

CANADA / JUDGMENT

H.M.H. v. J.E.

2023 BCSC 922

COURT

Supreme Court of British Columbia

DECIDED

28 April 2023

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

2023 BCSC 922 H.M.H. v. J.E.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

H.M.H. v. J.E.,

2023 BCSC 922

Date: 20230428

Docket: E093047

Registry: Vancouver

Between:

H.M.H.

Claimant

And

J.E.

Respondent

Corrected Judgment: The text of the judgment was corrected at the front page on June 6, 2023.

Before: The Honourable Mr. Justice Gomery

Oral Reasons for Judgment

Counsel for the Claimant:

J.E. Peterson

The Respondent, appearing on her own behalf:

J. E.

Place and Date of Trial/Hearing:

Vancouver, B.C.

April 11-14 and 24-27, 2023

Place and Date of Judgment:

Vancouver, B.C.

April 28, 2023

Introduction

- [1] Mr. H and Ms. E are the parents of H, who is 16 years old and a high school student. H has grown up as the child of divorced parents. Mr. H and Ms. E separated when she was three years old. When she was four, they agreed to a shared parenting arrangement under which H travelled back and forth between their houses. The shared parenting arrangement was confirmed by a consent order dated December 9, 2010. It provided:
7. By consent, the Claimant and the Respondent will share joint custody and joint guardianship of the child of the marriage, [H] , born December 1, 2006, in accordance with the equal Parenting Plan executed by the Claimant and the Respondent and dated June 1, 2010, a copy of which Parenting Plan is annexed as Schedule "A" to this Order;
- [2] The parenting plan referenced in the order was negotiated with the assistance of counsel on both sides. It contained a schedule of parenting time. It incorporated rights of first refusal and a list of appropriate substitute caregivers, and addressed healthcare, schooling, a ban on religious affiliation, and guidelines for discipline and personal care rules to be established for H, introducing H to significant others in either parent's life, and conflict resolution.
- [3] Mr. H and Ms. E modified the parenting schedule and the parenting plan from time to time until 2020, when H was in Grade 8. The parents agree that H was in distress at this time. In my view, her difficulties had been building for some time. She was preoccupied with social media, where she was experimenting with transgressive and highly-sexualized presentations of herself. She was getting failing marks in school. By all accounts, she was deeply unhappy. In her words, she was angry, tense, anxious, and a mess. Mr. H felt that H's relationship with her mother was contributing to her distress. With H's agreement, he kept H at his house. He insisted that H's meetings with her mother should be supervised.
- [4] Ms. E was unhappy with this change, though she did not apply to court to contest it. She agreed with Mr. H that a "Hear The Child" report should be prepared by Dr. Chotem. Dr. Chotem met with H in March 2021. She also interviewed the parents. It is clear from Dr. Chotem's report that H was estranged from her mother, though her feelings towards her

were not entirely negative. H told Dr. Chotem that she loved her mother, but did not trust her mother not to hurt her. She said that she wanted her mother to "get help for her issues of anger and issues from the past that make her upset." She said that she wanted a healthy relationship with her mother.

- [5] Ms. E challenges H's account of their interactions as set out in Dr. Chotem's report and relayed by H to others. She blames Mr. H and his partner, Ms. K, for the estrangement. Whatever the cause, H and her mother are still not on good terms. They have not spoken since an encounter at H's school in November 2020. Communications by gift exchange, email, and text have died away since Dr. Chotem prepared her report. In a text in October 2022, H asked her mother please not to communicate with her ever again.
- [6] At present, H lives with Mr. H in a household that includes Ms. K and two developmentally-disabled persons that Ms. K cares for. Ms. K's son, Z.K., and his fiancée reside in an apartment in the basement.
- [7] H's distress has abated and she is doing much better. She is no longer seeking attention on social media. Her marks have improved dramatically, and with them, her academic self-confidence. She now enjoys school and plans on going to university. She presents as a self-possessed, thoughtful, and articulate young woman. She says that she is happy with her life.
- [8] The impetus for this trial is an unfortunate medical development. In September 2022, Mr. H was diagnosed with an aggressive form of prostate cancer. He disclosed the diagnosis to the family. H became concerned about who would take care of her if something happened to him. She sought assurance that she would be looked after by Ms. K, and not by Ms. E.
- [9] In December 2022, Mr. H scheduled this trial. In his trial brief, he seeks the following orders:
 - 1. The separation agreement dated December 13, 2010, is set aside.
 - 2. The respondent is no longer a guardian of [H]. In the alternative the Claimant shall have all parentin[g] responsibilities and all parenting time with H.
 - 3. [Ms. K] is added as a guardian of [H].
- [10] In closing submissions, Mr. H's counsel, Mr. Peterson, clarified that what is sought is an order that Ms. K may share parenting responsibilities and parenting time with Mr. H, and Ms. E will no longer exercise parenting responsibilities and have parenting time.
- [11] Mr. H seeks further orders concerning miscellaneous matters that I will address at the conclusion of these reasons.

