

CANADA / JUDGMENT

Gill v. Kaur

2023 BCSC 178

COURT

Supreme Court of British Columbia

DECIDED

3 February 2023

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

2023 BCS 178 Gill v. Kaur

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Gill v. Kaur,

2023 BCSC 178

Date: 20230203

Docket: E221544

Registry: Vancouver

Between:

Sukhdip Singh Gill

Claimant

And:

Jasdeep Kaur

Respondent

Before: The Honourable Madam Justice Forth

Oral Reasons for Judgment

Counsel for the Claimant:

S.L. Specht

Counsel for the Respondent:

A. Riano

S. Basra, Articled Student

Place and Dates of Hearing:

Vancouver, B.C.

January 20 and 25, 2023

Place and Date of Judgment:

Vancouver, B.C.

February 3, 2023

Table of Contents

Introduction.. 3

Issues.. 5

Issue 1: Should There Be an Order That the Child be Returned to BC? 5

Position of the Parties. 5

Analysis. 6

Issue 2: Should there be an Order Establishing the Primary Residence of the Child?.. 10

Issue 3: What Interim Parenting Arrangement Should be Put in Place? 10

Parties Positions. 10

Best Interests of the Child Test 11

The Child's Health, Emotional Well-being, and Needs, including the Need for Stability 13

Relationships between the Child and Significant Persons in her Life, Nature and Strength of her Relationships. 15

Supporting the Child's Relationship with the Other Spouse. 16

History of Childcare and Plans for the Child's Care. 16

Ability and Willingness of Guardians to Care for the Child, Meet the Needs of the Child, Exercise Parenting Responsibilities, and Cooperate. 17

Impact of Family Violence, including Criminal Charges. 17

Analysis. 19

Issue 4: What Guardianship and Parenting Responsibilities Should be Ordered?.. 20

Issue 5: Should There be an Order Restricting Where the Child Can be Taken?.. 21

Issue 6: Should a s. 211 Report be Ordered?.. 21

Issue 7: Should the Parties be Ordered to Attend Co-Parenting Counselling?.. 23

Issue 8: Should the Child be Allowed to Continue in Educational, Extra-curricular Activities, and Therapy in Spokane, Washington?.. 24

Issue 9: Should the Respondent be Free to Take the Child to Medical and Dental Treatments in Spokane, Washington?.. 25

Issue 10: Who Should Hold onto the Child's American Passport and US Birth Certificate?.. 26

Conclusion.. 26

Introduction

[1] These parties initially appeared before me on a jurisdictional issue, and again on two other occasions for interim-interim parenting time for the claimant father. The parties have a child together who I will identify by her initials, "M.K.G.", or as the "Child". The jurisdictional issue was resolved by my finding that the Child's habitual residence is British Columbia. My reasons are indexed at 2022 BCSC 2088 (the "Reasons").

[2] The claimant filed a notice of application on October 3, 2022 (the "October Application"). The first order sought - that M.K.G. is a habitual resident of BC and that this Court shall determine all issues relating to the Child, has been decided in the Reasons. The claimant now seeks to pursue the following relief:

- An order that the respondent forthwith return the Child to BC;
- An interim order that the Child reside primarily with the claimant in BC, pending further order of this Court or written agreement between the parties;
- An interim order that the claimant have interim sole authority over parenting responsibilities for the Child;
- An order that the respondent provide the Child's American passport and US birth certificate to the claimant to hold pending further order of this Court; and
- An order that the Child shall not be removed from the territorial jurisdiction of BC by the respondent or by any agent on her behalf.

[3] The respondent filed a notice of application on December 30, 2022 (the "December Application"), seeking the following interim orders:

1. The Child shall reside primarily with the respondent in Spokane, Washington, pending further order of this Court or written agreement between the parties;
2. The claimant shall have parenting time throughout the months of January to May 2023, for approximately ten days each month;

3. The parties equally share parenting responsibilities;
 4. The parties are joint guardians;
 5. The parties retain a person, acceptable to both parties and to the Court, to assess the best interests of the Child and the ability and willingness of the parties to satisfy those needs in light of the fact that the respondent resides in Spokane, and the claimant resides in Surrey, and prepare a report with the costs of the report to be paid equally;
 6. The parties attend co-parenting counselling with the costs to be equally shared;
 7. The Child be allowed to continue to attend Journey, an early learning centre in Spokane;
 8. The Child be re-enrolled in therapy at the Center for Solace in Spokane;
 9. The respondent may enroll the Child in extra-curricular activities in Spokane, so long as the respondent informs the claimant beforehand;
 10. The respondent may take the Child to medical treatments, including her pediatrician, ophthalmologist, and dentist in Spokane as needed when the Child is in the respondent's care, so long as the respondent informs the claimant beforehand; and
 11. The Child's American passport be held by the party that is exercising parenting time.
- [4] The trial date in this matter has been set for June 12, 2023 for ten days.
- [5] The parties' backgrounds and relationship were extensively canvassed in the Reasons. The key facts are that the claimant father lives in Surrey, British Columbia, and the respondent mother lives in Spokane, Washington with the Child, who is about to turn three years old.

