

CANADA / JUDGMENT

Kitt v. Dutton

2022 BCSC 177

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 177 Kitt v. Dutton

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kitt v. Dutton,

2022 BCSC 177

Date: 20220120

Docket: E203111

Registry: Vancouver

Between:

Aaron Emil Kitt

Claimant

And:

Taylor Dawn Dutton

Respondent

Before: Master Elwood

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant

C. Heit

The Defendant, appearing on her own behalf:

T. Dutton

Place and Date of Hearing:

(via teleconference)

Vancouver, B.C.

December 8, 2021

January 19 and 20, 2022

Place and Date of Judgment:

Vancouver, B.C.

January 20, 2022

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- [1] THE COURT: There are a number of cross-applications before me, the most substantial of which concern interim parenting arrangements for a young child and an application by her father for an order that the parties jointly retain Dr. Elterman to prepare a report pursuant to s. 211 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] and equally share the cost of that report.
- [2] The father seeks regular, equal shared parenting time with the child on a three-three-four-four schedule. The mother proposes a schedule that would provide the father with weekend parenting time. The mother also seeks an option on two weeks' notice for the child to spend overnight on Saturday or Sunday with her family.
- [3] Both parties allege that the other has wrongfully denied their parenting time and seek compensatory parenting time and fines.
- [4] The parties have worked on a shared holiday and special occasion schedule that I will address at the conclusion of these reasons.
- [5] The parties seek orders regarding parental responsibilities and decision making on an interim basis. They also seek orders dealing with communications and conduct. Finally, each party seeks production of various categories of documents relating to income and employment.

Background

- [6] Mr. Kitt and Ms. Dutton began living together in a marriage-like relationship in November 2016. They separated on October 13, 2020. In total, they cohabitated for just under four years. They have one child, Audrey, who was born on July 17, 2019. Audrey is currently two and a half years old.
- [7] Mr. Kitt is 32 years old. He is self-employed as an electrical contractor. Mr. Kitt's work is mainly on site at clients' businesses or homes within the Greater Vancouver area, primarily in North Vancouver, West Vancouver, and Vancouver. His work schedule varies somewhat week to week.
- [8] In 2018, Mr. Kitt reported income of \$44,708. In 2019, he reported income of \$58,030. His F8 financial statement filed in April 2021 reports income of \$34,000. Mr. Kitt took five weeks' paternity leave after Audrey was born. His work was also affected by the outbreak of COVID-19. I understand that he is now back to working full-time.

- [9] Ms. Dutton is 29 years old. Prior to taking maternity leave, she was employed as a sales and leasing associate with Wesgroup in Vancouver. In 2018, Ms. Dutton reported income of \$138,747. In 2019, she reported income of \$115,725. In her F8 financial statement filed January 2021, she reported income of just \$58,000. In part, this reflects her maternity leave. Also, in September or October 2020, Ms. Dutton became involved in a dispute with Wesgroup, after they refused to allow her to return to her former position and salary. Ms. Dutton was terminated by Wesgroup in January 2021. Since losing her job, she has attended courses at BCIT; but she is currently a stay-at-home mother with no current plans to return to work.
- [10] There is some dispute between the parties concerning their incomes. Further disclosure is required to draw any definitive conclusions. For the purposes of these applications, I accept Ms. Dutton's evidence regarding her limited financial means and her decision to remain at home with Audrey at this time.
- [11] Mr. Kitt currently resides in a two-bedroom rental apartment in North Vancouver. Ms. Dutton currently resides in a townhouse in Langley owned by her grandmother.
- [12] Prior to the separation, the parties and Audrey lived in a townhouse in North Vancouver, referred to as the "Lillooet property". The Lillooet property was purchased some time before the parties moved in by Mr. Kitt's mother, Janice. Mr. Kitt's mother lived with the parties and continued to own an interest in the home.
- [13] Ms. Dutton was, prior to the separation, and remains, Audrey's primary caregiver. During the relationship, Mr. Kitt worked full-time, apart from his parental leave. Prior to the separation, Mr. Kitt worked Monday to Friday and Ms. Dutton stayed home with Audrey.
- [14] Mr. Kitt deposes that he was involved in the pregnancy and Audrey's birth, and provides examples of his involvement. Mr. Kitt further deposes that he played an active role in Audrey's life after she was born, and gives examples.
- [15] This evidence is disputed somewhat by Ms. Dutton. She deposes that Mr. Kitt did not take on his fair share of child-rearing responsibilities while the parties were together, and that this was one of the reasons why they separated.
- [16] Despite this disagreement, it is evident the parties shared in various care tasks for Audrey during the time they were together and immediately following their separation.
- [17] The parties were both involved in making decisions for Audrey. They discussed how they wanted to raise Audrey. They attended medical and dental appointments for Audrey together and occasionally separately, although Ms. Dutton was Audrey's primary medical advocate, in particular in relation to a hip condition.