- [12] Ms. E did not file a trial brief. For the most part, she was unrepresented in the lead-up to the trial, except that she retained counsel to seek an adjournment of the trial shortly before it began. The adjournment application was refused by Justice Fitzpatrick, and Ms. E represented herself at the trial.
- [13] I should say that Ms. E renewed her adjournment application before me and I refused it for reasons that I gave at the time. In final argument, she requested that I order the preparation of a report pursuant to s. 211 of the Family Law Act, S.B.C. 2011 c. 25. I pointed out that the request would entail a further adjournment of the trial and she modified it. She asked that I order a s. 211 report if the alternative were to be an order that she would not be able to see H under any circumstances. That is not an order Mr. H has requested and it is not an order that I would make in the circumstances of this case.
- [14] Ms. E opposes the orders sought by Mr. H. She believes that the living arrangement that has been in place since 2020 is the product of an orchestrated and illegal attempt by Mr. H and Ms. K to separate her from H. Ms. E is deeply distressed by her separation from H and that, as she sees it, she has been supplanted by Ms. K in H's affections.

Legal framework

- [15] It is important to appreciate the court's role and the legal principles that govern this case. I will address these matters through a series of eight propositions.

The issue is not who are H's parents

- [16] Ms. E is H's mother and Mr. H is her father. There is no order that I would or could make in this proceeding that would change these facts. The only order that could legally affect Ms. E's status as H's parent would be an adoption order and this is not an adoption proceeding.

The issue is not about who has the status of H's guardian

- [17] Paragraphs 17 and 18 of the order of December 9, 2010, make it clear that paragraph 7 of the order providing for joint custody and guardianship of H was made pursuant to the corollary provisions of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) (Canada). It follows that Mr. H's application to vary that order and substitute a different parenting regime is also governed by the Divorce Act.
- [18] The Family Law Act is provincial legislation that governs the rights and obligations of parents generally. It overlaps the Divorce Act which governs the rights and obligations of parents in the context of a divorce, but where the two statutes come into conflict, it is the Divorce Act that governs.
- [19] Under the Divorce Act as it stood in 2010, the reference to guardianship of H was superfluous. Joint custody was what mattered. The Divorce Act referred to custody and access, it did not refer to guardianship. The predecessor of the Family Law Act, the Family Relations Act, spoke of guardianship and so does the Family Law Act today, but the

allocation of rights and obligations associated with guardianship under provincial law did not affect the rights established by an order made under the Divorce Act. An award of custody under the Divorce Act conferred a full set of parental rights and duties: *B.D.M. v. A.E.M.*, 2014 BCSC 453 at paras. 94 to 99.

[20] The Divorce Act has been amended since 2010. The current Divorce Act makes no mention of either custody or guardianship. Instead, it contemplates parenting orders in s. 16.1. A parenting order may allocate parenting time and decision-making responsibility.

[21] A custody order made under the former statute must now be understood as a parenting order under s. 16.1 of the current Divorce Act. This is because s. 35.4(a) of the current Act provides:

35.4 Unless a court orders otherwise,

(a) a person who had custody of a child by virtue of a custody order made under this Act, immediately before the day on which this section comes into force, is deemed as of that day, to be a person to whom parenting time and decision-making responsibility have been allocated;

[22] It follows that the order of December 9, 2010, must now be understood as an order that conferred on Ms. E and Mr. H equal parenting time and full decision-making powers, all in accordance with the 2010 parenting plan.

