

CANADA / JUDGMENT

F.K.L. v. D.M.A.T.

2025 BCSC 1811

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2025 BCSC 1811 F.K.L. v. D.M.A.T.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

F.K.L. v. D.M.A.T.,

2025 BCSC 1811

Date: 20250917

Docket: E88897

Registry: Nanaimo

Between:

F.K.L.

Applicant

And

D.M.A.T.

Respondent

Before: The Honourable Justice Dion

Reasons for Judgment

The Applicant, appearing in person:

F. K. L.

The Respondent, appearing in person:

D. M. A. T.

Place and Date of Hearing:

Nanaimo, B.C.

August 20, 2025

Place and Date of Judgment:

Nanaimo, B.C.

September 17, 2025

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Introduction

- [1] This is a relocation application brought pursuant to the Family Law Act, S.B.C. 2011, c. 25 [FLA].
- [2] When I heard this application, I advised the parties that I would not be able to provide reasons prior to the start of the school year. Given this, I asked the parties if they still wished to proceed; they did. These are my reasons.
- [3] As is sometimes the practice to protect the anonymity of children in family law litigation involving them, I am using initials to identify the parties and their child A in these reasons. The applicant is F.K.L. ("Ms. L."). The respondent is D.M.A.T ("Mr. T."). Ms. L lives and works in Comox, B.C. She seeks to relocate A from Gold River to Comox, B.C. and to vary the parenting arrangement. The respondent, Mr. T, with whom A resides with in Gold River, opposes the application.

Background to the Litigation

- [4] From the record before me, there have been at least nine Court orders made in respect of these parties and their child A. The first one was made in 2020 after a trial; the remaining orders have been made since April 2022. Two of the nine orders were made by consent on March 31, 2025 and July 4, 2025. These are high-conflict parties. Litigation respecting A commenced when she was two years old. She is now ten years old.
- [5] The parties were in a common law relationship for less than three years. They resided in Trail, B.C. A was born in July 2015. In 2017, the parties separated; Ms. L. moved with A to Gold River, where she grew up and where her father resided. She now resides in Comox, where she works as a paramedic. Her father still resides in Gold River. On her days off, Ms. L exercises some parenting time in Gold River. Other times, her father will stay with her in Comox to help with A when Ms. L exercises parenting time when she is working. Ms. L works four days on, four days off. When working her shifts, she works two-day shifts, followed by two-night shifts. Comox is approximately an hour and half to two hours away from Gold River.
- [6] In 2018, Mr. T moved to Victoria from Trail to be closer to A and exercise parenting time. In 2019, the parties began to exercise shared parenting time. Mr. T purchased a home in Gold River in February 2021 and moved there in March 2021. He continues to reside there with his family.
- [7] Mr. T and his wife, Ms. T have a son, C, born in March 2023. C is two years old and is the stepbrother of A. As of May 2025, Mr. T has been employed in Campbell River. He works day shifts, Monday to Thursday at Capital Power as a Power Plant Instrumentation and Electrical Technician. He commutes the approximate one hour's drive each way to work daily. Prior to May 2025, Mr. T worked at Imperial Oil in Alberta on essentially a two week in, two week out shift.
- [8] Ms. T is employed at the elementary school A attends in Gold River. A is now in grade five. Since the age of two, A has always lived in Gold River. She has never attended school other than in Gold River.

Prior Relocation Applications

- [9] Justice Gomery presided over a five-day trial August 2020, he issued his Reasons on September 1, 2020. Ms. L wanted A to remain living with her in Gold River, as she was about to start kindergarten. Mr. L sought an order that A live with him in Victoria. Justice Gomery ordered that A would reside with Ms. L in Gold River while in school, and Mr. T would have substantial parenting time around A's school schedule. He also ordered a parenting coordinator be retained by the parties, to among other things, assist them with the implementation of his orders.

