

CANADA / JUDGMENT

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

2024 BCSC 1272

COURT

Supreme Court of British Columbia

DECIDED

11 July 2024

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

2024 BCSC 1272 K.H.D. v. O.O.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

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

2024 BCSC 1272

Date: 20240711

Docket: E210970

Registry: Vancouver

Between:

K.H.D.

Claimant

And

O.O.M.

Respondent

Before: The Honourable Justice Kent

Reasons for Judgment

Counsel for the Claimant:

E. Witzman

J. Bi, Articled Student

Counsel for the Respondent:

P. Boles

Place and Dates of Hearing:

Vancouver, B.C.

July 8-11, 2024

Place and Date of Judgment:

Vancouver, B.C.

July 11, 2024

Table of Contents

Overview and Background.. 3

Proceedings before the Florida Court. 9

Should the Court Decline Jurisdiction and/or Transfer any or all of this Supreme Court Proceeding to the Florida District Court?. 13

Property Claims. 20

Costs of Abandoned Appeal. 22

Summary of Orders Made. 23

Overview and Background

- [1] This high conflict family law case was filed in the Supreme Court of British Columbia in April 2021.
- [2] The claimant (the "Father") was born in December 1986. He is currently 37 years old. He is a US citizen.
- [3] The respondent (the "Mother") was born in November 1992. She is currently 31 years old. She too is a US citizen.
- [4] The parties met in 2012 when the Mother was in Germany completing her undergraduate degree.
- [5] Both parties belong to the Muslim faith. They met in Germany in 2012 where the Mother was completing her undergraduate degree. The Mother converted to Islam during that year.
- [6] The parties began living together in April 2013 and were married in New Jersey, USA on June 1, 2013. The family resided in New Jersey until 2017.
- [7] From 2013 to 2016 the Mother was enrolled in a Masters program and eventually obtained a Masters degree in psychology in New Jersey.

- [8] The Father's first marriage had ended in divorce. He and his first wife have a son together. He was working as a teacher in New Jersey. This is his second marriage.
- [9] The parties have two children of their own:
- a daughter, born in New Jersey on July 24, 2015, almost 9 years old; and,
 - a son, born in New Jersey on June 30, 2017, currently age 7.
- [10] Both children are US citizens.
- [11] In late July 2017, the family moved to British Columbia, settling first in Abbotsford and later in Surrey where they purchased and lived in the matrimonial home. That home has since been sold and the net proceeds currently sit in a lawyer's trust account pending further order.
- [12] The Mother was employed by the school district of Abbotsford as a school psychologist. She also enrolled in a five-year PhD program in clinical psychology with a concentration in neuropsychology. She took this program remotely through Fielding Graduate University in California. The fifth year of the program requires a work practicum.
- [13] The Father also worked as a teacher in the school district of Abbotsford. In June 2020, he was subject to professional discipline and a board-initiated transfer to a new school due to a substantiated sexual harassment complaint made by a female colleague. In September 2021, he was suspended without pay pending resolution of certain criminal charges arising from various incidents of family violence committed against the Mother. They included one charge of sexual assault and two other charges of assault, all arising out of different incidents.
- [14] The charges did not come on for trial until 2023. On April 14, 2023, the Father pleaded guilty to all three charges. The guilty plea was accepted by the court and was entered into the record. However sentencing did not occur until January 2024. At that time he was conditionally discharged on conditions which restricted direct contact and communication with the Mother for 24 months.
- [15] There was originally disagreement between the parties about the date of their separation. The Mother had claimed throughout the litigation that separation occurred on April 1, 2020, although the parties continued living under the same roof for a further 13 months thereafter. The Father took the position that the parties separated on January 3, 2021. Both parties agree that the Mother left the family home on May 3, 2021 and that they have not lived together anytime since.
- [16] The Mother obtained a Protection Order against the Father on May 14, 2021.

