

CANADA / JUDGMENT

## J.D.D. v. S.W.

2025 BCSC 1938

### COURT

Supreme Court of British Columbia

### DECIDED

29 July 2025

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2025 BCSC 1938 J.D.D. v. S.W.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

J.D.D. v. S.W.,

2025 BCSC 1938

Date: 20250729

Docket: E73604

Registry: New Westminster

Between:

J.D.D.

Claimant

And

S.W.

Respondent

Before: Associate Judge Hughes

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

S. Das

A. Plan

Counsel for the Respondent:

A. Parhar

Place and Dates of Hearing:

New Westminster, B.C.

July 25 and 29, 2025

Place and Date of Judgment:

New Westminster, B.C.

July 29, 2025

- [1] These oral reasons have been edited and anonymized for publication. The substance and result have not changed.
- [2] THE COURT: By notice of application filed July 8, 2025, the claimant seeks a number of orders against the respondent arising from his allegations of family violence and a risk of relocation.
- [3] By way of brief background, the parties began living together in 2014 and were married on June 16, 2014. There is one child of the marriage, namely R.D.W. ("R." or the "Child"), born in 2016. R. is eight years of age, turning nine shortly.
- [4] The parties separated in or about May 2025, although they continued to reside together in the same residence until very recently.
- [5] The Notice of Family Claim was filed on July 8, 2025, and this application was filed and set for hearing on the same day.
- [6] This application first came on for hearing before Justice Maisonville on a without notice basis, although I was advised that the respondent was in attendance. Justice Maisonville adjourned the application to July 11, 2025, on a priority basis, with deadlines for exchange of materials. She also restrained the respondent from removing the Child from the Lower Mainland without the claimant's consent or further court order, and ordered that the respondent was to provide the Child's passport to claimant's counsel (the "Maisonville Order"). She made no orders with respect to parenting.
- [7] On July 11, 2025, with the respondent's counsel having just been retained, Associate Judge Bilawich made some stopgap orders and adjourned the hearing to July 22, 2025. Those stopgap orders included interim exclusive occupancy of the family home to the claimant; that the Child's primary residence be with the claimant on an interim, without prejudice basis; and that the respondent was to have three days of professionally supervised parenting time for eight hours each day, with the cost to be shared equally between the parties.

- [8] On July 22, 2025, there was insufficient court time, and the hearing was adjourned to July 25 with the same direction that it be given priority.
- [9] The hearing began before me on July 25, 2025. However, the 90-minute time estimate provided by counsel proved to be insufficient and a continuation was required.
- [10] The orders sought by the claimant include protection orders with respect to both the claimant and R., interim exclusive occupancy of the family home, and an order prohibiting the respondent from relocating with the Child or removing him from the Lower Mainland of B.C. Strangely, no orders were sought with respect to parenting arrangements, and there is no cross-application by the respondent.

### Non-removal

- [11] I will first address the non-removal application, as that is the simplest. The respondent was born in Bangkok, and her family resides in Thailand. The parties, along with R., travelled to Thailand annually for the past 10 years or so. Prior to their separation, they had planned to travel to Thailand again as a family this summer. As I understand it, the respondent was going to travel to Thailand with R. in July, and the claimant was going to join them in August, with the family returning together in early September. The claimant is now concerned that if the respondent takes R. to Thailand as planned, that they may not return to Canada.
- [12] Although Thailand is a contracting state to the Hague Convention on the Civil Aspects of Child Abduction, Can T.S. 1983 No. 35 [Convention], the Convention is not in effect as between Canada and Thailand.
- [13] The respondent accepts that she cannot now travel outside Canada with R. unless she has the claimant's prior written consent or a court order.
- [14] As Justice Maisonville's interim order was granted on a without notice basis, this court is to address the issue de novo now that notice has been properly given.
- [15] Under the circumstances, and particularly given that the protections of the Convention are not available in Thailand, I am satisfied that it is appropriate to grant the orders sought in paragraphs 9 and 10 of the claimant's notice of application. The orders will, however, be mutual, such that neither party is to remove the Child from the Lower Mainland or relocate the Child without the prior written consent of the other party or further court order.