- [18] Post-separation, Mr. Kitt has organized various activities for him and Audrey to do together during his parenting time. Mr. Kitt's mother, Janice, deposes that Mr. Kitt is a loving and devoted father who consistently puts Audrey's needs and best interests first. Janice also acknowledges that Ms. Dutton is a lovely mother who is loving, caring, and attentive to Audrey.
- [19] Mr. Kitt deposes, and I do not think it is disputed, that he and Audrey have formed a strong father-daughter bond. Janice deposes that Mr. Kitt and Audrey have a good relationship and that Audrey is very comfortable with Mr. Kitt.
- [20] Ms. Dutton deposes that Audrey is also very well bonded and comfortable with her, about which I do not think there is any doubt.
- [21] The Lillooet property was sold in October 2020. The sale appears to have been a matter of some conflict, at least some of which occurred in front of Audrey, unfortunately. Ms. Dutton deposes that she decided to remove herself from the situation, which she found to be very stressful. On October 3, 2020, she relocated with Audrey to Langley. Ms. Dutton subsequently took steps to change Audrey's daycare from a facility in North Vancouver to one in Langley.
- [22] Mr. Kitt disapproved of this move. However, it was clear Ms. Dutton could no longer live under the same roof with Mr. Kitt. Certainly, she could no longer live in the Lillooet property, because it was being sold.
- [23] In November 2020, the parties reached a form of parenting agreement with assistance of the counsel for Mr. Kitt. The agreement was outlined in a letter from Mr. Kitt's counsel dated November 12, 2020:
- a) Mr. Kitt agreed that Ms. Dutton would be permitted to reside in Langley with Audrey.
 - b) Mr. Kitt would exercise parenting time with Audrey from Saturday morning at 10:00 a.m. to Sunday at 4:45 p.m., on one weeknight visit to be arranged between the parties, and during two FaceTime calls each week.
 - c) Mr. Kitt would consent to Audrey attending daycare in Langley.
- [24] The parties also addressed exchanges and driving responsibilities, which would subsequently become matters of dispute.
- [25] Mr. Kitt's counsel drew up minutes of settlement reflecting, among other matters, the parenting arrangements to which I have referred. To date, neither party has signed the minutes of settlement.
- [26] Mr. Kitt subsequently moved within North Vancouver, but as I understand it, only about four kilometres away from the Lillooet property.