- [17] A divorce order was granted in this action on January 9, 2023. As part of the application for divorce, the Mother swore an affidavit in which she stated under oath that the date of separation was January 3, 2021. That is therefore the date of separation for the purposes of determining any outstanding issues respecting division of family property or debt.
- [18] The pleadings in this case are something of a muddle. The parties initially filed a Notice of Joint Family Claim. However less than one month later, the Father filed a Notice of Withdrawal from Joint Family Claim.
- [19] The following pleadings have been filed since the date of withdrawal:
- the Mother's Response to Family Claim filed May 13, 2021;
 - the Mother's Counterclaim filed May 13, 2021;
 - the Father's Response to Counterclaim filed June 24, 2021; and,
 - the Fathers Amended Notice of Family Claim filed July 19, 2021.
- [20] Various orders were made by the court in the early stages of this proceeding, including orders for child support and parenting matters. These were mostly superseded by the judgment of Master Bilawich dated August 30, 2022 granting the Mother's application to relocate with the children to the city of Celebration, Florida. The judgment and a later clarification by Master Bilawich also amended the parenting regime to facilitate the Father's parenting time with the children following the relocation.
- [21] No formal order has yet been filed with the court arising out of the judgment of Master Bilawich. Counsel apparently squabbled over the terms of that order, although they informed me during the hearing that agreement on a final form has been reached and the order has now been submitted for filing with the Registry.
- [22] The relocation application before Master Bilawich was contested by the Father. He objected to the court granting what would effectively be a final order by way of an interim application based on conflicting affidavit evidence. He argued that relocation was not in the best interest of the children because it would dramatically reduce his parenting time with them (at that time he had the children every Friday after school to Monday morning).
- [23] In his reasons for judgment, Master Bilawich dealt with the preliminary procedural objection as follows:

Relocation as an interim application

- [122] A preliminary issue is whether it is appropriate to decide the respondent's relocation application on an interim application, as opposed to requiring that this be addressed at trial. While there is considerable conflicting affidavit evidence and some gaps in the available evidence, there is also substantial uncontested evidence indicating a pattern of recent questionable actions on the claimant's part. In my view these qualify as harassment

which can be fairly characterized as a form of ongoing family violence. This appears to be having an adverse impact on the well-being of the children and is contrary to their best interests. In these circumstances, I consider it to be appropriate to address relocation on an interim basis, relying on the available uncontested evidence.

- [24] Another issue which Master Bilawich was called upon to determine was whether the application was governed by the provisions of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) ("DA") or the Family Law Act, S.B.C. 2011, c. 25 ("FLA"). He expressly concluded that the federal legislation was paramount and that it was therefore appropriate in the circumstances for the matter to be decided pursuant to the relocation provisions in the DA.
- [25] After reviewing all of the evidence, including the Mother's affidavit testimony waxing poetic about the benefits of living in Celebration, Florida (where her parents also had a home), Master Bilawich concluded that it was indeed in the best interests of the children to allow the Mother to relocate them to that state. The judgment speaks for itself in respect of the various factors militating in favour of relocation and why such a move was in the best interests of the children.
- [26] The Father appealed the relocation order granted by Master Bilawich. That appeal was eventually abandoned and there remains a question before this court regarding the appropriate award of costs for the abandoned appeal.
- [27] The Mother and children moved to Celebration, Florida in early September 2022. The Father followed suit shortly thereafter. Both parties and the children have resided in Florida since that time.
- [28] In March 2023 the Father filed a petition in the Circuit Court of the Ninth Judicial Circuit (Family Law Division) for an order that the court recognize and enforce some of the orders made in the British Columbia proceedings pursuant to s. 61 of Part 11 of the Florida Statutes (the "Uniform Child Custody Jurisdiction and Enforcement Act").
- [29] Various jurisdictional manoeuvrings have been made by the parties. Indeed each of them have at different times purported to file a "Jurisdictional Response" in this action challenging the jurisdiction of this court.
- [30] The Supreme Court Family Rules allow such Jurisdictional Responses to be filed following service of the originating pleadings in a family law case. Any party who files such a Response is effectively immunized against attornment to the court's jurisdiction that would otherwise occur by contesting the issues in dispute. In this particular case, of course, both parties were residents of British Columbia when this family law case was instituted and no jurisdictional issues existed. They both filed their respective pleadings and made subsequent applications, and hence have submitted to the jurisdiction of the court from the outset. The subsequent filing of any Jurisdictional Response does not nullify that attornment to the court's jurisdiction and, perhaps ironically, itself constitutes a nullity.