[23] What is at stake is not who will be H's guardians. This case is not a case about a particular status, such as the status of guardianship. In principle, it is about parenting time and the exercise of decision-making powers.

It is important that H is 16 years old.

[24] H's age matters for two reasons.

[25] First, the views of a child who is the subject of a parenting order carry increasing weight with age. A court will rarely, if ever, attempt to override the considered views of a competent, older teenager concerning parenting time. The reasons for this are both principled and practical. The principled point is that heightened respect is due to the views of a more mature individual. The other point is that once teenagers are moving about in the world, they can make their own decisions as to where they will live, so that parenting orders must reasonably conform with their wishes to be practical: *O'Connell v. McIndoe* (1998), 1998 CanLII 5835 (B.C.C.A.), 56 B.C.L.R. (3d) 292 (C.A.) at para. 13; *L.G.P. V. C.F.B.*, 2018 BCSC 1168 at para. 16.

[26] Second, whatever order I may make concerning parenting time or decision making will terminate, in any event, when H achieves adulthood on her 19th birthday. In practical terms, any order I may make will only have a limited shelf life. It will expire in less than three years.

The order of December 9, 2010, no longer carries much weight.

- [27] Section 17(1)(b)(i) of the Divorce Act gives the court the power to vary a parenting order on the application of either former spouse. Section 17(5) directs that before varying a parenting order, the court must satisfy itself that there has been a change of circumstance. The jurisprudence directs that the change in circumstance must be material.
- [28] There have been massively material changes of circumstance since December 9, 2010. Then H had just turned four. Now she is 16 and on the verge of adulthood. Her capacities, needs, and interests are completely different from what they were. The dispute that has led to this trial arises from circumstances that were not and could not have been contemplated in 2010. It requires a resolution grounded in the present day.

I must decide this case having regard only to H's best interests.

- [29] Section 16(1) of the Divorce Act requires that I take into consideration only H's best interests in making a parenting order. Section 16(2) provides that I must "give primary consideration to the child's physical, emotional, and psychological safety, security, and well-being." Section 16(3) provides a list of factors to take into account and I will review them later in these reasons.

Past conduct of the parents is of limited importance

- [30] Section 16(5) of the Divorce Act is explicit. It states:
- (5) In determining what is in the best interests of the child, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the exercise of their parenting time, decision-making responsibility or contact with the child under a contact order.

It is important that parents have time with the child, but only to an extent consistent with the child's best interests

- [31] This principle is articulated in s. 16(6) of the Divorce Act. It states:
- (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.

A parenting order may provide for parenting time or the exercise of decision-making responsibility by a stepparent such as Ms. K.

- [32] Section 16.3 of the Divorce Act permits me to make an order providing for the exercise of parenting time or decision-making responsibility on application by the spouses or, in the language of subsection (b), "a person, other than a spouse, who is a parent of the child, stands in the place of a parent or intends to stand in the place of a parent." In simple terms, it authorizes me to allocate parenting time and parenting responsibilities to a stepparent.

[33] Strictly speaking, what the section permits is an application by the stepparent. In my view, it makes no difference that the application in this case is made by Mr. H instead of Ms. K. Ms. K clearly favours the application. The order that I could make on Ms. K's application is also an order concerning Ms. K that I can make on Mr. H's application with Ms. K's consent.

The questions I must address

[34] In that light, the questions I must address in this case are as follows:

1. Is it now in H's best interests that Ms. E and Mr. H have equal parenting time and equal parenting responsibilities in respect of H, as provided in the order of December 9, 2010, and the attached parenting plan?
2. Who should have parenting time with H in her best interests?
3. Who should have parenting responsibilities in H's best interests and how should the responsibilities be allocated?

Credibility

[35] Ms. E asks me to reject Mr. H's evidence and Ms. K's evidence. Mr. H asks me to reject Ms. E's evidence. It is, therefore, necessary for me to make some general comments on the credibility and reliability of the evidence I have heard.

