
CANADA / JUDGMENT

D.R. H. v. J.D.H.

2016 BCSC 1879

COURT

Supreme Court of British Columbia

DECIDED

16 August 2016

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

2016 BCSC 1879 D.R.H. v. J.D.H.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

D.R.H. v. J.D.H.,

2016 BCSC 1879

Date: 20160816

Docket: E050728

Registry: New Westminster

Between:

D.R.H.

Claimant

And

J.D.H.

Respondent

Before: The Honourable Mr. Justice Armstrong

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

A. Booth

Appearing as locum for R. Swartzberg, Counsel for the Respondent:

D. Boulding

Place and Date of Hearing:

New Westminster, B.C.

July 8, 2016

Place and Date of Judgment:

New Westminster, B.C.

August 16, 2016

- [1] THE COURT: These reasons will address the claimant's application for an interim parenting order concerning the parties' two children, B., born January 12, 2011, and C., born May 7, 2012.
- [2] If there should be a request for a transcript of these reasons, I reserve the right to edit that transcript to ensure that it correctly reflects the intentions of these reasons. Nothing in the reasoning or the result will change, and if a transcript is required, I will refer to the children and to the parties by initials, not by names whereas I will mention the names in these reasons.
- [3] The parties were married July 18, 2010, and separated on December 20, 2014. They currently share equal parenting time with the children. The claimant lives in Vancouver and the respondent lives in Maple Ridge.
- [4] The claimant lives in a 700 square foot, two-bedroom apartment and the respondent in a five-bedroom home on a cul-de-sac in Maple Ridge.
- [5] The respondent is a child protection worker with the Ministry of Children and Family Development, most recently working in the Tri-cities area.
- [6] The claimant is a border services agency employee and works in Vancouver.
- [7] The claimant works Monday to Friday from 8:00 a.m. to 4:00 p.m. and the respondent has most recently changed her work schedule so that she works full-time during the weekends and not at all on weekdays.
- [8] B. is five-and-a-half years old and C. is four. B. has been diagnosed with Autism Spectrum Disorder and is on the cusp of entering elementary school and kindergarten.
- [9] The most urgent issue raised in this application concerns which school B. will attend in September 2016. The claimant has enrolled B. in St. Andrews School; a private Catholic school in Vancouver, while the respondent has enrolled B. in a French immersion program at Coquitlam River School in Port Coquitlam which she says is approximately 20 minutes' drive from her Maple Ridge home.

- [10] The parties were litigating these issues in the Provincial Court and had a scheduled a hearing date for August 15, 2016 to decide some issues concerning whether the children should reside with the claimant or the respondent. As I understood the submissions, that hearing was not expected to address the question of which school B. should attend, and the parties believed that it would be more expeditious to seek this Court's ruling on the issue.

The issue

- [11] Thus, the central issue I have been asked to decide at this time is whether B. should be enrolled and attend St. Andrews School in Vancouver or Coquitlam River Elementary School in Port Coquitlam. Practically, this decision will decide where B. and C. are likely to reside, but I will deal with that question at the end of these reasons.

Discussion and Analysis

The Claimant's Position

- [12] The claimant pointed out that since separation the respondent has moved from Port Coquitlam to Surrey, from Surrey back to Port Coquitlam, and from Port Coquitlam to Maple Ridge.
- [13] After the respondent moved from Cloverdale back to Coquitlam, the claimant did not have confidence that if he moved nearer to the respondent's home she would remain in that location and share continued parenting in that community. Thus, he moved to Vancouver. Initially, he took steps to enrol B. in Vancouver College, a local boys' Catholic school. He said that the respondent was consulted and did not object to that effort but B.'s application for admittance to Vancouver College was rejected.
- [14] Because B. must attend kindergarten, he took further steps to find an appropriate school, identify the services and advantages of that school as they relate to B.'s needs and secured a position for him at St. Andrews school starting in September 2016.
- [15] The claimant said that he is a practising Roman Catholic and belongs to St. Andrews Parish in Vancouver.
- [16] The claimant began an application to St. Andrews to obtain a place for B. in the kindergarten program for September 2016. Sometime in April 2016 he had a meeting and correspondence with the staff at that school and B. was accepted for the kindergarten program at St. Andrews on June 1, 2016. He informed the Court there is a speech pathologist and an occupational therapist working with children at St. Andrews, and that he will have a full-time assistant attending to his needs in that school. His class size will be 17 students whereas he said that the class size at Coquitlam River would be 22 students.