- [31] In any event, on September 5, 2023 the Father filed in this court his application for an order that it "decline to exercise jurisdiction" over these family law proceedings in favour of legal proceedings in Florida. He also seeks an order that the court transfer this proceeding "for all purposes" to the court in Florida. The legal basis for that relief is stated to be the Court Jurisdiction and Proceedings Transfer Act, S.B.C. 2003, c. 28 ("CJPTA"), Division 7 of the FLA and the common law doctrine of forum non conveniens.
- [32] This is the first of four applications that came before me. The other three have been filed by the Mother as follows:
- a requisition filed April 5, 2024 for a hearing on "the issue of costs of the abandoned appeal of the order of Master Bilawich pronounced August 30, 2022 (the relocation decision)";
 - an application filed April 18, 2024 for interim partial distribution of the net sale proceeds of the former matrimonial home and also for production by the Father of an updated form F8 Financial Statement as well as production of additional documents respecting counselling he has received and other financial material; and
 - an application filed May 27, 2024 seeking an in order allowing the Mother to relocate the children from Celebration, Florida back to Abbotsford, BC as of August 2024. She also seeks an order assigning her exclusive parenting responsibilities for the children "on an interim basis until at least the removal of criminal conditions".
- [33] Part of the jurisdictional manoeuvring referred to above was the unilateral setting by counsel for the Mother of this matter for trial. That resulted in an attendance before Madam Justice Shergill of this court on April 2, 2024, who issued an order directing that the hearing of the four applications above was to occur over five days starting July 8, 2024 and that the trial of the matter would be scheduled for 10 days commencing September 9, 2024.
- [34] And so it is that the parties appeared before me to argue the various applications. In that regard, I was greeted with seven three-inch binders that are both confused and confusing. Included in the material were numerous serial affidavits of the parties, filled with denials, argument and other inadmissible evidence that is regrettably so common in family law cases. Some of these affidavits were sworn by legal assistants attaching other affidavits which themselves attached yet further affidavits, none of it indexed. The other counsel produced her version of her Application Record, unnecessarily containing many documents already found in the Father's Application Record but, which rather remarkably, did not include copies of the Responses filed by the Father. The parties did not provide the court with any common chronology of key events or statement of basic background facts. Nor did they provide the courts with a common book of authorities, about eleven copies of all the cases to which they referred.

- [35] The frustration of the court with the manner in which these applications were presented is difficult to politely articulate. I would commend to counsel paras. 24-25 of *Mansion House Estates Ltd. v. Mason*, 2022 BCSC 1364 for recommendations how long chambers applications might be better organized for the benefit of judges labouring under an already oppressive workload.
- [36] In any event, the primary question that must first be addressed with respect to these applications is whether the Mother's relocation application and any other part of these proceedings are more appropriately determined by the court in Florida. For the reasons that follow I find such is indeed the case and I issue orders accordingly.

Proceedings before the Florida Court

- [37] It would have been helpful if the court had been provided with a separate chronology of all the steps taken in the Circuit Court of the Ninth Judicial Circuit (Family Law Division) and a separate booklet of they key filings in and orders made by that court. That was not done and so what follows in that regard may not be entirely accurate or complete.
- [38] As noted earlier, the Father filed a petition in the Circuit Court in March 2023 for an order recognizing and enforcing in Florida three of the orders that had been made in this action in BC. Both parties retained counsel in Florida for that parallel litigation.
- [39] The Application Record before me contained an affidavit dated March 15, 2024 sworn by Ms. Savard, counsel for the Father and which outlined some but not all of the steps taken in the District Court. The affidavit confirms that the Florida court,
- has registered, domesticated and stands ready to enforce the order dated September 15, 2021, issued by Master Elwood the order dated August 30, 2022 issued by Master Bilawich and the order dated January 19, 2023 issued by Master Bilawich clarifying the parenting time order and the reasons for judgment previously entered.
- [40] The affidavit explains that while Florida courts can register the Canadian orders to give "full faith and credit to them for enforcement purposes", the Florida court cannot assume jurisdiction to modify these orders or enter any (other) orders relating to the best interest of the minor children because there are pending "custody proceedings" in Canada (citing Florida statute 61.519 regarding Simultaneous Proceedings) which have not yet been terminated or stayed on the grounds that Florida is a more convenient forum. There is an exception for emergency situations.
- [41] The affidavit explained that Florida will assume and exercise jurisdiction if "the other jurisdiction [BC] determines that Florida is a more appropriate forum and dismisses the action in [BC]".

[42] The affidavit then referred to two orders of the Florida court entered on December 12, 2023 and again on January 30, 2024 following the hearing of the Father's petition for registration and enforcement. Presumably these are the orders by which the three BC orders were "domesticated" for enforcement purposes in the state of Florida. A copy of these orders was not attached to the affidavit but one of them to be was found elsewhere in the Application Records.