Issues

- [6] I will address the following issues:
1. Should there be an order that the Child be returned to Surrey, BC?
 2. Should there be an order establishing the primary residence of the Child?
 3. What interim parenting arrangement should be put in place?
 4. What guardianship and parenting responsibilities should be ordered?
 5. Should there be an order restricting where the Child can be taken?
 6. Should a report, pursuant to s. 211 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], be ordered?
 7. Should the parties be ordered to attend co-parenting counselling?
 8. Should the Child be allowed to continue in educational, extra-curricular activities, and therapy in Spokane?

9. Should the respondent be free to take the Child to medical and dental treatments in Spokane?
10. Who should hold onto the Child's American passport and US birth certificate?

Issue 1: Should There Be an Order That the Child be Returned to BC?

Position of the Parties

- [7] The claimant's position is now that there is a finding that the Child's habitual residence is BC, there should be an order made that the Child be returned to her habitual residence. The claimant further contends that if such an order is not granted, effectively the Court will be retroactively ruling on the merits of a relocation application that was never made: *Roman-Manarovici v. Manarovici*, 2022 BCSC 1159 at para. 10.
- [8] The respondent's position is that there should be an interim order that the Child reside primarily with the respondent in Spokane since the Child has spent a significant amount of time in Spokane since her birth. The respondent claims that it was understood between the parties that the respondent and the Child would return to Spokane after the fellowship, and the parties would resume their long-distance relationship. The respondent asserts that as she has been the Child's primary caregiver for the majority of the Child's life, she should remain so.

Analysis

- [9] As I stated in the Reasons at para. 153, it appears that the respondent changed her mind about where she was going to live after the fellowship ended. I note that the respondent has now provided further evidence about her plans after she completed her fellowship. I will provide a summary of this evidence.
- [10] The respondent claims that in February 2022 she discussed resuming her job in Spokane since there were no jobs in Bellingham, Washington. In support of this claim she provided a text message, dated February 13, 2022, that she sent to the medical director at Sacred Heart Hospital (in Spokane) asking if there would be any positions available for part-time work at the hospital starting in August. The director confirmed via text message that there were openings. The respondent deposes that the claimant was aware as early as February 2022 that she had a plan to accept the job in Spokane. The respondent further claims that she verbally accepted the job in Spokane. She sets out in her fifth affidavit (the "Fifth Respondent Affidavit") made on December 29, 2022 that:
 6. We decided that it made more sense for me to resume my job in Spokane for the time being and continue our back and forth arrangement.

10. I made it clear to the Claimant at that time that since I verbally accepted the offer from Spokane, I would honor that contract for the length of the contract (usually 1 year) unless the medical director was ok with me pulling out of the contract sooner.
- [11] The respondent further claims that an arrangement was made with the claimant that he would assist her in the move back to Spokane. She states:
19. the plan was for me and [M.K.G.] to move back to Spokane and the Claimant was to help with the move. He was going to bring his mom's pathfinder or his father's truck to move the furniture back to Spokane for 1-2 weekends ahead of the end of the apartment lease.
20. I was scheduled to start work in Spokane for 7 days a month, beginning on August 1, 2022.
- [12] She claims the following in regards to the plan made with the claimant:
25. Before our separation, the plan for July 2022 was for me and [M.K.G.] to spend a few days in Spokane after the move [so] I could get credentialing and training done and start studying for my geriatrics board exams.
26. I was planning to visit the Claimant in Surrey as much as possible and help with his sister's upcoming wedding in August.
27. I was then going to be in Spokane to begin work on August 1.
28. I refute the Claimant's accusations that I abducted [M.K.G.] to Spokane.
29. The Claimant was aware of the plan to return to Spokane after the fellowship and resume the previous long distance arrangement.
- [13] The claimant denies there was an agreement for the respondent to work and live in Spokane after her fellowship was complete. In his first affidavit, sworn August 25, 2022, he states at para. 87, "the clear agreement between us was that at the end of her Fellowship, she would return to Surrey to reside full-time with me and [M.K.G.]." In his second affidavit, sworn on October 5, 2022, he states at para. 32, "At no time did the Respondent suggest to me that she would be moving back to Spokane at the end of June. She made it clear we would be moving back home to Surrey after her Fellowship". It was this evidence that I relied upon in making the following finding in the Reasons:
- [153] I accept that at some point in time the respondent made the decision that she was not going to live in BC. She changed her mind regarding where she and the child would live. Though it is not clear to me when exactly her intentions changed, it is apparent that they did by mid-June 2022. She did not, however, share that changed intention with the claimant: her decision was unilateral. I find that at no time did the claimant acquiesce to the retention of the child in Washington.

[14] It is now not clear to me whether the respondent had discussed this change in her intentions with the claimant. In response to the respondent's assertion the parties had agreed that the respondent would return to live or work in Spokane, the claimant states the following in his fifth affidavit, sworn on January 12, 2023:

26. there was never an agreement for the Respondent to work or live in Spokane after her Fellowship was complete. I made it very clear I was not in agreement with that and that I wanted our family to be together.

