

CANADA / JUDGMENT

K.M. v. F.A.C.

2025 BCSC 1572

COURT

Supreme Court of British Columbia

DECIDED

4 March 2025

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2025 BCSC 1572 K.M. v. F.A.C.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

K.M. v. F.A.C.,

2025 BCSC 1572

Date: 20250304

Docket: E71513

Registry: New Westminster

Between:

K.M.

Claimant

And

F.A.C.

Respondent

Before: Associate Judge Nielsen

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

S. Saran

Counsel for the Respondent:

E. Szilagyi

Place and Date of Hearing:

New Westminster, B.C.

March 4, 2025

Place and Date of Judgment:

New Westminster, B.C.

March 4, 2025

- [1] THE COURT: This is an application by the claimant for multiple orders. Those orders are: to have primary residence of the children; an order pursuant to s. 45(3) of the Family Law Act that the respondent's parenting time be supervised by a professional supervisor as agreed between the parties with times and dates to be mutually agreed; an order that respondent be responsible for paying the costs incurred to hire a professional supervisor.
- [2] The remedies outlined at paragraphs 4, 5, 8, 9, and 10 are all agreed.
- [3] The claimant seeks an order pursuant to s. 90 of the Family Law Act that the claimant have exclusive possession of the family residence at 2717 Anvil Green Street in Port Coquitlam, British Columbia, and the contents, until further order of the court, and that there be an order pursuant to s. 222 of the Family Law Act that the respondent not attend at the former family residence, except for the purposes of exercising parenting time by way of pickup and drop-off.
- [4] At paragraph 11, the claimant seeks an order that the expert who is to assess and appraise the family home be either one agreed by the parties or be Linquist or Bakerview or Macintosh.
- [5] And finally, the claimant seeks an order that within 14 days of this order, the respondent is to provide the claimant with a copy of his entire medical history.
- [6] There is no date set for trial.
- [7] The claimant is 45 years old and the respondent is 56 years old.
- [8] The claimant is currently employed by ICBC and makes slightly less than \$80,000 a year. The respondent had been employed by the IUOE Local 118 Union, and when employed, had an income just over \$150,000. He has since been fired by the union. There is a case ongoing, I am advised, the respondent is seeking reinstatement, but at the moment he remains unemployed.
- [9] The parties have two children: L.F.C., who is 15, and L.V.C., who is 13 years old.

- [10] There is an unfortunate history between the parties which includes allegations of family violence. There is a history of Provincial Court orders for protection that were ordered against the claimant, based upon allegations by the respondent, which have had substantial repercussions against her.
- [11] There is an allegation that the children underwent alienating behaviour by the respondent, and there is evidence to substantiate that allegation.
- [12] The respondent alleges that the claimant has mental health issues and the claimant alleges that the respondent has mental health issues. I do have the benefit of the claimant's family doctor's note, where she, I believe, indicates that the claimant does not have any mental health issues as far as her doctor is concerned. The doctor has been the claimant's treating physician for nine years.
- [13] The respondent, on the other hand, admits that he does have mental health issues, and indeed there is concerning evidence of the ramification of those mental health issues in terms of psychiatric issues and incidents. The union dismissed the respondent and indicated concerns about his behaviour. There is a letter from the union dated June 17, 2024, which outlines some of those concerns including hyperactive and aggressive behaviour, roaring around in a high performance Camaro and posting it on social media, driving the car in a dangerous and irresponsible way, aggressive conduct towards a pension trustee at executive board meetings of the union, conflicts with other co-workers, and threats made in telephone calls. The union letter refers to "almost daily drama, every day some new crisis always with you at the centre." The union's letter notes aggressive conduct that has involved physical conflicts or threats of physical conflicts, and there is even a reference to the respondent assaulting the union's lawyer.
- [14] There is also evidence from the neighbour which is concerning as well, and attributes negative behaviour towards the respondent. There is evidence of the principal from L.V.C.'s school contacting the claimant out of concern for L.V.C. and the respondent's behaviour.
- [15] There is also evidence where the respondent's own psychiatrist, Dr. Yoo [phonetic], who contacted the claimant while she was away on a trip in Lithuania on June 27, 2024 to express concern regarding the respondent's mental health.
- [16] Then there is the evidence of the children themselves since their reunification with their mother. I have had the benefit of listening to a recording of the son, L.F.C., and it is clear to me from the recording that he has fears concerning his dad and he also relates other concerns for his younger sister, L.V.C.
- [17] What is typical in cases like this is you have the claimant saying one thing, you have the respondent saying another. One of the benefits I have here is the evidence from a whole swath of third parties, which include the neighbour, the union, the principal, the respondent's own psychiatrist, and the children themselves.