[36] I do not think that any of the witnesses set out deliberately to deceive the court by making up stories or creating false documents. This is important because the evidence includes text and email exchanges between Ms. E and Mr. H that provide insight into their communications generally. While Ms. E denied the authenticity of these exchanges at the beginning of the trial, it became clear during her evidence that she does not remember them and does not want to believe that they are authentic, because they reflect poorly upon her. I find that the text and email exchanges are authentic documents.

[37] I am satisfied that Mr. H and Ms. K are honest and generally reliable witnesses. I should add that Mr. H's memory of dates is uncertain and quite unreliable, and Ms. K's memory of dates is usually precise and generally reliable.

[38] I approach Ms. E's evidence with caution. She offers absolute denials of conduct on her part that is established by the documents, such as name calling of Mr. H and Ms. K. My impression is that she gets angry and loses track of what she is saying. An example of her propensity for name calling is found in an email of February 21, 2019 in which she stated to Mr. H:

. . . You and your family abused me. You people are sickos. Now u want me to cooperate with a liar, cheat, porno watcher, financial manipulator, smelly loser, and [whiner]? NO.

[39] In this exchange, Ms. E was attempting to reopen a financial settlement agreed in 2010, in exchange for her agreement to sign a document needed for H's participation in a foreign holiday trip during spring break.

Significance and weight of H's views

- [40] I heard considerable evidence of H's opinions and accounts of past interactions with Ms. E tendered through Mr. H, Ms. K, and the views of the child report prepared by Dr. Chotem. H did not testify, but s. 202 of the Family Law Act permits a court to admit hearsay evidence it considers reliable of a child who is absent.
- [41] I should say that I also interviewed H at the end of the evidence and reported to the parties on the interview afterwards and before argument.
- [42] I admit, without reservation, the evidence of H's intentions and feelings as she expressed them to others at various times. Such evidence is not really hearsay.
- [43] With the exception of H's evidence of name calling by her mother, I attach little weight to what H told them about her past interactions with Ms. E and others, except insofar as it provides context for and insight into H's reports of her state of mind. H's reports of her past interactions are true hearsay. However, I am satisfied that H's reports of name calling by Ms. E are reliable, because they are consistent with other evidence of name calling that I will address.
- [44] I am not persuaded that H's reports of other interactions with Ms. E are sufficiently reliable that I should give weight to them in a proceeding in which H has not testified and been subjected to cross-examination. Adults in H's life who have testified are of the view that in 2019 and 2020, she would sometimes make things up. I think that this has almost certainly changed as H has matured, but I cannot say at what point her reports of past events became reliable enough to make it safe to give them weight.

Review of factors bearing on an assessment of H's best interests

- [45] Section 16(3)(a) of the Divorce Act directs me to consider H's needs, given her age and development, such as her need for stability.
- [46] As already noted, in 2019 and 2020, H was in distress and now she is not. Her present living arrangement in a household headed by Mr. H and Ms. K satisfies her needs. The former co-parenting arrangement did not.
- [47] Section 16(3)(b) directs me to consider the nature and strength of H's relationship with each parent, her grandparents, and any other person who plays an important role in her life.