- [17] St. Andrews has confirmed that B. will have a one-to-one assistant to meet his special needs at the school. The claimant recognizes that the respondent vigorously advocated for assistance and services for B. in addressing his Autism Spectrum issues but he believes St. Andrews will give B. the special help and attention necessary to assist him in the transition to elementary school.
- [18] The claimant points to the well-documented efforts he has made in preparing for B.'s transition to kindergarten to demonstrate that he is equipped to deal with B.'s issues. He says that he has clearly been connected with the school, has made enquiries concerning the services that will be available, and made efforts to achieve some continuity of those working with B. at meeting his needs.
- [19] Although he lives in a smaller residence than the respondent, the claimant described the amenities available for children in his area. The claimant accepts that the children will be in school from Monday to Friday and the respondent will have parenting time over the weekends. The obvious trade-off is that B. will have a school environment that is well-suited to addressing his issues.
- [20] Ms. Green is B.'s speech pathologist and Ms. Sexton has been his occupational therapist. Each of these people were involved with the parties at a June 24, 2016 transition meeting to review B.'s interests, strengths, challenges, and goals. The claimant points out that only Ms. Sexton is located in the Coquitlam area and she will be able to continue to provide advice and assistance. The claimant further points out that Coquitlam River School will not allow either service provider to come into the school.
- [21] The claimant said that because he is a parishioner at St. Andrews Parish he would have reduced tuition fees. He said that the respondent did not object when he had obtained a placement for B. at Vancouver College and is surprised at her virulent opposition to B. going to Catholic school now.
- [22] The claimant recognizes that there is a concern that B. is fastidious about his clothing, that he has issues and difficulties with change, but nevertheless believes that St. Andrews will be able to accommodate those questions and that the practice of wearing a uniform is not necessarily objectionable to B. at this time.
- [23] The claimant reports that on February 27, 2016 the respondent had written to him and informed him that she had moved to Maple Ridge and that there was a French Immersion School within walking distance of their new home. She said she had managed to have B. placed number one on the wait list for that school.
- [24] Oddly, B. was then accepted at Coquitlam River French Immersion School but that admission was apparently achieved in January 2016. The respondent did not explain what efforts she had taken to find schooling in Maple Ridge or nearby except for having B. placed on a wait list. I did not understand that any opportunities arose for B. to attend school in Maple Ridge between then and this application.

- [25] Finally, the claimant pointed out that the respondent told him of her intention to change her employment situation from weekday work to weekend work in May 2016. He implied that she had jumped the gun in order to improve the chances that this Court would favour Coquitlam River as the best choice for B.'s schooling.

The Respondent's Position

- [26] The respondent prefers to have B. registered in a French immersion school in the Port Coquitlam area. She says it is close to her home and work and close to the people who have been treating him over the past years.
- [27] She does not want her children attending a Catholic school. Further, she does not believe that the presence of a full-time support person in B.'s classroom is necessary and questions whether this level of support might not damage B.'s self-esteem, feelings of inclusion and ability to develop independent coping skills.
- [28] She contends that the claimant has never been involved in the Catholic Church and has not attended church during their marriage, and she is surprised and perplexed by his current position on this question.
- [29] The respondent believes that the Coquitlam River School is well-equipped to address B.'s needs. She claims to have worked extensively in the school district and with staff who have extensive knowledge of the complexities and opportunities for children with autism in that school.
- [30] She obtained some advice indicating French immersion schooling may be helpful for B. in that it might better engage him in his new environment.
- [31] One of the themes of the respondent's submissions was her belief that B. should attend school in the same locale where his professional advisors have provided their services up to the present because he will be best served by attending a school in the same community in the same context where he has been treated by professional advisors in the past. She contends he does not cope well with change and will be at risk if he starts a new school away from familiar people. She believes his life will be disrupted in a new treatment program elsewhere and that leaving the Tri-cities will be detrimental to his progress. She believes he would suffer the least distressing interruption in his life if he remained connected to that area where she works and he is familiar with those helping him.
- [32] The respondent focused concerns about the availability of Ms. Green and Ms. Sexton to continue working with B. She recognized that Ms. Green will see B. at St. Andrews, but if he was in Coquitlam he could attend her office which I understand was the more familiar setting for his attendances with her. She said that Ms. Sexton had voiced concerns that St. Andrews might be harmful to B. because of his need for assistance and self-regulation which she thought would be absent at St. Andrews. She believed that he would be unfamiliar with some of the treating staff and was concerned that Ms. Sexton would not be able to attend St.