[15] This leaves open the suggestion that the parties did have some discussion about a change of intention on the part of the respondent, which was communicated prior to mid-June 2022. As I mentioned to both parties and counsel during the hearing on January 20, 2023, it is very difficult for a chambers judge to decide who is telling the truth on affidavit evidence. It is only after the parties have appeared in person, along with the benefit of cross-examination, that difficult decisions respecting the credibility of the parties can be made: *Wang v. Wang*, 2021 BCSC 2290 at paras. 35-43. As noted by the Court of Appeal in *Mayer v. Mayer*, 2012 BCCA 77:

[80] Further, cross-examination is essential to protect trial fairness since, without it, the court cannot assess the probative value of the evidence: see *R. v. Darrach*, 2000 SCC 46, [2000] 2 S.C.R. 443 at para. 63. In *R. v. Osolin*, [1993] 4 S.C.R. 595 at 663, Cory J. made the following remarks which, although made in a criminal context, are apposite to this discussion:

There can be no question of the importance of cross-examination. It is of essential importance in determining whether a witness is credible. Even with the most honest witness cross-examination can provide the means to explore the frailties of the testimony. ... Its importance cannot be denied. It is the ultimate means of demonstrating truth and of testing veracity. ...

I would add that, in cases of conflicting evidence, cross-examination of the parties offering the conflicting evidence is essential - the credibility of one or the other cannot be considered in a vacuum.

[81] In addition to exposing credibility to scrutiny, cross-examination may also cast a different light on the evidence given by witnesses and may bring out relevant information that might not otherwise be disclosed, thus enabling the court to be informed of all the evidence bearing on the issues.

[16] If the parties had agreed that the respondent was going to return to Spokane with M.K.G. after the fellowship ended, this is a material piece of evidence that needs to be considered. I am not in the position to make a finding on who is telling the truth since the evidence of the parties is in direct conflict. That decision will have to be made by the trial judge.

[17] I accept that when a parent has unilaterally removed a child from one jurisdiction, absent the consent of the other parent, both the FLA and the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA] support that the child should be returned to its habitual residence. In addition, a parent who seeks to relocate must comply with the formal notice requirement of s. 16 of the

DA and s. 66 of the FLA before such relocation is permitted: Roman-Manarovici at paras. 11, 15. The respondent concedes that she has not complied with the notice requirements in the DA and FLA. The respondent's counsel confirmed the intention to amend the pleadings to seek a relocation of the Child to Spokane. It is anticipated that this will be an issue before the trial judge. The claimant agrees that any relocation application should be heard at the trial.

- [18] I have found M.K.G.'s habitual residence to be BC, based on the evidence before me on October 5 and 6, 2022 (the "Jurisdiction Hearing"). In light of the further evidence of the respondent, I am not prepared to make an order that the Child be returned to BC since there is no need to do so at this time. The Child has been returned to BC by the respondent when directed to do so for the claimant's parenting time. The situation here is unlike other cases where a child has been removed by one parent and taken to another jurisdiction, thereby depriving one parent from any meaningful contact with the child: *Shortridge-Tsuchiya v. Tsuchiya*, 2010 BCCA 61 at para. 38, leave to appeal to SCC ref'd, 33632 (8 July 2010). It also differs from the situation in *Y.Q. v. J.D.*, 2022 BCSC 2189 in which the respondent had taken the child to China and had refused to bring her back to Canada. As Justice Kirchner noted in *Y.Q.* at para. 70, the wrongful removal of the child from BC resulted in the ending of any meaningful contact with the child. As such, the Court ordered the child be returned to BC and reunited with her mother.
- [19] Each of these cases are unique and turn on the factual findings made. As stated by the Supreme Court of Canada in *Barendregt v. Grebliunas*, 2022 SCC 22 at para. 123, the inquiry has to be an individual one considering the best interests of the particular child in the particular circumstances of the case. As noted in the Reasons, based on the evidence before me at the time of the Jurisdiction Hearing, I found that the claimant did not consent, nor acquiesce to the respondent taking M.K.G. to Spokane. Now, however, it is not clear to me whether the claimant was aware of, and agreed with the respondent's plans to return to Spokane after the fellowship, and that the parties would resume a long-distance relationship. If the claimant was aware of and/or agreed to the respondent's plans, that is a significant piece of evidence that fundamentally alters the claimant's assertion that the Child was "abducted" by the respondent and unilaterally taken to Spokane. As I have indicated, only at trial will the "truth" be ascertained.

Issue 2: Should there be an Order Establishing the Primary Residence of the Child?

- [20] Both parties seek an order that the primary residence of the Child be with them pending the trial of this matter.
- [21] I will not order that the Child be primarily resident with either parent at this time. That decision should be made after the receipt of a s. 211 report, and after the trial of this matter. I note that this decision is a very important one which, in my view, should only be made in the circumstances of this case after a trial. Pending the outcome of the trial, a parenting arrangement which will allow both parents to be a part of the Child's life will be put in place.

Issue 3: What Interim Parenting Arrangement Should be Put in Place?