- [10] Ms. L filed a relocation application on March 30, 2022, which was heard by Justice Steeves on April 27, 2022. He determined that the application was premature and by consent, the relocation application was adjourned generally. In his Reasons, Justice Steeves observed,
- [9] Returning to the relocation issue in the Gomery J. judgment. The reasons are at paras. 93-105. There was a finding that both parents provide physical, psychological and emotional safety to the child and ensure her well-being. There were factors in favor of parenting time for each parent. The claimant's history of problematic conduct made the decision more difficult. However, Justice Gomery placed significant weight on the breadth and depth of [A's] connection to Gold River, the place where she had lived the longest, knew the best, where she went to school and where she had friends. Gold River offered almost everything she needed at this stage in her life. With respect to parenting time, it was not up to the claimant to decide the respondents parenting time, and there were problems with the claimant consulting the respondent.
- [11] Ms. L filed another relocation application in 2022. Justice Lamb heard the application on August 24, 2022. She issued her reasons and made final orders on August 31, 2022 ("Relocation Reasons"). The Relocation Reasons are indexed at 2022 BCSC 2368. Lamb, J. dismissed Ms. L's application, concluding that:
- [103] In my view, weighing the factors I have identified leads me to conclude that having A live and attend school in Gold River is in her best interests. As in August 2020, A has a strong connection to the community. She is a member of a household that includes her father and his common law spouse and will soon include her younger sibling.
- [104] I agree with Justice Gomery that whether life in the village of Gold River will continue to meet her needs when she grows up remains to be seen. I am not satisfied, however, that A has outgrown Gold River at the age of seven.
- [105] Like Justice Gomery, I have taken account of Ms. L's problematic conduct both before and after trial. I am more confident that Mr. T will take appropriate steps to preserve A's relationship with Ms. L, including showing flexibility when her work schedule permits additional parenting time than Miss L would be if A was permitted to relocate to Comox.
- [12] Justice Saunders heard a third relocation application in August 2023. In that application, Ms. L sought to have A relocate to Comox. While Saunders, J., dismissed Ms. L's relocation application, he did vary the parenting time schedule.
- [13] It was anticipated in the Relocation Reasons that Mr. T would try to obtain employment in Gold River once he completed his electrical Red Seal program at the end of 2022 in Campbell River. However, when Saunders J. heard Ms. L's subsequent relocation application in August 2023, Mr. T. had not secured that anticipated employment. Mr. T returned working away from Gold River at Imperial Oil Gold on a two week out, two week in, rotation. Even so, Justice Saunders concluded,

- [56] It is in A's best interests that she continue to reside in Gold River. Her need for stability, her ties to her school and to the community, and her relationship with her newly-born half-brother weigh heavily in favor of that outcome. These factors surmount any concerns arising out of the impact of a being in the care of Ms. I, rather than Ms. L, for periods of time during Mr. T's work related absences. Giving further weight to residing in Gold River is the continuing factor of the greater likelihood that Mr. T will foster a strong and healthy relationship between A and her mother than the converse.
- [57] Mr. T's work-related absences do however weigh in favor of Ms. L being granted the opportunity to exercise regular midweek parenting time with A during those absences.
- [14] Justice Saunders varied the Ms. L's parenting time, by among other things, adding one mid-week overnight in Gold River, at the option of Ms. L, when Mr. T was absent from Gold River for more than seven consecutive days because of employment in Alberta.
- [15] In February 2024, Justice Blok appointed a second parenting coordinator, A. Perry, to assist the parties. Justice Blok also varied Justice Saunders' order so that Ms. L could exercise parenting time when Mr. T was not home in Gold River on his days off, and that additional time does not result in Ms. L's overall parenting time exceeding 60 percent annually. Justice Blok adjourned Mr. T's late-filed application to vary parenting time to May 14, 2024.
- [16] On May 14, 2024, Justice McNaughton (as she then was) heard Mr. T's application to vary the parenting time schedule. She did not find a material change in circumstances since Justice Lamb's order, as varied by Justice Saunders' order and therefore she did not vary either order: *F.K.L. v. D.M.A.T.*, 2024 BCSC 967 ("McNaughton Reasons"). The parties continued to work and live in different communities (at para. 65). Justice McNaughton went on,
- [66] The parties knew when they appeared before Justice Lamb that her order contemplated Ms. L exercising parenting time in Gold River while Mr. T was out of town. That remained the case when they were before Justice Saunders.
- [67] The parenting time remains shared, and Ms. L's time is not to exceed 60 percent annually.
- [17] Mr. T having another child was also contemplated by Justice Lamb and was not new. Justice McNaughton was of the view that what Mr. T appeared to be really objecting to was Ms. L's selection of her parenting days and the fact that she had chosen to parent A, in Gold River, while Mr. T was away for work. Justice McNaughton determined that was an issue for the parenting coordinator to address (at para. 69).
- [18] Parenting coordinator Ms. Perry commenced working with the parties. Mr. T was satisfied with her work; Ms. L was not. Ultimately, on Ms. L's application, Ms. Perry's services were terminated by order of Justice Brongers on March 4, 2025. Justice Brongers' Reasons are indexed as *F.K.L. v. D.M.A.T.*, 2025 BCSC 364. He noted,

