
CANADA / JUDGMENT

K.H.D. v. O.O.M.

2021 BCSC 1808

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2021 BCSC 1808 K.H.D. v. O.O.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

K.H.D. v. O.O.M.,

2021 BCSC 1808

Date: 20210915

Docket: E210970

Registry: Vancouver

Between:

K.H.D.

Claimant

And

O.O.M.

Respondent

Before: Master Elwood

Reasons for Judgment

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Place and Dates of Hearing:

Vancouver, B.C.

June 3, July 30, and

September 7, 2021

Place and Date of Judgment:

Vancouver, B.C.

September 15, 2021

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I. INTRODUCTION

- [1] Mr. D. applies to vacate a protection order made without notice pursuant to s. 183 of the Family Law Act, S.B.C.2011, c. 25 [FLA]. The order prohibits Mr. D. from communicating with or approaching his spouse Ms. M. or their children except for certain purposes, including professionally supervised parenting time. Mr. D. seeks to replace the protection order with a general conduct order and an order for equal, unsupervised parenting time. In the alternative, Mr. D. seeks to limit the protection order to Ms. M., replace the balance of the existing order with a conduct order, and obtain an order for equal, unsupervised parenting time.
- [2] While this judgement was under reserve, both parties applied to reopen the hearing for the purposes of providing fresh or new evidence. Mr. D. also applied for an order under s. 211 of the FLA requiring a parenting report. On September 7, 2021, I adjourned Mr. D.'s application for a parenting report, and heard the applications to adduce new or fresh evidence. Those applications are dealt with in these reasons for judgment.

II. BACKGROUND

- [3] Mr. D. and Ms. M. were married in 2013. They had two children together: S., who is now six years old; and E., who is four.
- [4] In 2017, Mr. D. and Ms. M. moved to Canada from the United States, and purchased a home in Abbotsford. In November, 2020, they sold the home in Abbotsford, and purchased a home in Surrey. In January 2021, Mr. D. moved into a basement suite in the Surrey home.
- [5] The parties disagree on when they separated: Ms. M. says they separated when she informed Mr. D. in April 2020 of her intent to separate; Mr. D. says they only separated when he moved to the basement in January 2021.
- [6] Ms. M. deposes that, throughout the relationship and during the separation, Mr. D. was physically, verbally and psychologically abusive. She describes serious physical assaults by Mr. D. in 2014, 2016 and 2017, and a sexual assault in September 2020. She also sets out a number of angry outbursts by Mr. D. in which Mr. D. yelled or screamed at her or the children. She deposes that the incidents of verbal and physical violence escalated in 2020. She states that Mr. D. screamed at her, pushed her around and called her demeaning names.
- [7] For a long time after she told him that she intended to leave the marriage, Ms. M. says, Mr. D. refused to accept the separation. She deposes that he acted out his anger and denial with insults, yelling and by driving recklessly fast when she and the children were in the car.
- [8] Mr. D. acknowledges "verbal and physical arguments", although not to the extent alleged by Ms. M. He acknowledges that he made mistakes during the relationship, but states that he has been trying to "work on myself" since the separation.

- [9] Mr. D. denies sexually assaulting Ms. M. in September 2020. He claims that sexual intercourse prior to January 2021 was consensual "as we had not yet separated".
- [10] Mr. D. acknowledges being strict with the children "because they need routine". He acknowledges speaking sternly or raising his voice "when they did not listen". However, he denies physically or emotionally abusing the children.
- [11] The parties each allege that the other has mental health issues. Ms. M. states that Mr. D. has been taking medication to manage anxiety since 2019 or 2020. Since 2020, she deposes, there have been two incidents in which Mr. D. has disappeared and told her that he planned to kill himself. She states that Mr. D. made suicidal comments almost every other month if she tried to distance herself from him. She claims he was diagnosed with bipolar disorder in April 2021.
- [12] For his part, Mr. D. asserts that Ms. M. suffers from depression and borderline personality disorder with self harm ideation.
- [13] Mr. D. acknowledges struggling emotionally with the breakdown of the marriage. He acknowledges unwisely insisting that he wanted to stay together when Ms. M. was scared of him and did not want him around. He acknowledges that he experienced side effects when he changed medications in April 2021. However, he says he is now fully regulated and no longer experiences side effects. He deposes that he has sought out therapy and assistance coping with his emotions around the separation.
- [14] In April 2021, Ms. M. and Mr. D. negotiated a notice of joint family claim and the materials for a desk order divorce. In the filed notice of joint family claim, the parties sought an order that would have provided Mr. D. with weekend parenting time and required him to pay \$1,400 in child support.
- [15] During the negotiations, Mr. D. sought equal parenting time, on a week on / week off schedule, with no obligation to pay child support. Mr. D. alleges that Ms. M. threatened to seek full custody of the children, or to limit his access to supervised parenting time, if he did not agree to pay child support.
- [16] On May 3, 2021, Ms. M. left the family home. Ms. M. deposes that she fled the home because she was scared Mr. D. would become violent with her again. She deposes that, after filing the notice of joint family claim, it became clear to her that Mr. D. would make it very difficult for her to leave the marriage. The precipitating event was on May 2nd, when Mr. D would not allow her to take the children to the park alone, insisting that it was important they look like a family. Ms. M. took this to be evidence Mr. D. would not accept the divorce, a prospect she found frightening in light of his history of family violence.
- [17] Mr. D. deposes that, as far as he knew, Ms. M. left the home peacefully to stay a few nights at a hotel because she was stressed out. He says he booked the hotel for her, so that she could get away and relax.