[43] The affidavit then states that, as at March 15, 2024, the Father had three Motions pending before the Florida court namely:

- A motion for Florida to assume Uniform Child Custody Jurisdiction and Enforcement Act Jurisdiction ("UCCJEA");
- a motion for "Judicial Conferencing" (between the Canadian and Florida courts to determine appropriate jurisdiction); and,
- a motion for contempt and enforcement (filed on March 13, 2024 and which has apparently been argued but is in abeyance pending the outcome of the jurisdictional applications before me).

[44] Other material elsewhere in the Application Record included two orders granted by the Florida court:

- a consent order issued on December 28, 2023 prohibiting the Mother from relocating with the minor children without express written agreement of the parties or a court order permitting her to do so; and,
- an order issued March 27, 2024 indicating that "the court will take no action until after the [jurisdictional] hearing in Canada".

[45] It appears that in late fall 2023, the Mother had advised the Father that she intended to relocate to Ann Arbor, Michigan for the practicum necessary to complete her PhD. The Father objected and filed an urgent motion for emergency relief on December 11, 2023. Hence the consent order referred to above.

[46] It appears that the Mother has now changed her mind about any practicum in Michigan and now wishes to come back to BC to resume employment and develop a psychology practice in this province.

[47] It will be recalled that part of the relief sought by the Father is an order transferring all of this family law proceeding to the Florida court pursuant to the provisions of the CJPTA. Section 14(3) of that Act makes it mandatory for the BC court to apply the laws of Florida when determining whether a court in that state has territorial or subject matter competence in a proceeding. As well, in exercising any discretion to decline jurisdiction in a matter, s.11(2)(b) of the CJPTA makes it mandatory for the court to consider the applicable Florida law as one factor in its determination.

- [48] This court is often called upon to apply "foreign" law in civil cases that have multijurisdictional components. In such circumstances, the relevant law of other jurisdictions is usually adduced into evidence by way of expert reports which must comply with all procedural requirements pertaining to such expert evidence including, of course, impartiality.
- [49] Technically speaking, the March 15, 2024 affidavit of Ms. Savard does not qualify as properly admissible expert evidence but the technical rules of evidence are often relaxed in family law cases as a matter of practicality and to avoid increased expense.
- [50] As a result of various questions from the bench regarding Florida law and procedure, the court was presented with another affidavit of Ms. Savard sworn July 10, 2024 as well as an affidavit sworn July 9, 2024 by Ms. Connors, counsel for the Mother in the Florida litigation.
- [51] Again at the request of the court but with consent of BC counsel, both Ms. Savard and Ms. Connors appeared by video/audio conferencing in order to answer questions of the court (and BC counsel) regarding the status of the Florida litigation and the practicality/constraints of having relocation and related parenting issues determined by the Florida court.
- [52] As a result of all this material, I am satisfied that the Florida court has both territorial and subject matter competence to decide the relocation and related parenting adjustment issues that have recently arisen in this case.
- [53] Indeed, I am also satisfied that the Florida court has and can also exercise jurisdiction to enforce the child support order issued by Justice Edelmann of this court on October 25, 2021 and to address any spousal support claim that the Mother may wish to pursue. [I would note here that, although I have been told that the Mother wishes to pursue a spousal support claim at the BC trial, her Counterclaim in these BC proceedings actually makes no claim for any such support].
- [54] The Florida attorneys also informed the court that, now that all real estate owned by the parties in BC has been sold and reduced to net proceeds deposited in a trust account, it is even possible for the Florida court to exercise jurisdiction over financial matters such as division of family property and family debt (as those terms are defined in the FLA), although Florida does not have any presumption similar to that found in the FLA of equal asset/debt division between spouses.
- [55] Having determined that the District Court in Florida has jurisdiction to entertain the family law claims between the parties in this case, the next question is whether it is appropriate for this court to now decline jurisdiction under any appropriate legislation in BC or simply as an exercise of discretion having regard to traditional forum non conveniens principles. I turn to that question now.

Should the Court Decline Jurisdiction and/or Transfer any or all of this Supreme Court Proceeding to the Florida District Court?