## Protection Order

- [16] The thornier issue is that of the claimant's allegations of family violence. The claimant seeks a sweeping protection order which would, if granted, prohibit the respondent from communicating with him or with the Child except pursuant to a court order. He does not specify what terms of a court order would be appropriate. The order sought would also prohibit the respondent from attending at the family home, the claimant's place of employment, the Child's school, tutoring centre, or the local community centre.
- [17] In order to decide the claimant's application, s. 183(2) of the Family Law Act, S.B.C. 2011, c. 25, provides that I must first determine whether family violence is likely to occur at the hands of the respondent and whether the claimant and/or the child are at-risk family members. An "at-risk family member" is defined in s. 182: "a person whose safety and security is or is likely at risk from family violence carried out by a family member."
- [18] "Family violence" is defined in s. 1 as: including, with or without an intent to harm a family member:
- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
  - (b) sexual abuse of a family member,
  - (c) attempts to physically or sexually abuse a family member,
  - (d) psychological or emotional abuse of a family member, including
    - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
    - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
    - (iii) stalking or following of the family member, and
    - (iv) intentional damage to property, and
  - (e) in the case of a child, direct or indirect exposure to family violence;
- [19] The allegations of family violence include physical and verbal abuse of both the claimant and the Child. These are described in rather general terms with few specifics. The claimant alleges that the respondent "has and continues to be physically violent towards me (hitting, pushing, spitting, throwing things at me)." He alleges that the respondent uses corporal punishment with R., and that she hits, pinches, flicks and kicks R. and pins him to the ground. He claims that the family violence has been escalating, but without specifics.
- [20] The claimant provides three specific examples of the respondent's alleged abuse towards R.:

1. An incident on April 19, 2025, when R. showed the claimant a bruise on his thigh. The claimant says that R. told him the respondent was upset about misplacing her key fob and she yelled at R. and squeezed his leg hard enough to leave a bruise. The respondent's evidence is that R. was kicking her seat while she was driving, and she grabbed his leg in a safe manner to restrain him from kicking the seat;
  2. An incident on May 14, 2025, when the inside of R.'s lip was bleeding. The claimant said that R. told him the respondent had flicked him in the face and mouth repeatedly causing him to bleed, because R. refused to give the respondent a hug and a kiss. The respondent denies making R.'s lip bleed and says that the blood in his mouth was from two teeth coming out within two days. She says that the Child was talking non-stop and she grabbed his lips in a light manner to stop the talking, but that she did not flick or hurt him or cause him to bleed;
  3. An incident on May 22, 2025, when R. told the claimant that the respondent had pushed him to the ground and pinned him down aggressively. The respondent says that the Child started hitting her and that he got on top of her after she took away his iPad, and that she had to push the child to restrain him and get him off her.
- [21] Immediately following the April 19 and May 22 incidents, the claimant asked the Child to repeat again what had happened so that he could videotape the Child's explanation. Those video recordings were tendered in evidence, but I declined to view them. Such recordings are inherently problematic as they are not trustworthy insofar as there is no way of knowing if the child has been coached. Involving a child in the parents' matrimonial dispute to this degree is highly inappropriate and is to be discouraged.
- [22] On June 17, 2025, the claimant reported these three incidents to the Ministry of Children and Family Development ("MCFD"), who then involved the RCMP. MCFD has interviewed both parties and R., and R. was also interviewed by the RCMP. The MCFD social worker, Jagjit Akali, has provided a letter dated July 10th, 2025, in which she says "The child protection concerns have been mitigated and there is no current need for further MCFD involvement. Your MCFD incident will now be closed."
- [23] The claimant's explanation, in para. 14 of his second affidavit, is that:
- I believe that the MCFD is now stepping back as [R.] is safe in my care and there is no immediate risk to his safety given that the Respondent does not have time with him (except as provided in limited professionally supervised instances under the Maisonville Order).
- This was the same submission initially made by claimant's counsel.
- [24] As I indicated this morning, this explanation makes no sense. The Maisonville Order, made on July 8, 2025, did not place any restrictions on the respondent's contact with R., and did not order supervised parenting time. The order that provided for interim, without prejudice primary residence with the claimant and supervised parenting to the respondent was made by Associate Judge Bilawich on July 11, 2025, the day after the MCFD closing letter. Accordingly, the reason for MCFD determining that there were no child protection concerns

had nothing do with the orders made in this proceeding.

