

CANADA / JUDGMENT

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

2025 BCSC 364

COURT

Supreme Court of British Columbia

DECIDED

4 March 2025

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2025 BCSC 364 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 364

Date: 20250304

Docket: E88897

Registry: Nanaimo

Between:

F.K.L.

Claimant

And

D.M.A.T.

Respondent

Before: The Honourable Mr. Justice Brongers

Reasons for Judgment

The Claimant, appearing in person:

F. K. L.

The Respondent, appearing in person:

D. M. A. T.

Place and Dates of Hearing:

Nanaimo, B.C.

January 30, 2025

Place and Date of Judgment:

Nanaimo, B.C.

March 4, 2025

I. INTRODUCTION

- [1] This is an application brought in the context of a proceeding under the Family Law Act, S.B.C. 2011, c. 25 [FLA].
- [2] The applicant is F.K.L. ("Ms. L"). The respondent is D.M.A.T. ("Mr. T"). Initials are being used to identify the parties and their relatives in order to preserve the anonymity of the parties' nine-year old child (the "Child"). This is consistent with the practice that has been adopted in all of the prior judgments issued in this matter, of which there are many.
- [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 also 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.
- [4] Their current parenting coordinator, Anna Perry (the "Coordinator" or "Ms. Perry") was appointed in May 2024. Mr. T is pleased with the way she has been performing her functions. Ms. L is not. She feels that the Coordinator has been making improper determinations that are contrary to orders issued by the court, and that the parenting coordinator relationship has become unworkable. Ms. L wants these determinations to be set aside, and the Coordinator's appointment to be terminated.
- [5] Having reviewed the record before me, I find that the two specific determinations in issue were made in excess of the Coordinator's jurisdiction and must therefore be set aside. I have also concluded that, in the particular circumstances of this case, termination of the parenting coordination agreement is warranted.
- [6] My detailed reasons for so concluding are set out below.

II. Background**Litigation History**

- [7] The parties cohabited in a marriage-like relationship from October 2014 to May 2017. The Child was born in July 2015. When their family was together, they lived in Trail.

- [8] Upon separation, Ms. L moved with the Child first to Rossland. They then moved to Gold River, a village near the geographic centre of Vancouver Island where Ms. L grew up and where Ms. L's father (M.L., who will be referenced in these reasons as "the Grandfather") lives. Ms. L obtained employment there as a paramedic.
- [9] As for Mr. T, he initially continued to maintain his residence in Trail. However, he has an oil industry job in Northern Alberta. It requires him to work at a camp for an extended period, followed by an extended period of time off when he can return home to British Columbia.
- [10] In 2018, Mr. T took a leave of absence from this job and moved to Victoria, where he found other work. That same year, Ms. L filed a notice of family claim to commence the present proceedings in this court. A number of interim pre-trial orders were issued over the next two years, none of which are directly relevant to the present application.
- [11] In August 2020, a five-day trial took place before Justice Gomery in Nanaimo. It dealt primarily with parenting issues and support. With the exception of a dispute over the family pet, property and debt division issues were resolved on consent.
- [12] At the time of trial, a shared parenting regime was in place whereby Mr. T generally had parenting time for eight days out of every 20 in Victoria, and Ms. L had the remaining parenting time in Gold River. However, this regime could not be sustained as the Child was on the verge of starting elementary school, and the driving distance between Gold River and Victoria is significant.
- [13] In his September 1, 2020 judgment indexed at F.K.L. v. D.M.A.T., 2020 BCSC 1296, Justice Gomery decided that the parenting arrangement that then best served the Child's interests was one whereby the Child would live with Ms. L in Gold River while school is in session, and Mr. T would have substantial parenting time on weekends and during school holidays. The specific terms of the parenting time order that was issued are set out at paragraph 146 of the judgment, as follows:
- [146] ...
- f) [The Child] will reside with Ms. L in Gold River while school is in session.
- g) While school is in session, [the Child] will have parenting time with Mr. T as follows:
- i. Every long weekend, including long weekends attributable to Pro-D days, from the evening preceding the long weekend until the last afternoon of the long weekend;
- ii. In addition, one weekend per month to be chosen by Mr. T, from the Friday evening to the Sunday afternoon;
- iii. Provided that Mr. T will notify Ms. L of the weekends chosen by him for parenting time by text or email, at least 7 days in advance.

- h) When school is not in session, [the Child] will have two-thirds of her parenting time with Mr. T, and one-third of her parenting time with Ms. L (in both cases rounded to the nearest whole day), on dates to be chosen by Mr. T and notified to Ms. L by email at least 30 days in advance.
- [14] Justice Gomery also ordered that steps be taken to have a parenting coordinator appointed.
- [15] Following the trial judgment, Mr. T returned to his oil industry job in northern Alberta in order to earn enough money to relocate from Victoria to Gold River. Mr. T accomplished this goal in March 2021. At that time, he moved to Gold River with his new spouse, A.I. ("Ms. I"), which enabled him to more easily parent the Child on a regular basis. The parties then negotiated a change to the parenting schedule whereby Mr. T would have nine overnights with the Child during the 13 days per month that Mr. T was home in Gold River. However, this revised parenting schedule was not formalized and was not always followed.
- [16] The matter next came before the court on April 27, 2022, when two cross-applications were presented before Justice Steeves. The first was an application by Ms. L for an order allowing her to relocate the Child to Comox, as well as other relief. The second was an application by Mr. T to prohibit the Child's relocation and to vary the parenting time. In an unreported judgment issued that same day, Justice Steeves adjourned the relocation application but modified the parenting arrangement to provide that the Child reside first with Mr. T for two weeks less one overnight, and then with Ms. L for the following two weeks uninterrupted. Justice Steeves also noted in his judgment that the parties had yet to appoint a parenting coordinator, and expressed his view that it would be helpful to have one in this case.
- [17] Ms. L's relocation application came back before the court in August 2022, along with an application to appoint a parenting coordinator. In her judgment dated August 31, 2022 and indexed at F.K.L. v. D.M.A.T., 2022 BCSC 2368, Justice Lamb denied Ms. L permission to relocate the Child to Comox, finding that it was in the Child's best interests to remain in Gold River. Furthermore, Justice Lamb revised the parties' parenting time schedule as follows:
- [106] I conclude that the parenting arrangement that will best serve [the Child's] interests and needs is for her to reside with her father in Gold River while school is in session. Ms. L shall have substantial parenting time on weekends and during school holidays. In particular, I direct that Ms. L will have parenting time on long weekends and one additional weekend per month while school is in session. Mr. T will have parenting time at least one weekend per month. When school is not in session, Ms. L will have two-thirds of the parenting time.
- [107] If her work schedule permits, Ms. L may also exercise mid-week parenting time in Gold River. The parties may involve a parenting coordinator if they need assistance working out such details. The parenting coordinator will be authorized to approve additional parenting time for Ms. L during the week provided that the overall parenting time for Ms. L does not exceed 60%. To be perfectly clear, mid-week parenting time during the school year will take place in Gold River. I will provide further details of the revised parenting order later in these reasons.

...

[123] For these reasons, I order as follows:

...