[56] I start by reciting the relevant provisions of the CJPTA regarding the court's discretion to decline jurisdiction and to transfer all or part of any proceeding to a court outside British Columbia:

Part 2 -- Territorial Competence of Courts of British Columbia

Application of this Part

2 (1) In this Part, "court" means a court of British Columbia.

(2) The territorial competence of a court is to be determined solely by reference to this Part.

Proceedings against a person

3 A court has territorial competence in a proceeding that is brought against a person only if

(a) that person is the plaintiff in another proceeding in the court to which the proceeding in question is a counterclaim,

(b) during the course of the proceeding that person submits to the court's jurisdiction,

(c) there is an agreement between the plaintiff and that person to the effect that the court has jurisdiction in the proceeding,

(d) that person is ordinarily resident in British Columbia at the time of the commencement of the proceeding, or

(e) there is a real and substantial connection between British Columbia and the facts on which the proceeding against that person is based.

Discretion as to the exercise of territorial competence

11 (1) After considering the interests of the parties to a proceeding and the ends of justice, a court may decline to exercise its territorial competence in the proceeding on the ground that a court of another state is a more appropriate forum in which to hear the proceeding.

(2) A court, in deciding the question of whether it or a court outside British Columbia is the more appropriate forum in which to hear a proceeding, must consider the circumstances relevant to the proceeding, including

(a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum,

(b) the law to be applied to issues in the proceeding,

(c) the desirability of avoiding multiplicity of legal proceedings,

(d) the desirability of avoiding conflicting decisions in different courts,

- (e) the enforcement of an eventual judgment, and
- (f) the fair and efficient working of the Canadian legal system as a whole.

Part 3 -- Transfer of a Proceeding

General provisions applicable to transfers

13 (1) The Supreme Court, in accordance with this Part, may

- (a) transfer a proceeding to a court outside British Columbia, or
- (b) accept a transfer of a proceeding from a court outside British Columbia.

(2) A power given under this Part to the Supreme Court to transfer a proceeding to a court outside British Columbia includes the power to transfer part of the proceeding to that court.

(4) If anything relating to a transfer of a proceeding is done or ought to be done in the Supreme Court, or in another court of British Columbia on appeal from the Supreme Court, the transfer is governed by the provisions of this Part.

(5) If anything relating to a transfer of a proceeding is done or ought to be done in a court outside British Columbia, the Supreme Court, despite any differences between this Part and the rules applicable in the court outside British Columbia, may transfer or accept a transfer of the proceeding if the Supreme Court considers that the differences do not

- (a) impair the effectiveness of the transfer, or
- (b) inhibit the fair and proper conduct of the proceeding.

Grounds for an order transferring a proceeding

14 (1) The Supreme Court by order may request a court outside British Columbia to accept a transfer of a proceeding in which the Supreme Court has both territorial and subject matter competence if the Supreme Court is satisfied that

- (a) the receiving court has subject matter competence in the proceeding, and
- (b) under section 11, the receiving court is a more appropriate forum for the proceeding than the Supreme Court.

(3) In deciding whether a court outside British Columbia has territorial or subject matter competence in a proceeding, the Supreme Court must apply the laws of the state in which the court outside British Columbia is established.

- [57] Section 12 above addresses conflicts or inconsistencies between the CJPTA and other acts of BC or Canada. In family law cases, this will mean one or both of the DA (federal legislation) or the FLA (provincial legislation), both of which contain provisions addressing jurisdiction. Where conflicts exist between the DA and the FLA, the doctrine of "paramountcy" requires the DA to be followed, at least in those cases where the parties are seeking a divorce, the subject matter falling within the jurisdiction of the federal government.
- [58] Sections 3 and 4 of the DA bestow upon this court jurisdiction to hear and determine both a "divorce proceeding" and a "corollary relief proceeding". "Corollary relief" includes such matters as child support, spousal support and parenting issues. Parenting orders under the DA can and usually do involve the allocation of both parenting time with and decision-making responsibility for the children. Section 16.1(7) of the DA, which addresses parenting orders, expressly includes orders authorizing or prohibiting the relocation of children, such as the order made by Master Bilawich in this case.
- [59] Section 6.3 of the DA imposes limitations on the court's jurisdiction to make parenting orders with respect to a child "habitually resident outside Canada". It provides as follows:

Child habitually resident outside Canada

6.3 (1) If a child of the marriage is not habitually resident in Canada, a court in the province that would otherwise have jurisdiction under sections 3 to 5 to make a parenting order or contact order, or a variation order in respect of such an order, has jurisdiction to do so only in exceptional circumstances and if the child is present in the province.