Andrews to provide support.

- [33] The respondent argues that she has been B.'s champion and advocate in obtaining services and funding to address his autism issues. She said the claimant was not involved in any of those efforts and she does not have confidence he will be able to deal with B.'s behavioural issues. She cited instances where the claimant has phoned her and reported his inability to manage B. She also believes that the claimant suffers from significant depression and personality problems which render him ill-equipped to undertake the role as primary caregiver in addressing B.'s circumstances.
- [34] She also argues that B. has been very attached to her and a change in his residence will have negative impacts. She questions the claimant's capabilities to care for B. and address his needs. She suggests that until recently she did the bulk of the planning and organization to obtain treatment and addressing issues of B.'s autism and that the claimant was indifferent to B.'s needs for those supports.
- [35] In May, the respondent advised the claimant of an opportunity to adjust her work schedule to be free Monday to Friday while working Saturday and Sunday. She obtained an appointment to that position on June 22, 2016 and then adjusted her work schedule such that she works weekends and is having weekdays off. Thus, she says that she will be able to provide the ongoing daycare required by C. and most consistently to deal with B. She says that if B. is to reside with his father, the respondent would need to find alternate work to be able to spend time with the children.
- [36] She contends that her decision to change employment which limits her work schedule to weekends will mean that the children do not have to attend a daycare. Although the focus of her argument was on schooling, the respondent argues that the overall situation concerning B. must be considered.

B.'s Regular Care Providers

- [37] B. is cared for by eight specialists and therapists who provide a wide range of services. The details of all of those services was not made clear in the affidavit material but it nevertheless is obvious that Ms. Sexton and Ms. Green have been the most important participants in B.'s care.
- [38] On the evidence before me, the only therapist or treatment provider located in the Tri-cities was Ms. Sexton. Otherwise, the family doctor, Dr. Nordahl was located in Vancouver. Christopher Gibbons, a psychologist whose report was in evidence, appears to work in Vancouver, and some other treatment providers appear to be in Vancouver as well, but addresses were not provided for all of them.

Therapist's Input

[39] Ms. Sexton wrote a letter to the respondent in April 2016 commenting on the various attributes of the schools available for B. The respondent pointed out that Ms. Sexton's initial opinion was that St. Andrews might be too restrictive for B. as it expects him to be responsible for adhering to the Code of Conduct at the school. She thought that some of his behaviours could be potential problem if he was required to conform to a more demanding program.

[40] On July 6, 2016, Ms. Sexton wrote to the claimant indicating that she had spoken with St. Andrews School and was impressed by their obvious care and concern for his special needs. She said this:

I am theorizing that the transition to kindergarten has the potential to be challenging for [B.] But I do feel the School understands this and are preparing well to support [B.] With that in mind, I think [B.] will be supported to reach his potential.

[41] Ms. Green indicated a willingness to assist in B.'s transition if he attends St. Andrews School or a school in Maple Ridge (where the respondent had originally attempted to register him for school). Ms. Green does not travel as far as Maple Ridge on a regular basis.

[42] Ms. Green informed the claimant that she is not allowed to provide therapy or speak with school staff in public schools except in regard to individual education plans. Typically, private schools accept her attending on site at a school on a regular basis and working with the school teams. She strongly recommended that B. start those sessions as opposed to continuing on the one-to-one sessions she has engaged in with him up to now.

[43] Ms. Green will not have an opening to see B. outside school hours on a one-to-one basis in September and recommended that he receive speech language assistance on a regular basis at the school.

[44] Dr. Nordahl wrote a letter dated June 23, 2016 indicating a concern that because of B.'s delays in sensory processing and sensory receptive sensitivity a French immersion class could be potentially detrimental and result in learning delays.

[45] Ms. Green on the other hand believes that B. might benefit from the challenge of learning a new language and should not be prevented from the option of attending French immersion because of those limitations.

[46] It is significant that B. had expressed a theological conclusion that God did not exist and that was one of the reasons offered by the respondent that he should not attend St. Andrews. As I indicated to counsel, I can only imagine that the respondent has influenced B. in regard to that conclusion.