- [18] Ms. M. did not return to the family home. As of the date of this application, she was staying with a friend.
- [19] On May 7, 2021, Ms. M. called the police to conduct a wellness check on the children. The police attended at the family home. They did not take any child protection action.
- [20] On May 10, 2021, Ms. M. gave notice that she was withdrawing from the notice of joint family claim. On May 13, she filed a response to family claim and a counterclaim seeking child support, spousal support, primary residence and sole guardianship of the children.
- [21] On May 13, 2021, Ms. M. applied without notice to Mr. D. and obtained a protection order by Master Taylor. The protection order restrained Mr. D. from communicating with Ms. M. or the children, attending a place regularly attended by Ms. M. or the children, following Ms. M. or the children, or possessing a weapon or firearm. The protection order also directed any police officer with a copy of the order to remove Mr. D. from the family home.
- [22] On May 14, 2021, Ms. M. applied once again without notice to Mr. D. and obtained a change of protection order by Master Vos, amending the initial order to clarify exceptions for Mr. D. to arrange professionally supervised parenting time with the children, attend a settlement conference, family case conference or court proceeding and communications between counsel. The amending order also deleted the term directing a police officer to remove Mr. D. from the family home, and instead provided that Mr. D. was not to approach within 2 blocks of the family home.
- [23] Following receipt of the protection order, the RCMP removed the children from Mr. D.'s care and delivered them into the care of Ms. M.
- [24] On May 22, 2021, Mr. D. spent two hours with the children in a public park under professional supervision. Ms. M. agreed to further supervised visits, once every two weeks for two hours in a public place. She would not agree to Mr. D.'s request for more frequent or lengthier supervised visits.
- [25] A judicial case conference ("JCC") is scheduled for October 29, 2021.

III. PROCEDURAL HISTORY and RECENT DEVELOPMENTS

- [26] This application initially came on before me on June 3, 2021. I reserved judgment on Mr. D.'s application. The order by Master Taylor, as amended by the order of Master Vos, remained in place, providing Mr. D. with the ability to continue supervised parenting visits with the children, albeit on terms to which Ms. M. agreed.
- [27] On June 5 and 19, 2021, Mr. D. spent two hours with the children under professional supervision. These two visits, and the visit on May 22, are the only times Mr. D. has seen the children since the original protection order was made.

- [28] On June 25, 2021, Surrey RCMP arrested Mr. D. and charged him with sexual assault on Ms. M. in September 2020, and two assaults on Ms. M. in March and April, 2021.
- [29] On July 28, 2021, a Provincial Court judge ordered, as a condition of his release, that Mr. D. have no contact with Ms. M. or the children. The release order permitted exceptions as allowed by a family or child protection order by a judge or master who had been given a copy of the order.
- [30] On July 30, 2021, the parties appeared before me by teleconference to address the developments in the criminal proceedings. They provided me with a copy of the release order. Ms. M. opposed any order being made during the very brief teleconference that would allow Mr. D. additional parenting time with the children.
- [31] The parties appeared before me again on September 7, 2021. Mr. D. applied to reopen the hearing to adduce new and fresh evidence concerning Ms. M.'s conduct. He argued that the new or fresh evidence would establish that Ms. M. has interfered with his ability to maintain a relationship with the children, contrary to their best interests.
- [32] Ms. M. opposed the application by Mr. D. She sought an order that the application be reopened for the limited purpose of receiving evidence of the fact that Mr. D. has been charged criminally and the conditions of his release.
- [33] I will consider some of the evidence of recent developments in the analysis that follows. The parties agree that I should at least be aware of the fact that Mr. D. has been charged with sexual assault and assault, and the conditions of his release.
- [34] However, much of the new or fresh evidence tendered by Mr. D. is outside the scope of what can or should be received by the court following the conclusion of a contested application. I will address Mr. D's application in this regard at the conclusion of these reasons for judgment.