Parties Positions

- [22] The claimant sought an order that the Child live with him in Surrey. At the hearing he suggested that if the respondent obtained housing in Surrey, or perhaps in Bellingham, then the parties could enter into a shared parenting arrangement on a 3-3-4-4 basis.
- [23] If the respondent continues to reside in Spokane, it is not clear to me what type of parenting arrangement the claimant is suggesting.
- [24] In the Fifth Respondent Affidavit, the respondent submits that the claimant should see the Child for approximately ten days per month pending the trial. Her view is that ten days per month is "a meaningful amount of time for the Claimant to establish and maintain a relationship with [M.K.G.]"

Best Interests of the Child Test

- [25] The best interests of the Child are paramount over all other considerations when making an order for parenting arrangements and parenting time.
- [26] With respect to the best interests of the Child, s. 37 of the FLA provides:
- 37 (1) In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only.
- (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
- (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;
 - (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - (d) the history of the child's care;
 - (e) the child's need for stability, given the child's age and stage of development;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
 - (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;

- (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
 - (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
 - (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.
- (3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.
- (4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.
- [27] The amendments to the DA also require the Court, when determining the best interests of the Child, to prioritize the safety, security, and well-being of the Child above all other considerations: s. 16(2). Section 16(3) sets out the factors to be considered:
- (3) In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including
 - (a) the child's needs, given the child's age and stage of development, such as the child's need for stability;
 - (b) the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;
 - (c) each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
 - (d) the history of care of the child;
 - (e) the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
 - (f) the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;
 - (g) any plans for the child's care;
 - (h) the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
 - (i) the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;

- (j) any family violence and its impact on, among other things,
- (i) the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
- (ii) the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and
- (k) any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

[28] Section 37(2) of the FLA and s. 16(3) of the DA mandate that in determining the best interests of the Child, the Court must consider certain specific factors. There is a great deal of overlap between the FLA and the DA, and I have broken them into the following factors listed below. I have not included factors relating to the Child's cultural heritage since this is not relevant in light of the shared cultural background of the parties, nor have I considered the Child's views since she is too young.

[29] The parties made submissions under the factors in the FLA and the DA. I have considered all of their submissions under both Acts, and organized them under the headings below. For clarity, I will make this order under the FLA, but I am satisfied that the outcome would be the same under the DA.

The Child's Health, Emotional Well-being, and Needs, including the Need for Stability

[30] The Child has just turned three years old. Since the father was forcibly removed from Seattle in June 2022, he has spent a total of 27 days with the Child as of January 16, 2023. When the Child has been with her father I find that all of her needs are met, including needs related to her health and emotional well-being. Equally, I find that when the Child is with her mother, her mother also supports all of her needs. I find that there is no evidence of either party neglecting the child's health and emotional well-being.

[31] The respondent has raised issues that in the past, as well as currently, the Child experiences separation anxiety and engages in hair pulling (thus developing bald spots) after she has been in her father's care. The claimant has tendered evidence supporting that any hair pulling existed prior to the Child being left under his care. If the Child has returned to hair pulling, I am unable to determine its cause are visits with her father. As the claimant deposed, he has not seen any evidence of the Child pulling her hair during her stays with him. The claimant also says that when the Child has been under his care she is a "happy, healthy child". It is understandable that a Child of her age would experience some degree of stress when being transferred from one home to the other. It also makes sense that when the Child returns to her mother she would want to be with her as much as possible.

- [32] The claimant has raised the issue of the Child being left with strangers for the majority of her waking hours while living in Spokane with the respondent. The respondent has enrolled the Child in school and daycare, which she attends four days a week, for approximately six hours per day. The respondent has her reasons for registering the Child in the particular school program and it appears that the Child has been thriving being in this program. The report from the Journey Discovery Center dated December 31, 2022, notes that when the Child first started she was "very shy" and "hesitant", but since then the teachers describe her as having "blossomed", "growing and thriving", and gaining "confidence".
- [33] The claimant has also raised an issue with the Child being left with Raj Kaur ("Aunty Raj") in Spokane. In particular, he raised some issue with Aunty Raj's husband. The respondent denies the allegations made against the husband. The claimant asserts that the respondent has left the Child with Aunty Raj. I have reviewed the respondent's affidavits and I can find no reference to the Child being left with Aunty Raj at her home. The respondent deposes to meeting with family friends several times a month, including Aunty Raj. There is no indication that the Child is being left at Aunty Raj's home or being alone with her husband. The only reference I could find was that Aunty Raj had babysat the Child a few times at the respondent's residence. As the respondent deposes, the primary people caring for the Child are herself, her mother, and "Sharon" the babysitter. I have every confidence that the respondent would not expose the Child to anyone that would harm her.
- [34] The Child has a unique past in that her whole life has been one of transitions between living in BC and Washington. On some occasions she has been with one parent, and other times with both parents, when residing in both jurisdictions.
- [35] I do agree that at some point in time there should be more stability regarding where the Child lives, as well as a reduction in the travelling that she has to make. This will become essential when the Child starts her formal education. It is not possible for her to attend school in both jurisdictions. This is one of the key issues to be determined at the trial.
- [36] I am convinced that both parents will provide for the Child's health, emotional well-being, and needs.