The Respondent's Affidavit

- [47] With a review of the respondent's affidavit, I expressed my views to counsel for the respondent concerning the contents of the respondent's affidavit.
- [48] This affidavit in my view was inappropriate in the circumstances of this case. First, the respondent's affidavit is replete with statements of opinion framed in language that suggests she is able to give evidence of certain facts couched in the form of opinion. For example, at one stage she said, "Private schools also refuse the student re-admittance should they find their behaviour too challenging or disruptive." No basis for that opinion was offered.
- [49] Further, she said, "My extensive experience in working in both private and public sector is it does not matter what level of support that a school can provide so much as about the team involved." Again, no basis was provided for that opinion.
- [50] In yet another paragraph, she opined that St. Andrews' expectations are not developmentally appropriate for B. and "Based on research that indicates the detriments of children in kindergarten being taught a curriculum that is above their development level." Again, little support is offered for the conclusion or opinion that she gave.
- [51] It is unclear to me whether her opinions were based on her professional training, skill, experience, or other background. She did not describe much in the way of detail that might have assisted in forming her opinions or that she might have been subject to cross-examination if the opportunity had been available.
- [52] Other paragraphs of the affidavit are also troubling. In another paragraph, she said, "[B.] is already set in his belief that God does not exist." This latter comment, in my view, is an absurd statement. B. is a five-year-old child and I cannot accept or understand why the respondent wished to discuss the issue of B.'s theological grasp of God except to conjure up another reason for opposing the registration at St. Andrews in an attempt to influence the Court that St. Andrews would not be appropriate.
- [53] These things should not be set out in affidavits intended as reliable evidence to inform the Court's views on the best interests of the child.
- [54] The prior affidavit is also framed in the nature of argument. For example, she said, "In order to be successful a parent must get familiar with the resources in the Community." and "It is fully up to the parent to educate themselves in all the different types of interventions you can implement and how to run the program and navigate the system".
- [55] The respondent's most egregious statement occurred when she said, "It would be my position that the primary factor contributing to [B.'s] dysregulated emotions and aggressive behaviours is the negative interactional features of the claimant's mental health concerns on [B.]."

- [56] This latter attack on the claimant framed as an opinion is unfortunate and unhelpful. It demonstrates a lack of judgment on the respondent's part concerning the reliability of her evidence that appears directed to distort the process which is intended to inform the Court about important facts touching on the child's best interests.
- [57] The respondent's affidavit is also replete with different types of pejorative allegations concerning the claimant's behaviour, including his preference of one child over the other. She reports that B.'s relationship with his father is strained and that the father tends to lose patience with B. and that the children appear to struggle with the claimant's condominium.
- [58] A substantial number of these allegations are denied by the claimant. Some of them may very well be accurate reports of what the children have informed her, but no detail was given concerning those reports from the children.
- [59] Although it is usual for the Court to make findings on interim parenting applications on a "rough and ready basis", that cannot always be the case. The parties have deferred their opportunity to have a trial on the merits in Provincial Court in October 2016 and it seems to me that the parties' best strategy at this point would be to obtain an early trial date on this matter so that these issues can be resolved.
- [60] I am satisfied that whatever order this Court makes, it will likely be in place for a lengthy period of time. These children are very young and there is a distinct prospect that an interim order will place them for the better part of one or two years in a situation where they will be much influenced by their surroundings and that in turn the placement of the children at this stage will influence the final result. Thus the outcome of an interim parenting application is likely to have long-term consequences.
- [61] The claimant contends that the contents of paras. 28, 29, 30, 35, 38, 43, 45, 46, 47, 52, 55, 59, 60, 61, 73, 74, 76, 77, 78 and 86 contain opinion, argument, speculation, and hearsay without the requisite identification of sources of hearsay and/or the background for the opinions, all of which are inappropriate in an affidavit on an application of this type. The respondent also included at paras. 79 to 82 allegations concerning the claimant's activities and abilities concerning the children which he diametrically disagrees with. In each paragraph there is some justification for the respondent's contentions but on balance and overall the respondent's affidavit goes well beyond what is appropriate.
- [62] Based on the respondent's argumentative and opinionated affidavit and her attacks on the claimant's capacity to parent and other psychiatric shortcomings, I cannot give much weight to her opinions and distorted suggestions of fact as contained in her affidavit: see *B.D.H. v. S.N.H.*, 2014 BCSC 2010; *Elliott v. Pollock*, 2015 BCSC 2121; and *Sovereign General Insurance Co. v. McNeill*, 2007 BCSC 988.
- [63] The respondent is advised in the future to file any affidavit evidence she hopes to rely on in compliance with the Supreme Court Family Rules and the rules of evidence concerning affidavits. If she wishes to submit an affidavit which contains hearsay or speculative or