- [48] H has a strong, affectionate, and respectful relationship with Mr. H. He has always been directly involved in parenting her. This relationship stabilizes H and contributes to her well-being. She values his opinions and accepts that he has a disciplinary role to play. She feels that she can discuss issues with him.
- [49] H's relationship with Ms. E began well enough. H is Ms. E's only child and she was wanted. Ms. E was fully involved in parenting H until 2020, but by then H had come to prefer her father's household.
- [50] In June 2020, H went to Kimberley with Ms. E. It was a trip to visit Ms. E's mother who was dying of cancer. Other family members were present. There were confrontations between Ms. E and H concerning H's behaviour, and H has reported to others that her mother assaulted her on two occasions. Ms. E denies that she assaulted H. I need not and cannot come to any conclusion as to what actually happened. Clearly it was a difficult and emotional time for everyone. Whatever happened, it did not result in a complete rupture between mother and daughter, but it did trigger the end of the co-parenting arrangement under which H moved back and forth between her mother's home and her father's.
- [51] At present, H's relationship with Ms. E is tenuous at best. It has deteriorated since H began living only with her father in 2020. There was a period in which Ms. E agreed that her visits would be supervised and there were weekly telephone calls. This came to an end in November 2020, when Ms. E met with H at lunchtime at her school without supervision, apart from the presence of a friend of H's. Afterwards, Mr. Peterson wrote to Ms. E's lawyer at the time demanding confirmation that the phone calls would not continue past 8:00 p.m., and further visits would be prearranged and professionally supervised. There were no further visits and it seems that the telephone calls ended or trailed off.
- [52] At present, H reports that she loves her mother, but does not trust her and believes that contact with her mother would not be healthy for her at this time. In my judgment, H would not accept the exercise of parental decision making or discipline by her mother at this time. Ms. E blames the deterioration in her relationship with H on manipulation by Mr. H and Ms. K, but I disagree. H's estrangement from her mother is rationally grounded.
- [53] I find that Ms. E called H rude and hurtful names. H has reported to Ms. K a litany of insults including "lazy", "stupid", "retard", "whore", "bitch", "cunt", and "slut". She has reported to Mr. H that Ms. E called her a "bitch", "cunt", "dumb fuck", and "a better road bump than a person". She has reported to Z.K. that Ms. E called her "stupid", "fat", "a whore", and "retarded". H is dyslexic, as is Mr. H, and she has reported to Mr. H and Z.K. that Ms. E has mocked her dyslexia. On February 13, 2020, Ms. K overheard Ms. E calling H "a little shit" and "a little ass" on a telephone call on a speakerphone. Mr. H recalls Ms. E often telling him that H was stinky and smelly at times, and sometimes complaining that she was getting fat. All this foul language is consistent with Ms. E's email and text messages in which, for example, she refers to Mr. H's parents as Nazis, and Mr. H as an asshole, a pig, and fat, and refers to his "stupid [H] dyslexic genes". She also derides Ms. K.

- [54] It is clear that in 2019 and 2020, H had a very poor opinion of herself. This was, at least in part, a consequence of her mother's invective and it contributed to her distress and attention-seeking behaviour. Prior to June 2020, H was moving between two households, one in which she was respected, and the other in which she was not.
- [55] H has known Ms. K since November 2016. At that point, Ms. K was a close friend of Mr. H's and they were spending time together. The relationship between Ms. K and Mr. H became romantic in May 2021, and Ms. K moved in to the household on November 30, 2021. It was much earlier, in 2018, that Ms. K and H began to bond, as Ms. K began to help H with her schoolwork in Grade 6.
- [56] By 2019 and 2020, H and Ms. K had become close and H was confiding in Ms. K. Following Mr. H's cancer diagnosis in the fall of 2022, H told Ms. K that if anything happened to her father, she wanted to continue living with her and not to go into her mother's care. H views Ms. K as her stepmom. They have discussed the possibility that Ms. K might adopt her. Ms. K expresses a desire to support H in any way she can, emotionally or financially, in whatever she needs.
- [57] H views Ms. K as logical, sensible, and honest. She accepts her as exercising a parental role, viewing her as a little tougher than Mr. H, but appropriately so. She says that they talk things out and have strategies for resolving conflicts.
- [58] H has affectionate relationships with Mr. H's parents and his sister, her Aunt Caroline. The parents assisted with childcare when H was young. Mr. H's extended family holidays together from time to time.
- [59] H has an affectionate memory of an outing with one of Ms. E's sisters and a somewhat attenuated relationship with another sister, her Aunt Anne. She has not had contact with her extended family on her mother's side since 2020.
- [60] Section 16(3)(c) directs me to consider each parent's willingness to support the development and maintenance of H's relationship with the other parent. As already noted, in 2020, Mr. H took steps that limited H's interactions with Ms. E. He did not attempt to cut off all contact, and I would attribute the subsequent deterioration in the mother-daughter relationship to a series of miscommunications. Notably, Ms. E misinterpreted and rejected a handmade Christmas gift H dropped off for her, to H's distress.
- [61] Section 16(3)(d) directs me to consider the history of H's care. I need not add to what I have already said on this topic.
- [62] Section 16(3)(e) directs me to consider H's views and preferences, giving due weight to her age and maturity, unless they cannot be ascertained. As I have already noted, this consideration carries particular weight, because H is a competent, thoughtful, 16-year-old.