Relationships between the Child and Significant Persons in her Life, Nature and Strength of her Relationships

- [37] The two most significant people in the Child's life are her parents.
- [38] The Supreme Court of Canada has held that maximum contact with each parent is preferred as long as it is in the best interests of the child: see *Young v. Young*, [1993] 4 S.C.R. 3, 1993 CanLII 34. Maximum contact gives the child the opportunity to know both parents and benefit from a relationship with each: *A.P. v. S.T.*, 2019 BCSC 1780 at para. 51. The concept of maximum contact is codified at s. 16(6) of the DA which reads:

Parenting time consistent with best interests of child

- (6) In allocating parenting time, the court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child.
- [39] Maximum contact between the Child and her father requires that the father be given the opportunity to spend time with his daughter in-person on a regular basis at his home. The amount of parenting time he has had since mid-June 2022 is not enough.
- [40] In addition, there are other people that were part of the Child's life up until mid-June 2022, as noted in my Reasons at para. 154. The Child should continue to have the opportunity to spend time with her cousins, aunts, uncles, and grandparents at the Surrey home, as they too are "significant persons" in her life. As are the Child's grandmother and uncle in Spokane.
- [41] I accept the respondent's evidence that she has a very close bond with her daughter. However, the Child should be given the opportunity to develop a close bond with both of her parents.

Supporting the Child's Relationship with the Other Spouse

- [42] A positive relationship between both parents helps provide stability for children. The claimant asserts that the respondent has denied him any parenting time, and continues to wrongfully refuse to increase his parenting time with the Child so as to impede his ability to parent. The respondent disputes this, and claims that she has only ever acted in the best interests of the Child. I accept that since mid-June 2022, the father's parenting time with his daughter has been restricted.
- [43] Both parties say they support the Child's relationship with the other parent. The claimant alleges that the respondent is coaching the Child and making derogatory comments about the Child's young cousins and about issues relating to the separation of the parties. The parties should not be casting aspersions against each other or other family members. A young child should not be exposed to any such commentary. If it has happened, it should stop.
- [44] Both parents need to speak in a positive manner when referring to the other in front of the Child, particularly as she matures and begins to better grasp the conflict that exists. I am confident that both parents understand the importance of working together and being positive role models for their daughter.

History of Childcare and Plans for the Child's Care

- [45] I accept that up until June 17, 2022, both parents played a role in caring for and raising their daughter. Their situation was unique because of how far apart their homes were located. There were times when the parties were together in the same home, and other times when one of the parties had M.K.G. alone with them.
- [46] I specifically reject the respondent's sworn evidence in the Washington proceeding that the claimant had a lack of emotional ties with the Child and neglected the Child.
- [47] Since the separation in June 2022, the respondent has been most involved in caring for the Child. This arrangement was forced on the claimant as he was deprived the opportunity of seeing his daughter from June 16 to October 14, 2022. After separation, the claimant has continuously made efforts to maintain a relationship with his daughter and to care for her.
- [48] There are no issues with the provision of appropriate health and dental care in either jurisdiction. Both parents have an appropriate plan to ensure that the Child's needs are met.

Ability and Willingness of Guardians to Care for the Child, Meet the Needs of the Child, Exercise Parenting Responsibilities, and Cooperate

- [49] Both parents appear capable of exercising their parental obligations. I accept that neither parent has any physical, psychological, or other such limitations that would raise a concern for the Child's health, safety, well-being, and development. I have no concerns with either parent's ability to carry out their parenting responsibilities. I am also confident now that a parenting schedule has been set, they can turn their focus on working cooperatively for the best interests of the Child.

Impact of Family Violence, including Criminal Charges

- [50] Section 37(2)(g) of the FLA specifically requires the Court to consider family violence when considering the best interests of the Child. An assessment of family violence is set out in s. 38:

Assessing family violence

38 For the purposes of section 37 (2) (g) and (h) [best interests of child], a court must consider all of the following:

- (a) the nature and seriousness of the family violence;
- (b) how recently the family violence occurred;
- (c) the frequency of the family violence;
- (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;

- (e) whether the family violence was directed toward the child;
- (f) whether the child was exposed to family violence that was not directed toward the child;
- (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- (i) any other relevant matter.

[51] Section 16(4) of the DA outlines the factors relating to family violence and states:

- (4) In considering the impact of any family violence under paragraph (3)(j), the court shall take the following into account:
 - (a) the nature, seriousness and frequency of the family violence and when it occurred;
 - (b) whether there is a pattern of coercive and controlling behaviour in relation to a family member;
 - (c) whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;
 - (d) the physical, emotional and psychological harm or risk of harm to the child;
 - (e) any compromise to the safety of the child or other family member;
 - (f) whether the family violence causes the child or other family member to fear for their own safety or for that of another person;
 - (g) any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child; and
 - (h) any other relevant factor.

[52] Since the respondent makes allegations of family violence, I must consider the factors enumerated in s. 38 of the FLA and s. 16(4) of the DA. The respondent says there was a history of conflict in the relationship. This culminated in the events of June 15 and 16, 2022, as set out in the Reasons at paras. 96-100. There are two versions of what happened and I am unable to determine who is telling the truth.

[53] The claimant says that the respondent acted in an inappropriate manner of slapping the Child's legs while changing her diaper while on vacation in Hawaii. The respondent denies this description of this event.

