

CANADA / JUDGMENT

I.G. v. A.H.

2022 BCSC 778

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 778 I.G. v. A.H.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

I.G. v. A.H.,

2022 BCSC 778

Date: 20220511

Docket: E200932

Registry: Vancouver

Between:

I.G.

Claimant

And

A.H.

Respondent

Before: Master Bilawich

Reasons for Judgment

Counsel for the Claimant, by videoconference:

K. Heinrichs

Counsel for the Respondent, by videoconference:

S. Bunn

Place and Date of Hearing:

Vancouver, B.C.

April 7, 2022

Place and Date of Judgment:

Vancouver, B.C.

May 11, 2022

- [1] By application filed February 4, 2021, the respondent applies for orders to re-start his parenting time with the parties' child, R. (age 15), including video, telephone and other forms of electronic communication. Relief sought includes orders for:
- a) Video or other electronic communication between the respondent and R., to take place a minimum of two times per week, at times agreeable to the parties;
 - b) R. shall be able to call the respondent, or arrange for the respondent to call him, by video, phone or electronic communication, at any time that he requests such communication; and
 - c) When video or telephone communication is taking place between R. and the respondent, the claimant and her partner shall not be in the same room as R. during the conversation, and will not listen in on, or record, the conversation.
- [2] The claimant opposes the relief sought based on R. having indicated that he does not want any contact with the respondent, and her concern that forcing that upon him would be harmful to his well-being. She wants R. to be the one to decide if, when and how he wishes to re-establish contact with the respondent.
- [3] The respondent has not had in-person parenting time with R. since about May 2017. R. was 10 years old at that time. The respondent has not spoken to R. since about December 2018 according to claimant / September 2019 according to the respondent. Complicating matters is the fact that the respondent lives in Montreal, Quebec.

Background

- [4] The parties married in Tunisia on October 6, 2006. At the time, the claimant was living in Budapest, Hungary and the respondent in Tunisia. They began living together in spring of 2007.
- [5] They have one child, R.H. ("R."), born [date redacted], 2007.
- [6] The parties separated in 2008 and were divorced by order of the Tunisian court on October 20, 2010. The claimant was granted primary care and decision-making with regard to R., while the respondent was granted parenting time every weekend from 2:00 p.m. on Saturday to sunset on Sunday and for the second half of any religious holidays and school vacations.

- [7] There are many direct conflicts in the affidavit evidence that each of the parties has tendered for this application. I am not able to make credibility findings on an interim application. I will summarize each party's evidence.

Respondent's Evidence

- [8] The respondent says between 2010 and 2017, he and R. had a strong relationship. They loved each other and saw or spoke to each other on almost daily basis. He says there were significant periods of time that R. lived predominantly with him.
- [9] In 2015, both he and the claimant both moved from Tunisia to Paris. They lived in the same apartment (separately) for a period of about 3 months, after which the respondent found a different apartment.
- [10] Even after they had separate apartments, they spent a lot of time together. The claimant worked and R. lived with the respondent. He looked after R.'s daily needs, including taking him to school, basketball practice, playing basketball with him and cooking meals together, including Tunisian cultural dishes passed down through the family and putting R. to bed.
- [11] The claimant saw R. almost every day while he was in the respondent's care because he wanted R. to have a close relationship with her. He suggests the claimant was having trouble dealing with R.'s behaviour at the time so he, as primary parent, helped her through the troubles she was having with her personal life, her work-life balance, mental health and helped her to understand R.'s behaviour.
- [12] The parties both tried as much as possible to make it seem like they were still a close family, even to the extent of regularly sharing meals. He and the claimant co-parented together.
- [13] On February 13, 2016, the respondent moved from Paris to Montreal. R. stayed in Paris with the claimant. He continued to speak to R. daily by phone.
- [14] In May 2017, R. came to stay with him for 10 days. He paid R.'s airfare. The claimant flew with R. and then continued on to Vancouver to visit her new partner.
- [15] He and R. had a wonderful time, including travelling to Niagara Falls, sightseeing around Montreal, visiting Toronto, going to the aquarium, swimming, dancing and eating delicious meals. He says R. loved the visit so much that he did not want to leave. Due to the respondent's immigration status, he could not fly to Paris to see R., so he promised R. that his sister would come and visit him in Paris, which he arranged.
- [16] During R.'s summer break in 2017, he went to visit the respondent's parents in Tunisia for about 1.5 months. His parents told him that the claimant rarely if ever phoned R. during the visit. Afterwards, R. did not want to return to Paris to the claimant.
- [17] During 2018, the claimant told him she had a job opportunity in Africa. She and R. lived there for about six months, until about July 2018.