- d) [The Child] will reside with Mr. T in Gold River BC while school is in session.
 - e) While school is in session, [the Child] will have parenting time with Ms. L as follows:
 - 1) Every long weekend, including long weekends attributable to pro-D days, from the evening preceding the long weekend until the last afternoon of the long weekend;
 - 2) In addition, one weekend per month to be chosen by Ms. L from the Friday evening to the Sunday afternoon, provided that Ms. L will notify Mr. T of the weekends chosen by her for parenting time by text or email at least seven days in advance.
 - f) When school is not in session, [the Child] will have two-thirds of her parenting time with Ms. L and one-third of her parenting time with Mr. T, in both cases rounded to the nearest full day, on dates to be chosen by Ms. L with notice to Mr. T by email at least 30 days in advance.
 - g) The parenting schedule provided by this order may be varied by a written agreement between the parties expressed by text, email, or otherwise in writing.
 - h) In addition to the parenting time with Ms. L while school is in session as set out in paragraph (e), Ms. L may have additional mid-week parenting time with [the Child] in Gold River BC, as agreed by the parties in writing or as allocated by the parenting coordinator, provided that parenting time allocated to Ms. L does not exceed 60 percent on an annual basis.
- [18] Justice Lamb also made an order appointing Joan Cotie as the parties' parenting coordinator. Ms. Cotie entered into a parenting coordinator agreement with the parties in November 2022.
- [19] In August 2023, Ms. L applied to the court once again for permission to relocate the Child to Comox. Ms. L was now residing in Comox, but would also visit Gold River regularly, staying at the residence of her father (i.e., the Grandfather) when she did so. By this time, Mr. T and Ms. I had a newborn baby (the Child's half-sibling), and were still living in Gold River.
- [20] By judgment dated August 31, 2023 and indexed at F.K.L. v. D.M.A.T., 2023 BCSC 1535, Justice Saunders denied Ms. L's latest relocation application. However, Justice Saunders also further revised the parties' parenting arrangements to reflect their new circumstances, as follows:
- [56] It is in [the Child'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 to her newly-born half-brother weigh heavily in favour of that outcome. These factors surmount any concerns arising out of the impact of [the Child] 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 [the Child] and her mother, than the converse.

[57] Mr. T's work-related absences do however weigh in favour of Ms. L being given the opportunity to exercise regular mid-week parenting time with [the Child] during those absences.

[58] I therefore order as follows:

- a) [Ms. L's] application for relocation of [the Child] is dismissed.
- b) Terms 9 and 10 of the Order made August 31, 2022 are varied to provide as follows:

When school is in session, [the Child] will reside primarily in the home of [Mr. T] in Gold River, B.C. and [Ms. L] will have the following parenting time:

- (1) Every long weekend, including long weekends attributable to Pro-D days, from the evening preceding the long weekend until the last afternoon of the long weekend;
- (2) One additional weekend per month to be chosen by [Ms. L], from Friday evening to Sunday afternoon;
- (3) At the option of [Ms. L], one mid-week overnight per month to be exercised in Gold River, B.C., on a date [Mr. T] is to be notified of at least 30 days in advance, provided that so long as [Mr. T's] employment necessitates his work-related absence from the home for periods of seven continuous days or more, that mid-week overnight shall be scheduled for a weeknight during the period of [Mr. T's] work-related absence;
- (4) Such additional parenting time in Gold River as agreed to by the parties in writing, or as determined and allocated by the parenting coordinator to be in [the Child's] best interests, provided that the parenting time allocated to [Ms. L.] does not exceed 60 percent on an annual basis.

[21] An appeal of Justice Saunders' decision was dismissed by judgment of the Court of Appeal issued on June 13, 2024. It is indexed at F.K.L. v. D.M.A.T., 2024 BCCA 238.

[22] Ms. Cotie withdrew as the parties' parenting coordinator effective January 9, 2024. Ms. Cotie said she was doing so because Mr. T was barely communicating with her, was refusing to abide by a term of the parenting coordinator agreement, and was not paying her fees. In addition, Ms. Cotie said that both parties had threatened complaints about her to the provincial body that regulates parenting coordinators.

[23] In February 2024, the parties cross-applied for the appointment of a new parenting coordinator (the parties could not agree on whom that person should be), and Mr. T applied to vary the parenting time once again. Their applications were first heard by Justice Blok on February 26, 2024. In his unreported judgment dated March 8, 2024, Justice Blok appointed Ms. Perry as the parties' new parenting coordinator, as proposed by Ms. L and contrary to

the wishes of Mr. T. Justice Blok also issued a consent order permitting Ms. L to exercise additional parenting time in Gold River during the school week, so long as that occurs when Mr. T is not at home in Gold River on his days off, and that the additional time does not result in Ms. L's overall parenting time to exceed 60% annually. Furthermore, the consent order removed the reference to the parenting coordinator having authority to allocate additional Gold River parenting time to Ms. L. However, Mr. T's application for an order that he have two weekends of parenting time each month while he is in Gold River, and 46% of the parenting time during school breaks and summer vacations, was adjourned.

- [24] This latter application was heard on May 14, 2024 by Justice MacNaughton. It was dismissed on the basis that Mr. T had not established a material change in circumstances since Justice Lamb's order, as varied by Justice Saunders' order. Justice MacNaughton's judgment, dated June 4, 2024, is indexed at F.K.L. v. D.M.A.T., 2024 BCSC 967.

Coordinator Appointment and the "SNIS Long Weekend" Dispute

- [25] Following Justice Blok's order of March 8, 2024, a parenting coordination agreement (the "Agreement") was signed by the parties and the Coordinator (i.e., Ms. Perry). It came into effect on May 23, 2024. Its stipulated end date is April 8, 2026.
- [26] Shortly after her appointment, the Coordinator canvassed the parties for their views on which parenting issues are in dispute and how they might be resolved. This proved to be challenging, particularly with respect to communication between the Coordinator and Ms. L. It was not long before each was accusing the other of sending disrespectful and discourteous emails, while refusing to acknowledge any issues with the tone and substance of their own messages.
- [27] An illustrative example is an email from the Coordinator to Ms. L dated July 25, 2024, in which the Coordinator asserted the following:

[Ms. L],

I accept that you are angry and increasingly upset, as that comes through clearly. Your anger directed at me and my process has a history: I am not responsible for or privy to events or decisions made by others in years past.

You are attacking me, treading heavily on my process. This will not accomplish your goals. ... Your accusation that my efforts, my process, is a waste of your time and your money is a direct attack on my role as PC. By telling me what you will do in response (to avoid discussions around scheduling, for example) is an attempt to hijack the process. To be effective as an advocate, to achieve change, then drop the threats and sarcasm, and cease this bullying. I do not respond to it in the way that you might anticipate.

...

... I am an independent judicial authority, not your aide, assistant, or investigator. ...

... By 6:00 pm today, when we are in our open session, I expect that you will have regained your composure and will address me politely and with respect.

[emphasis added, not in original]

[28] One issue that Mr. T wanted to raise for discussion was the question of how to allocate the parties' parenting time on weekends while school is in session.