prejudicial comments, expressions of opinion and argument, the Court may order that that affidavit be removed from the file and order a compliant affidavit be filed and order her to bear the costs. This was the outcome in *Webber v. Wallace*, [1994] B.C.J. No. 1894 where the Court said: As so much of the plaintiff's affidavit is improper, the affidavit should be removed from the file and replaced with an affidavit complying with Rule 51 and the rules of evidence.

The Law

- [64] The Court of Appeal recently commented on interim parenting questions in *Kalafchi v. Yao*, 2015 BCCA 524 at para. 17 said:
- [17] I do not doubt that, as this Court has reiterated in *Fitzgibbon v. Fitzgibbon*, 2014 BCCA 403, decisions regarding guardianship, custody, parenting and contact are typically exercises of discretion and:
- [22] Interim orders are primarily designed to maintain the status quo and to provide short-term solutions until issues regarding the best interests of a child can be fully canvassed at trial: *Johnson v. Jessel*, 2012 BCCA 393 at para. 48; *Leung v. Leung* (1998), 44 R.F.L. (4th) 121 (B.C.C.A.) at para. 10; *Eaton v. Eaton* (1987), 11 R.F.L. (3d) 92 (B.C.C.A.); and *Prost v. Prost* (1990), 30 R.F.L. (3d) 80 (B.C.C.A.). In this case, the best interests of the child was at issue. The incident that gave rise to the supervision order was disputed. This raised issues of the parties' credibility. The forum to resolve these issues and whether there is an ongoing need for supervision of the child are best resolved at trial and not by repeated interim applications. Appeals from interim orders on issues regarding the best interests of a child generally have been discouraged absent a compelling reason: see *Haigh v. Haigh* (1987), 9 R.F.L. (3d) 301 (B.C.C.A.).
- [65] In the context of this case, I recognize the importance of B. attending a school that best addresses his needs and the special circumstances necessary to enrich the life and development of a child with Autism Spectrum Disorder. He will require support in social communication skills and self-regulation. Unfortunately, I am not satisfied that the issue concerning the optimum educational institution for B. can be fully assessed on the evidence that I have before me.
- [66] Dr. Gibbons reported on B. in July 2014 when B. was only three years, six months old. In that report, Dr. Gibbons made significant recommendations concerning B.'s schooling. It is difficult to reconcile the different plans concerning B.'s schooling with Dr. Gibbons' recommendations. Without an assessment of the available options choosing between these two opportunities is difficult. There is no status quo that might be the default position pending trial.

- [67] As I have said, I am concerned that this interim parenting order may be in place for a prolonged period. The parties have been separated since December 2014 and only recently commenced this proceeding in hopes of having an early decision regarding interim parenting. There is no trial date and very little has occurred in the litigation.
- [68] In the absence of a default to status quo, I must make a decision that will be effective in September 2016 when B. is to start kindergarten. He is obviously a bright young boy and needs the best possible opportunities at his schooling.
- [69] The respondent has been the primary intervenor in obtaining assessments, care and treatment for B.'s disorders. She claims that she has had the bulk of the childcare responsibilities although the claimant contends that he has shared substantially in those tasks. Nonetheless, the parties have both worked full-time, (except for maternity and paternity leaves), and have shared parenting on a 50/50 basis notwithstanding the respondent's suggestion that she was the primary caregiver and her unhelpful and pejorative comments about the claimant's capacity.
- [70] Following separation, the parties retained their Port Coquitlam family home and rotated living in the house and with the children. In 2015, they moved out of the Coquitlam home to the Surrey residence and the claimant followed her, moving to Cloverdale to be closer to the respondent and the children. When she moved to Coquitlam, he decided to move to Vancouver to be closer to his work and his new partner.
- [71] In May 2016, the respondent moved to Maple Ridge. The respondent's three changes of residence in a short period of time is some evidence that there is no status quo that can be assessed at this time.
- [72] It is odd that the respondent is so adamant about enrolling B. in the Port Coquitlam school when it appears that decision was made because she applied too late to have him attend French immersion school in Maple Ridge. It seems to me that, as between Port Coquitlam and Maple Ridge, the latter would have been the preferable location for B.'s schooling. She did not comment on the prospect of enrolling B. in Maple Ridge for Grade 1 or at some time in the future nor that there were facilities and services available for a child with Autism Spectrum Disorder in that community.
- [73] The respondent said that the drive to the Coquitlam River School is only 15 to 20 minutes. I doubt very much that that time estimate will accurately reflect the time for B. to travel to and from school at peak traffic times in the morning and the afternoon. The daily drive to and from his school is something of a factor affecting the location of his kindergarten. St. Andrews is significantly closer to the claimant's residence and he will not be subject to lengthy morning and afternoon automobile trips in those circumstances.
- [74] Notwithstanding the respondent's history of advocating for B. in investigating services to meet his needs, it is clear to me that the claimant has embarked upon a helpful and constructive role in identifying a school that would meet B.'s needs. I cannot evaluate or