IV. ANALYSIS

A. Application for a s. 211 Parenting Report

- [35] During the hearing on September 7, 2021, I adjourned Mr. D.'s application for an order requiring a parenting report under s. 211 of the FLA. These are my reasons for adjourning the application.
- [36] First, the application was brought without leave prior to a JCC, contrary to Rule 7-1(2) of the Supreme Court Family Rules [Rules]. Mr. D.'s initial application to vacate or vary the protection order was also prior to a JCC. Assuming leave was required, I was prepared to relieve Mr. D. from the requirement to first attend a JCC for that application. The initial application was in response to a without notice application by Ms. M. The parties required clarification of the parenting arrangements prior to any available dates for a JCC.

- [37] However, I would not relieve Mr. D. from the requirement to attend a JCC before he brings an application under s. 211 requiring a parenting report. The application for a parenting report is not urgent. It raises issues that should first be discussed at a JCC, such as: whether a parenting report would be of assistance in this case; whether meeting with an expert would be unnecessarily intrusive on the lives of the children; and who would pay for the report and whether it would be prohibitively expensive for these parties.
- [38] Rule 7-1(2) is not a technical requirement that can be honoured in the breach. Rule 7-1(2) promotes the interests of justice by limiting interim applications in family law cases, and the associated expense to the parties and the public, to issues on which the parties truly cannot agree and genuinely require intervention by the court. Rule 7-1(2) also facilitates efficient use of court time and resources, by seeking to limit the number of filings and hearings in a family law case.
- [39] The purpose of re-opening Mr. D.'s application was to consider new or fresh evidence bearing on the need for a protection order and parenting arrangements. Allowing Mr. D. to add on an application for an order for a parenting report prior to a JCC would not assist with a decision on the immediately pressing issues; nor would it promote a just, speedy or inexpensive resolution of the case as a whole.
- [40] The second reason I would not consider Mr. D.'s application is that the notice of application did not provide a factual basis or a legal argument in support of an order for a parenting report. Ms. M. is entitled to notice of the grounds on which such an order is sought. The court is also entitled to expect that counsel will prepare application materials that comply with the Rules. Counsel who come to court with materials that do not comply risk having their applications adjourned: *Yake v. Chamberlain*, 2014 BCSC 1582.
- [41] Mr. D. did not press the application when it came on for hearing on September 7th. Counsel for Mr. D. said a parenting report was included in the notice of application merely in hopes Ms. M. would consent to the order sought. A proposal of this nature can be made in correspondence between counsel or at a JCC. Notices of application require a response and take up court time. Notices of application should not be filed except in compliance with the Rules.

B. Protection Order / Supervised Parenting

- [42] Ms. M. obtained the current protection order without notice to Mr. D. I must now consider the need for a protection order de novo. In doing so, I must consider the evidence of both parties and the circumstances that have occurred since the original order was made: *Martinuik v. Martinuik*, 2001 BCSC 424, at paras. 9, 14, citing *Waruk v. Waruk*, [1996] B.C.J. No. 2282 (C.A.), at para 22.