- [54] However, I note that I did not have the benefit of hearing direct and cross-examination evidence from the parties. I also do not know all of the facts and circumstances of the alleged family violence, and the determination of what happened will be left for the trial.
- [55] There is no evidence before me that the Child suffered physical, psychological, or emotional harm as a result of the alleged violence.
- [56] On the balance, I find that the Child is safe with both parties and that the parties are equally capable of addressing and meeting all of the Child's needs. I am not prepared to find on the evidence before me that either parent poses any risk to their daughter.

Analysis

- [57] I have concluded, on the evidence before me, that it is in the best interests of the Child to move to a shared parenting regime with her parents. That means that for one half of each month the Child will be living with the claimant in the Surrey home. For the other half of each month the Child will be living with the respondent in the Spokane home. Since March and May each have 31 days, one party will have the Child for the extra day in March and the other party will have the Child for the extra day in May.
- [58] The respondent, if she so chooses, is entitled to move to a location that is closer to Surrey, but she is not entitled to move to a location that is further from Surrey than Spokane. The respondent has raised a concern about the impact of travel on the Child. If she has such a heightened concern for the Child's well-being during these lengthy commutes, she does have the ability and the opportunity to move to a community, such as Bellingham, that will substantially reduce this impact on the Child. This is entirely the respondent's choice since it would be inappropriate to direct that such a move should take place. The respondent is entitled to live where she chooses: *McIntosh v. Kaulbach*, 2014 BCCA 299 at para. 16, citing *Falvai v. Falvai*, 2008 BCCA 503 at para. 40.
- [59] I do accept that it would be far more beneficial for the Child if the parents lived in closer proximity to each other. How or if that can be achieved will be left for the trial judge and the parties.
- [60] I will leave it for the parties and counsel to work out the schedule for the shared parenting arrangement, though it should commence in February 2023. I would suggest that during the seven days that the respondent is working, it would make the most sense that the Child be with the claimant.
- [61] The respondent will be responsible for arranging for the transport of the Child from Spokane to the Seattle airport if the Child is flying for the parenting exchange. The claimant, or a family member, will cross the border and pick up and then return the Child to the Seattle airport. The costs of transporting the Child to the Seattle airport will be initially for the respondent to pay, subject to the decision of the trial judge. If the respondent is driving the Child, the parties should agree to an exchange location that is close to the Seattle

airport, or some other location that is agreed to by the parties.

- [62] This avoids the need for the respondent to cross the border since she asserts there is a potential risk she could be arrested. It also places the burden on the claimant or his family to have to cross the border.

Issue 4: What Guardianship and Parenting Responsibilities Should be Ordered?

- [63] As the parents of the Child, both parties are her legal guardians under s. 39 of the FLA. There is no reason to make an order deviating from this. The claimant seeks sole parenting responsibilities, whereas the respondent seeks the parties equally share parenting responsibilities under s. 41 of the FLA.
- [64] Since I have concluded that on an interim basis, pending the trial, the parties shall have a shared parenting regime, I am of the view that they also should share the parenting responsibilities.
- [65] The parties need to recognize that they both have an equal say in the Child's life: neither parent is more important than the other. They need to cooperate and start respectfully communicating with each other on how to care for and raise their daughter. I am hopeful that they can achieve this. Further, any failure by one or both parties to cooperate will likely be scrutinized by the trial judge, should provide them with motivation to work together.

Issue 5: Should There be an Order Restricting Where the Child Can be Taken?

- [66] The claimant seeks an order that the Child not be removed from BC by the respondent. That order is not granted since the Child is permitted to live with the respondent in Spokane during the respondent's parenting time.
- [67] It is appropriate that neither party remove M.K.G. to any other jurisdiction aside from BC and Washington.

Issue 6: Should a s. 211 Report be Ordered?

- [68] The parties agree that a s. 211 report should be obtained. The parties have agreed to retain Dr. Michael Elterman. The claimant seeks the following conditions be imposed:
- a. That the strict instruction be given to the Author that the Child's habitual residence has been determined by the Court to be British Columbia.
 - b. That the Author be given instructions that the Child has been wrongfully retained in Spokane since July 1, 2022 without the consent of the Claimant and parenting time has been withheld by the Respondent to the Claimant since that time, except in accordance with recent interim without prejudice Court Orders.