- [63] H's views and preferences are reasonably summarized. She wants to be parented by her father and Ms. K. If he dies or is incapacitated, she wants to live with Ms. K. At present, she does not want contact with Ms. E. She does not want Ms. E to exercise decision-making authority over her, because she does not trust her mother to act in her best interests.
- [64] As I have already indicated, H's views and preferences are considered and rationally grounded in her experience of her relationship with her mother. I do not think that they are the product of manipulation or coaching by Mr. H or Ms. K. Ms. K testified that she has assured H that her mother loves her. At the conclusion of Ms. K's cross-examination by Ms. E, Ms. K told Ms. E tearfully that it was never her intention to take Ms. E's place. She said, "I don't want to take her from you." She said that what she wants is to give H what she needs, and that H has made such improvements and such progress that Ms. E would be very proud of where she is today. I have no doubt that this evidence was given sincerely and I accept it.
- [65] I should comment very briefly on Mr. Dow's evidence. He has never met or spoken with H, but he listened in on three speakerphone calls between H and Ms. E in July and August 2020. While he does not remember the substance of what was said, he recalls that he formed the impression that there were other people with H, who was being coached through the calls. He formed this impression from his assessment of H's speech patterns, the cogency of her comments, and what he terms "her circular logic".
- [66] I place no weight on this evidence. Mr. Dow had no baseline of conversations with H upon which to found an assessment of her speech patterns. It would not be unusual for a 13-year-old to be distracted by conversations with others during a telephone call with her mother. If H was speaking with someone else, we do not know who that was. She might well have been with friends at the time.
- [67] Section 16(3)(f) directs me to consider H's cultural, linguistic, religious, and spiritual upbringing and heritage. This is not a major consideration in this case. Mr. H and Ms. K are Christian. Ms. E, I gather, is not. In the parenting plan, Mr. H and Ms. E agreed that H would not receive religious instruction or be brought into a religious community without prior discussion and consent. That has not occurred. Ms. E is unhappy that Ms. K gave H a Bible. I accept Ms. K's evidence that there was no associated religious instruction and that the gift was made at H's request.
- [68] Section 16(3)(g) directs me to consider any plans for H's care.
- [69] The parenting plan made in 2010 is not a current document. It contains much that is no longer pertinent, such as, for example, the provisions for alternate caregivers. I am satisfied that it no longer serves H's best interests.

- [70] H's plan in the broad sense is to graduate from high school and attend Capilano University, where she hopes to study psychology and art with a view to an eventual career as an art therapist. Mr. H and Ms. K intend to support H. Some financial support is available from an RESP to which Ms. E contributed. H would be able to live at home while attending Capilano University. This plan appears sensible.
- [71] Section 16(3)(h) directs me to consider the ability and willingness of Mr. H, Ms. K, and Ms. E to care for and meet H's needs.
- [72] Since 2020, Mr. H and Ms. K have shown themselves willing and able to care for and meet H's physical and emotional needs. At present, regrettably, Ms. E is unable to do the same, in part because H does not trust her. It is not clear to H, and I must add it is not clear to me, that renewal of the mother and daughter relationship between H and Ms. E would go well. Ms. E would have to adjust to the changes in H since she was 13 years old. She would undoubtedly have to adjust her parenting style and expectations. She would have to listen to H. None of this is impossible, but even in the best of all possible worlds, it could not happen quickly. It is not clear to me whether at present Ms. E or H are willing to undertake the difficult work of reconciliation. I will return to this point later in these reasons.
- [73] Section 16(3)(i) directs me to consider the ability and willingness of Mr. H, Ms. K, and Ms. E to communicate and cooperate, in particular with one another, on matters affecting H.
- [74] The communications between Ms. E and Mr. H in the period from 2016 to 2020 were often unpleasant and ineffectual. Ms. E exercised a right afforded her under the parenting plan to approve foreign travel by H to pursue a collateral objective of obtaining funds in addition to those allocated to her in the settlement of family assets in 2010. This was not in H's best interests. Effective co-parenting proved impossible. Ms. E refused to attend parent-teacher meetings with Mr. H after Grade 4 because she found it impossible to communicate effectively at the meetings.
- [75] Ms. E and Ms. K have never communicated directly with one another.
- [76] Relations have deteriorated since 2020. I conclude that a co-parenting arrangement would not be in H's best interests.
- [77] Section 16(3)(j) directs me to consider 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 [people] in respect of whom the order would apply to cooperate on issues affecting the child;