- [25] The evidence shows that the respondent has used derogatory and demeaning language towards the claimant and in reference to members of the claimant's family, particularly the claimant's brother, sister-in-law and niece. Although rude and even vile, the respondent's language is not threatening.
- [26] The respondent admits to having used forms of corporal punishment or physical discipline with R., and she commits to refrain from such actions in the future.
- [27] There is also evidence of poor behaviour and questionable conduct on the part of the claimant. The respondent alleges that the claimant has made sexual remarks to her or about her in R.'s presence, which he denies.
- [28] He does not deny using alcohol, cannabis and magic mushrooms, although he disputes the frequency of the latter. The respondent says that the claimant regularly used alcohol and cannabis in R.'s presence, which he does not deny.
- [29] The claimant admits in his affidavit that he increased his use of alcohol and cannabis during the parties' relationship and particularly towards the end of that relationship. He has committed himself to sober living since the separation, is attending Alcoholics Anonymous meetings regularly, and has been clean and sober since June 18, 2025.
- [30] Although the claimant denies being aggressive, there is evidence that he was banned from attending inside R.'s daycare in October 2024 after he addressed another child in a harsh and intimidating manner.
- [31] I am not going to reiterate the rest of the allegations that each party has made against the other. Suffice it to say that they both allege various forms of poor behaviour on the part of the other, and they each deny that they have been the perpetrator of any family violence. Both parties' affidavits contain both general accusations and blanket denials. Both claim to have been R.'s primary caregiver. Both point the finger at each other. The evidence also includes many examples of impermissible opinion and argument.
- [32] After having thoroughly read all of the affidavits carefully between the two hearing dates, I cannot conclude on a balance of probabilities that one party is more truthful than the other, or that a protection order is warranted in this case. The evidence of family violence is unconvincing and appears to be geared towards obtaining an advantage in this litigation. MCFD has been involved and has closed their file, having no ongoing protection concerns.
- [33] In an attempt to manage some of the parties' behaviours, I will make the following conduct orders.
- [34] The parties are not to communicate with each other, directly or indirectly, with the following exceptions:
  - 1) Communication through legal counsel;

- 2) While in attendance at a settlement meeting, mediation or judicial case conference;
  - 3) Communication in writing, which includes text messages, limited to communication regarding R.; and
  - 4) Incidental communication during parenting exchanges.
- [35] The respondent is not to use any form of physical restraint or discipline on the Child.
- [36] The claimant will not consume or possess any alcohol, cannabis or controlled substances within the meaning of s. 2 of the Controlled Drugs and Substances Act, S.C. 1996, c. 19, except as prescribed by a licensed physician, during parenting time and for 12 hours before having parenting time.
- [37] The application for a protection order is dismissed. The parties will: (a) put the best interests of the Child before their own interests; (b) encourage the Child to have a good relationship with the other parent; and speak to the Child about the other parent and that parent's partner, if any, in a positive and respectful manner; and (c) make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communications, or argument in front of the Child.
- [38] The parties will not: (a) question the Child about the other parent or time spent with the other parent beyond simple conversational questions; (b) discuss with the Child any inappropriate adult court or legal matters; or (c) blame, criticize, or disparage the other parent to the Child.
- [39] The parties will encourage their respective families to refrain from any negative comment about the other parent and their extended family, and from discussions in front of the Child concerning family issues or litigation.