[29] Under the terms of Justice Lamb's August 2022 order as modified by Justice Saunders in August 2023, Ms. L is to parent the Child every long weekend plus one ordinary weekend every month. The specific wording of the order that is presently in effect as it relates to weekend parenting time during the school year is as follows:

2. When school is in session, [the Child] will reside primarily in the home of [Mr. T] in Gold River, B.C., and [Ms. L] will have the following parenting time:
 - (a) Every long weekend, including long weekends attributable to Pro-D days, from the evening preceding the long weekend until the last afternoon of the long weekend;
 - (b) One additional weekend per month to be chosen by [Ms. L], from Friday evening to Sunday afternoon; ...

[30] It is worth noting that these terms are essentially the same as those set by Justice Gomery in his September 2020 judgment, except that the weekend allocation has been reversed to account for the fact that the parent who is actually residing in Gold River has changed. In 2020, Ms. L resided in Gold River while Mr. T did not. Since 2022, Mr. T has resided in Gold River while Ms. L has not.

[31] Prior to the Coordinator's appointment, the parties tacitly accepted that, for the purposes of allocating parenting time under the court's order, a "long weekend" meant any weekend extending beyond Saturday and Sunday when the Child's school was also closed on the day(s) immediately preceding or following, including: (1) statutory holidays; (2) Professional Development ("Pro-D") days; and (3) School Not In Session ("SNIS") days. These long weekends occur relatively frequently in the case of the Child since her school's administrators have designated almost every second Friday as either a Pro-D or a SNIS day.

[32] Practically speaking, this has meant that the parties' weekend parenting time during the school year typically has been divided as follows: (1) Ms. L parents the Child three weekends per month in Comox; and (2) Mr. T parents the Child one weekend per month in Gold River.

[33] However, Mr. T is not happy with this arrangement. He would prefer to be able to parent the Child for two weekends every month when he is at home in Gold River. As has been noted, he filed an application to vary the parenting time order accordingly on February 22, 2024. However, this application was dismissed by Justice MacNaughton on June 4, 2024.

[34] On August 6, 2024, Mr. T sent an email formally requesting the Coordinator to make a determination of a number of issues. One of them was what has come to be known as the "SNIS Issue", which Mr. T characterized in this way:

We need to discuss the "School not in Session" Days from [the Child's] School Calendar. When School is in session, The Justice's order states [Ms. L] will have weekend parenting attributed to pro-d days and statutory holidays. Additionally, [Ms. L] will have one additional weekend per month. I would like [the Child] to enjoy her time in Gold River to avoid the frequent and lengthy commutes out of her Community of Gold River so she can enjoy the time with friends and family that reside in her Community and make for a more equitable weekend time between [Ms. L] and myself. Since the Court Orders don't specify what "School not in Session" weekend time would be, I feel this would be a good framework addition to the determination. This will also alleviate many of the issues with a parenting calendar for [the Child].

[35] Over the next few weeks, a number of other emails were exchanged between Mr. T, Ms. L, and the Coordinator with respect to the issue of whether Ms. L should continue to be able to parent the Child on all long weekends attributable to SNIS days. For example, Ms. L set out her position on the SNIS Issue in an email dated August 19, 2024, in these words:

I am allocated "Every" long weekend. It is inconsequential as to what the long weekend is attributed to. Based on [the Child's] school schedule, as she has two long weekends per month, this equates to 3 weekends of parenting time per month (2 long weekends, and 1 additional weekend of my choice), and 1 weekend of parenting time to [Mr. T]. ... We have been operating under this model going on our third year now, and there has never been a misunderstanding of this.

[36] The Coordinator's initial response was to encourage the parties to reconsider their past approach to allocating long weekend parenting time, in the hope that they might reach an agreement. However, the Coordinator also suggested in her correspondence that she fundamentally agreed with Mr. T that it would be in the best interests of the Child if the parties were not to treat SNIS long weekends as parenting time that must always be allocated to Ms. L.

[37] In particular, the Coordinator sent a lengthy email on September 25, 2024 in which she emphasized several points that seemed to favour Mr. T's position. These included the Coordinator's apparent view that the current arrangement is unbalanced and affords insufficient quality parenting time for Mr. T since: (1) out-of-school weekend parenting time is qualitatively superior "prime parenting time" when compared to weekday parenting time while school is in session; (2) Mr. T's total parenting time is only 40% while Ms. L's is 60%; and (3) the Child is required to effect a large number of time-consuming weekend commutes between her parents' respective homes in Comox and Gold River. The Coordinator wrote:

Even if the court did order "every long weekend" to go to [Ms. L], and even if SNIS dates were specifically included, that must be interpreted in context of "best interests" for [the Child], because the current orders "MUST" be read together with the "best interests" test that governs as

a prerequisite to every parenting agreement and court order. The court is not a guardian. If there is an imbalance created that does not serve [the Child's] best interests overall, long term or short term, then it is the parents' job - the guardians' job - to adjust the schedule, even to go against the strict wording in a court order, by agreement, because as guardians, your 1st priority is to do what is best for [the Child]. What is best for [the Child] may require (and does require) that the schedule be "best" for [the Child].

[emphasis added, not in original]

[38] At the same time, the Coordinator characterized Ms. L's position as being based solely on the strict wording of the Court's order, one which the Coordinator had earlier suggested was made by "mistake". In an email dated August 9, 2024, the Coordinator had written:

I have conducted a review of the orders and the Reasons. Instead of reading each order on its' own, I have read each in conjunction with the Applications as described/outlined in the Reasons, and the facts and rationale relied upon by the judge, and the logic applied, in the Reasons. This was helpful to put things in context. This review is what led to my statement about Justice Lamb's order adding a weekend of parenting time being a mistake. Justice Lamb was not a family law lawyer and fairly new on the bench, when she made the order. I believe that she did not run the % of days, or consider "free" days v. school days - in terms of impact overall."

[emphasis added, not in original]

[39] The Coordinator concluded her September 25, 2024 email by proposing the following:

TWO OPTIONS: If you cannot agree on this matter of the SNIS dates, to include or exclude from "long weekends", then you have two options:

- a. refer to PC but PC cannot make a significant change to parenting time so that must be looked at and weighed;
- b. take it to Court directly to seek a change or correction to an unintended consequence.

...

The above information is intended to persuade you to think about these factors, to encourage discussion. At this point, I am not offering solutions or pushing you toward any direction except keeping open dialogue.

Let me know how you intend to proceed, whether this is negotiable or not.

[emphasis in original]

[40] Mr. T responded to the Coordinator's email a few hours later by writing that he wished to have a formal determination of this matter, reminding the Coordinator and Ms. L that he had been requesting one since August 6, 2024.

[41] As for Ms. L, she also responded quickly with a September 25, 2024 email in which she reiterated her view that the court's order provides that Ms. L is to have parenting time on every long weekend plus one ordinary weekend each month, with Mr. T having parenting time on the remaining ordinary weekend. Ms. L wrote:

I have no desire to continue to re-hash issues that have already been solved, and spend time, energy and money weeding through old affidavits, and evidence to the PC. [Mr. T], if you feel the need to go back to court to have this clarified, you are more than welcome to and can give me notice of your application.