- [18] By mid July 2018, the claimant moved in with her new partner, Mr. J. in Surrey, B.C. The respondent was first told about the move on July 16, 2018. He was excited that R. was moving to Canada because he thought his in person parenting time would increase. He complains that instead of involving him in decisions about R., the claimant acted as if she could just provide him with information after the fact.
- [19] The respondent believes the claimant tried to trick him into granting Mr. J. guardianship of R. She told the respondent this was required so they could register R. in school in Canada. He believes the claimant thought he would agree because his understanding of English is poor. The request made no sense to him because he could have consented to R. being registered. Alternatively, the claimant could have had R. registered through a study permit.
- [20] After the respondent refused to agree to Mr. J. becoming a R.'s guardian, his communications with R. were drastically reduced. He would message the claimant but Mr. J. would reply, advising R. was out, did not want to speak to him, was busy and he should call another time. When he the respondent did call back, his calls were often not answered.
- [21] On the occasions when he did spoke to R., someone was often monitoring the conversation. This was awkward and overbearing. He believes the monitoring pressured R. and made the respondent's parenting time less enjoyable.
- [22] The respondent's conversations with R. became stilted. R. would not respond or he would look around before answering. He stopped talking as freely as he had previously. The respondent would say "I love you" and speculates that R. felt he could not say it back to him in front of the claimant or Mr. J.
- [23] The claimant has cut off contact between R. and the respondent's family, including his parents and sister.
- [24] By December 2018, the respondent was receiving messages from Mr. J. saying that R. was refusing to speak to him.
- [25] The respondent believes the excuse that R. does not want to speak to him is untrue. He does not believe R. would come to that decision without being pressured or influenced by the claimant and Mr. J.
- [26] In August 2019, the respondent received a handwritten card via mail from R. for his birthday. The respondent was very pleased by this. The claimant later asked him if he had received it, and he confirmed that he had. The following day a process server showed up at his home and served him court documents filed by the claimant. He believes the claimant sent him the card in order to confirm his home address to facilitate service of process. Immediately afterwards, the claimant cut off his parenting time with R. completely.
- [27] The respondent says the last time he spoke to R. was August/ September 2019. By that time the claimant was already refusing to allow him contact, however, he arranged for his father contact the claimant's father to arrange for the respondent to have a call with R. He believes

the claimant's father was visiting Canada for her wedding to Mr. J. The call with R. went fairly well from his perspective, however, the claimant's father was in the room off camera monitoring the call. At the end, he came out said hello to the respondent and told him that they would call him again the following day. That never happened and he has not been allowed to speak to R. since the claimant was married.

[28] The respondent says he has not had any arguments or fights with R. which could possibly account for him being denied parenting time.

[29] The respondent has tried to arrange contact with R. through counsel and has asked to visit him in person in Vancouver, however, the claimant refuses to allow this. Her position is summarized in correspondence from counsel for the claimant as follows:

I have consulted with my client and she maintains the position that she set out in her May 29, 2020 Notice of Family Claim; namely, that your client can exercise parenting time with [R.] in Vancouver, such parenting time to be subject to [R.'s] wishes. She agrees that videoconferencing or telephone calls can take place as long as they, too, are subject to [R.'s] wishes. [R.] understands that he is free to talk with your client at any point, and we will advise you if he decides that he would like to speak with or see your client.

[30] The respondent knows of no basis to believe that R. or the claimant are in fear of him, or that would suggest there is any risk of future harm to R. He believes the claimant and Mr. J. have cut off his contact with R. in an effort to weaken their relationship, so they can raise R. without the respondent's involvement.

[31] The respondent says this situation is having a terrible impact on him. He thinks about R. every day and cannot understand why R. is being made to feel the way he does about his father. It is a weight that he carries constantly. He knows that what is happening might have lasting consequences for both of them and it makes him incredibly sad.