Exceptional circumstances

- (2) In determining whether there are exceptional circumstances, the court shall consider all relevant factors, including
- (a) whether there is a sufficient connection between the child and the province;
 - (b) the urgency of the situation;
 - (c) the importance of avoiding a multiplicity of proceedings and inconsistent decisions; and
 - (d) the importance of discouraging child abduction.
- [60] This provision has been only rarely considered in the case law but it is of critical importance to this case because the children have been residing in Florida since September 2022.
- [61] One of the cases which has addressed s. 6.3 of the DA is *A.J.L. v. J.G.L.*, 2022 BCSC 1344. In that case, the trial had been bifurcated. The first part of the trial was to decide the parenting arrangements for the child, including an application by one parent to relocate with the child to Australia. The second part of the bifurcated trial was to proceed after the relocation decision had been made and was to address remaining issues such as child support, spousal support and property division.

[62] The court authorized the relocation to Australia. Some six months later, the non-custodial parent applied for a declaration that this Court retained jurisdiction to make parenting orders in respect of the child. In response, the custodial parent "took no position" with respect to jurisdiction but requested that, in the event this Court finds it did not retain jurisdiction to make parenting orders, asked that the court provide a "non-binding opinion" with respect to the issues pursuant to Rules 7-1(15)(o) and 7-2 of the Supreme Court Family Rules.

[63] The first question the court was required to decide was whether a relocation order preserves the jurisdiction of the court to make subsequent parenting orders regardless of whether it contains an express clause to that effect. After reviewing relevant case law, the court concluded,

Where the court has authorized a child to relocate to another country, that court cannot retain jurisdiction over a child who has become habitually resident in the other country.

Regardless of the wording in [any] Relocation Order, the jurisdiction best placed to adjudicate on parenting issues with respect to [the child] is the jurisdiction in which [the child] is habitually resident.

[64] The court then went on to address s. 6.3 of the DA. It cited case law in the provinces of Alberta and Québec which had declined jurisdiction because,

Section 6.3 of the DA confers jurisdiction on provincial superior courts to make or vary a parenting order or contact order in respect of children not habitually resident in Canada only in exceptional circumstances and only if the child is present in the province in which the application is made.

[65] In the A.J.L. case, as here, none of the prescribed exceptional circumstances existed and, because the child was no longer habitually resident in British Columbia, "s. 6.3 of the DA dictates that this court does not have jurisdiction to make parenting orders in respect of [the child]".

[66] In the result, the court refused to make any parenting orders and also declined to provide the parties with the requested non-binding opinion on the probable outcome of their dispute under BC law. The court also declined to order costs against the parent who took no position on the jurisdiction application.

[67] On its face, A.J.L. is powerful authority for the proposition that this court no longer has any jurisdiction to deal with any parenting orders respecting the children in this case, including the Mother's relocation application. It is authority I am obliged to follow pursuant to the doctrine of horizontal stare decisis unless it can somehow be distinguished on some basis that renders it inapplicable.

[68] Counsel for the Mother valiantly argued several grounds for distinguishing the A.J.L. decision:

1. it involved a "final" relocation order after trial, as opposed to an interim order made before any trial (which is yet to be heard);
2. the decision did not reference certain case law, including a Court of Appeal decision in *Gill v. Delbeck*, 2020 BCCA 37, which held that the court had jurisdiction to make a contact order under the FLA regarding children no longer present in the province so long as they were habitually resident in the province when the family law case was first filed; and,
3. while the children are not technically speaking parties in the lawsuit, they ought nevertheless be deemed to be present in the province at the time of this second relocation application by virtue of the presence of their parents, the guardians of the children, who have attorned to this jurisdiction.

[69] I am not persuaded by any of these arguments.

[70] First, while the relocation order issued by Master Bilawich was indeed an interim order from a procedural perspective, it was effectively a final order for all practical purposes. At that time, the Mother was planning to move to Florida on what was then expected to be a permanent basis, as her evidence before Master Bilawich amply demonstrated. There were no submissions made by her to the effect that any such relocation was intended to be only temporary and certainly no provision was made in the order itself that it was either temporary or was subject to re-visitation at a trial.