assess the likelihood of success or the better opportunity offered in each case. However, when I consider the recommendations listed by Dr. Gibbons, and B.'s tender age as he enters kindergarten, the presence of a full time or relatively full time assistant to work with B. on a daily basis in the school, it seems to me that St. Andrews offers an optimum strategy. With respect to the latter, there is no similar service that can be expected at Coquitlam River.

- [75] If B. attends St. Andrews, the respondent will surely continue to support him. She will be able to intervene and advocate on his behalf when required and it is not as if the decision to enroll him at St. Andrews should substantially affect the respondent's role.
- [76] I have weighed the evidence concerning Ms. Sexton's views and Ms. Green's views, Dr. Gibbons' opinion, the facilities and services available at St. Andrews, and the respondent's description of the facilities and services that might be available at Coquitlam River School.
- [77] I have also weighed and balanced the respondent's concerns and her historical role in B.'s upbringing. I do not think that will change simply because he is not in the school she has chosen.
- [78] I appreciate that placing B. at St. Andrews may be something of an experiment given the concerns outlined by the respondent, but I have reached my conclusion on the balance of probabilities and on the evidence known to me that it will likely be in B.'s best interests to accept his enrollment at St. Andrews for the upcoming school year.
- [79] My conclusions reflect, in part, the deficient affidavit tendered by the respondent and that I have been unable to rely on many of her assertions as they were based on opinion, argument, speculation and unidentified hearsay.
- [80] At the outset, I was concerned about the evidence on this application because it lacks professional opinion and advice that could address the issues raised by the parties. It seems to me this is crucial in assessing B.'s needs but on this interim application the parties invited me to decide the question of B.'s schooling on the basis of their own personal opinion, references to Ms. Green and Ms. Sexton, and they have invited me to make inferences from the comments of those people involved. In my view, this is too important a decision to make without better professional assessment.
- [81] The order that I will make is thus that B. will be enrolled at St. Andrews School and the parties must settle apart the parenting role that will be in place until this issue is reviewed.
- [82] Notwithstanding this conclusion on this interim application, I remain concerned that there must be a thorough evaluation and investigation of B.'s needs and his placement at St. Andrews and his ongoing performance and development. This review should also examine schooling alternatives. This must be accomplished in a timely way and before B. is too far in the school year.