- [27] Mr. Kitt alleges that very shortly after the parenting agreement was made, Ms. Dutton refused to follow through because she did not want to do any of the driving.
- [28] Further, a dispute arose between the parties in early December 2020 when Ms. Dutton was attempting to retrieve belongings from the Lillooet property. Around this time, Ms. Dutton sent a number of messages to Mr. Kitt that she regrets. She tried to have Mr. Kitt pick up Audrey to take care of Audrey while she was moving her belongings. Mr. Kitt, she says, declined to take care of Audrey because he said that she was required to drop Audrey off at his home. Ms. Dutton ended up leaving Audrey in her mother's care and inviting Mr. Kitt to pick her up there, which he declined to do. This incident gave rise to a fair amount of conflict.
- [29] On December 15, 2020, the parties appeared before Justice Smith on a short leave application by Mr. Kitt. Smith J. granted various orders, including communication and conduct orders, and an order that Mr. Kitt would have compensatory time with Audrey on December 25 through December 27 of that year.
- [30] On April 14, 2021, the parties agreed to change some of the terms of the parenting agreement. The arrangements remained essentially that Mr. Kitt would have weekend parenting time with Audrey, and Audrey would primarily reside in Langley with Ms. Dutton.
- [31] On October 29, 2021, the parties appeared before me on an application by Ms. Dutton for a parenting order and an application by Mr. Kitt to adjourn the application. I granted the adjournment and made an interim order based essentially on the parenting agreement, providing weekend parenting time for Mr. Kitt.
- [32] Mr. Kitt alleges that Ms. Dutton has breached the terms of Smith J.'s order by making derogatory and negative comments about Mr. Kitt and calling him names. He alleges that Ms. Dutton has breached the terms of the parenting agreement and subsequent modifications by refusing to do the driving, and more specifically by taking the position that unless Mr. Kitt picks Audrey up in Langley, he will not have any parenting time. Mr. Kitt also alleges that Ms. Dutton has made it very difficult for him to schedule his weeknight visits pursuant to the parenting agreement.
- [33] Mr. Kitt has kept a calendar of his parenting time with Audrey and documented the occasions on which he says Ms. Dutton wrongfully denied his parenting time. Mr. Kitt argues that these denials were wrongful and flagrant, particularly following the appearance before Smith J.
- [34] On this application, Mr. Kitt focused on November 19-21, 2021, on which days he says Ms. Dutton wrongfully denied his parenting time with Audrey, contrary to a verbal agreement between the parties to extend my temporary order from October to that weekend in November.

- [35] On the other hand, Ms. Dutton provides a lengthy list of weekdays on which she says that Mr. Kitt withheld her access to Audrey. At least some of these occasions are acknowledged by Mr. Kitt in his chart. Ms. Dutton argues that Mr. Kitt wrongfully denied her parenting time by physically refusing to return Audrey. Not only did Mr. Kitt refuse to return Audrey for her parenting time on these dates, Ms. Dutton says, he also threatened to call the police if Ms. Dutton came near his house to pick up Audrey, citing the order of Smith J.
- [36] While he was at work on at least some of these days, Ms. Dutton says, Mr. Kitt put Audrey in the care of third parties or his mother and refused to tell Ms. Dutton where the child was in order to prevent Ms. Dutton from picking her up. Further, Ms. Dutton argues that Mr. Kitt failed to take care of Audrey on one weekday evening per week as agreed in the parenting agreement.
- [37] Ms. Dutton deposes that the incident on November 19-21, 2021, of alleged wrongful denial of parenting time to Mr. Kitt, occurred following high conflict during an exchange on November 17. She deposes that Mr. Kitt berated her personally, insulted her, and required her to walk down a dark road with Audrey to where he was parked, after which he grabbed the infant from her arms and sped off without any discussion.
- [38] Ms. Dutton spoke to Mr. Kitt's legal counsel following the incident on November 17, and informed counsel that she did not feel comfortable with completing an exchange on November 19. She said she felt it would be detrimental to her safety and the safety of her daughter to have an in-person exchange with Mr. Kitt at that time. Instead, she left Audrey at her mother's house, but Mr. Kitt chose not to pick her up.
- [39] The parties disagree in their evidence about this and other incidents. However, I think it is clear that conflict at the exchanges has been an unfortunate theme of this case and something that both parties have struggled with.
- [40] The primary points of conflict appear to be coordinating with Mr. Kitt's work schedule and transportation, particularly driving back and forth between North Vancouver and Langley.
- [41] The parties agree it is in Audrey's best interests that she have meaningful time with both parents and stability in her life. Mr. Kitt says he is ready and able to have Audrey in his care 50 percent of the time, and that he has taken various steps to prepare for equal parenting time. Mr. Kitt argues that the proposed three-three-four-four schedule accommodates the parties' respective work schedules, seeks to address the concerns with driving, and strikes a fair balance in terms of pickups and drop-offs.

Analysis

- [42] Section 37(1) of the FLA requires that, in making an order pursuant to Part 4 of the FLA for a parenting schedule, the court must consider the best interests of the child only. Section 37(2) sets out a number of specific factors that must be considered, to which I will return below.

