have two weeks of uninterrupted parenting time with the Children during the summer months, which shall be broken down into one-week increments, with the parenting time commencing on Day 1 at 10:00 a.m., until Day 7 at 7:00 p.m. The two weeks of uninterrupted summer access will take place one week in July and one week in the August.
- [62] In the event the matter is not resolved before the winter school break in December and subject to the parties' determining otherwise, Christmas Day will be shared, such that one party will have the children from 12:00 p.m. Christmas Eve Day to 12:00 p.m. Christmas Day; and the other party shall have the Children from Christmas Day at 12:00 p.m. to Boxing Day at 12:00 p.m. The balance of the time over the winter school break shall be shared equally.
- [63] Without prejudice to either party's position at the trial of the matter, I will adopt the schedule outlined in Dr. LaTorre's report, based on a three-week plan, as follows:
- Week 1: Mr. D.M. shall have parenting time with both Children, commencing Thursday of Week 1 at 11:00 a.m. continuing until 11:00 a.m. on Tuesday of Week 2;
- Week 2: Mr. D.M. shall have parenting time with both Children continuing from the previous week until 11:00 a.m. on Tuesday of Week 2; and
- Week 3: Mr. D.M. shall have parenting time with both Children in Week 3, from Tuesday at 11:00 a.m. until Thursday at 11:00 a.m.
- [64] Week 1 of the new parenting schedule shall commence the week of May 25, 2020. The parenting schedule may be modified by written agreement of the parties.
- [65] The schedule, when drafted, contemplated that the Children would continue in their daily routines and organized activities during the week, which resulted in Mr. D.M. picking up the Children from daycare or school. However, in the current environment, arrangements will continue to be made at the times set out above.
- [66] Pickup and drop off shall be by the parties, or a mutually agreeable third party on behalf of each parent, and at a place to be agreed upon.
- [67] Other than when Mr. D.M. picks up one or both of the Children at pre-school or at school, unless agreed to in writing, the parties shall continue to pickup and drop-off at the McDonald's, as set out in Blok J.'s order dated February 28, 2018.

- [68] The parenting time is modified to minimize the contact between the parties and to reflect the fact that, until the end of the current school year, children are unlikely to return to the classroom and will continue to be home schooled, on-line.
- [69] In the event the trial does not proceed as scheduled and the Child does not return to the classroom in the fall, the pickup and drop-off of the eldest Child may need to be modified to accommodate a home-schooled, on-line program. In the event of disagreement on this particular issue, the parties/counsel are at liberty to schedule a 30-minute telephone application before me, to be heard prior to regular court hours, arranged through the Manager, Supreme Court Scheduling-New Westminster.

SUMMARY

[70] To summarize and on the basis of the foregoing, the court orders:

- 1) the orders set out in para. 15 are by consent;
- 2) a mutual conduct order is made in the terms specified in para. 18;
- 3) the parties shall have parenting time on birthdays, Mother's Day, Father's Day, and during the summer and the winter school holiday as particularized in paras. 59-62;
- 4) Mr. D.M.'s parenting schedule is modified, as provided for in paras. 63 and 64.
- 5) updated property appraisals shall be undertaken on the terms specified in para. 45; and
- 6) the sale of the former Family Residence is denied, with liberty to reapply.

"T.J. Crabtree J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/07/2020BCSC0766cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/d-m-v-m-m-2020>

Prepared on 24 October 2026 · Esheria