- [83] In addition to the above, I order and direct that the parties obtain an updated assessment from Dr. Gibbons or someone equally qualified to inform the court about B.'s performance at St. Andrews and the wisdom of his remaining in that school.
- [84] A report should be prepared and available no later than the end of December 2016 but not earlier than November 15, 2016. Thus, this order will be subject to a review upon receipt by the parties of a report from Dr. Gibbons or the other qualified person agreed to by the parties.
- [85] I am making this order with considerable reservation because of B.'s needs for stability and certainty. However, if B. is not performing well at St. Andrews or if the new parenting arrangement is flawed, those issues must be addressed when the parties have obtained the professional opinion that should deal with all aspects of B.'s schooling and care and provide other recommendations or options that the parties may wish to advance. If B. is experiencing extraordinary difficulty in this new school, the November 15 date should not prevent the parties returning to court with professional advice concerning his well-being.
- [86] In the meantime, if this matter comes before the court on a review, the respondent is directed to prepare proper affidavit material that conforms with the Rules and the authorities concerning affidavits.
- [87] Now, what do you suggest or propose with regard to the ancillary order regarding childcare and parenting?
- [88] MS. BOOTH: My submission is that (indiscernible) proposal set out in the application materials which should be the parenting time that follows from the order that B. attend St. Andrews. Nothing was challenged either in their reply or in their submissions made on behalf of the respondent.
- [89] THE COURT: In this regard, I am concerned that Mr. Boulding is not equipped to deal with that issue. That was not argued when the matter was before me. No one actually addressed the issues. As I read the proposal, it addresses the Monday to Friday during weeks 1 and 2 and in week 3 -- I take it that for week 3 the proposal is that the claimant would have the children for the entire week and no reference to a week 4, as I understand it.
- [90] MS. BOOTH: No, it is a three-week rotation so that the claimant has some time with the children on weekends and not just during the week.
- [91] THE COURT: Well, look, I - right now the - they are dealing with - is it week on/ week off? I know it was 50/50. It is not week on/week off, is it?
- [92] MS. BOOTH: No, it's - a schedule is set out (indiscernible) of the material -
- [93] THE COURT: Yes.
- [94] MS. BOOTH: -- the current schedule is in the notice of application which is that one, it's on page 2 starting paragraph 6 -

- [95] THE COURT: Okay.
- [96] MS. BOOTH: sub (2) -- the parties currently have equal parenting time on the following schedule. That the respondent have Monday and Tuesdays, the claimant Wednesday through Thursdays and then there is the two things and then there is the weekends -- there is a switch.
- [97] THE COURT: Well, what I am going to do because I understand the difficulty, I am going to adjourn the parenting schedule aspect of the application. I think that it would be preferable if Mr. Swartzberg were instructed on this. It seems to me that the parties ought to be able to come up with a mutually agreeable plan. I appreciate that that is not always the case, but it would be far preferable if the parties could arrive at something that would work for them as opposed to being imposed by me, particularly -- I appreciate your position that Mr. Swartzberg did not argue the point, but I am still concerned with the best interests of the children and I do not want to impose an order that is not sensitive yet to those interests. I appreciate that that may very well mean a return to argue this point, but in the scheme of things I am of the view that that would provide the fairest means to resolve this.
- [98] MS. BOOTH: Yes. Perhaps (indiscernible) when Mr. Swartzberg is coming back as we only have another couple of weeks until school starts.
- [99] MR. BOULDING: Mr. Swartzberg's - I am a locum - Mr. Swartzberg's return date is unknown to me. It is not a health related matter. My submission would be counsel should get together and put something forward that we could get a consent order. Following that a couple of pages of written argument. I do not think we need to - I - Your Lordship, I agree.
- [100] THE COURT: Mm-hmm.
- [101] MR. BOULDING: This is not affidavit material. She has a proposal, we have a proposal, and we can negotiate. Failing that, in a week or two submit a couple of pages written argument and that would be my submission.
- [102] MS. BOOTH: I can say that there actually is not a proposal - there has been no proposal from the respondent that addressed what if B. goes to St. Andrews.
- [103] THE COURT: Well, I guess -- that is my concern.
- [104] MS. BOOTH: So -
- [105] THE COURT: I think what I will do -- regrettably, I am not here for a long time after this week, but what I am going to direct is that by September 7th the parties will if they have not been able to come to some compromise on how to manage parenting, then a short two-page or obviously what you need but a fairly brief written argument. If you can get that to me by September 7th, I can resolve that question fairly quickly and so you will get an answer before much of the school year has gone by.
- [106] MS. BOOTH: If perhaps - our proposal is set out so that --

- [107] THE COURT: Yes, your proposal is set out, that -
- [108] MS. BOOTH: if we could have a deadline for when the respondent will provide their proposal given the fact that B. will be going to St. Andrews -
- [109] THE COURT: Mr. Boulding if - and I appreciate you do not know when Mr. Swartzberg is back but I think it would be fair to make an order that Mr. Swartzberg or the respondent provide her written position and submissions by August 31st.
- [110] MR. BOULDING: I was going to say September 1st but August 31st works. And that is to my friend?
- [111] THE COURT: To your friend, yes.
- [112] MR. BOULDING: Yes. Thank you, My Lord.
- [113] THE COURT: Thank you.

"Armstrong 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/16/18/2016BCSC1879.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/d-r-h-v-j-d-h-2016>

Prepared on 29 October 2026 · Esheria