[42] Ms. L also sent an email that same day to the Coordinator in which Ms. L expressed her view that their relationship had now become unworkable. Ms. L said further that she would be making a request to the BC Parenting Coordinators Roster Society ("BCPCRS") for assistance with a dispute resolution process.

[43] On September 26, 2024, the Coordinator sent out two apologetic emails. The first was addressed to just Ms. L. The Coordinator wrote:

My sincere apologies, [Ms. L]. I am now alert to the nature and extent of your concerns and shall address through dialogue. I was aware of the discomfort but not aware of the extent of it. I will need to review in terms of action to be taken. I am concerns [sic] about the impact you have noted for [the Child]. This impact is the opposite of the PC process and my goals in the process.

...

Best if I leave off there and read and consider. I assure you that I shall do all in my power and control to correct the situation.

[44] The second was addressed to both parties. It reads:

[Mr. T] and [Ms. L],

I have received your communications. I note the discord is increased, not decreased, and there is a negative impact on the family that is directly linked to my actions. I am responsible for this. I apologize to each of you and your families, for my actions and the unintended consequences. A decision on what is the best way forward requires some input and thought.

Coordinator Determination #1

[45] Approximately one week after sending her apologies to the parties, the Coordinator issued her first determination on October 2, 2024 ("Determination #1").

- [46] Its primary aspect concerned the question of which parent should exercise the Child's parenting time for the upcoming weekend. It was a long weekend since Friday, October 4, 2024 was a SNIS day. The Coordinator determined that Mr. T should have parenting time with the Child in Gold River during the entirety of this long weekend. This was contrary to Ms. L's expectation that she would be exercising parenting time in Comox in accordance with how SNIS long weekends had been treated in the past.
- [47] The Coordinator characterized Determination #1 as simply a "short form" determination that was being issued to address what she felt to be "deserving, and sufficiently urgent, circumstances given the facts as [she] know[s] them currently". The specific wording of the "orders" the Coordinator purported to issue was as follows:

The orders I am making are listed below. Items 1 and 2 are short term, confined to one weekend. Items 3 and 4 are interim conduct orders:

1. [The Child] will remain in Gold River, BC for Thursday, October 3 to Sunday, October 6, that [the Child] is to remain in care of [Mr. T] for uninterrupted parenting time in Gold River, BC continuous through to Sunday, October 6th.
2. In this time, if [Ms. L] places a call to [the Child], the call shall be in [Mr. T's] presence and hearing. [Ms. L] is not to give [the Child] information or otherwise make remarks that may cause [the Child] to feel sad, anxious or fearful. Specifically, [Ms. L] is not to question [the Child] or to make remarks about [the Child's] teacher or school, [the Child's] family and home with her father in Gold River, the PC's actions or PC communications, [the Child's] activities in Comox or in Gold River.
3. [The Child] shall be picked up from school on October 3, 2024 by either her step-parent, [Ms. I] or [Mr. T].
4. [Ms. L] shall not attend [the Child's] school, nor attend [Mr. T's] residence, or cause any other person or the police to attend the school or [Mr. T's] residence, when [the Child] is in the care of [Mr. T] or [Ms. I], even when [Ms. L] is of the opinion or belief that it is [Ms. L's] parenting time, and/or [Ms. L] has a right to take [the Child].

This Determination stands as full authority for [Mr. T] to have [the Child] in his care.

5. [Ms. L] shall not involve [the Child] in parenting issues or PC matters or issues, in general, and in specific, that [Ms. L] shall not
 - (a) speak with [the Child] about the PC's communications or role,
 - (b) allow [the Child] to read, know of, or learn the content and subject matter of parent and/or PC communications.

[emphasis in original]

[48] The Coordinator also set out detailed reasons for her determination. They can be summarized as follows:

- (a) the Child is experiencing anxiety and fear about the Child's extracurricular activities, schooling, and time spent in Comox;
- (b) the Child has been wrongly exposed to information about matters being discussed in the parenting coordination process;
- (c) while a Coordinator cannot make significant changes to parenting time, this is a minor change made to address an imbalance in the allocation of parenting time, and is in the best interests of the Child;
- (d) the court's orders do not clearly indicate which parent is to exercise parenting time on long weekends that are due to SNIS days; and
- (e) the Child needs the benefit of a long weekend out of school with downtime in Gold River, in the care of the Child's father and stepmother, and in the company of the Child's sibling.

[49] Under the heading "Conclusion", the Coordinator wrote:

In summary, I am making the Determination as stated in the opening paragraphs above, to keep [the Child] in Gold River, BC for this SNIS long weekend as a short term measure, for these reasons:

1. [The Child] has been involved directly and indirectly in adult matters, by [Ms. L], in breach of court orders, and this involvement is taking a toll on [the Child].
2. [Ms. L] denied [Mr. T's] request in August that he be allocated an "extra" weekend in September with [the Child] while he is on vacation from work.
3. Justice Lamb's Reasons and Order made in August 2022 on "every long weekend" does not include "SNIS school not in session" weekends and any opinion on that to the contrary is wrong. Even if the Lamb Order does by reason of "plain language" include SNIS dates/weekends, then it goes too far and results in an imbalance of parenting time to [the Child's] detriment.
4. [Ms. L's] communications and actions since August 2024 in regard to the parenting schedule have been consistent with the behaviour noted in almost all the Reasons for Judgement.

[emphasis added, not in original]

[50] Then, under the heading "Next Steps: Determinations", the Coordinator stated that she would afford the parties an opportunity to make further submissions on the SNIS long weekend issue. The Coordinator wrote:

[Ms. L] has an opportunity to be heard, via written submissions, on the question of the SNIS dates. I list below the information that I want to have from [Ms. L].

...

If there is insufficient grounds produced by [Ms. L] to change my understanding of the SNIS dates not being included in "long weekends" on the court orders, and/or it is in [the Child's] best interests to discontinue the SNIS weekends, then I shall proceed to apply the court order wording according to my understanding.

[51] The Coordinator also set out a schedule whereby Ms. L was required to produce certain documents and submissions by October 15, 2024, and Mr. T was required to respond by October 21, 2024. The Coordinator stated that a further determination would then be issued within the week of October 21st.

Coordinator Determination #2

[52] By email dated October 15, 2024, Ms. L wrote to the Coordinator advising that she will not participate any further in the parenting coordinator process pending resolution through the BCPCRS, the Law Society of British Columbia, or a court application.

[53] Two weeks later, the Coordinator issued her second determination on October 31, 2024 ("Determination #2"). It has four elements to it.

[54] First, it purports to formally set the parties' specific parenting time schedule for all of November and December 2024. Most significantly for the present application, there were three SNIS long weekends during this period. The Coordinator allocated two of them to Mr. T, and one to Ms. L. The Coordinator set out her rationale for doing so in these words:

[Ms. L] has taken unfair advantage of the wording of the parenting schedule terms of Justice Lamb's order, to take for herself the "school not in session" ("SNIS") weekends, which were not addressed or granted in the order of Justice Lamb or any decision in this family law matter since 2020. All judgements' written Reasons define "long weekend" to include the statutory long weekends plus Professional Development Days ("ProD Days") per the school calendar. The fact that SNIS days also appear on the school calendar and add a day to the parents' weekend on occasion is not a justification for [Ms. L] to unilaterally take for herself all SNIS dates. This was not part of any court's Reasons or orders.