- [78] There is only one allegation of physical violence in this case. It concerns what happened in Kimberley in June 2020. As already noted, I am not satisfied that Ms. E engaged in family violence on this occasion.
- [79] As defined in s. 2(1) of the Divorce Act, family violence includes any conduct between family members that constitutes a pattern of coercive and controlling behaviour, including psychological abuse. It is at least arguable that Ms. E's name calling qualifies as family violence. Ms. E submits that the evidence of name calling only extends to isolated examples and lacks context. I am not persuaded by this submission. The evidence of name calling is not confined to just a few names or a few occasions, and I cannot think of anything that would have justified the abusive language I have recited, spoken by a mother to her adolescent daughter. However, I need not come to a final conclusion as to whether the name calling amounted to family violence, because I have independently taken it into account in considering the nature and strength of H's relationship with her mother and the reasons for their present estrangement.
- [80] Section 16(3)(k) directs me to consider any civil or criminal proceeding, order, condition, or measure that is relevant to H's safety, security, and well-being. There are none.

Assessment

1. Is it now in H's best interests that Ms. E and Mr. H have equal parenting time and equal parenting responsibilities in respect of H, as provided in the order of December 9, 2010, and the attached parenting plan?

[81] The obvious answer is no. Circumstances have changed since 2010. Equal shared parenting time is not in H's best interests. Considering her history with Ms. E, she does not want contact with her mother and it would not be right to attempt to force parenting time with her mother on her, even if it were practical, which it is not. H has done much better since the equal parenting arrangement was terminated de facto in 2020.

[82] Equal shared decision making is not appropriate. At the age of 16, H makes her own decisions about medical care. The principal area of parental decision making at this point involves schooling decisions. At this stage, Ms. E is not close enough to H to be able to make schooling decisions in her best interests. She is not attuned to H's plans and options. I will address whether Ms. E should have any role in parental decision making in a moment.
2. Who should have parenting time with H in her best interests?

[83] Mr. H, Ms. K, and Ms. E all want parenting time with H. In my view, H is old and independently minded enough that she should decide in which household she will live and who she will visit.

- [84] Unless and until H decides otherwise, she should have parenting time with Mr. H and Ms. K at their home. It is in her best interests that she continue to have access to that stable environment in which she is thriving for as long as she wants it.
- [85] To be clear, if H wishes to see Ms. E, there is no requirement that the visits be supervised. It is up to H if she wishes to be accompanied.
- [86] If H wishes to speak to Ms. E by electronic means, there should be no curfew imposed. I do not suggest that the 8:00 p.m. curfew imposed by Mr. H in November 2020 was unreasonable at the time, but it would not be reasonable now. In saying this, I do not mean to suggest that Mr. H and Ms. K may not impose reasonable restrictions on nighttime activities in their shared home.
3. Who should have parenting responsibilities in H's best interests and how should the responsibilities be allocated?
- [87] Everyone agrees that Mr. H should exercise parenting responsibilities generally. He wishes to share parenting responsibilities with Ms. K, excluding Ms. E. Ms. E wishes to share parenting responsibilities with him, excluding Ms. K. Ms. E's submission is that, as H's mother, she should be responsible for her child rather than Ms. K. She views Ms. K as an interloper.
- [88] I think that Ms. E's submission pays too much attention to biological parenthood and not enough to H's best interests. It is not in H's best interests that Ms. E share parenting responsibilities with Mr. H for several reasons.
- [89] Shared parenting requires communication and cooperation among the parents. Ms. E and Mr. H were not communicating and cooperating well in 2019 and 2020, and there is no reason to think that they would do better now. Ms. E's bitterness toward Mr. H and Ms. K would present a very substantial obstacle.
- [90] H does not trust Ms. E to make decisions in her best interests. Putting Ms. E in a position to make decisions concerning H's schooling or her financial affairs would make her anxious. As already noted, Ms. E is not attuned to H's plans and options. They are not in communication with one another.
- [91] I conclude that it is not in H's best interests that Ms. E exercise parenting responsibilities. In *Yang v. Zhang*, 2021 BCSC 138 at para. 15, two children, aged 10 and 12, were living with their father in Canada while their mother was living in China. Justice Caldwell allocated all parenting responsibilities to the father, while ordering him to keep the mother informed of all significant developments in the children's lives. I have considered whether to make an equivalent order in this case for the maintenance of some connection between H and her mother. Mr. H asks that any requirement for the provision of information to Ms. E be limited to information provided with H's consent.