- [3] Indeed, it was noted in one of these judgments that, unfortunately, repeated court intervention has been required to address the parties ongoing parenting conflicts since their separation almost eight years ago: *F.K.L. v. D.M.A.T.*, 2024 BCSC 967 at para 3. Parenting coordinators have been appointed to assist. However, even with these resources at their disposal, a high level of conflict over how to parent the Child persists between the parties.
- [19] As previous judges have noted, the party's relationship continues to be strained. Justice McNaughton was hopeful that a parenting coordinator would be able to assist them in addressing their parenting conflicts and achieve a more flexible parenting arrangement (at para. 60). In that regard, while Justice Brongers terminated the parenting coordinator in March 2025, he noted:
- [17] I acknowledge that this will leave the parties without a parenting coordinator for the time being. I also recognize that several of the judges who have issued decisions in this case have commented upon the desirability of having one given the high conflict nature of the parties' relationship. This is no doubt still the case. Indeed, the parties are encouraged to consider securing the services of another parenting coordinator, by agreement or further to a court order.

Application Before Me

- [20] As stated, before me is Ms. L's application to relocate A to Comox. If I grant her request for relocation, she seeks to vary the current parenting time schedule. She says on her proposed parenting schedule, Mr. T will have the parenting time he wants, including three weekends a month and 2/3 of all holiday time.
- [21] Ms. L has been living in Comox since 2022. She has a career and a residence there. She believes that the town of Gold River, with its limited resources, cannot sustain A and her current needs, growth, and circumstances. All of A's extracurriculars, counseling, dentist and doctor are all located a substantial distance outside of the town, she says.
- [22] Ms. L says there are material changes in circumstances since the previous court orders, most importantly, a Views of the Child Report ("Views Report").
- [23] Mr. T does not consent to the relocation of A. He says that A is settled, happy and content in the family, in their family home and in her community of Gold River. He says that A has a strong bond with her brother. Relocating A out of Gold River and drastically altering the parenting schedule will have detrimental effects on their relationship.
- [24] Mr. T says that Ms. L relies on the same arguments that she has made in previous relocation applications. He says there are no material changes in circumstances. With respect to the Views Report, Mr. T says that Ms. L has coached A about what to say.

Views of the Child Report

[25] The Views Report was ordered in June 2025. Dr. J. Elterman completed that report on August 5, 2025. In summary, Dr. Elterman's opinion is that,

[A] has a close relationship with both parents, as well as her step-mother, half-brother and maternal grandfather. She has a close group of friends in Gold River and is reportedly doing very well in school there and is completing work beyond her grade level [A] describes her time with both parents positively and she shares her mother's optimism about the opportunities for her in Comox. The reasons that [A] provides for wanting to move to Comox include the opportunities that a larger community provides and the criticisms of her current school, including that her teachers are not qualified and that the school in Gold River is ranked lower than the school in Comox.

While [A] has expressed a strong preference to move to Comox to attend school there, she also has close relationships with her family in Gold River and has close friendships. It is important to recognize that her younger brother lives in Gold River, and although he is significantly younger, [A] has developed a close relationship with him as well.

While there is no evidence of overt coaching in relation to the views that [A] expressed in this assessment, I believe that [A] has been influenced by her mother that it would be better for her to attend school in Comox based on the reasons that [A] provides. This is consistent with [Ms. L's] own acknowledgement that she is open in speaking with [A] about issues that may affect her. It is also my impression that [A] is comfortable and enjoys spending time with both parents, but relates more closely to her mother as she reports feeling more comfortable talking to her about problems and describes herself as a "mom's girl".

Education

[26] A continues to attend Ray Watkins Elementary School in Gold River ("Ray Watkins"). She is enrolled in grade 5 for the 2025/2026 academic year. Last year, when she was in grade 4, she attended a Grade 4/5/6 split class. Ms. L says she expects that A will again be enrolled in a split class for the 2025/2026 academic year.

[27] Ray Watkins is part of School District #84 which encompasses Vancouver Island West. Ms. L relies on a report titled, "The Enhanced Student Learning Report" published in September 2023 ("Learning Report"). The Learning Report refers to challenges experienced at Ray Watkins and students attending there, associated with such a rural school. Among the challenges are that services for students and families are limited. There is a higher teacher turnover and difficulty hiring qualified staff.

[28] However, on the other hand, the Learning Report also indicates that "[o]ur small size and remote nature also offer some powerful positive opportunities for learning, such as the ability to form close connections with each student and family, rich Nuuchahnulth culture, and abundant outdoor learning opportunities".