[55] Second, it contains an "interim order" purporting to direct the conduct of Ms. L's father (i.e., the Grandfather) as follows:

Until there is a written agreement between the parties or a further Determination or court order, there is an interim order that:

- a) [The Grandfather] will refrain from removing [the Child] from class for any reason, including for FaceTime sessions. Specifically, there will be no FaceTime sessions on school days when [the Child] is in school.

- b) Except on the dates and times that he is allocated to deliver or pick up [the Child] during [Ms. L's] parenting time, [the Grandfather] will not attend [the Child's] school grounds, including the parking lot, playground, and school entrances.

[emphasis in original]

- [56] Third, it directs Ms. L and the Grandfather to provide information on the purpose of the Grandfather's attendance on school grounds, the FaceTime calls he is facilitating between the Child and Ms. L, and reasons why this ought to be allowed to continue.
- [57] Finally, it directs the parties to exchange proposals for their January 2025 parenting time schedule.

Post-Determination Developments

- [58] Following Determination #2, the Grandfather wrote to the Coordinator on November 3, 2024 to respond to her assertions about his actions at the Child's school. The Grandfather explained that he has been regularly attending the Child's school in the morning before it starts for the past five years, ever since the Child was in kindergarten. He says that the Child has always appreciated his visits, and that he has never heard the Child, other parents, teachers, or administrators accuse him of any unacceptable behaviour or conduct.
- [59] The Grandfather also adamantly denies ever going into the Child's class to remove the Child and to enable a FaceTime call with Ms. L. Instead, he says that, on occasion, the Child will ask him to arrange for a FaceTime call with Ms. L before the start of school or on the lunch break. The Grandfather alleges that this is because Mr. T refuses to allow the Child to contact Ms. L. The Grandfather also questions whether the Coordinator has the authority to issue a conduct order against him. The Grandfather stated the following in his letter to the Coordinator:

As I'm not a signatory to the parenting coordinator agreement and not one of the parents, I'm unsure weather [sic] your scope of practice as a PC gives you the legal authority to impose such draconian restrictions on my access to the public school in my community. Furthermore, since your determination process doesn't include discussion, consultation, engagement with all the stake holders and has no due process, witness statements or proven evidence to justify the determination I will definitely be seeking out a family lawyer to provide me with legal advice.

- [60] On November 4, 2024, Ms. L responded to the Coordinator's Determination #2 as well. Ms. L reiterated her position that the Coordinator's allocation of parenting time was contrary to the governing orders of the court, especially in relation to long weekends. Ms. L also expressed her shock and disagreement with the Coordinator's determination regarding the Grandfather, which she says lacks an evidentiary foundation and amounts to an unjustified attempt by the Coordinator to alienate the Child from the Grandfather. Ms. L informed the Coordinator that she has filed complaints with the BCPCRS and the Law Society of British Columbia. Finally, Ms. L requested the Coordinator to withdraw, failing which Ms. L

threatened to bring a court application to set aside the two determinations and to terminate the Coordinator's appointment.

- [61] The Coordinator answered Ms. L's email on November 7, 2024. The Coordinator said that she stood by her determinations and would not be making any changes, but did not expressly respond to Ms. L's demand that the Coordinator withdraw and cease working for the parties. The Coordinator also noted that an issue had arisen in relation to the Child's application for a new passport. Specifically, Ms. L had prepared such an application but Mr. T was refusing to sign it. On that topic, the Coordinator wrote:

I have instructed [Mr. T] not to sign a passport application that he does not have a copy of or that he is not participating in in terms of knowing the contents of the application, or [Ms. L's] plans for travel.

Ms. L's Application

- [62] Ms. L filed the present application on November 8, 2024.
- [63] The primary relief she is seeking is to have Determination #1 and Determination #2 set aside, pursuant to s. 19 of the FLA. She also seeks an order terminating the appointment of Ms. Perry as the parties' parenting coordinator, pursuant to s.15 of the FLA.
- [64] Ms. L also seeks two other orders. The first is one that would require Mr. T to sign off on the Child's passport application. The second is one that would require a views of the child report to be prepared under s. 211 of the FLA.
- [65] Mr. T filed his response to application on November 25, 2024. He opposes all of the relief sought by Ms. L.
- [66] The hearing of Ms. L's application came before me in chambers in Nanaimo on January 30, 2025. The parties represented themselves. At its conclusion, I took the matter under reserve so that I could review the voluminous application record. It includes seven affidavits filed prior to the hearing, and a tardy affidavit brought by Mr. T on the date of the hearing which I gave him leave to file into evidence.

III. ISSUES

- [67] As I informed the parties at the hearing, I will only be addressing the primary relief being sought by Ms. L in relation to the Coordinator's determinations and her appointment. For reasons that I will set out later, I am of the view that the relief being sought in relation to the Child's passport and a s. 211 FLA views of the child report is not ripe for determination at this time, and these aspects of Ms. L's application will be adjourned generally.
- [68] Accordingly, the issues I will be considering in this judgment are:
- (a) Should Determination #1 and Determination #2 be set aside?

(b) Should the Coordinator's appointment be terminated?

[69] These questions will be answered after a discussion of the applicable legal framework that applies to their adjudication.

IV. ANALYSIS

Legal Framework

Applications to Set Aside Parenting Coordinator Determinations

[70] Section 19(1) of the FLA provides the court with the discretionary authority to change or set aside a determination made by a parenting coordinator:

19(1) On application by a party to a determination made by a parenting coordinator, the court may change or set aside the determination if satisfied that the parenting coordinator

- (a) acted outside the parenting coordinator's authority, or
- (b) made an error of law or of mixed law and fact.

[71] In other words, there are two bases upon which the court may set aside a determination. The first is when the court finds that the parenting coordinator lacked the lawful authority to issue the determination (s. 19(1)(a) of the FLA). The second is when the court finds that, while the parenting coordinator was acting within their lawful authority, they nevertheless made an error of law, or an error of mixed law and fact, with respect to the determination (s. 19(1)(b) of the FLA).

[72] There has been some discussion in this court's jurisprudence of the standard of review that applies to s. 19 FLA applications. Several cases have concluded that it is "reasonableness", even though that is a deferential administrative law standard, and parenting coordinators are not public officials who perform administrative law functions: *Law v. Cheng*, 2017 BCSC 328 at paras. 28 to 35; *A.K.S. v. A.L.E.S.*, 2019 BCSC 419 at paras. 28 to 34 and 49; *T.R. v. A.R.*, 2020 BCSC 2068 at paras. 33 to 34; *C.M.W. v. K.M.C.N.*, 2021 BCSC 1986 at paras. 26 and 43; *C.J.C. v. N.J.C.*, 2021 BCSC 1930 at para. 6; and *Jeanes v. Shirzad*, 2024 BCSC 381 at paras. 26 and 37, and 2024 BCSC 2493 at para 24. The Court of Appeal does not appear to have addressed this issue as of yet.