Claimant's Evidence

[32] The claimant alleges that during their relationship, the respondent was verbally, physically and sexually abusive towards her. She describes several incidents which occurred while R. was an infant. After separation, the respondent continued to be abusive towards her.

[33] She alleges that in June 2011 in Tunisia, the respondent threatened to kill her and later assaulted her and her sister's boyfriend. R. witnessed this assault. The boyfriend was taken to hospital. The respondent was initially sentenced by the Tunisian court to six months in jail, however, due to pressure placed on her by the respondent's family, she asked that the respondent not be incarcerated.

[34] I pause to note that the respondent vigorously denies this incident occurred as the claimant describes and alleges serious irregularities in the Tunisian criminal proceeding. It is not necessary to review those in detail here.

- [35] The claimant says R. was mentally and emotionally affected by witnessing the assault and it caused him to be fearful of the respondent and have insecurities and anxieties about him.
- [36] The claimant says that initially after separation, the respondent was not consistent in exercising his parenting time with R. He missed 4 out of 5 weekends and rarely exercised holiday parenting time. He frequently missed important days in R.'s life, such as birthdays and school events. She describes his parenting time as haphazard and infrequent.
- [37] On August 31, 2015, she and R. moved to Paris. The respondent followed them to Paris in September 2015. They lived in the same apartment (separately) for about 1.5 months. She asked him to leave in October 2015. She alleges that the respondent refused to sign paperwork for R. to attend school in Paris. She had to plead with school authorities to get him enrolled. She denies that R. spent extended time with the respondent while in Paris. In late 2015 she had to go into hospital for surgery. During that time her boyfriend at the time cared for R. She also denied that the respondent was helpful or supportive towards her and R. while in Paris and denies his suggestion that she had issues with her mental health. She says she did try to keep the peace with the respondent, because she was concerned he might take R. back to Tunisia where her rights as parent were not guaranteed. She denies they co-parented during this period.
- [38] In 2016, the respondent moved to Montreal. The claimant says she was solely and completely in charge of all aspects of R.'s life. The respondent no longer played any role beyond infrequent telephone calls. She denies they spoke on the phone daily.
- [39] In May 2017, the claimant arranged for R. (then age 10) to visit the respondent in Montreal for 10 days. She denies that the respondent paid for R.'s airfare; she paid for both of their tickets. After the visit, R. told her that the respondent had taken money that R. had earned dog sitting for someone the respondent knew. This upset R. and remains a persistent negative memory of his father.
- [40] The Montreal visit was the last in-person parenting time that the respondent had with R.
- [41] With regard to the holiday in Tunisia, the claimant says the respondent promised R. he would meet him in Tunisia, but ended up not showing. R. spent the entire holiday with the respondent's family. The respondent only purchased a one-way ticket for R., so she had to purchase a return ticket for him. She says she tried to contact him every day while he was in Tunisia, but his family only infrequently answered the phone; when they did, they only rarely put R. on to talk to her.
- [42] She, R. and Mr. J. lived together in Paris from July 2017 to September 2017 and in Madagascar from September 2017 to February 2018. In July 2018, they all moved to B.C. She and the respondent were not in frequent communication during this time.