- c. That there is to be no consideration by the Author on the relocation issues of the Child's alleged 'settlement' in Spokane, or any connections/schooling/activities thereto between the period of July 1, 2022 to the date that this Court makes an Order regarding the Child's interim residence;
 - d. That there be an assessment of the existence of parental alienation by the Respondent against the Claimant as it relates to the Child;
 - e. That all Affidavits, Court transcripts or Reasons for Judgment be provided to the Author as may be available from either Washington or BC;
 - f. That the parties agree further on what documents may be forwarded to the Author, with liberty to apply in the event of disagreement; and
 - g. That the Respondent pay the costs of the Section 211 Report, subject to further reapportionment by the Trial Judge.
- [69] I do not agree that the instructions sought in items "a" and "b" should be made to Dr. Elterman. Dr. Elterman should be provided with the Reasons, as well as these reasons, which I will be publishing. He will understand that a finding has been made that M.K.G.'s habitual residence is BC, and that this Court will be making the decisions respecting the Child - not the Washington Court.
- [70] Respecting item "c", it will ultimately be for the trial judge to decide where the Child should primarily reside, since it has been confirmed that the respondent will be seeking a relocation order. If such an order is sought, it is appropriate for Dr. Elterman to consider the life that M.K.G. has in Spokane with the respondent. It would not be appropriate to place such a limitation on Dr. Elterman's assessment.
- [71] Further, I have not seen any evidence of parental alienation carried out by either party, as noted in item "d", and I will leave it to Dr. Elterman to advise the Court if he finds any evidence to support such an allegation. I will not direct him to specifically consider that the respondent has engaged in such behaviour.
- [72] It is appropriate that item "e" be ordered, but I see no need to give any further documents from the Washington proceedings since the vast majority are already attached to the affidavits filed in this proceeding.
- [73] It is appropriate that item "f" be ordered.
- [74] I will also ask Dr. Elterman to consider whether the Child should be receiving any therapy or counselling to assist her in adjusting to her changed circumstances, and whether it would be appropriate for FaceTime or other contact to happen when the Child is away from each parent.

- [75] In respect to costs of such a report, I am not persuaded that the respondent should fund this initially. The parties will equally fund the s. 211 report with the ultimate decision on who should pay being left to the trial judge.
- [76] The respondent raised a concern regarding the location of the assessment. If Dr. Elterman is to assess the Child in the claimant's home, the respondent requested that the same type of assessment be conducted in her home. I am not prepared to direct how Dr. Elterman is to conduct his assessment. He is a well-respected and experienced s. 211 author and I have every confidence that he will carry out his assessment in an appropriate and fair way.

Issue 7: Should the Parties be Ordered to Attend Co-Parenting Counselling?

- [77] Since M.K.G. is at an age where many decisions frequently must be made for her care, the respondent seeks an order that the parties attend co-parenting counselling to assist in their communication. She submits that it is imperative that the parties learn how to communicate with one another without the need for court intervention. This is a proposition that I endorse.
- [78] The claimant's position was not entirely clear, though he was unsure of how this co-parenting counselling would occur and what the associated costs would be. The respondent's counsel explained that it would be counselling provided online.
- [79] It is clear that since June 2022 the parties have not been effectively communicating with each other. I am of the view that co-parenting counselling is appropriate and would assist the parties in numerous ways, including: providing strategies to communicate in a fashion that encourages co-parenting; outlining parameters on what should be communicated; implementing common sets of expectations and rules for the Child; and supporting both parties to execute strategies that work. I am concerned that without some professional assistance, these parties will struggle with co-parenting.
- [80] To date, it appears that most inter-party communication has been through counsel, including communications about the care of M.K.G. It is my recommendation that this method of communication change when relating to the day-to-day issues of the Child's care. The co-parenting counselling will hopefully assist in this transition.
- [81] Learning how to effectively communicate with each other can help foster responsible parenting, ultimately ensuring the Child's needs are prioritized. That the parties are no longer a couple does not change their status as parents to the Child. It is in M.K.G.'s best interests for the parties to learn to respect and value each other's views and opinions.
- [82] I note that both parties confirmed that the co-parenting counselling should be provided on a without prejudice basis, which means that what is said in counselling should not be permitted to be used at the trial. I agree that any counselling provided should be on a without prejudice basis. This will help promote the success of the co-parenting counselling.

[83] I direct that the parties engage in co-parenting counselling up until the trial date. I will leave it for the trial judge to decide whether further co-parenting counselling is needed. The costs will initially be shared between the parties, subject to the decision of the trial judge.

Issue 8: Should the Child be Allowed to Continue in Educational, Extra-curricular Activities, and Therapy in Spokane, Washington?

[84] Since the Child will be living one-half of each month with the respondent in Spokane, she is entitled to participate in appropriate education and extra-curricular activities. As such, when the Child is living with the claimant in Surrey, she should also participate in activities to support her developmental growth.

[85] The claimant objects to the Child attending the Journey Discovery Center. The report from this Center, however, supports that the Child's attendance has been a positive experience. I see no reason to order that the Child be prohibited from attending. In the same fashion, the Child should also be entitled to continue to attend the StrongStart program when she is with the claimant.

[86] Both parents should be consulting the other regarding the various extra-curricular activities the Child participates in. When in Spokane, the Child should have the opportunity to participate in extra-curricular activities that continue to enhance her social, physical, and mental development. I would expect that her father should support such activities. Equally, her mother should support her daughter being involved in extra-curricular activities while the Child is in Surrey.

[87] I again remind the parties that their actions and decision-making will be subject to close scrutiny during the trial. Hopefully they will both act as mature parents, putting the Child's best interests first and foremost.

[88] I now turn to the issue of therapy. The respondent registered the Child in a therapy program with the Center for Solace (the "Center") without consulting with the claimant. The letter from the Center dated September 30, 2022, states that the Child has been attending for "mental health counselling" since September 13, 2022. What is not clear to me is what the respondent may have told this Center respecting the claimant. The decision to have a young child attend counselling is one that the parents should be jointly involved in. The respondent should be providing all the documents that were provided to the Center to the claimant, so that he may contribute in deciding whether the Center should be providing any counselling.