[73] However, Ms. L's challenge to Determinations #1 and #2 is based on her assertion that they were made outside the scope of the Coordinator's legal authority. As such, it is an application for relief pursuant to s. 19(1)(a) of the FLA. In my view, this means that there is no real issue of standard of review in this case. If the court finds that the Coordinator exceeded her lawful authority, then the determination should be set aside. An unlawful determination cannot be afforded deference, no matter how "reasonable" it might otherwise be.

[74] The scope of a parenting coordinator's authority to issue determinations is limited by ss. 15(2), 17(b) and 18(1) of the FLA, and ss. 6(3) and 6(4) of the Family Law Act Regulation, B.C. Reg. 347/2012 ["FLAR"], which read:

FLA

15(2) A parenting coordinator may assist only

- (a) if there is a parenting coordination agreement or order in place, and
- (b) for the purpose of implementing an agreement or order respecting parenting arrangements, contact with a child or other prescribed matters.

17 A parenting coordinator may assist the parties in the following manner:

...

- (b) by making determinations respecting the matters prescribed for the purposes of section 18 [determinations by parenting coordinators].

18(1) A parenting coordinator

- (a) may make determinations respecting prescribed matters only, subject to any limits or conditions set out in the regulations,
- (b) must not make a determination respecting any matter excluded by the parenting coordination agreement or order, even if the matter is a prescribed matter, and
- (c) must not make a determination that would affect the division or possession of property, or the division of family debt.

FLAR

6(3) The following are the matters in respect of which a parenting coordinator may make determinations:

- (a) parenting arrangements;
- (b) contact with a child.

6(4) For the purposes of subsection (3), a parenting coordinator

- (a) may make determinations in respect of
 - (i) a child's daily routine, including a child's schedule in relation to parenting time or contact with the child,
 - (ii) the education of a child, including in relation to the child's special needs,
 - (iii) the participation of a child in extracurricular activities and special events,
 - (iv) the temporary care of a child by a person other than

- (A) the child's guardian, or
- (B) a person who has contact with the child under an agreement or order,
 - (v) the provision of routine medical, dental or other health care to a child,
 - (vi) the discipline of a child,
 - (vii) the transportation and exchange of a child for the purposes of exercising parenting time or contact with the child,
 - (viii) parenting time or contact with a child during vacations and special occasions, and
 - (ix) any other matters, other than matters referred to in paragraph (b), that are agreed on by the parties and the parenting coordinator, and
- (b) must not make determinations in respect of
 - (i) a change to the guardianship of a child,
 - (ii) a change to the allocation of parental responsibilities,
 - (iii) giving parenting time or contact with a child to a person who does not have parenting time or contact with the child,
 - (iv) a substantial change to the parenting time or contact with a child, or
 - (v) the relocation of a child.

[75] Lastly, pursuant to s. 6(4)(a)(ix) of the FLAR, the parties to a parenting coordinator agreement may authorize a parenting coordinator to make determinations on other matters, except for those set out at s. 6(4)(b) of the FLAR.

[76] While the Agreement in the case at bar lists a number of matters in respect of which the Coordinator may make determinations, the parties did not identify any that might be relevant to this application. Based on my own review of the Agreement, I was unable to find any that might constitute such a relevant "other matter" beyond those already mentioned expressly in s. 6(4)(a) of the FLAR.

Applications to Terminate Parenting Coordinator Agreements

[77] Section 15(6) of the FLA provides the court with the discretionary authority to terminate a parenting coordination agreement:

15(6) Despite subsection (4), a parenting coordination agreement or order may be terminated at any time as follows:

- (a) in the case of an agreement, by agreement of the parties or by an order made on application by either of the parties;
- (b) in the case of an order, by an order made on application by either of the parties;

- (c) in any case, by the parenting coordinator, on giving notice to the parties and, if the parenting coordinator is acting under an order, to the court.
- [78] The FLA does not set out what factors are to be applied by a court when deciding a parenting coordinator agreement termination application. However, a helpful analytical framework was set out by Justice Butler (then of this court) in *M.H. v. C.S.*, 2013 BCSC 2232 ["M.H."] at para. 41:
- [41] ... The intent of the legislation in formalizing parenting coordination is to create a cost-effective alternative process to litigation and dispute resolution. It would be counterproductive to the entire coordination scheme to adopt an overly technical approach to applications to terminate coordination agreements. On an application to terminate a coordination agreement, it is important to examine all of the circumstances to determine if the parenting coordination process is generally being carried out in accordance with the provisions of the Family Law Act and the terms, if any, of the agreement. If it is, then a court should be reluctant to terminate an agreement for a minor or technical or temporary misapplication or breach of an agreement or order.
- [emphasis added, not in original]
- [79] The importance of exercising judicial restraint when considering a s. 15(6) FLA termination application was also noted by Justice Lamb in *C.M.W.* at para. 83:
- [83] The role of parenting coordinator was created to further the objective of encouraging parents to resolve conflict other than through court intervention: s. 4(c)(i) of the FLA. In my view, setting a low threshold for removal of a parenting coordinator is not consistent with avoiding court intervention and would risk inviting a court application for removal whenever a party is unhappy with a determination. The credibility of a parenting coordinator would be undermined if they could be removed and replaced based on one party's professed lack of confidence. In my view, the Legislature's intention to create an alternate dispute mechanism would be defeated if the decision-maker could be so easily removed, especially in circumstances where a parenting coordinator has acted within their mandate.
- [80] That said, in a case where a party has genuinely and justifiably lost confidence in the ability of a parenting coordinator to fairly make determinations and mediate conflict, termination of a parenting coordinator agreement may be warranted (see, for example, *A.K.S. v. A.L.E.S.*, 2019 BCSC 419 at para. 58).

Issue 1: Should Determination #1 and Determination #2 be Set Aside?

The Parties' Positions

- [81] Ms. L's position is that the two determinations violate the court's existing orders that establish the parties' respective parenting time with the Child. In addition, they effectively grant to Mr. T parenting time he had sought by means of a variation application that was denied by the court. Accordingly, Ms. L requests an order setting aside both determinations.
- [82] Mr. T submits that the two determinations should not be set aside. He says that they were developed within the confines of the applicable court orders that were carefully reviewed by the Coordinator. Mr. T argues that the determinations are justified since they bring the parties' shared parenting arrangement back to a state of parity, and he asks that they be affirmed.