- [18] The respondent is concerned about the allegations of family violence being somewhat obtuse and not specific, but I am satisfied there are lists of specific incidents that would clearly fall within the realm of family violence. There are at least two incidents where the respondent himself admits to his inappropriate behaviour, but either tries to justify it, or is contrite concerning it. One is kicking L.F.C. out of the family home in February of 2025 without a jacket, where L.F.C. had to go stay with a friend, and another is waking up L.V.C. at 5:30 in the morning, smacking her with a cereal box, and berating her for making a mess, and then requiring that she clean it up. As I indicated, the respondent has indicated he is contrite about that, that he regrets it, and he has in fact made efforts to get some counselling in that regard.
- [19] The respondent is still under the care of Dr. Yoo and he is seeing a counsellor as well.
- [20] There is currently a protection order in place which was issued by Associate Judge Hughes on February 28, 2025. It expires today at five o'clock, unless extended by further order of the court, and the claimant is seeking that the protection order be extended.
- [21] The respondent submits that, looking at the past, there has been no police involvement or MCFD involvement with respect to the respondent. I do note that recently that has changed. The MCFD is now investigating the behaviour of the respondent and I am advised that the police are investigating an allegation of assault by the respondent against his son, L.F.C., and both of those investigations are still ongoing and outstanding. To be fair to the respondent, the police allegation was only levied this past Friday, which would be February 28, 2025.
- [22] In my view, there are concerns regarding the children's safety and psychological well-being. As I indicated, I am satisfied that the children have undergone alienating behaviour and they have been exposed to family violence at the hands of the respondent. The question becomes whether or not that meets the threshold of s. 183 of the Family Law Act, whereby a protection order is necessary.
- [23] The respondent has agreed to conduct orders and takes the position that these would be sufficient.
- [24] One concern I have is the respondent's current psychological state. We can see evidence of past psychiatric behaviour and there is evidence that inappropriate behavior may be ongoing, particularly insofar as his conduct towards the son and daughter are concerned.
- [25] Accordingly, I am going to make the order extending the protection order, and I am going to make it for another four months, and it is interim, without prejudice, so that will take us to June 9, 2025. Unless extended by agreement, or further court order, the protection order will expire June 9, 2025.
- [26] That should give the respondent ample time to try and repair his relationship with the children through agreement, in terms of parenting.

- [27] And I am going to make an order that the respondent is entitled to supervised parenting time, and that will be by a professional supervisor or another person whom the claimant is comfortable with, and the cost of that will be borne by the respondent. And that supervised parenting order again is interim, without prejudice, and if, for example, and this is not part of a court order, but if there is professional evidence from a psychiatrist that suggests that the respondent's condition and mood is stable, then that would be a basis to review the need for supervision.
- [28] That now takes us to the other orders sought. I am going to deal now with the exclusive possession of family residence and the claim for primary residence of the children.
- [29] First, in *Glowacki v. Nesbeth*, 2021 BCSC 535, Master Bilawich, as he then was, canvassed the applicable law with respect to the exclusive occupancy of a family residence, and notes at paragraph 69 that to obtain an order for exclusive occupancy, the applicant must show, first, that shared use of the family residence is a practical impossibility, and both parties are in agreement that Part 1 of the test is met here, and second, that the applicant is the preferred occupant of the property, on a balance of convenience, and that in such an application, that onus of proof rests with the applicant.
- [30] Under the second part of the test, which is the preferred occupant on a balance of convenience, it is an objective test and some of the factors to be considered are any acquiescence or delay, the conduct of the parties, the economic position of the parties, alternate living accommodations available to either of the parties, and other relevant circumstances such as health.
- [31] In my view, the balance favours the claimant. The conduct of the respondent has been such that the balance of convenience does not favour him.
- [32] In terms of living arrangements, I acknowledge that the respondent is currently out of work. However, the evidence indicates he has come into some sort of sizeable inheritance from his father.
- [33] He is currently living in a hotel and, in my view, he has other alternatives.
- [34] As an adjunct to that, the claimant will be responsible for all expenses related to the maintenance and the upkeep of the family residence, including utilities. The respondent is not in any way financially responsible for the family home while it is being occupied by the claimant.
- [35] I also note that the family home is currently without a mortgage and that the respondent is making an excluded claim for a chunk of the value of the equity in the property based upon, as I understand it, two factors: that from his inheritance, he paid off the mortgage, and secondly, that when the parties got together, he brought in money from a prior residence that he owned. That, of course, is a matter to be left for another day, and I do not see any threat to his claim by granting exclusive occupancy to the claimant.