- [43] The so-called maximum contact principle is only one aspect of the best interests of the child analysis. It provides that, all other things being equal, the court should give effect to the principle that a child should have as much contact with each parent as is consistent with his or her best interests. The courts recognize that infants form meaningful attachments to both of their parents and require interaction, including overnights, with both parents to foster and maintain their attachments.

Past Wrongful Denial of Parenting Time

- [44] I will first address first the issue of wrongful denial of parenting time and the compensatory time and fines sought by the parties.
- [45] Mr. Kitt argues that there has been significant wrongful denial of parenting time by Ms. Dutton. He cites *K.R. v. J.W.*, 2016 BCSC 225, where Justice Betton said, in part, at para. 57:
- [57] Parenting time that has been included in an agreement or that has been ordered must be respected. If not appealed or varied, compliance cannot be viewed as optional. . . .

And at para. 59:

- [59] A pattern of wrongful conduct that frustrates an agreement or order such that parenting time is not fully available is a wrongful denial. . . .
- [46] In my view, Mr. Kitt is not blameless in this regard himself. There is evidence that he has engaged in a form of self-help, withholding Audrey from Ms. Dutton during Ms. Dutton's parenting time, putting Audrey in the care of third parties rather than returning her to her mother, not allowing Ms. Dutton to pick up Audrey during her parenting time and even refusing to tell Ms. Dutton where Audrey was during her parenting time.
- [47] Put simply, on the evidence on this application, both parties have wrongfully withheld time from the other parent. I am not in a position to resolve the conflicts in the evidence about who was the cause of which denial.
- [48] Ms. Dutton's move to Langley, to which Mr. Kitt agreed in the parenting agreement, has created real challenges for the parties. However, in my view, Ms. Dutton cannot be faulted for wanting to start a new life in Langley, where she has family and affordable accommodations, any more than Mr. Kitt can be faulted for wanting to remain in North Vancouver close to his mother and his business. Both parties will need to find a way to abide by parenting agreements and court orders without unnecessary conflict, particularly in the presence of their young child.
- [49] In my view, orders for monetary fines and compensatory parenting are not appropriate on the evidence on this application.
- [50] Section 61(2) of the FLA provides a range of remedies if the court is satisfied that parenting time has been wrongfully withheld, including:

61(2) . . .

- (a) require the parties to participate in family dispute resolution; [and]
- (b) require one or more [of the] parties or . . . to attend counselling, specified services or programs;

[51] I am told that the parties have qualified for counselling through Family Services, as well as free remote mediation services through Legal Aid.

[52] Accordingly, the order that I would make under s. 61(2) of the FLA is that the parties attend joint counselling with a family justice counsellor and mediation through B.C. Remote Child Support Mediation Services for the purpose of resolving issues that arise from their parenting schedules and improving their communications.

Parenting Arrangements for Audrey

[53] I turn next to the parenting arrangements for Audrey, referring to the factors set out under s. 37(2) of the FLA.

- (a) Audrey's health and emotional well-being

[54] In my view, the biggest risk to Audrey's well-being at this time is the conflict between her parents. I do not agree with Mr. Kitt that Ms. Dutton's behaviour is the sole cause of the conflict or that Ms. Dutton's behaviour alone is causing harm to Audrey's well-being. Rather, it is my view on the evidence that both parties have struggled with productive parenting arrangements and appropriate communications. Parenting after separation is hard work. The transition to co-parenting is difficult. In Audrey's best interests, however, the parties will need to redouble their efforts, including through counselling and mediation as set out above.

- (b) Audrey's views

[55] Audrey is only two and a half years old. It would not be appropriate to consider her views yet.

- (c) The nature and strength of the relationships between the child and significant persons in the child's life

[56] Audrey has formed a bond with both parents. She has a close and positive relationship with both Ms. Dutton and Mr. Kitt, and with their extended families. It is apparent to me that she is loved and well cared for by the significant people in her life.

[57] I agree with Mr. Kitt that establishing and maintaining a schedule where Audrey has regular visits with her father is important to provide opportunities for crucial interactions and nurturing, and to foster and maintain the bond with her father, which is in Audrey's best interests.

