
CANADA / JUDGMENT

H.D. v. L.M.D.

2020 BCSC 1306

COURT

Supreme Court of British Columbia

DECIDED

26 August 2020

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

2020 BCSC 1306 H.D. v. L.M.D.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

H.D. v. L.M.D.,

2020 BCSC 1306

Date: 20200826

Docket: E121683

Registry: Vancouver

Between:

H.D.

Claimant

And

L.M.D. also known as L.M.H.

Respondent

Before: The Honourable Mr. Justice Macintosh

Oral Ruling Re Application to Change Parenting Time

The Claimant, appearing in person:

H.D.

Counsel for the Respondent:

J.M. Dreyer

Place and Date of Hearing:

Vancouver, B.C.

August 24, 2020

Place and Date of Judgment:

Vancouver, B.C.

August 26, 2020

- [1] THE COURT: This proceeding first came before me by telephone on August 13, 2020. The Claimant father, H.D., by his notice of application filed April 29, 2019, was seeking ten orders, the first five of which were for changed parenting time. Of those, four were, in essence, to have the son, A.M.D., reside full time with H.D. L.M.D., the Respondent mother, on August 13, brought a preliminary application that H.D.'s application had to go to the trial list where she said five days would be needed to hear the matter. No trial date has been requested.
- [2] After hearing the introductory submissions on August 13, I concluded that H.D.'s request for exclusive parenting time was overly broad, but also that a five-day trial was unlikely to be needed. I ordered that the parties appear before me in the courtroom on August 24 to argue the following four questions:
- 1) whether the existing order, for parenting time shared 50/50, should be changed to 65 for H.D. and 35 for L.M.D., pursuant to a recent s. 211 report by Dr. Elterman;
 - 2) whether there will be a parent coordinator;
 - 3) pick-up and drop-off arrangements; and
 - 4) whether there will be an update of the s. 211 report in six months, and if so, whether another expert's report will also be updated at that time.
- [3] Also, on August 13, I reserved the right to finally decide based on what was said in the August 24 hearing, whether a trial is necessary, particularly for the parenting time question. That turned in part on L.M.D.'s position that before parenting time could be revisited, it would be necessary to have cross-examination of the experts, Dr. Michael Elterman and Dr. Antonio Ocana. I have now determined that a trial is not required because cross-examination is not essential, and that conclusion is buttressed by a practical consideration of financial cost and time delay associated with a five-day trial.
- [4] The parties married on September 8, 2001. They divorced on June 3, 2013. There are two children, M.A.D, aged 17, and A.M.D., aged 11.
- [5] The daughter, M.A.D., resides permanently with L.M.D. They live alone together in a rented house in Langley.

- [6] H.D. is remarried. His wife is a school principal. They had a baby boy about five weeks ago. They live in a townhouse in Surrey.
- [7] This dispute gives added meaning to the idea of high-conflict family litigation. At least ten judges on this Court have rendered decisions. Before me were six large volumes of material. I estimate the parties have each sworn over 30 affidavits. Many of the affidavits exceed 130 pages when the exhibits are included. Counsel told me there are ten binders of pleadings. Eleven-year-old A.M.D. has known nothing in his life except parental strife. It is impossible to believe that the unended animosity demonstrated between A.M.D.'s parents can be anything but harmful to him. His best interests have yet to see the light of day in so far as how this dispute has been continued.
- [8] The present plan of 50/50 shared parenting was ordered by Justice Wong of this Court in June of 2013, when A.M.D. was only four. Justice Wong's order adopted the recommendations of Dr. Elterman in his first report in this proceeding, in May of 2013. The Wong order was a final order. However, I have no doubt in concluding that A.M.D. growing from age four to age eleven is a material change in circumstances allowing the Wong order to be revisited at this stage.
- [9] The parties were before Justice Baird in a trial of their claims in February of 2018. Mid-trial, on the third day, they entered into a consent order with 34 provisions. One was that after six months of counselling, they could revisit the question of parenting time for A.M.D.
- [10] Justice Power of this Court granted further consent orders on May 30, 2019. One order was that Dr. Elterman was to be retained to provide an updated report for A.M.D.'s needs under s. 211 of the Family Law Act, S.B.C. 2011, c. 25. Justice Power said that parenting time could be reconsidered after the new Elterman report was available.
- [11] Dr. Elterman's new report is dated May 12, 2020. There he recommended a change in parenting time from 50/50 to approximately 65 H.D. and 35 L.M.D. Dr. Elterman interviewed A.M.D. on four occasions for the new report, twice in August of 2019 and in December 2019 and in January of this year. His report is 44 pages and exhibits the care and thoroughness typical of his work for this Court.
- [12] I am ordering a change in parenting time in accordance with Dr. Elterman's recommendations. The order from today will track the times for parenting as Dr. Elterman has particularized them in his May 12, 2020 report.
- [13] The order of Justice Power also allowed L.M.D., at her expense, to refer A.M.D. to an expert to assess him for ADD and ADHD, and other similar difficulties he might be facing. The order did not state what use was to be made of that expert's report. Pursuant to the order, L.M.D. retained Dr. Ocana. Dr. Ocana practices family medicine. From his statement of his qualifications, he has worked extensively and primarily in matters of addiction and ADHD and related disorders. He interviewed A.M.D. once, in June of this year. He opined that A.M.D. had oppositional defiance disorder and another disorder. Based on no particular