[71] With respect to the case law addressing different provisions in the FLA, I suppose I am bound by the Court of Appeal authority, (I must say I have some reservations about the conclusion) but it is in any event based upon different language in a different statute, one which has no application to this particular situation.

[72] Lastly, the concept of habitual residence of children has nothing whatever to do with whether or not lawyers appear in a BC court on behalf of parents living in another country. The test is amply described in the A.J.L. decision. These children have been living in Florida for almost two calendar years and already two school years. There is simply no reasonable argument to be made that they are any longer habitual residents of BC.

[73] I agree with the authority referred to above that where a court has authorized children to relocate to another country, once those children become habitually resident in that other country, it is the courts of that country who are best placed to adjudicate on parenting issues, including any further relocation of the children. This is particularly so where the parent who originally opposed the first relocation has followed the other parent and the children to the new country and has established a new residence there to facilitate parenting time with the children.

- [74] Even if this court had jurisdiction to address the Mother's most recent relocation request, I would decline to exercise that jurisdiction on the above grounds and on the basis that the District Court of Florida is a much more convenient forum to decide the matter having regard to the parties' and the children's present circumstances in that particular state.
- [75] I recognize that the Mother may have changed her mind about the relocation and that she has already taken steps to facilitate moving the children to Canada by securing Canadian citizenship for both herself and them. As indicated, however, weighing the factors animating this conduct is best undertaken by the court in the jurisdiction from which the parent wishes to depart.
- [76] So too with the issues of child and spousal support. In my opinion, and for much the same reasons, any dispute regarding continued child support or the making of any spousal support order at first instance should be decided by the court in the state in which the parties and the children presently reside and where the parents make their living. As I understand it, the Father has paid all amounts owing with respect to the only child support order that has been made, even though that order has not been "domesticated" into the Florida courts (unlike the relocation and parenting orders).
- [77] I might add that, while the court is declining jurisdiction regarding any parenting matters and any claims for child or spousal support, the question of jurisdiction may have to be revisited if the Mother and the children do in fact return to BC sometime in the future. At that point, the court in BC will regain territorial and subject matter competence and it is possible, perhaps even probable in this high conflict case, that the BC court will be called upon to make further prospective rulings regarding parenting and support issues.
- [78] It appears that the court's jurisdictional ruling is alone sufficient under Florida law to allow the District Court to entertain the applications pending before it as well as any relocation petition that the Mother may choose to file (or for that matter, any petition she may choose to file for recognition and enforcement of the child support order made by the Canadian court should that ever become necessary). In these circumstances, it is unnecessary to issue an order under the CJPTA formally requesting the Florida District Court to accept the transfer of any part of the British Columbia proceeding and I make no order to that effect at this time.
- [79] However, should the BC action pose any other procedural or substantive obstacles to the continued pursuit of proceedings in the District Court of Florida, the parties (or the District Court) are certainly at liberty to request any necessary assistance from this court to resolve the problem.

Property Claims

- [80] The court is retaining jurisdiction to deal with the distribution between the parties of any "family property" or "family debt", as those terms are defined under the FLA.

- [81] As noted earlier, property division is not addressed in the DA but rather is governed by Part 5 and Part 6 of the FLA. Generally speaking, subject to any exceptions in the act or a court order providing otherwise,
- spouses are both entitled to family property and responsible for family debt regardless of the use or contribution; and,
 - the act and the date of separation crystalizes each spouse's right to an undivided half interest in all the existing family property and their equal responsibility for family then existing debt.
- [82] As with issues involving child or spousal support, proper disclosure is required of each party's part property and financial interests. No doubt Florida courts have also recognized, as have the courts in Canada, that improper disclosure is the cancer of family law litigation.
- [83] In BC, one of the chief mechanisms for securing proper financial disclosure is the requirement that each party complete and, as necessary update, a detailed sworn Financial Statement in the form prescribed by the Supreme Court Family Rules. This statement discloses income and tax returns, as well as assets and debt.
- [84] Both parties filed such Financial Statements shortly after this family proceeding was started. Their primary asset was the matrimonial home which has since been sold and the net proceeds of \$200,000 are being retained in the trust account of counsel for the Mother. The residual property and debt issues are relatively insignificant and will likely settle without trial.
- [85] One of the Mother's applications before me was for an interim distribution of \$60,000 from the trust monies and also for an order requiring the Father to produce an updated sworn Financial Statement with all the required attachments including but not limited to copies of all returns filed in Canada and the USA, since the date of separation, personally and for any entity with which he has financial involvement, including charities, corporations etc.
- [86] The Mother also seeks production of an updated list of documents by the Father and an order that he produce copies of all bank/credit card statements and income records for 2022-2024 not already produced in the litigation.
- [87] I agree that an interim distribution of the net sale proceeds is appropriate, although in my opinion it is only fair that both parties receive equal amounts in that regard. I therefore issue an order requiring \$60,000 from the trust account proceeds to be forthwith paid to each of the Father and the Mother. The balance of the trust monies are not to be further distributed except by agreement of the parties or further order of the court.
- [88] I also agree that it is appropriate to have the Father, indeed both parties, produce an updated form F8 Financial Statement with all required attachments as set out above. These statements must be completed and served upon the other side within 30 days of this order. They will likely prove helpful not only here in BC but also in any Florida litigation.