Discussion

- [83] While Determination #1 and Determination #2 are notionally separate and distinct, it is apparent that the Coordinator viewed them fundamentally as part of a single process, designed to address both parenting time scheduling and some related conduct issues.
- [84] Specifically, the Coordinator issued Determination #1 on October 2, 2024 as a short term interim measure to address the matter of how to allocate parenting time for just the October 3 to 6, 2024 long weekend. The Coordinator did so by determining that Mr. T should have that parenting time, and by issuing conduct orders directed at Ms. L designed to prevent her from interfering with Mr. T's parenting time during that period. The Coordinator also provided a detailed explanation of why she felt that that weekend should be allocated to Mr. T in spite of the fact that it is a long one resulting from an SNIS day. Finally, the Coordinator put the parties on notice that, after giving Ms. L an opportunity to "change [the Coordinator's] understanding" of the SNIS Issue, the Coordinator intended to issue a further determination regarding the parties' future parenting time in accordance with that understanding.
- [85] Determination #2 was then issued on October 31, 2024. It effectively indicated that the Coordinator was still of the view that the court's orders that allocate parenting time between the parties do not stipulate that Ms. L is to have parenting time on all SNIS long weekends. The Coordinator proceeded to determine the parties' parenting time for November and December 2024 on the basis that she has the discretion to allocate SNIS long weekends in accordance with the Coordinator's view of the Child's best interests. In particular, the Coordinator allocated parenting time for two of the three SNIS long weekends to Mr. T, and one SNIS long weekend to Ms. L. In addition, the Coordinator decided to issue a conduct order directed at the Grandfather in relation to his attendance and behaviour at the Child's school.
- [86] Accordingly, Ms. L's challenge to the determinations gives rise to two questions.

- [87] First, did the Coordinator act outside her authority when she purported to determine parenting time for long weekends arising from SNIS days to Mr. T, contrary to the governing parenting order issued by the court?
- [88] Second, did the Coordinator act outside her authority when she purported to issue conduct orders against Ms. L and the Grandfather?
- [89] Each question will be addressed in turn.

Long Weekend Parenting Time

- [90] Beginning with parenting time, the analytical starting point is s. 15(2)(b) of the FLA. It provides that parenting coordinators are only to assist with implementing agreements or orders respecting parenting arrangements, contact with a child or other prescribed matters. This means that parenting coordinators cannot change parenting arrangements that are already established by court order or agreement: M.H. at para. 36.
- [91] Now, it is true that by the combined operation of s. 17(b) of the FLA and ss. 6(3) and 6(4)(a)(i) of the FLAR, a parenting coordinator can make determinations in respect of "a child's daily routine, including a child's schedule in relation to parenting time or contact with the child." In addition, s. 6(4)(a)(vii) of the FLAR allows for determinations to be made regarding "parenting time or contact with a child during vacations and special occasions". However, s. 6(4)(b)(iv) of the FLAR provides that a parenting coordinator cannot make "a substantial change to the parenting time or contact with a child". In my view, it is axiomatic that a determination that changes parenting time in a manner that is directly contrary to a court order is a "substantial change" that cannot be made by a parenting coordinator.
- [92] The current wording of the governing order issued by the court in relation to the parties' parenting time while school is in session is set out at paragraph 2 of the August 31, 2023 order of Justice Saunders, as modified by paragraph 5 of the March 8, 2024 order of Justice Blok (the "Governing Order"). It reads:
2. When school is in session, [the Child] will reside primarily in the home of [Mr. T] in Gold River, B.C., and [Ms. L] will have the following parenting time:
 - (a) Every long weekend, including long weekends attributable to Pro-D days, from the evening preceding the long weekend until the last afternoon of the long weekend;
 - (b) One additional weekend per month to be chosen by [Ms. L], from Friday evening to Sunday afternoon;
 - (c) At the option of [Ms. L], one mid-week overnight per month to be exercised in Gold River, B.C., on a date [Mr. T] is to be notified of at least 30 days in advance, provided that so long as [Mr. T's] employment necessitates his work-related absence from the home for periods of seven continuous days or more, that mid-week overnight shall be scheduled for a weeknight during the period of [Mr. T's] work-related absence;

(d) That [Ms. L] may exercise additional parenting time in Gold River during the school week, so long as that time is when [Mr. T] is not home in Gold River on his days off, and that the additional time does not result in [Ms. L's] overall parenting time exceeding 60% on an annual basis.

[93] There are no provisions in the Governing Order which authorize the parenting coordinator to allocate weekend parenting time differently from the express terms of the Governing Order. Furthermore, since Justice Blok's consent modification to paragraph 2(d) effected on March 8, 2024, there is no express mention of any discretion afforded to the parenting coordinator to allocate additional parenting time of any sort to either party.

[94] Accordingly, I find that the Coordinator exceeded her authority when she purported to allocate entire long weekends of parenting time to Mr. T contrary to the terms of the Governing Order, particularly those set out at paragraph 2(a).

[95] I also do not agree with the Coordinator and Mr. T that paragraph 2(a) of the Governing Order is in any way ambiguous, thereby permitting the Coordinator to allocate SNIS long weekend parenting time to Mr. T should the Coordinator feel this is in the best interests of the Child. To the contrary, the Governing Order clearly states that "Every long weekend" is parenting time to be allocated to Ms. L.

[96] In addition, the Merriam-Webster English dictionary definition of the term "long weekend" is:

long weekend (noun): A weekend that includes the Friday before, the Monday after, or both because one does not have to work or go to school on those days

[97] This definition is one that is commonly understood in ordinary parlance. It is not restricted to just those long weekends that arise because of a particular reason, such as a statutory holiday.

[98] Furthermore, the fact that paragraph 2(a) of the Governing Order provides, for clarity, that "long weekends attributable to Pro-D days" are included within the definition of "long weekends" cannot reasonably be interpreted to mean that other types of long weekends - such as those arising from SNIS days - are then excluded from the definition.

[99] Simply put, I agree with Ms. L that it is inconsequential as to what the long weekend is attributed to. The Governing Order provides that parenting time for every long weekend while school is in session is to be allocated to Ms. L. The Coordinator was therefore not allowed to allocate SNIS long weekends to Mr. T instead. This is particularly the case when Mr. T had sought to vary the Governing Order to increase his share of weekend parenting time, but was denied such relief by Justice MacNaughton by order dated June 4, 2024.

[100] Lastly, I also note parenthetically that this was not a situation where the parenting coordinator identified a special occasion that arguably may have justified an exceptional deviation from the court ordered allocation of parenting time under s. 6(4)(a)(vii) of the

FLAR. There may indeed be some unusual circumstances in which this may be permissible; an example might be if one parent's family reunion celebration happens to fall within weekend parenting time ordinarily allocated to the other parent. However, it is not open to a parenting coordinator to simply reallocate parenting time periods that are clearly defined in a court order just because the coordinator feels it would be in the best interests of the child.

Conduct Orders

- [101] In her reasons for determination, the Coordinator did not identify any legislative, contractual, or jurisprudential authority for the conduct orders she issued against Ms. L and the Grandfather in Determination #1 and Determination #2. In his submissions before the court, Mr. T did not point to any such authority either.
- [102] I am also unaware of any provisions in the FLA, the FLAR, the Agreement, or any of the court orders issued in this matter that could conceivably authorize a parenting coordinator to issue conduct orders against the parties or other persons. While parenting coordinators may certainly encourage parents to communicate and behave in ways that promote the best interests of the child, it is apparent that they have no express jurisdiction to enjoin conduct akin to that afforded to the court under Division 5 (Orders Respecting Conduct) of Part 10 of the FLA.
- [103] Accordingly, I find that the Coordinator also exceeded her authority when she purported to forbid Ms. L and the Grandfather from attending at the Child's school or other locations, and to impose limits on when and how they may communicate with the Child.