### Exclusive Occupancy

- [40] Turning to the application for exclusive occupancy of the family home, the test is whether shared use of the home is a practical impossibility and, if so, who is the preferred occupant based on a balance of convenience analysis.
- [41] The challenge today, as I have mentioned many times during the course of the hearing, is that there is no parenting arrangement currently in place, and no application by either party with respect to parenting arrangements. Were I convinced that shared use of the home is a practical impossibility, it is not possible to conduct the balance of convenience analysis in the absence of an interim parenting arrangement being determined. The best interests of the Child is an important part of the that analysis, and determining occupancy of the family home before determining parenting is putting the proverbial cart before the horse.

- [42] I am not persuaded by the claimant's argument that I should make substantive parenting orders today under the catch-all paragraph in the notice of application seeking "any such further relief as ordered by the court." A parenting application needs to be brought properly with specific parenting proposals from each party.
- [43] There is also very limited financial information provided by either party, and no F8 financial statements. That evidence is also relevant in the balance of convenience analysis for exclusive occupancy.
- [44] The application for exclusive occupancy is adjourned generally. It may be reset for hearing, either together with a parenting application or after an interim parenting arrangement is in place, either by agreement or further court order.
- [45] I will make a stopgap parenting order to ensure that both parents have parenting time pending the next court hearing. I would not want to see a repeat of what has happened this past weekend, when the respondent had no parenting time. This order is not to be considered an interim parenting arrangement for the purpose of resetting the exclusive occupancy application.
- [46] On an interim without prejudice basis, the Child's primary residence will remain with the claimant. The respondent will have unsupervised parenting time for a minimum of eight hours a day, three days a week, or such other time as the parties agree.
- [47] A judicial case conference ("JCC") is to be scheduled at the earliest mutually available date, and it may be held in New Westminster, Vancouver, Port Coquitlam or Abbotsford. That JCC is to be booked not later than 4:00 p.m. tomorrow. And I will note, parenthetically, I looked at available JCC dates in New Westminster. There is actually one JCC date available on July 31st and one on August 1st, so Thursday or Friday this week. The next available dates in New Westminster are in December. So, if counsel are available on one of those dates this week, you may want to grab one of those dates before somebody else takes it.
- [48] Finally, I will grant both parties leave to file an application regarding parenting prior to a JCC so you do not need to apply for a further JCC exemption.
- [49] All right. I went through that quickly. Ms. Das, is there anything requiring clarification?
- [50] CNSL S. DAS: Yes, Your Honour, I just wanted to clarify the interim parenting order.
- [51] THE COURT: Yes.
- [52] CNSL S. DAS: It's a stopgap, like I you said. Is this an interim, without prejudice parenting order?
- [53] THE COURT: Yes.
- [54] CNSL S. DAS: For lasting purposes? Okay. And the other thing is that you've indicated that the parenting time is going to be eight hours -- up to eight hours, three days a week, or such other time as agreed. And I wanted to clarify that Associate Judge Bilawich's order was eight

hours during daytime. And I know there's a dispute between my friend and I about him pronouncing -- I say it was in a public location. We can sort that out later. I just wanted to clarify, those eight hours, is it similar -- is it the same as Associate Judge Bilawich's order, which specifically provided that those eight hours would be during daytime hours? So not overnight?

[55] THE COURT: That is my intention at this point, without having any evidence as to where the respondent is living. Eight hours during the daytime, not to include overnight. It does not have to be in a public place.

[56] CNSL S. DAS: Okay. And, sorry, there was one more thing. Are you inclined to hear arguments related to costs?

[57] THE COURT: Sorry. I thought you said you had another clarification. I want to hear, first, from Mr. Parhar as to whether he requires any clarifications. Mr. Parhar?

[58] CNSL A. PARHAR: Yeah, just a couple points. One, so based on this, both parties are at liberty to stay at the house, in theory?

[59] THE COURT: I am not preventing them from doing so. You may want to have some discussions between counsel as to what arrangements you are going to make, but I am not making an exclusive occupancy order in favour of either party at this time. And I am not making any order preventing either party from being at the house at this time.

[60] CNSL A. PARHAR: Okay. And then eight hours a day, three days a week --

[61] THE COURT: That is the minimum.

[62] CNSL A. PARHAR: the words were -- yeah. That's exactly it. So that was the words. At minimum, eight hours a day, three days a week?

[63] THE COURT: Yes.

