

CANADA / JUDGMENT

# J.S.M. v. T.K.N.

2025 BCSC 2552

## COURT

Supreme Court of British Columbia

## DECIDED

5 December 2025

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2025 BCSC 2552 J.S.M. v. T.K.N. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: J.S.M. v. T.K.N., 2025 BCSC 2552 Date: 20251205 Docket: E69737 Registry: New Westminster Between: J.S.M. also known as J.S. Claimant And T.K.N. also known as T.K.M. Respondent And P.S.M. and P.K.M. Respondents by Counterclaim Before: Associate Judge Nielsen Oral Reasons for Judgment In Chambers Counsel for the Claimant: H.S. Randhawa Counsel for the Respondent: V. Aggarwal Place and Date of Hearing: New Westminster, B.C. December 5, 2025 Place and Date of Judgment: New Westminster, B.C. December 5, 2025

- [1] THE COURT: This is an application pursuant to s. 33(2)(b) of the Family Law Act, S.B.C. 2011, c. 25, seeking a DNA test of the oldest son of the marriage to determine his parentage. The application is opposed.
- [2] The child in question is currently 18 years old and will turn 19 years old on December 26, 2025. The application for the DNA test is opposed. Essentially, the submission is that it will not change any financial obligations within the proceeding as the claimant has been the only father that the child in question has known, and it seems indisputable that he has stood in the position of father for the child's entire life.
- [3] I should also indicate that the claimant only learnt of the possibility that the child in question was not his biological child subsequent to the separation of the parties.
- [4] I have been referred to several cases concerning DNA tests. The respondent referenced C.A.S. v. G.A.P, 2011 BCSC 1431, a decision of Justice Punnett. The DNA test in that case was denied. Justice Punnett states at para. 17 that no evidence was provided to the court to support the claim that the applicant was not the biological father, and essentially that the father had missed the opportunity to raise the issue of paternity within the context of the proceeding.
- [5] As I indicated, this is somewhat different given the fact that the issue of paternity only came to the claimant's attention subsequent to separation, and it arises from some informal DNA tests that were conducted at the claimant's behest, but they are not official tests.

- [6] I have been referred to two other cases by counsel for the applicant. The first is *I.M. v. K.M. et al*, 2003 BCSC 678, which is a decision of Justice Neilson. In that case DNA testing was ordered, although it was not ordered within the context of a family law proceeding.
- [7] Justice Neilson acknowledges a concession made by the father in that case at para. 14 where she states: He acknowledges that the result of any finding with respect to paternity will have no bearing on his obligation to support A.M., which he has honoured to date, and he says he harbours the hope that she is indeed his daughter, and that they may renew their relationship as she grows older.
- [8] At para. 16, Justice Neilson indicates that in her view "DNA profiling will provide highly relevant evidence of biological parentage." She also noted at para. 21 that she found it: significant, however, that K.M.'s affidavits do not set out any clear statement that the plaintiff was the only person with whom she had sexual relations during the period surrounding A.M.'s conception. She states at para. 23 that: Earlier decisions have found that the interests of justice, and the interests of a child involved in such a matter, are often best served by ascertaining the truth with respect to paternity. While one must guard against permitting blood tests of a child to be taken if it would be against the child's interests, the court need not be satisfied that the outcome of the tests will necessarily benefit the child: *J.S.D. v. W.L.V.* at para. 23; *Schuh v. Schulzer* at para. 18. The court also notes that in the modern state, at para. 24 "public policy no longer requires a child to be protected from the status of illegitimacy."
- [9] Justice Neilson ultimately granted the application that paternity be determined.
- [10] In the other case, *K.M.S. v. A.H. and S.H.*, 2021 BCPC 201, the court considered whether or not a DNA test was appropriate. Ultimately, it found that it was, and granted the order. At para. 36 the court states: legitimacy and "stigma" are no longer relevant considerations for granting or denying parental testing and specifically that "the law has abolished all distinctions between a legitimate and an illegitimate child it is in the best interests of the child that, where a real issue as to parentage is raised, the truth be ascertained on the best evidence possible" (*R.J.P. v. N.L.W.*, 2011 BCSC 1649 at para. 72). I also note the court's comments at para. 41 where the court states: the best interests of the child and it is the rights of the child which must prevail not the adult parties as stated in *Tearoe v. Swan*, 1993 BCCA 2730.
- [11] And then at para. 53, the court indicates some of the benefits of knowing your biological parent. And those include the potential of a relationship with your biological parent, medical history and health history that may come from that knowledge, the potential of a relationship with the biological father and his extended family, the potential for financial advantages to the child from the biological parent, and also the potential of an inheritance from that biological parent. And then at para. 57 the court states, "It is the child's right to know his paternity not that of A.H. nor S.H.," who were the respondents in that case.

- [12] It is understandable that the respondent would oppose the application given the potential embarrassment if, and when, it is determined that the oldest son is not the claimant's biological child. However, there is the potential that he could indeed be the biological child of the claimant, and that would certainly put those related issues to rest. Further, in my view, there is the benefits of knowing your biological parents, and those include the factors indicated at para. 53 of K.M.S. noted above.
- [13] In all the circumstances the DNA test sought is ordered. [CLARIFICATION SOUGHT BY CLERK]
- [14] THE COURT: Thank you for that, Madam Clerk.
- [15] To be more specific, I will say that para. 4 of the notice of application is granted. [DISCUSSION RE TIMING OF TEST]
- [16] THE COURT: I am going to make the order that it be done within the five days at a time convenient for the oldest child, but it is to be done within the five days. [QUESTION RE COSTS]
- [17] THE COURT: I think in this case the costs of the application will be determined by the paternity. "Nielsen A.J."

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