Conclusion

- [104] For all of these reasons, I have concluded that the Coordinator acted outside of her authority when she issued Determination #1 and Determination #2. In particular, the Coordinator was not permitted to alter the parties' parenting schedule in a manner contrary to the Governing Order. She was also not allowed to issue conduct orders against Ms. L and the Grandfather.
- [105] I therefore will order that both Determination #1 and Determination #2 are set aside pursuant to s. 19(1)(a) of the FLA.

Issue 2: Should the Agreement be Terminated?

The Parties' Positions

- [106] Ms. L's position is that the Coordinator's appointment should be terminated. Ms. L believes that the Coordinator is unable to perform her obligations in an unbiased, impartial and objective manner. She also says that since the Coordinator was appointed, the parties' relationship has seen increased conflict, confusion, and chaos. Ms. L is concerned that if the Coordinator is permitted to remain in place, this dynamic will only persist and degrade further.
- [107] Mr. T disagrees. In his view, it is Ms. L's unwillingness to cooperate with the Coordinator that is the primary cause of the difficulties that have led to the present application. Mr. T also notes that Ms. L has not made any proposal for replacing the Coordinator. As such, termination of the Coordinator's appointment would leave the parties without a parenting coordinator to help them manage their high conflict co-parenting situation. Mr. T submits that the Coordinator's appointment should therefore be maintained.

Discussion

- [108] Having reviewed the application record, I find that this is an exceptional case in which termination of the parties' parenting coordination agreement is warranted. I so find for two reasons in particular.
- [109] First, I accept that Ms. L has genuinely lost all confidence in the Coordinator to fairly, impartially, and effectively assist the parties. I also find that this subjective loss of confidence is objectively justified. There are multiple examples in the record of email messages from the Coordinator which give rise to an appearance that the Coordinator has developed an antipathy against Ms. L and her views, and a sympathy for Mr. T and his views. Whether or not the Coordinator actually feels this way, and whether or not she has good reason to, is beside the point. A parenting coordinator is duty bound to maintain not just actual objectivity and impartiality, but to give the appearance of having these qualities. In this case, the Coordinator has not been able to do so consistently.
- [110] Commendably, it is apparent that the Coordinator had some awareness of this problem. This is evidenced by her two apologetic emails that she sent on September 26, 2024, in which she took responsibility for the situation and promised to do better. Unfortunately, she was not able to fulfill this promise. Instead, much of the Coordinator's subsequent communication is similar in substance and tone to that which she sent prior to her apology.
- [111] Second, I am concerned that the two determinations under review and several comments made by the Coordinator in her emails reveal a fundamental misunderstanding and misapprehension of a parenting coordinator's role. That role is to build consensus, make certain determinations under court supervision, and to encourage parents to resolve conflict other than through court intervention: *Fleetwood v. Percival*, 2014 BCCA 502 at para. 44, and *F.J.V. v. W.K.S.*, 2019 BCCA 67 at para. 40. A parenting coordinator is not, however, a judicial official who enjoys inherent decision-making authority so long as it is exercised in

the best interests of children.

- [112] In the case at bar, the Coordinator issued two determinations accompanied by extensive reasons that were made in excess of her jurisdiction. The Coordinator also made several comments in her emails to the parties indicative of a view that her authority is wider than what is bestowed by the applicable provincial legislation.
- [113] An illustrative example is the July 25, 2024 message from the Coordinator to Ms. L referenced at paragraph 27 above, in which the Coordinator refers to herself four times as a "judicial authority". As has been discussed, this is not correct. While they perform certain adjudicative functions, parenting coordinators are not judges and do not have authority that can be equated to that of the judiciary.
- [114] In addition, there are the emails of September 25 and August 9, 2024, referenced at paras. 37 and 38, respectively. In the first, the Coordinator encourages the parties to agree to "go against the strict wording in a court order" if the order does not provide for the best interests of the Child. In the second, the Coordinator states, without any supporting evidence, that a judge who issued a particular order in this case made "a mistake", and speculates that this may be attributed to the judge's alleged lack of experience and familiarity with the subject matter. Comments of this nature are not conducive to assisting parties with implementing court orders, and are antithetical to the role of a parenting coordinator.
- [115] In sum, I have examined all of the circumstances set out in the application record to determine if the parenting coordinator process is generally being carried out by the Coordinator in accordance with the FLA, the FLAR, the applicable court orders, and the terms of the Agreement. In my view, it has not. Furthermore, this is not a case of just "a minor or technical or temporary misapplication or breach of an agreement or order" (M.H. at para. 41). To the contrary, it involves the issuance of two determinations that clearly exceeded the Coordinator's jurisdiction. Finally, I find and accept that Ms. L has justifiably lost confidence in the Coordinator's ability to effectively and impartially act as a parenting coordinator for the parties.

Conclusion

- [116] Accordingly, I will order that the Coordinator's parenting coordination agreement is terminated pursuant to s. 15(6)(a) and (b) of the FLA.
- [117] 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.

[118] If and when they do, however, the parties are reminded that they also have an individual responsibility to actively cooperate and participate in the parenting coordination process, in good faith and with a view to ensuring the best interests of the Child whom they love.

Outstanding Issues

[119] In her notice of application filed November 8, 2024, Ms. L also requested two other orders.

[120] The first is an order that would require Mr. T to sign off and approve a passport application that Ms. L has prepared for the Child. At the time of the hearing, it was unclear to me whether this was an issue that the parties had contractually agreed to be determined by the Coordinator. I therefore thought it best to address first the issue of whether the Coordinator's appointment should be maintained. Also, while there was some discussion of the passport application issue at the hearing, it was not fully argued by the parties.

[121] Accordingly, this aspect of Ms. L's application is adjourned generally and she is at liberty to re-set the application for hearing on a date that is mutually convenient for the parties.

[122] The other outstanding order being sought by Ms. L is one that would require a s. 211 FLA views of the child report to be prepared. At the hearing, Ms. L explained that she seeks such a report in anticipation of another parenting time variation application that Mr. T has indicated that he wishes to file in the near future. However, Mr. T has not done so yet. Accordingly, I find that this aspect of Ms. L's application is premature. Should Mr. T ultimately bring a variation application, and Ms. L remains of the opinion that a s. 211 FLA report is needed for its adjudication, she will be at liberty to seek that relief from the court.

V. DISPOSITION

[123] The following order is issued:

- (a) Determination #1 made by the Coordinator on October 2, 2024 is set aside;
- (b) Determination #2 made by the Coordinator on October 31, 2024 is set aside; and
- (c) the parenting coordination agreement between the parties and the Coordinator, Anna Perry, is terminated.

[124] The balance of the relief sought by Ms. L in her notice of application filed November 8, 2024 is adjourned generally.

[125] Ms. L has been substantially successful on this application, which was opposed by Mr. T. She is accordingly entitled to an award of costs. In my discretion, and bearing in mind that the parties are self-represented, the costs payable by Mr. T to Ms. L are fixed in a lump sum of \$750, payable forthwith.

"Brongers J."

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Prepared on 27 October 2026 · Esheria