- [58] However, it must be recognized and emphasized that Ms. Dutton has been Audrey's primary caregiver and advocate since birth and following the parties' separation. While the bond with her father needs to be maintained and fostered, a sudden disruption in the relationship between Audrey and her mother would not be in her best interests.
- [59] While driving back and forth from Langley to North Vancouver is far from ideal, Audrey should not go long periods of time without seeing either parent. It would be contrary to Audrey's emotional well-being to be away from either parent for extended periods of time at this point in her life.
- (d) History of Audrey's care
- [60] As stated, Ms. Dutton has been and remains Audrey's primary caregiver. I also recognize that Mr. Kitt has been involved in Audrey's care since birth, although the extent of his engagement is a matter of some dispute on the evidence.
- (e) Audrey's need for stability given her age and stage of development
- [61] Audrey needs stability. She will benefit from a clear parenting schedule which is not left to the discretion of the parties.
- [62] Audrey moved to Langley in October 2020. As stated, Mr. Kitt agreed in the November 2020 parenting agreement that Audrey could remain with her mother in Langley and that she could attend daycare in Langley.
- [63] Ms. Dutton deposes that Audrey is well established in the Langley community. Although she is still very young, Audrey likely has a closer connection to her surroundings in Langley than North Vancouver, which she left over a year ago. A change now in her surroundings, to a 50/50 split between Langley and North Vancouver, that would see Audrey living half-time in North Vancouver and attending daycare while Mr. Kitt is working, would disrupt the status quo. It would, in my respectful view, be destabilizing for Audrey and not in her best interests.
- (f) The ability of the parties to exercise their parenting responsibilities
- [64] There is no evidence that either parent is impaired in their ability to exercise parenting responsibilities. By all indications, the parties are both good parents.
- (g) The appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security, or well-being of the child or other family members
- [65] I fundamentally agree with Ms. Dutton that 50/50 shared parenting requires cooperation, respectful dialogue, compromise, and effective communications. In my view, the parties require more work on their parenting skills and communications before they can move to equal shared parenting.

- [66] It is not in Audrey's best interests to have equal shared parenting at a point in the separation process when her parents are unable to agree on very much, if anything. Nor is it in Audrey's best interests to live separate parallel lives in North Vancouver and Langley.

Conclusion on a Parenting Schedule

- [67] Overall, both parties have put forward schedules that would promote Audrey's best interests, reduce the conflict and acrimony between the parties, and enable Audrey to spend meaningful time with both parents, both of whom love her dearly.
- [68] The parties agree that for any order to be effective at this point in time, it must be clearly delineated. The primary issue for the court on this application has been whether to order a change now to a 50/50 shared parenting schedule or whether to maintain the status quo. I have found that the parties need to improve their communications and co-parenting skills and that, for the time being, the status quo is in Audrey's best interests.
- [69] Over time, and perhaps by the scheduled trial date in November 2022, the parties may be able to transition to equal shared parenting. However, at this time, I cannot make that order.
- [70] Having considered all the factors I must under s. 37 of the FLA, I have concluded that a change to equal shared parenting time is not in Audrey's best interests. In my view, the schedule set out in my order of December 8, 2021, should continue.
- [71] In continuing this order, I am relying on Ms. Dutton's statement to the court that driving Audrey to North Vancouver on Friday evenings will not be a problem. Emergencies and bad weather do occur, but Ms. Dutton must ensure that driving responsibilities will not continue to be a subject of conflict.
- [72] Referring to Ms. Dutton's proposed schedule, I am concerned that the additional weekend parenting time with her family that she proposes on two weeks' notice to Mr. Kitt will give rise to further conflict and disagreements between the parties. Instead, the parties and I have worked out a schedule for holidays, including long weekends, that I expect will allow Audrey time to spend with the Dutton family.

Parenting Responsibilities

- [73] I will address parenting responsibilities next. I agree with Mr. Kitt that the parties should share parenting responsibilities and that during their parenting times, they should make the day-to-day decisions that affect Audrey.
- [74] Having said that, both parties need to remain actively involved in Audrey's life. It is important that both parties continue to have input into the significant decisions that will affect her life in the future.