- [43] Section 183 of the FLA authorizes the court to make an order against a family member for the protection of another family member if the court determines that family violence is likely to occur and the other family member is an at-risk family member.
- [44] Section 184 of the FLA sets out the risk factors the court must consider. These include any history of family violence and whether any family violence is repetitive or escalating.
- [45] Ms. M. makes a number of allegations in her affidavits about Mr. D.'s mental health. Mr. D. denies many of these allegations, and advances a number of his own allegations about Ms. M.'s mental health, which Ms. M. denies.
- [46] I find conflicting and unsupported allegations of mental health issues unhelpful on these kinds of applications. Competing evidence of conditions like depression, anxiety and suicidal ideation can be unnecessarily provocative and stigmatizing. People with mental health challenges such as these can be excellent parents, provided they receive appropriate treatment.
- [47] Generally speaking, disputed issues around the mental health and ability of a parent should be advanced by way of proper expert evidence and decided at a trial. The exception is "mental health problems associated with a risk of family violence" (s. 184(1)(e)) of the FLA. The evidence in this case does not rise to that exceptional level.
- [48] More importantly, Ms. M. alleges family violence by Mr. D., including a sexual assault in 2020 and recent physical and verbal assaults. Mr. D. disputes the full extent of the family violence alleged by Ms. M.; he specifically denies sexually assaulting her.
- [49] It is not necessary for me to resolve the conflicts in the evidence to find that family violence occurred in this case. The evidence establishes that the relationship was marred by a pattern of conduct by Mr. D. aimed at exerting control over Ms. M. For the purposes of this application, I am satisfied that Ms. M. has shown a history of family violence by Mr. D., manifested in angry outbursts, passive aggression and, occasionally, physical violence. This pattern continued and appears to have escalated following the parties' discussion of separating. There is evidence of recent acts of aggression by Mr. D. toward Ms. M., both physical and emotional.
- [50] Ms. M.'s graphic description of the alleged sexual assault in September 2020 is consistent with a pattern of control and coercion in the relationship. Mr. D. is, of course, presumed innocent of the criminal charges against him. However, I find his claim that the encounter was consensual because the parties had not yet separated fundamentally unacceptable.

- [51] I accept Mr. D.'s evidence that he is addressing the conduct that he acknowledges made the relationship unhealthy. However, I am concerned the likelihood of further family violence following Ms. M.'s decision to terminate the relationship has not adequately diminished. I am unable to conclude with sufficient confidence that need to protect Ms. M. has passed. Mr. D. has shown himself to be capable of various forms of family violence against Ms. M. in the past. There remains an unacceptable risk of family violence against her in the future.
- [52] The evidence that the children are at risk of family violence is much less compelling. For the reasons discussed below, I will not make an order for equal parenting time by Mr. D.'s equal parenting time is not in the best interests of the children at this time. However, I am not convinced that a protection order is required to protect the children. Nor am I convinced that Mr. D.'s parenting time with the children must be supervised.
- [53] In *F.K. v. M.K.*, 2010 BCSC 563 [F.K.], Madam Justice Griffin (as she then was) accepted the statement by the court in *V.S.J. v. L.J.G.*, [2004] O.T.C. 460 (S.C.J.), that an order for supervised parenting "requires evidence of exceptional circumstances as it is just one small step away from a complete termination of the parent-child relationship".
- [54] Circumstances warranting a protection order or supervision requirement include violence, uncontrollable anger or irrational hostility that presents a risk to a child's safety and well being: *F.K.*, at para. 147, 156.
- [55] While there is evidence that Mr. D. has harmed Ms. M., there is no evidence he has sought to harm the children, physically or emotionally. There is evidence that he yelled at the children; however, verbal discipline alone is not evidence of a risk to a child's safety or well being. The evidence of his dangerous driving with the children in the car is troubling; however, there is no evidence of a pattern of conduct demonstrating a disregard for their safety or well-being.
- [56] In my view, the evidence of aggression or controlling behaviour by Mr. D. reflects his unhealthy relationship with Ms. M. and how he responded to the separation, rather than a risk to the children. I see no evidence of a risk that Mr. D. will act out his anger or denial against the children when Ms. M. is not present.
- [57] The fact that Ms. M. originally proposed unsupervised weekend parenting time for Mr. D. as a consent term of the divorce gives me comfort the children are safe in his presence. I do not think Ms. M. would have bargained with the safety of her children. Nor do I think Ms. M. would have left the children in Mr. D.'s care when she fled the home on May 3rd if she thought they were in danger.
- [58] Since the original protection order was made on May 13th, Mr. D. has demonstrated a strong interest in spending time with the children. I accept his evidence that he loves the children, and wants to remain in their lives. A continuing protection order or supervision requirement would disrupt that relationship unnecessarily in my view.

C. Interim Parenting Arrangements

- [59] Section 37 of the FLA requires that, in making an order with respect to parenting arrangements, the court must consider only the best interests of the child. Section 37(2) mandates that, in determining the best interests of a child, certain specific factors must be considered. Section 37(3) stipulates that an order is not in the best interests of the child unless it protects to the greatest extent possible the child's physical, psychological and emotional safety, security and well-being. Section 40(4) provides further guidance, by providing that there must not be a presumption that parenting time should be shared equally.
- [60] Based on the following factors from s. 37(2), I would order, on an interim basis, that Mr. D. have weekend parenting time with the children.