- [43] The claimant denies that she tried to trick the respondent into granting Mr. J. guardianship of R. They asked he allow Mr. J. to added as a guardian in addition to herself and the respondent. This would have allowed her to easily register R. in school in B.C. for free because Mr. J. is a Canadian citizen and would have allowed them to avoid international student fees. The respondent refused to cooperate.
- [44] The claimant says the respondent has refused to sign almost every legal document she has asked him to sign for R. over the years, including passports, visas and school authorizations. This has caused her many complications.
- [45] Contact between R. and the respondent had been sparse for years before the move to Canada. The claimant says every time she answered the respondent's calls or messages, he would insult her. Because she did not wish to deal with this, she asked Mr. J. to respond to the respondent. She stresses that through all of this, she did not stand in the way of the respondent's communication with R. R. was able to speak to the respondent when he desired to do so.
- [46] The claimant suggests a significant number of the respondent's calls to R. were in the middle of the school day or in the middle of the night. On those occasions they informed R. the respondent had called, and let him decide whether to return the call.
- [47] The claimant admits that she or Mr. J. often monitored the respondent's calls with R. This was dependent on what R. was doing at the time and whether he wanted them nearby. She says R. became increasingly agitated about the calls and there were times when he specifically asked them to stay close for provide emotional support. By 2018, R. was conflicted about whether he wanted to talk to the respondent.
- [48] Following one particular call on September 7, 2018, R. was extremely upset. He told them the respondent had threatened to come and take R. away. Thereafter, claimant says they always monitored calls between the respondent and R.
- [49] R. began expressing fear the respondent would take him away, had trouble sleeping and would refuse to sleep alone. He woke up at night crying and terrified. The claimant sought help from R.'s principal and counsellors. Mr. J. installed security cameras around the home to comfort R. It was not until they moved to a new address that the respondent did not know about that R. began to feel comfortable again and was again able to sleep through the night.
- [50] The claimant says R. previously expressed fears the respondent would try to kidnap him or hurt the claimant or Mr. J. When they were living in Madagascar, he asked them for a bed that was easy to hide under, in case the respondent broke into the home. He had these fears while they were living in France and when the first moved to B.C. R. would close the curtains in their home so no one could see in from outside. He wanted to sleep with the lights on and with the bedroom doors open.

- [51] The claimant says she has always facilitated visits and calls between the respondent and R. She wanted them to have a healthy relationship. Now that R. is 15 years old, she believes he is mature enough to come to his own decision about whether he wishes to speak with and spend time with the respondent. She supports whatever decisions he makes. She is concerned that forcing him to speak with or see the respondent in person against his wishes would be harmful for R.'s emotional and mental well-being.
- [52] The claimant says R. has always been a good student academically, but from grades 5 through 8, he had behavioural issues in school. These included tantrums and demonstrations of anger. He showed signs of fear and anxiety. At night, he insisted that Mr. J. and the claimant be within sight at all times and that they not leave or close doors inside the home, which would prevent him from checking on them. He would begin crying if they closed their bedroom door. When it was windy or if the neighbours' flood lights came on at night, he would wake up Mr. J. and insist that he check to see if there was anyone outside.
- [53] On one occasion, when the claimant and Mr. J. were returning from grocery shopping, R. hid in a small nook in their home and watched them search and call for him until he was satisfied his hiding place was a good one, in case he needed to hide from the respondent.
- [54] The claimant says R. has attended counselling to help deal with his emotional and mental health since they were living in Paris. At the time, he was seen by a child psychiatrist, but would not open up to him. In Canada, R. proposed that he talk to his school counsellor, which he did on about 5 occasions during grade 7. That counsellor connected R. with a youth worker, who he talked with between 2019 and 2020. During the 2020 - 2021, he began seeing a community counsellor approximately twice a month. That counsellor also met with the claimant and Mr. J. This arrangement ended in December 2021. The claimant did not provide counselling records for this application.
- [55] Since 2020, R's fears and anxieties have eased. His academic performance and behaviour in school is excellent and he excels in sports. The claimant says he is overall happier and healthier now. He no longer appears frightened at home and does not appear to be experiencing his former level of anxiety. His report cards reflect this improvement. She wants his positive progress to continue and is fearful that forcibly reintroducing the respondent into R.'s life will reverse all of his progress.

Procedural Steps

- [56] In May 2020, the claimant filed the notice of family claim. In September 2020, the respondent filed a counterclaim.
- [57] In April 2021, the parties attended a judicial case conference ("JCC"), at which they agreed R. should be allowed to express his wishes regarding communications with the respondent. Justice Steeves made a consent order that a "Views Of The Child" report to be prepared.

- [58] On August 19, 2021, the report author, Fiona Beveridge, issued her report. In it, she says that R. had clearly expressed that he did not want any contact with the respondent.