- [75] In order to guard against either party unilaterally making important decisions, I will make an order that each party will have the obligation to advise the other of matters of a significant nature affecting Audrey. Each party will have the obligation to discuss with the other any significant decisions that must be made concerning Audrey, including significant decisions about health care (except in emergencies), education, religious instruction, and general welfare, and that each party will have an obligation to use their best efforts to reach an agreement on these decisions.
- [76] In the event the parties cannot reach an agreement on a significant decision despite their best efforts, I will order that, on an interim basis, Ms. Dutton will have final decision-making authority and Mr. Kitt will have the right to apply to the court for directions under s. 49 of the FLA.

Section 211 Report

- [77] I turn next to the s. 211 report. Mr. Kitt seeks an order that a s. 211 report be prepared by Dr. Elterman.
- [78] Section 211 of the FLA provides that the court may appoint a person to assess, for the purposes of an order about care and time with a child, one or more of the following:
- (a) the needs of a child in relation to a family law dispute;
 - (b) the views of a child in relation to a family law dispute; [and]
 - (c) the ability and willingness of a party to a family law dispute to satisfy the needs of a child.
- [79] Section 211(5) gives the court the power to allocate amongst the parties or require one party alone to pay the fees relating to an assessment under s. 211. Mr. Kitt proposes that the parties share the cost equally.
- [80] Decisions such as *T.N. v. J.C.N.*, 2015 BCSC 439, establish that the court should take a broad and generous approach to requests for s. 211 reports, and that the threshold for granting such an application is low. Basing decisions about matters of custody and access on evidence of two often antagonistic parents is, at best, very challenging. It is not desirable if it can be avoided. Section 211 reports can provide much needed elements of neutrality and objectivity.
- [81] However, the cost of the report is a legitimate countervailing concern. Section 211 reports by a registered psychologist like Dr. Elterman are very expensive. Although I do not have an estimate before me, I can say based on my experience that they cost at least \$15,000 and maybe as much as \$30,000. I would expect Dr. Elterman, being a highly-experienced psychologist, to fall on the high end of that scale.
- [82] The parties in this case are of limited means. They have pressing financial requirements for rent, gas, including gas for driving between North Vancouver and Langley, and food, including food for Audrey.

- [83] A s. 211 report could be done by a family justice counsellor at no cost to the parties. However, there is normally a 12 to 16 month turnaround, which is likely longer now in light of COVID-19 and staffing shortages throughout government services. A report prepared by a family justice counsellor would not be available for the current trial date in November. In my view, it would not be in Audrey's best interests to adjourn the trial simply to obtain a report by a family justice counsellor.
- [84] I do not regard this case as one that cries out for a s. 211 report. There are no allegations of family violence, mental health issues, or other matters that would impair the ability or willingness of either party to parent Audrey. As stated, the evidence is that both parents are capable and loving guardians.
- [85] Audrey is too young to have views such that an analysis of her views in relation to parenting would be relevant in this case.
- [86] The parenting issues in this case are, in my view, within the ordinary knowledge and experience of a trial judge. Trial judges are well equipped to hear the evidence of the parties and make decisions based on the best interests of the child.
- [87] Moreover, this case should be resolved as expeditiously and inexpensively as possible. I agree with Ms. Dutton that the parties should invest their time and effort into free counselling, mediation and hopefully, resolution with the assistance of counsel, rather than expensive expert reports.
- [88] For these reasons, I decline at this time to make an order for a s. 211 report. If there is a material change in circumstances, Mr. Kitt may renew his application.

Communications

- [89] I turn to communications. Mr. Kitt's notice of application proposed communications between the parties by email. There is evidence that email has been ineffective in the past and the source of some conflict between the parties. I am also concerned that communication by text message may give rise to additional conflicts.
- [90] I agree with Ms. Dutton that My Family Wizard would provide the parties with a valuable tool to improve their communication skills. I am told that the cost of a subscription to My Family Wizard is approximately \$100 per year, which in my view is worth the investment by the parties.
- [91] I will make an order that the parties communicate about Audrey's care, the parenting schedule, and other matters concerning parenting using the My Family Wizard app, and text message only in the event of emergency.
- [92] So as to save on expenses, I will make an order that Mr. Kitt's lawyers may communicate and deliver legal documents to Ms. Dutton by email, clearly marked in the "re" line as requiring her attention. [Note to reader: see paragraph 99, below.]