The children's health and emotional well-being

- [61] Although not requiring a protection order or supervision, the evidence of Mr. D.'s controlling behaviour is relevant to the appropriate interim parenting arrangements. I am concerned that, if he is granted immediate equal parenting time, Mr. D. will not fully address the issues he recognizes in his relationship with Ms. M., and relapse into unhealthy conduct that, while not dangerous to the children, would not be in the interests of their emotional well-being.
- [62] It is better, in my view, that Mr. D. begin with weekend parenting and establish a more healthy relationship with Ms. M. as a co-parent after separation, before progressing to equal parenting time.

The children's views

- [63] The children are both too young to have views on their parenting arrangements.

Relationship between the child and significant persons in his life

- [64] The most significant people in the lives of the children are their parents. They now also have the new romantic partner of Ms. M. in their lives. However, their relationship with their father remains significant and important. This militates in favour of regular and predictable parenting time with Mr. D.

History of child care

- [65] Ms. M. was the primary caregiver for the children during the relationship. Mr. D. was also actively involved in raising the children, and shared in a number of parenting tasks. He cared for the children alone on a number of occasions, including recently, in March and May of 2021. However, Ms. M. was primarily responsible for their care.

The child's need for stability

[66] There is no question that the children need more stability. The current situation is unpredictable and no doubt upsetting for them.

Ability of the guardians to exercise parenting responsibilities

[67] Both parents in this case appear capable of exercising parenting responsibilities. Their affidavits demonstrate that they are both capable of being loving and responsible parents. However, as stated, Mr. D. requires more time to improve his relationship with Ms. M. to be an equal co-parent.

Impact of family violence

[68] As discussed, the relationship between the parents was marred by family violence. While there is no evidence that Mr. D. was physically violent with either child, I am instructed by s. 37(1)(g) of the FLA to assess the impact of the family violence on their safety, security or well-being, regardless of whether it was directed at them.

[69] At least some of Mr. D.'s angry outbursts against Ms. M. will have had an impact on the children. His anger may have been situational. Any impact on the children may wane with time and his physical separation from Ms. M. However, the history of family violence against Ms. M. cannot be ignored in determining the best interests of the children.

Whether actions of a person responsible for family violence impairs their ability to care for the child and meet the child's needs

[70] Mr. D. deposes that he is committed to responsible parenting for his children. As stated, I accept his evidence that he is addressing the issues that arose during the relationship. However, his ability to care for the children as an equal co-parent with Ms. M. remains untested in light of his past conduct.

Ability of guardians to cooperate

[71] Based on the current evidence, I am concerned about the ability of the parties to cooperate on parenting arrangements. Equal parenting requires productive communication in which both parties feel safe to express their concerns and aspirations for the children.

[72] I trust that the communications between Mr. D. and Ms. M. will improve over time. I see evidence in their affidavits that both parties are capable of successful parenting after separation. But it will require time and hard work.

D. Application to Reopen the Hearing for New or Fresh Evidence

[73] Mr. D. applies to adduce new or fresh evidence which he submits will demonstrate a pattern of conduct by Ms. M. aimed at interfering with his relationship with the children and using the criminal justice system to gain an upper hand in the family law proceedings. Specific examples of the evidence Mr. D. seeks to rely on include:

- a) A passage from a supervised parenting report in which the supervisor recorded that S. cried and said her mom had a new friend that lived with them but she wanted Mr. D. to be her dad, and, in response to a question from Mr. D., said her mom wanted her to call the new friend dad.
- b) A further passage in the same report in which the supervisor recorded that S. said her mom does not let her use a family photo album.
- c) A passage from a police report in which an RCMP constable recorded that upon attending a wellness check on the children on May 7 (while they were in Mr. D.'s care), the constable found that E. was dropped off at daycare at the regular time and seemed normal and in good spirits.
- d) A passage from a different police report, recording that the Abbotsford police recommended that Mr. D. be remanded in custody, given that Ms. M. had expressed a fear for her safety and did not believe he would follow court imposed conditions given that he already breaches the family court order regularly (which Mr. D. says is false).
- e) Other passages from documents which Mr. D. argues evidence statements by Ms. M. that are at odds with her evidence in in this proceeding.