Hear The Child Report

- [59] The author described R. as cooperative and willing to speak to her, answer questions and engage with her. She describes him as personable and with a good sense of humour. He was responsive to questions asked and asked for clarifications if he did not understand.
- [60] R. refers to Mr. J., who is described as his stepfather, as "Dad" and when he refers to his "parents", he is normally referring to the claimant and Mr. J.
- [61] When asked his understanding of why he was meeting with the author, R. said "There is a disagreement between both parties my Dad [respondent] and my Mom [claimant] and I don't want to see my Dad [respondent] starting a while ago and so my parents [claimant and Mr. J.] tried to make it more official with lawyers but the first thing that made it happen was us wanting to move to Canada."
- [62] When asked what the claimant and Mr. J. had told him about the meeting, he said "They told me before what is mostly about me expressing myself and how I feel and giving an opinion on the situation. She said me and [Mr. J.] can't tell you what to say. They told me it is happening today and it will be fine and there will [be] some questions and to answer them honestly."
- [63] The author asked R. if there are things that he feels stressed or worried about. At the first interview, he said not really. At the second interview, he said "Maybe if the Judge forces me to see [the respondent]." She then asked him who he talks to when he is worried or upset about something. He responded that he talks to his parents, the claimant and Mr. J.
- [64] The author asked R. how having time with the respondent works. He stated "There is a way to contact him. I have decided not to use it. He tries to contact me, but rarely. He would contact me on my birthday and then promise a present and then not get it. Lately, he tries to manipulate me and buying me. On my last birthday, he gave me \$200. Usually he never does. He usually says he will, but never does." She asked how R. can contact the respondent. His response was that he could contact him on Messenger, but he was not sure.
- [65] The author states, "[R.] said that he was 3 when his parents separated. I asked if his parents had arguments and he said not really. At the second interview, he said 'When I was younger, I saw my Dad get violent towards my Mom. And that caused me to be scared at night sometimes. I have a harder time sleeping because I am scared from those events.' She asked if he heard arguments and he said 'Maybe when I was young. Not after separation, but from before. There was some arguments [after separation]. Like when he promised to get me presents and then he doesn't and my Mom argues with him.'"

- [66] The author asked him how he would describe the respondent to a friend. He stated, "I don't know much about him. I haven't talked to him in a while. He is not nice. He might be violent. He used to be violent I know. A couple of other mean things I would say, I don't know." The author asked him about the violence. He said "Some events I saw and some events I remember perfectly well. It was when I was 3 and I remember them from then." He said the violence was from the respondent towards the claimant.
- [67] The author asked him how he can tell the respondent loves him. He responded, "I don't think he does. I think he is trying to get something. He didn't talk to me much when I was in Tunisia. He would usually leave me. When I saw him on the weekends, he would ask his brother to pick him up and I would take the bus. He would be late. He was not a good father. He would not try. I don't know why he is contacting me. He must think I don't like my Dad [Mr. J.]"
- [68] At one point the author asked R. if he has any suggestions for his parents and how they could make things better for him. For his mother he said there was nothing she can do because it is already good. For the respondent he said, "Lots of things. One of [them] is to just stay away from me."
- [69] The author asked him what has made him feel like he doesn't want to spend as much time with the respondent. He responded, "One of them is the uncertainty of why he would like to see me again knowing that before he abandoned me alone with my Mom in Paris. Now that life is going great, I don't know why he would decide to go back randomly. He was a violent person in his past. He scares me to see him again. Third, he is not a great person. He is not nice and as I said before he was a violent person. I want my Dad to be someone like [Mr. J.] and to be a good role model and someone that would not hurt someone for no reason."
- [70] The author asked if the respondent had been in contact with him since he has lived in B.C. He said, "He tried I guess sometimes, but it didn't work. He would call on the phone and my Dad [Mr. J.] and Mom would answer and tell him that I don't want to talk to him. They would ask me if I wanted to talk to him."
- [71] The author asked how he would contact the respondent if he wanted to. He said, "I would borrow my Mom's phone and call him, but I don't because I don't want to." The author asked how his mother handles it and what does she say when he says he does not want to talk to the respondent. He replied, "Nothing much. She says that when you want to talk to him, you can just ask."
- [72] The author asked what would need to happen to have him more comfortable with spending time with the respondent. He said there was nothing that would make him more comfortable. She asked if there is a type of communication with the respondent that he is most comfortable with. He replied, "I don't think so. I don't know. Maybe which is a small thing, maybe someone like a policeman near him when he calls to me and then maybe we can talk for a bit, but I don't think I want to. It would keep him away from my Mom and put some limits that make it more safe." The author clarified that this would be if he were to see

the respondent in person. At the second interview, after reading back what he said in the first interview, R. said, "But I would honestly rather not to meet him."