Document Disclosure

[93] On disclosure, both parties have sought specific categories of documents in their respective notices of application. I have heard no argument as to why those documents should not be ordered. Accordingly, there will be an order that Ms. Dutton produce the documents sought by Mr. Kitt in his notice of application, and an order that Mr. Kitt produce the documents sought in Ms. Dutton's notice of application.

Holidays and Special Occasions

[94] Lastly, I will address the schedule for holidays and special occasions that was discussed during this application.

[95] There will be an order that the regular parenting schedule, as set out in my order of December 8, 2021, and continued by this order, will be temporarily suspended during the following holidays and special occasions.

[96] I will adopt the following paras. of Schedule A of Mr. Kitt's notice of application filed November 3, 2021: (b)(i) summer holiday period; (b)(ii) Christmas holiday period; (c) Mother's Day and Father's Day; and, (d) Remembrance Day.

[97] I will add the following:

- a) For New Year's Eve and New Year's Day morning on even years, Audrey will be with Ms. Dutton, and on odd years with Mr. Kitt.
- b) On Family Day, Audrey will be with Ms. Dutton.
- c) On the Victoria Day long weekend, including the statutory Monday holiday, Audrey will be with Mr. Kitt.
- d) On the Labour Day long weekend, including Saturday and Sunday as well as the statutory Monday, Audrey will be with Ms. Dutton.
- e) On Canada Day, Audrey will be with Mr. Kitt.
- f) On B.C. Day, she will be with Ms. Dutton.
- g) On Thanksgiving, in even years, Audrey will spend Saturday to Sunday morning at 10:00 a.m. with Mr. Kitt, and from Sunday at 10:00 a.m. on with Ms. Dutton, and in odd years the reverse.
- h) For Easter, Audrey will spend Saturday until Sunday at 10:00 a.m. with Ms. Dutton, and from 10:00 a.m. on Sunday to the end of the day on Monday with Mr. Kitt, and in odd years the reverse.
- i) On Truth and Reconciliation Day, the parties will alternate beginning in 2022, when Audrey will spend the day with Mr. Kitt.

- j) On Audrey's birthday, she will spend the day with her parents on alternating years, beginning with Ms. Dutton in 2022.
- k) On the parents' birthdays, each parent with a birthday not falling within their regular parenting time will have the option of having Audrey with them from 10:00 a.m. on that day to 10:00 a.m. the following day. The birthday person will be responsible for picking up and dropping off Audrey.

Other Matters

[SUBMISSIONS]

[98] THE COURT: Concerning driving arrangements, the regular parenting schedule will be according to my order of December 8th, such that on the Friday, Ms. Dutton will drop Audrey off at 7:00 p.m. at John Braithwaite Community Centre in North Vancouver, and on the Monday, Mr. Kitt will return Audrey at 9:00 a.m. at the Walnut Grove Community Centre.

[SUBMISSIONS]

[99] THE COURT: Having heard further submissions from Ms. Dutton, I am revising my previous order about delivery by email. I will order that correspondence between Mr. Kitt's legal counsel and Ms. Dutton be by mail or courier.

[100] I will also order that the documents I have ordered Mr. Kitt to produce, some of which he has already produced electronically, must be produced to Ms. Dutton in hard copy by mail or courier upon receipt from her of payment of reasonable photocopying expenses.

[SUBMISSIONS]

[101] THE COURT: The disclosure obligations of both parties under this order will be from January 1, 2019, to present.

[102] The parties may set out in a letter to the other party the categories of documents the other party seeks that they say do not exist.

[SUBMISSIONS]

[103] THE COURT: I will ask that, after she receives the reasons for judgment, Ms. Heit prepare a draft order and provide the draft to Ms. Dutton for her approval.

[104] Should the parties require assistance settling the terms of the order or directions implementing the order, they may ask to appear before me on a mutually convenient day at 9:00 a.m.

[SUBMISSIONS]

[105] THE COURT: The parties will bear their own costs of these applications.

"Master Elwood"

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