- [29] Ms. L emphasized that A took part in the provincial Foundational Skills assessment testing this past school year when she was in grade 4. Those assessments are done at the grade 4, 7 and 10 levels province wide each year.
- [30] Ms. L is concerned that at Ray Watkins, children in grade 4 performed slightly below the provincial average in Literacy and Numeracy. Moreover, as children aged their scores declined, performing substantially below the provincial average in Literacy and Numeracy in Grade 7, as well as in Grade 10.
- [31] Ms. L is also concerned that Ray Watkins has problem with hiring and retaining qualified staff. She says the longer A remains in this educational environment, the more she will fall behind in her learning. Ms. L says she supplement's A's learning with at home teachings and casework. She has also hired a tutor in Comox that A sees regularly.
- [32] Mr. T says that A is settled and doing well in school. He said that his wife is employed as the Strong Start Facilitator. Ms. T is working toward greater classroom teaching certification. Ms. T helps A get ready for school and they go to school together along with A's younger brother.
- [33] He says that A's grades are above average. Mr. T entered A's 2024/2025 report card into evidence which shows, for instance, she is reading at grade level and has a 'solid grasp' of math concepts. There are no concerns noted in A's 2024/2025 report card about her scholastic achievements.

Extra-curricular Activities

- [34] In this application, Ms. L places significant emphasis on the need for A to live in Comox because all of her extracurricular activities are in Comox.
- [35] There are absences and late attendance noted in A's 2024/2025 report card. According to Mr. T, A has missed over two weeks of school every year due to Ms. L removing her from school and taking her to Comox. In her submissions, Ms. L said that A has extra-curricular activities mid-week in the evenings in Comox. That means, A misses some school. According to A's 2024/2025 report card, she had 15.5 absences and one late attendance from school over the past academic year.
- [36] Ms. L says that A has been enrolled in extra-curricular activities in Comox for three years and has shown a passion for figure skating, dance and gymnastics. She says A has reached a level where she can compete competitively, but this requires her to attend classes Monday to Friday. She said A's classes are no longer offered on the weekend. Ms. L says that she alone covers the costs of A's extracurricular activities.

- [37] Mr. T says Ms. L unilaterally stopped all of A's Gold River based extracurricular activities and replaced them all with extracurricular activities in Comox. These unilateral changes by Ms. L have had a detrimental effect on A's stability and well-being. She no longer participates in hockey, figure skating or karate in Gold River as she had in the past.
- [38] Mr. T acknowledges that the parties are supposed to share extracurricular expenses, but he says that Ms. L has never provided him with receipts of A's extracurricular activities in Comox.

Other Issues Raised

- [39] Ms. L says A's dentist and doctor are in Comox. She says that A was referred to an Orthodontist in Courtney from her dental office in Comox. A underwent dental surgery in May 2025, which will require check-ups and braces.
- [40] Ms. L says that Mr. T unilaterally withheld his consent for A to attend counselling. In an email dated August 14, 2025, the counsellor advised both Ms. L and Mr. T that consent for counselling services had been withdrawn by Mr. T until further notice. Since consent was required from both guardians for A to attend her counselling session, the counsellor cancelled the scheduled appointment.
- [41] Mr. T says he did not withhold his consent entirely, but he did for that one appointment. He said he is supportive of counselling for A but that counselling does not have to occur just in Comox.

Analysis and Conclusion

- [42] For the reasons that follow, I decline to vary Judge Lamb's order in respect of relocation, and in turn, make no order as to change in parenting time schedule as proposed by Ms. L.
- [43] Ms. L. has the burden of showing that there has been a material change in A's needs or circumstances since the last orders were made. I am not satisfied that she has met that burden.
- [44] Pursuant to s. 47 of the FLA, a court has jurisdiction to change, suspend, or terminate an order as it relates to parenting arrangements. The court may change, suspend, or terminate an order for parenting arrangements if satisfied that there has been a change in the needs or circumstances of the child, including because of a change in the circumstances of another person. since the order was made (s. 47).
- [45] In *Williamson v. Williamson*, 2016 BCCA 87, the Court of Appeal held that a change in circumstances must meet the test of materiality applicable in cases decided under the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), as set out by the Supreme Court of Canada in *Gordon and Goertz*, [1996] 2. S.C.R. 27, 134 D.L.R. (4th). Justice Stomberg-Stein wrote:

[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": *Boychuk* [v. *Singleton*, 2008 BCCA 355] 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 the original.]