- [89] Similarly, I order that both parties produce and exchange within 30 days a copy of all bank/ credit card statements and income records for the years 2022-2024 that have not been previously produced in this action.
- [90] Lastly, I decline to issue the order requested by the Mother requiring the Father to produce unredacted copies of the "complete files" of the three counsellors identified in para. 3 of the said Notice of Application. These are the counsellors who provided treatment to the plaintiff as part of or prior to the sentencing in his criminal proceedings. It is not likely this otherwise intrusive investigation will produce anything of much probative value, and its production has the potential to inflame the already high conflict nature of this dispute.
- [91] Having said that, my order is not designed in any way to restrict the Florida District Court from ordering production of this material should it be considered necessary for the purposes of any parenting motion that may be brought in that forum.

Costs of Abandoned Appeal

- [92] The fourth "application" before me was the Requisition for a hearing regarding costs of the Father's abandoned appeal of the Bilawich orders in this case. The Mother seeks special costs, arguing that the Father initially imposed unreasonable deadlines for completion of responses, arguments and a related hearing date, even though he had already filed claims in the Florida District Court (which had no jurisdiction for lack of the required residency), and which was then followed by protracted delay tactics designed to stave off the inevitable but which put the Mother to unnecessary costs.
- [93] I do not agree that special costs are warranted in the circumstances. The Mother herself took advantage of the premature Florida litigation to raise a completely invalid claim that the BC court had lost jurisdiction and therefore the appeal could not proceed. Suffice it to say, the litigation tactics of both parties appears to have been questionable from time to time. Neither party is the proverbial innocent entitled to cast the first stone.
- [94] I order that the Mother is entitled to the costs of the abandoned appeal in any event of the cause to be assessed as a matter of ordinary difficulty. If the parties are unable to agree on the amount, it will be referred to the registrar for assessment in the usual manner at the conclusion of these proceedings.
- [95] The Father is entitled to the costs of his jurisdiction application and also of his response to the Mother's relocation application that the court has declined to hear for lack of jurisdiction.
- [96] As both parties are subject to, and the beneficiary of, the order regarding the interim distribution and the production of further disclosure, each shall bear their own costs of that application.

Summary of Orders Made

[97] In summary, this court declares and orders:

1. The children of the marriage are habitually resident in Florida;
2. The District Court of Florida has jurisdiction to determine all parenting issues between the parties, including any motion by the Mother to relocate the children to BC;
3. This court has no jurisdiction to determine the said parenting issues;
4. This court declines to exercise any jurisdiction it may have to determine any issues between the parties respecting child support or spousal support, on the basis that the District Court of Florida is a more appropriate and convenient forum for such matters;
5. This court has and retains jurisdiction to determine all issues of family property and family debt arising from the separation and divorce of the parties;
6. \$60,000 of the net proceeds of the sale of the matrimonial home, currently being held in trust, are to be forthwith distributed to each of the parties;
7. Costs of the Father's abandoned appeal of Master Bilawich's orders are awarded to the Mother in any event of the cause and to be assessed as a matter of ordinary difficulty;
8. Cost of the Father's application filed September 5, 2023 and his Response to the Mother's application filed May 27, 2024 are awarded to the Father in any event of the cause, to be assessed as a matter of ordinary difficulty;
9. No costs are awarded to either party respecting the Mother's application filed April 18, 2024.

"Kent J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/24/12/2024BCSC1272.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/k-h-d-v-o-o-m-2024>

Prepared on 27 October 2026 · Esheria