- [92] If reconciliation with her mother is possible, I think it would be in H's best interests. Ms. E is H's only mother. H is Ms. E's only daughter. They love one another, however difficult they find it to express their love and hear that their love is appreciated. But I cannot require a reconciliation. All I can do is make an order that leaves room for work at reconciliation to occur if and when both mother and daughter are ready and willing to attempt it.
- [93] The question is whether it will further the goal of reconciliation to require that Ms. E be informed of significant developments in H's life, whether or not H wishes it. On balance, I think that reconciliation is more likely to be achieved if Ms. E is kept informed with H's consent. I hope that H will consent, but it is up to her.
- [94] I turn to the question of Ms. K's role. Ms. K, Mr. H, and H all agree that they wish Ms. K to share parenting responsibilities with Mr. H. For all practical purposes, she is already doing so. Ms. K is unequivocally dedicated to H's well-being and, in light of Mr. H's cancer diagnosis, I think it is in H's best interest that his parenting responsibilities be shared with Ms. K.

Other issues

- [95] Mr. H seeks an order that an engagement ring in Ms. E's possession be delivered to H because, he submits, it belongs to H. This was the engagement ring given by Mr. H to Ms. E before they married. The evidence is that Ms. E has told H that she wants her to have it one day.
- [96] In law, the ring belongs to Ms. E until she both intends to make a gift of it to H and delivers it to H in some way or other. The first requirement of intention is satisfied, but the second requirement of delivery is not. The ring does not yet belong to H and Ms. E is not required to give it up. It is up to her to decide when she wishes to perfect the gift.
- [97] Mr. H seeks an order that a cat named Stu in Ms. E's possession be delivered to H, because he contends Stu is H's cat. The evidence is that Ms. E acquired the cat. Ms. E says that she did not gift the cat to H and there is no evidence to the contrary. In law, Stu belongs to Ms. E.

Disposition

- [98] For these reasons, I order as follows:
- paragraph 7 of the order dated December 9, 2010, is set aside;
 - subject to the terms of this order, H will reside with Mr. H and Ms. K, who will be responsible to parent her;
 - H may have parenting time with Ms. E at any time and in any way that she desires;
 - Mr. H and Ms. K will share parenting responsibilities for H;

- e) Ms. E will not have parenting responsibilities for H, except that Mr. H will inform Ms. E of educational achievements and significant milestones in H's life with H's consent; and
- f) Ms. E is not required to deliver to H her engagement ring or the cat Stu.

[99] Mr. H has achieved substantial success at this trial and is entitled to costs of the trial.

[100] Is there anything arising?

[101] CNSL J. PETERSON: My only submission would be that in terms of the costs, some of the conduct throughout the proceedings by the respondent, I think should hopefully be deterred in the future by some sort of increased costs, as opposed to just the ordinary scale of costs. That would be my only submission in regards to costs.

[102] THE COURT: I am not going to order special costs in this case. There were some delays in the trial that were, I think, unnecessary, but Ms. E was representing herself. It is not easy. I do not think that her conduct rises to a level that would require the court's rebuke, which is essentially the test.

[103] CNSL J. PETERSON: Understood, thank you.

"Gomery 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/23/09/2023BCSC0922cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/h-m-h-v-j-e-2023>

Prepared on 28 October 2026 · Esheria