[46] As set out on the *McNaughton Reasons*, at para. 64:

A material change in circumstances is one that, if known at that time, would likely have resulted in different terms than the initial order (*L.M.P. v. L.S.*, 2011 SCC 64). If the matter relied on as constituting a material change was known at the relevant time, it cannot be relied on as the basis for a variation. The test is subjective. As explained by the Court of Appeal in *Moazzen-Ahmadi v. Ahmadi-Far*, 2016 BCCA 503 at para. 21, a "material change is based not on what one party knew or reasonably foresaw, but rather on what the parties actually contemplated at the time the order was entered".

[47] With respect to the provincial assessments, Ms. L. made similar arguments before Justice Lamb. At para. 44 of the *Relocation Reasons*, Justice Lamb said this about the Fraser Institute Rankings,

I am not sure that the available evidence objectively establishes that Comox is better than Gold River for A's education now and in the near future. The Fraser Institute rankings are not persuasive for the reasons identified in *E.P. v. B.P.* 2022 BCSC 882.

[48] The Learning Report Ms. L relies on here provides the same information based on the same or similar assessments as in the Fraser Institute Rankings.

[49] At para. 37 of his *Reasons*, Saunders J. refers to Ms. L's criticism of Ray Watkins, her citing the Fraser Institute Report and Justice Lamb's comments about those assessments. Ultimately, Saunders J. was of the view that while a more populated school may likely offer some advantages, he was unable to find that A's well-being would be significantly compromised by continuing to attend Ray Watkins, at least not her then age of 8-years old.

- [50] Similarly, I do not find the Learning Report to be persuasive for the same reasons as Justice Lamb and Justice Saunders.
- [51] Ms. L says she has hired a tutor for A in Comox. She is concerned that A will fall behind in her learning. However, A's 2024/2025 report card does not indicate that A is falling behind. Rather, it shows that A is doing well in school.
- [52] Moreover, Ms. L says she has removed A from school mid-week to attend extra-curricular activities in the evening in Comox. At times, this results in A missing school. While the issue of A having a tutor in Comox was not specifically before previous judges, A can continue with her tutoring lessons when she is in Comox. When she is not in Comox, Ms. L should have no difficulty arranging some lessons be held remotely; a common practice in 2025.
- [53] Ms. L places significant weight on the Views Report. I consider it a helpful resource, however, the main grounds that Ms. L claims as the basis for her relocation application - the low quality of teachers and overall education offered at Ray Watkins - are echoed by A.
- [54] While Dr. Elterman's view is that there is no evidence of overt coaching by Ms. L., I accept his view that A has been influenced by her mother about why she wishes to attend school in Comox. Mr. T also shares the same concern.
- [55] Justices before me have not been satisfied that A's educational needs were better served in Comox rather than in Gold River. I have reached the same conclusion, particularly given her quite young age and still being in elementary school.
- [56] I find that Ms. L has not met her onus in showing a material change on the issue of A's education.
- [57] The issue of extra-curricular activities being more plentiful in Comox was before Justice Lamb and had been contemplated by her. Ms. L has provided no affidavit evidence that A has reached competitive levels in her extra-curricular activities. Nor has she provided any affidavit evidence to support her claims that A's classes are now only offered mid-week and not on weekends. For these reasons, I do not place much weight on Ms. L's submissions. I note the comments of Justice Lamb,
- [86] I find that Ms. L's insistence on controlling A's extracurricular activities and birthday attendance is a further example of her overly rigid and heavy-handed approach to parenting...
- [58] I find that Ms. L continues to control A's extracurricular activities, three years after Justice Lamb's decision.
- [59] For the purposes of this application, I find that Ms. L has not met her onus in showing a material change on the issue of A's extracurricular activities.

- [60] With respect to dental services, Ms. L does not provide any details of what kind of dental surgery A underwent in May 2025, nor has she provided details about what follow-up was or may still be required. She has also not provided a letter from A's dentist about her planned, or necessary dental care. I do not find that the A having dental surgery impacts the court's decision in a material way.
- [61] I accept Mr. T revoked his consent for one counselling session and that he is not opposed to A continuing with counselling. The parties will have to try to resolve where A will take the counselling. This is an example of where, as other justices have noted, the parties would benefit from the assistance of a parenting coordinator to assist them to more amicably parent their child A. The court urges the parties consider retaining a third parenting coordinator since there appears to be some benefit in having that guidance.
- [62] For these reasons, Ms. L's application is dismissed. Mr. T's is entitled to his costs of this application.

"Dion J."

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