[89] The claimant has also researched different places where the Child can attend therapy in Surrey.

[90] I am not persuaded on the evidence before me that the Child needs therapy or counselling. I have asked that Dr. Elterman consider whether therapy or counselling is something the Child should have. I will not grant the order that the Child return to the Center for further counselling. If the parents see changes in the Child that supports a need for her to attend therapy or counselling, they should discuss and act in the Child's best interests.

Issue 9: Should the Respondent be Free to Take the Child to Medical and Dental Treatments in Spokane, Washington?

[91] The parties are entitled to take the Child to medical and dental appointments and treatments that are needed in either jurisdiction. The parties should be keeping the other advised of the nature of the appointments, the need for the attendance, and providing the medical documentation arising from any appointment or treatment.

Issue 10: Who Should Hold onto the Child's American Passport and US Birth Certificate?

[92] The claimant suggested that there is a potential risk that the respondent could take the Child elsewhere "as part of her continued legal attack". On the evidence before me, I see little risk of that occurring. The respondent has been a US citizen since 1998. Her mother lives in Spokane. Her father is deceased. Her other family members live in the United States. She has been medically trained in the US and works as a physician in Spokane.

[93] It does make sense to me that the Child's American passport remain with her when she crosses the border. Further, I see no reason why her US birth certificate should be surrendered. The respondent can keep the US birth certificate for the time being.

Conclusion

[94] The following orders are made:

1. The claimant's application that M.K.G. be forthwith returned to her habitual residence in Surrey is adjourned to be heard at the trial of the action.
2. The applications of the parties for a declaration as to the primary residence of M.K.G. is adjourned to be heard at the trial of the action.
3. The claimant and respondent will have shared parenting time, with M.K.G. based with each parent, spending one half of each month with the Child. Regarding the months of March and May 2023, the claimant will have an extra day in one month, and in the other month the respondent will have the extra day. The claimant is entitled to have his parenting time at the Surrey home. The respondent is entitled to have her parenting time in Spokane, or in any city in Washington that is closer to Surrey.

4. The respondent, or a family member, will be responsible for arranging for the transport of the Child from Spokane to the Seattle airport if the Child is flying for the parenting exchange. The claimant, or a family member, will cross the border to pick up and to return the Child to the Seattle airport. If the respondent, or a family member, is driving the Child, the parties should agree to an exchange location that is close to the Seattle airport or some other location that is agreed to by the parties.
5. The costs of transporting M.K.G., from Spokane to Seattle and return, will initially be borne by the respondent, subject to further direction of the trial judge.
6. The claimant and respondent shall be guardians of M.K.G. under s. 39(1) of the Family Law Act.
7. On an interim basis, the parties shall equally share all of the s. 41 parental responsibilities for M.K.G. under s. 40(2) of the Family Law Act.
8. When M.K.G. is exchanged for parenting arrangements, her American passport will remain with her.
9. M.K.G.'s US birth certificate can be kept by the respondent at this time.
10. The parties will sign a general written authorization for M.K.G. to travel between Washington and BC for the parenting arrangements.
11. Dr. Michael Elterman (the "Assessor") is appointed to prepare a written report concerning the arrangements for the parenting, parenting responsibilities of M.K.G., any counselling needed for M.K.G., whether there should be FaceTime or other contact between M.K.G. and the other parent during the parenting time, and the type of parenting arrangement which would be in the best interests of M.K.G.
12. The Assessor shall be provided with all affidavits, court transcripts, and reasons for judgment as may be available from this family law proceeding.
13. The parties are at liberty to agree to further documents that may be forwarded to the Assessor, with liberty to apply to the Court in the event of disagreement.
14. The cost of the s. 211 report is initially to be shared equally by the parties, subject to determination by the trial judge.
15. The Assessor will give a copy of the completed report to each party, and give a copy of the completed report to the Court.
16. The parties shall not remove M.K.G. from the jurisdiction of BC and Washington without written consent of the parties or further order of this Court.
17. M.K.G. is entitled to attend the Journey Discovery Center in Spokane and the StrongStart program in Surrey.

18. The parties will consult and agree on the extra-curricular activities M.K.G. participates in when in BC and Washington.
 19. The parties are entitled to take M.K.G. to medical and dental appointments in both Washington and BC, and are to keep the other advised of the nature of the appointments, the need for the attendance, and provision of the medical documentation arising from any appointment or treatment.
 20. The parties will engage in co-parenting counselling on a without prejudice basis with the costs to be equally shared, subject to the direction of the trial judge.
 21. The respondent's application to have M.K.G. return to therapy with the Center of Solace is dismissed.
- [95] The costs of the October and December Applications will be at the discretion of the trial judge.
- [96] I am not seized of any further aspect of this proceeding. I am of the view that there is urgency in having the issues relating to the primary residence and parenting arrangement relating to the Child proceed at the currently scheduled trial date in June 2023. The property division issues are less urgent.

"Forth J."

Source & reproduction note

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

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/23/01/2023BCSC0178.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/gill-v-kaur-2023>

Prepared on 27 October 2026 · Esheria