[64] CNSL A. PARHAR: Okay.

[65] CNSL S. DAS: Your Honour, I -- there may be some challenges --

[66] THE COURT: Yes, Ms. Das?

[67] CNSL S. DAS: -- like on -- oh, there might be some challenges on figuring out, like, how do the parties arrive at that. Are you prepared to order any kind of direction --

[68] THE COURT: If the parties are unable to agree on the specifics of the parenting time, you may put in a request to appear before me, and I will hear that application if I can be made available in a timely manner. I would strongly encourage counsel to have discussions first and see what can be agreed.

[69] CNSL S. DAS: And is it your intention -- is the spirit of the order that the days will be the same every week, so that the parties are not negotiating every single week? Or just --

[70] THE COURT: Not necessarily. I do not know what the parties' schedules are. I understand that the claimant has some regular work hours, and then with his own business has some additional work hours, so his schedule may be changing from time to time. I have no idea what the respondent's schedule is because there was no evidence of that. So I am not making a determination as to whether they need to be the same days every week at this stage. That may be easier for the parties to plan around and provide some consistency for R.. But I am going to leave that to counsel to, hopefully, sort out.

[71] Mr. Parhar, was there anything else, from your perspective, that required clarification?

[72] CNSL A. PARHAR: Not at this stage, Your Honour.

[73] THE COURT: All right. Ms. Das, submissions on costs?

[74] CNSL S. DAS: One last thing I wanted to clarify, sorry, that just came to my mind, is the parties having -- you ordered that the parties have leave to file an application relating to parenting time prior to a JCC.

[75] THE COURT: Parenting arrangements. So not just parenting time. But that would include parental responsibilities as well.

[76] CNSL S. DAS: Okay. And such application, are you suggesting that it should be set for a mutually available date? I'm just trying to avoid conflict, as things, kind of, progress on the file, so the parties have more guidance on how to conduct --

[77] THE COURT: Yes, it should be set for a mutually available date, provided that counsel are providing reasonable availability. If somebody turns around and says, my first available date is in October, that is not reasonable.

[78] CNSL S. DAS: Yeah. Okay. Certainly. Yeah, I just --

[79] CNSL A. PARHAR: That's not going to be an issue.

[SUBMISSIONS RE COSTS]

[80] THE COURT: I think there is enough blame to go around. With respect to the protection order, certainly the respondent was successful on that aspect of the application. The claimant was successful on the non-removal. The exclusive occupancy is yet to be determined. I am going to order that each party bear their own costs of this application.

[81] Ms. Das, would you like to send an agent to retrieve your binders, or would you like to have them destroyed?

[82] CNSL S. DAS: Your Honour, sorry, I put myself on mute. I want to decide one more thing -- sorry. I didn't raise it earlier. There's an order that was made by Associate Judge Bilawich that's part of my client's application. The section 231 police enforcement, it's part of his application. I notice that it wasn't addressed, necessarily, in your reasons. Is that going to be continued in your current order or not granted?

- [83] THE COURT: The police enforcement? Sorry. Where is his --
- [84] CNSL S. DAS: Yeah. So it's at paragraph 11 of his notice of application, page 2, at the bottom. And we have an order - 11 and 12. We have Associate Judge Bilawich's order that did grant it on an interim - interim, without prejudice basis. And I was just wondering, because it wasn't addressed in your reasons, is that being continued? It's under the non-removal - non-removal/relocation section of his application. You've granted 9 and 10, made them mutual, and I'm just wondering about 11 and 12 of his application relief.
- [85] THE COURT: I am just looking at them. Just a second.
- [86] CNSL S. DAS: Yeah, no problem.
- [87] THE COURT: I do not see a need for police enforcement at this time. The Child is in the jurisdiction. I have made an order that he not be removed from the Lower Mainland by either party. As I understand it, the passport as been surrendered, so there should not be an issue. If that order is breached, then an application can be made for police enforcement. But under the current circumstances, paragraphs 11 and 12 of the notice of application are dismissed. I just do not see them as being necessary at this point.

"Associate Judge Hughes"

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