- [36] I am going to make the exclusive occupancy order interim and without prejudice, and I am going to put a sunset clause on that of six months, so that will expire September 8, 2025, unless extended by agreement of the parties or further order of the court.
- [37] Turning now to the s. 211 report, the respondent is agreeable to the report. He is agreeable to it being paid 50/50. However, he is seeking that, in addition to the points of reference in paragraph 4, that those be expanded to the ability and willingness of each parent to satisfy the needs of the children. In addition, that the needs of the child be addressed in the report, including the children's material, physical, developmental, emotional, and educational needs, and that the views of the children be addressed.
- [38] And there is also a request for a blanket consideration of the factors in s. 37(2).
- [39] Is there any objection to that, Mr. Saran? I did not really hear you respond to that.
- [40] CNSL S. SARAN: There's no objection.
- [41] THE COURT: Okay, then that is going to go as sought by the respondent, and the cost of that assessment will be shared equally between the parties.
- [42] There was also reference by the respondent to an evaluation of the value of each party's pension. I do not actually have an application in that regard in front of me, so I am going to decline to make any ruling in that regard, but that is certainly something that is open to the parties to discuss further and reach agreement.
- [43] The order at paragraph 7, pursuant to s. 222 of the Family Law Act that the respondent not attend at the former family residence except for the purposes of exercising parenting time, pickup, and drop-off, or for such other purpose as agreed or by further court order is granted. That order is consented to.
- [44] I am not going to make an order under paragraph 11 for whoever does the appraisal of the home. I think you need to discuss that further. Like I said, I think that is a tempest in a teapot. I think everyone wants to get the maximum value out of the house, so I think that just really warrants a further discussion.
- [45] In terms of the order that the respondent provide the claimant a copy of his entire medical history and diagnosis, medication prescribed, and all other medical reports, I am going to adjourn that generally. My experience is that the s. 211 reporter is going to make a request for that, and if the respondent wants to basically put all this behind him, he is going to have to adduce psychiatric evidence to show that he is stable, things are back on track, and it can be dealt with. I did note in the materials there was a request by the union for an IME by Dr. Yoo. I did not see that in the materials. I do not know if that has been provided but, you know, that is a red flag that it is out there somewhere.
- [46] Is there anything else I have not addressed?
- [47] CNSL S. SARAN: Costs.

[48] THE COURT: Ms. Szilaagyi?

[49] CNSL E. SZILAGYI: I mean, I would suggest costs in the cause or -- but actually, it would be our submission that perhaps the parties should bear their own costs in this case. I think the conclusion of this -- of Your Honour's judgment and so forth is going to cause my client a lot of stress and a lot of -- and I think it's also going to cause a lot of strife between the parties going forward, and I -- it is our respectful submission that a costs order would just add to that strife and animosity between the parties.

[50] THE COURT: Ordinarily costs follow the event, the substantial winner gets the costs of the application, and I do not see any reason on a principled basis to depart from that rule. The applicant will have their costs of the application in the cause.

"Nielsen A.J."

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