[74] In *Chan-Henry v. Liu*, 2017 BCSC 134 [Chan-Henry], Mr. Justice Smith found that the principles that govern re-opening an application are the same as those that apply to re-opening a trial, adopting the following summary of the discretion from *Zhu v. Li*, 2007 BCSC 1467, at para. 20:

From the cases, I conclude that the following principles apply to an application to re-open a trial to adduce fresh evidence:

1. Prior to the entry of the formal order, a trial judge has a wide discretion to re-open the trial to hear new evidence.
2. This discretion should be exercised sparingly and with the greatest care so as to prevent fraud and abuse of the court's process.
3. The onus is on the applicant to show first that a miscarriage of justice would probably occur if the trial is not re-opened and second that the new evidence would probably change the result.
4. The credibility of the proposed fresh evidence is a relevant consideration in deciding whether its admission would probably change the result.
5. Although the question of whether the evidence could have been presented at trial by the exercise of due diligence is not necessarily determinative, it may be an important consideration in deciding whether a miscarriage of justice would probably occur if the trial is not re-opened. (emphasis added)

[75] Mr. Justice Smith further elaborated on the third principle, emphasized above, at para. 16 of Chan-Henry:

A miscarriage of justice means something far beyond the possibility that a different result might have been reached. Rather, it means a result that would leave one party with such an unfair benefit or advantage at the expense of the other that a reasonable person would regard it as shocking and unconscionable.

[76] I do not agree with Mr. D. that a lower threshold applies when, as here, judgment on the application is under reserve. The parties may not know the actual result of the application when it is under reserve; but they know the issues and they know the evidence that was relied on at the hearing. The two part test remains: whether a miscarriage of justice would probably occur if the application is not re-opened, and whether the new evidence would probably change the result.

[77] In considering whether a reasonable person would regard it "shocking and unconscionable" not to re-open an application such as this, it bears repeating the dictum of the Court of Appeal in *Fitzgibbon v. Fitzgibbon*, 2014 BCCA 403: interim orders are primarily designed to provide short-term solutions until issues regarding the best interests of a child can be fully canvassed at trial. Disputed issues of fact and credibility are best resolved at trial and not by repeated interim applications (para. 22).

[78] Mr. D. has not shown that a miscarriage of justice would probably occur if the application is not re-opened to allow further evidence and arguments about Ms. M.'s conduct and credibility; nor has he shown that the new evidence would probably alter the result on this application.

[79] The issues on this application were whether to set aside a protection order and whether to order equal parenting time. The need for a protection order or supervised parenting time was argued based on the evidence of family violence. The appropriate parenting arrangements were argued on the basis of the best interests of the children.

[80] As stated, s. 37 of the FLA requires that, in making an order with respect to parenting arrangements, the court must consider only the best interests of the child. Section 37(3) of the FLA provides that the court may consider a person's conduct only if it substantially affects a factor in subsection (2) for determining the best interests of a child, and only to the extent it affects that factor.

[81] Mr. D.'s proposed new evidence has very little if any probative value on these factors. Nothing in the proposed new evidence would cause me to doubt my conclusion that equal parenting time is not in the children's best interests at this time. Mr. D clearly misses his children; but his complaint that Ms. M. has unreasonably denied his requests for more parenting time would not change the result on this application.

- [82] Moreover, nothing in the proposed new evidence would cause me to doubt my conclusion that Ms. M. suffered family violence and is at risk of further family violence. At most, the proposed new evidence shows that credibility will be an issue in these proceedings. However, no miscarriage of justice will occur if Mr. D. is denied an opportunity to re-open this application for the purpose of challenging her sworn evidence based on statements attributed to her in police reports.
- [83] In short, I am not convinced I should look outside the record the parties placed before the court on June 3rd to decide the issues on this application; nor am I convinced the hearing should be re-opened for re-argument by Mr. D.

V. CONCLUSION

- [84] The protection order by Master Taylor will remain in place with respect to Ms. M., her residence and her place of employment. The children will be excluded from the scope of the protection order.
- [85] Paragraph 2 of the order of Master Vos, amending para. 1 of the protection order, will be amended by deleting the words "professionally supervised".
- [86] On an interim basis, Mr. D. will have weekend parenting time with the children. If the parties cannot agree on the details of the parenting exchanges, they may ask to appear before me by telephone at 9:00 am on any day that I am available to resolve those issues.
- [87] Mr. D.'s application for a s. 211 report is adjourned.
- [88] The parties are directed to be prepared to discuss the protection order, interim parenting arrangements and a parenting report at the JCC scheduled for October 29, 2021.
- [89] The protection order will expire in any event on May 14, 2022.
- [90] I will not order any costs of the initial application by Mr. D. to set aside the protection order. The circumstances were such that both parties reasonably required a review of the without notice order and an interim decision on parenting arrangements.
- [91] Ms. M. is entitled to costs in the cause of the cross-applications heard on September 7, 2021.
- "Master Elwood"

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