expertise that I could detect from his qualifications or report, and after his stating that "I find the interpretations and suggestions of Dr. Elterman to be quite sensible," Dr. Ocana came up with his own recommendations for the parenting time of A.M.D. I did not see a logical basis for his plan from either his credentials and experience or his reasoning. I do not accept his plan where it differs from Dr. Elterman's plan recommendations. In responding to a letter from counsel for L.M.D., Dr. Elterman, on August 20, 2020, said, with qualifications, that he was not opposed to trying a parenting time suggestion of Dr. Ocana if it was in A.M.D.'s best interests, but he was not giving the suggestion a ringing endorsement, and I do not order it as part of the parenting time order.

- [14] Clearly the best evidence before the Court of A.M.D.'s parenting needs is that expressed in the opinion of Dr. Elterman. The thousands of pages of accusations between the parties in their affidavits do much less than does the opinion of Dr. Elterman in assisting the Court on the parenting time question.
- [15] At the conclusion of his new report, Dr. Elterman recommended a "short update" to be done six months later. I am ordering that the parties retain Dr. Elterman jointly to prepare that update report, to be dated approximately six months from today. If Dr. Elterman six months hence believes a new parenting schedule is called for, either party may apply. In such application, the only evidence should be the various Elterman reports plus affidavits about events from today until the time of the new application. Any other of the extensive evidence already filed can be looked to only as a background. I am not ordering an update of the report by Dr. Ocana. If L.M.D. wants an update of that report, she is at liberty to request it.
- [16] Pick-ups and drop-offs are now either at school or, in non-school times, at the McDonald's parking lot roughly on the boundary of Langley and Surrey. H.D. wants to replace the McDonald's location with the respective houses of the parents for pick-ups and drop-offs. L.M.D. opposes that change. She finds the house locations too stressful. I am therefore leaving McDonald's as the non-school venue for pick-ups and drop-offs.
- [17] Last is the question of ordering a parent coordinator. L.M.D. opposes that primarily because of the related cost.
- [18] In his report of May 12, 2020, Dr. Elterman said this at page 43:

Secondly, I think that it is essential that the parents retain a parent coordinator to assist them. I would recommend that they retain an experienced, more senior parent coordinator who will help them to mediate and if they disagree, who can arbitrate between them should there be an impasse in decision-making. The type of coordinator I am considering in this regard is someone like Morag McLeod, Stephanie Fabbro or Craig Neville. In retaining a parent coordinator I believe that the contract should be that for a period of 24 months that they do not go back to Court and that any disputes are dealt with through the parent coordination process and that the only court action relates to appealing a determination by the parent coordinator. Furthermore I would recommend that all communication between the parties be copied to the parent coordinator for the first 6 months so that this can be monitored and if necessary corrected in relation to content

and tone.

[19] In his letter of August 20, 2020, in responding to counsel for L.M.D., Dr. Elterman added the following:

My recommendation regarding a parenting coordinator is to deal with their disputes out of court and in a timely manner. The alternative is that they will have the expense to go to Court often including legal expenses and losing a day of work.

[20] Those are sensible observations and recommendations in my view. Ms. MacLeod has said that she is too busy to handle this assignment. Ms. Fabbro has declined because of the high degree of conflict in this case. Mr. Neville is available, and I order that he be the parent coordinator. The terms of the parent coordinator's role will be as recommended by Dr. Elterman, which I have quoted above. The result of implementing those recommendations is that the only further court process, other than reviewing matters from the parent coordinator's work, will be to revisit parenting time if the updated Elterman report brings parenting time into issue once again.

[21] I would order lump sum costs to H.D. because he was largely successful, except that his application, as presented August 13, 2020, requested exclusive parenting time for A.M.D., and that is the application L.M.D. had to prepare for. It was only this Court's intervention on August 13 that narrowed the parenting time issue. In the result, I am ordering that costs are in the cause. That concludes my reasons. Thank you.

"Macintosh J."

Source & reproduction note

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

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/13/2020BCSC1306.htm>

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

Prepared on 25 October 2026 · Esheria