- [73] The author asked R. about texting or emailing the respondent. He said, "Not really, I don't think." The author asked him why not. He replied, "I think he will try to make things worse and I don't want him to."
- [74] The author closes by noting this is a non-evaluative report and there are no opinions or conclusions included in it other than what R. had expressed to her.

Applicable Law

- [75] Section 37 of the Family Law Act, S.B.C. 2011, c. 25 ["FLA"] provides that in making an order respecting parenting or contact with a child, the parties and the court must consider the best interests of the child only.

Best interests of child

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;

- (i) 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.

[76] In this case, R.'s views are a prominent issue. In *M.Y.T.C. v. L.H.N.*, 2018 BCSC 1174 ["M.Y.T.C."], Madam Justice Forth summarized as follows:

29 The views of the child should be considered, and in this case they are a significant factor.

30 Canada has ratified the United Nations Conventions on the Rights of the Child, CAN. T.S. 1992, NO. 3. Article 12 imposes an obligation to ensure that children are afforded the opportunity to be heard in any judicial proceeding affecting them. These obligations were discussed in *B.J.G. v. D.L.G.*, 2010 YKSC 44, a decision that has been cited with approval in a number of British Columbia Supreme Court decisions.

31 The weight given to a child's views should be in accordance with their age and maturity. If a child is forming a view in a reasonable and independent manner, then the views must be considered as a significant factor in family cases.

[77] Another prominent issue is an allegation from the respondent that the claimant must have alienated R. from him because there is no other possible explanation arising from their interactions which could explain R.'s unwillingness to communicate with or have in person time with him.

[78] There is a significant distinction between alienation and estrangement. The distinction is described by Justice Kent in *N.R.G. v. G.R.G.*, 2015 BCSC 1062 at paras. 277-278:

[277] The difference between an estranged child and an alienated child lies in the cause; estrangement, sometimes referred to as "realistic estrangement", is the label applied when the child understandably refuses contact with a parent because of the latter's behaviour whether it be physical or emotional abuse, rigid or restrictive parenting, immature and self-centered behaviour, and/or dysfunctional conduct arising from the parent's own psychological or psychiatric issues. In such circumstances, the child's rejection of the parent may well be a reasonable and adaptive response to the estranged parent's behaviour.

[278] An alienated child, on the other hand, is the label frequently applied when there is little or no objectively reasonable cause for the child's rejection of the parent and particularly when it is the product of the other parent's hostility and antipathy towards his/her former spouse and the intentional undermining by the former of the child's relationship with the latter. While the undermining of the relationship can arise from direct or indirect behaviours, in its worst form the parental conduct is expressly designed to alienate the child from the

other parent. Such conduct is pernicious and unpardonable.

[79] There must be persuasive evidence of parental alienation before the court can make and act on such a determination. Alienation is a serious allegation and cannot simply be assumed or implied. In *M.Y.T.C.*, Justice Forth was asked to order that the parties and the child attend a REACH program, which was premised on there having been parental alienation. At para. 32 of her reasons:

32 The claimant's affidavit and application for an order that the parties and child attend the REACH program is premised on the assertion that this is a case of parental alienation. I agree with the following comment made by Mr. Justice Affleck in *K.L.S. v. K.M.S.*, 2017 BCSC 1315 at para. 12:

[12] On this application I make no findings concerning the parental "alienation" Dr. Eirikson describes. I am not requested to make such findings by the respondent. This is an instance of complete estrangement but not "alienation" between a mother and her now 16 year old daughter. "Alienation" is a word used in family law to refer to deliberate efforts by one parent to alienate a child from the other parent. I would not be prepared to consider addressing that question without a trial. Dr. Eirikson's emphasis on alleged alienation greatly limits the value of his report on this application. I agree, however, that an order compelling J.S. to resume a relationship with her mother would be, to use Dr. Eirikson's phrase, "a recipe for getting nowhere".

[80] An allegation of alienation should be supported by expert evidence, both with regard to determining whether there has been alienation and also to determine how best to address it, in the child's best interests. In *Williamson v. Williamson*, 2016 BCCA 87 at para. 47:

47 Alienation is a serious allegation. In this case, its existence and its root cause were hotly disputed by the parties. Further, as described above, there is a range of mechanisms available to a court to address alienation. Some of these responses could have a long term impact on the child involved. Therefore, in a case such as this, alienation should be proved. Proposed responses should be supported with admissible expert evidence. In determining whether the particular evidence is admissible a court must follow the steps outlined in *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23 at paras. 22-23. First, a court must examine the threshold admissibility of such evidence in accordance with the well-established factors in *R. v. Mohan*, [1994] 2 S.C.R. 9 (relevance, necessity, absence of an exclusionary rule and a properly qualified expert). Then, if the evidence meets the threshold requirements of admissibility, the court must exercise its gatekeeper function and balance the potential risks and benefits of admitting the evidence.

48 Proof of such a serious allegation requires proper expert evidence to support a finding of alienation on the part of either party and to support that the FRRP was in the best interests of the children.

Analysis

- [81] The respondent says he simply wishes to re-establish telephone and electronic/ video contact between himself and R., as a prelude to eventually re-establishing more regular telephone/ video contact and in person parenting time. He vigorously disputes the claimant's historical allegations of family violence. His post-separation relationship with R. has always been mutually loving and emphasizes his positive parental role in R.'s life. There is no incident or dispute between them that could possibly explain R.'s current views about him. He believes there must have been parental alienation for R. to now hold the negative views he indicated about the respondent and to not want any contact. He believes the claimant is pushing him out of R.'s life so that she and Mr. J. can carry on as R.'s de facto parents, to his exclusion.
- [82] There is considerable conflicting affidavit evidence before me. This is an interim application and I cannot make findings of credibility and pick and chose between conflicting accounts of the parties. There is no independent expert evidence before me which addresses whether there has been parental alienation, as opposed to possible estrangement.
- [83] The claimant has described significant emotional and behavioural issues that R. has gone through relating to his concerns about the respondent being violent to him and the claimant or the respondent taking R. away. The issues identified are sufficiently serious that, until reliable independent expert evidence is available, I am obliged to assume they are valid and substantial concerns when assessing R.'s bests interests.
- [84] The claimant says she arranged for counselling of sorts for R. over the past several years and that this has recently yielded positive results for him. She is concerned that forced contact with the respondent may reverse R.'s recent gains. This is difficult to assess on the record before me. The claimant has not produced counselling records or reports which elaborate on the nature of the counselling and what specifically they addressed and accomplished.
- [85] The respondent has not addressed whether counselling specifically focused on assessing and supporting rehabilitation of R.'s relationship with the respondent would be advisable or how best to approach this. There is no proposal for any form of counselling or reunification program. I have no expert evidence which addresses how best to address R.'s concerns as expressed in the Views of the Child Report.
- [86] On this application, the respondent is not seeking a formal declaration that there has been parental alienation, but it is an unavoidable and pervasive theme underlying his position. He may well argue that it is not necessary for the court to make a finding regarding parental alienation before dealing with an interim request to re-establish video and telephone contact as a preliminary step.

- [87] R. is now 15 years old and has clearly expressed that he does not want contact with the respondent at this time. He is of sufficient age and level of maturity that his wishes deserve significant weight. I also have unchallenged evidence from the claimant indicating R. has a history of anxiety and has expressed safety concerns relating to the respondent. I am concerned that forcing R. to re-establish contact with the respondent against his wishes could have an adverse effect on him and be contrary to his best interests.
- [88] It is not appropriate to embark on a re-introduction program against R.'s wishes without appropriate expert guidance and insight. Given R.'s age and circumstances, it is possible that the best course is to allow time to pass and let him decide whether, when and how to re-connect with the respondent.

Conclusion

- [89] I am not persuaded that a re-introduction of R. to the respondent against R.'s express wishes is in his best interests at this time. The respondent's application is dismissed. The respondent has leave to re-apply on better evidence, which should include appropriate independent expert evidence addressing the issues I have identified.
- [90] The respondent was not successful on his application, but it is perhaps understandable that he chose to pursue it. A significant part of the information the claimant disclosed about R. was apparently provided to him for the first time through the claimant's affidavit in response to this application. Had it been provided earlier, this application may have been avoided entirely or have proceeded differently. In the circumstances, it is appropriate that the parties bear their own costs.

"Master Bilawich"

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