

CANADA / JUDGMENT

M.B.K. v. R.R.R.

2025 BCSC 1623

COURT

Supreme Court of British Columbia

DECIDED

17 January 2025

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2025 BCSC 1623 M.B.K. v. R.R.R.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

M.B.K. v. R.R.R.,

2025 BCSC 1623

Date: 20250117

Docket: E140276

Registry: Kelowna

Between:

M.B.K.

Claimant

And

R.R.R.

Respondent

Before: The Honourable Justice B. Hardwick

Oral Reasons for Judgment

Counsel for the Claimant:

M. Chiu

Appearing on their own behalf:

R. R.

Place and Date of Trial/Hearing:

Kelowna, B.C.

January 17, 2025

Place and Date of Judgment:

Kelowna, B.C.

January 17, 2025

- [1] THE COURT: These are my oral reasons for judgment in respect to the notice of application filed by the claimant, M.B.K., on December 24, 2024 (the "Application"). They are brief and address what I consider to be the material facts without belabouring the background information, much of which is in dispute in the affidavit material.
- [2] The Application concerns the parties' single child, T, born in July 2021 (the "Child"). The Child is approximately 3.5 years of age at present.
- [3] The respondent did not personally attend the hearing today but did log on by telephone via MS Teams shortly before I was about to originally deliver oral reasons for judgment. Upon logging in, I asked certain questions of the respondent. In light of that exchange, I am going to cover off some important details which I have relied upon in satisfying myself that it is appropriate to proceed today in making certain orders. Those details are as follows.
- [4] A notice of intention to withdraw was filed by former counsel for the respondent on August 16, 2024. No objection was filed. The notice of intention lists an email address for the respondent of [redacted]123@gmail.com. Although the respondent apparently did engage the services of another counsel this fall, namely the fall of 2024, they never formally went on record for court purposes. No change of address has been filed by the respondent. Counsel for the claimant indicates they were in contact via email with the respondent at this particular email address as recently as early December 2024. Counsel for the claimant served the claimant's notice of application via email to the respondent on December 24, 2024. The respondent has not, to date, filed an application response. Even accounting for the holiday period, the application was served in accordance with the British Columbia Supreme Court Family Rules [Rules] given that it seeks interim relief only.
- [5] When this matter, which was set on assize, was called up from backup for me to hear it, Supreme Court Scheduling advises that they made multiple attempts to contact the respondent but received no response. Those efforts included up to shortly prior to the commencement of court this morning. The respondent was paged by Madam Clerk without success, and Madam Clerk opened the MS Teams link and was advised to inform me if anyone sought permission to enter. No one did. I stood the matter down for approximately 10 minutes at 10:35 a.m. to confirm consistency in the email address provided for service, and to again have Supreme Court Scheduling email the respondent for a final time with the

MS Teams link and advise her I was going back on the record at 10:45 if she wished to participate. Again, there was no response received at that time.

- [6] After hearing some further submissions from counsel for the claimant which were based upon the claimant's notice of application and the affidavits relied upon therein, I stood the matter down until 12 o'clock to give oral reasons for judgment. My drafting took slightly longer than anticipated and I advised Madam Clerk it would be a 12:10 p.m. start instead.
- [7] At approximately 12:04 p.m., the respondent did log on to the courtroom via MS Teams using the telephone link. There were some audio issues, but I am ultimately satisfied the respondent was able to hear the court and I was able to hear the respondent.
- [8] Although the respondent has not filed an application response, I provided her with the opportunity to answer certain questions posed by the court relevant to whether I should proceed with hearing the matter on its merits today. The material portions of the respondent's responses to those inquiries are:
- a) [redacted]123@gmail.com is an email address she regularly uses. This is confirmed by the fact she logged into the courtroom via telephone using the MS Teams link emailed to her by Supreme Court Scheduling at that email address;
 - b) The respondent received the Application;
 - c) The respondent has not sought an adjournment of the Application;
 - d) The respondent does not currently have legal counsel;
 - e) The respondent has applied for new Legal Aid counsel, and the last email she received in that regard was on or about December 19, 2024. The respondent read the email into the record via telephone, and I accept its contents to be true despite not having a hard copy of that as part of the application record;
 - f) The respondent's position, although not set forth in an application response, is that supervised parenting time should continue between the claimant and the Child, but she did not articulate any specific reason why supervision was required. The respondent was somewhat vague as to whether or not she had reviewed the professional supervisor access reports in the record, but did not dispute when queried by me that the reports from the supervised access professional of the visits between claimant and the Child were positive in nature;
 - g) I asked the respondent if there was anything in the materials she wanted to draw my attention to, and she asked if I was aware of certain criminal proceedings involving the claimant, and I confirmed that I was and that I had a copy of the updated release conditions; and

- h) I then confirmed with the respondent if she was available to attend at 2:15 today via MS Teams so that I could take some further time to consider how to proceed. We discussed attending by video and ultimately agreed attending by phone was the better option.
- [9] Ultimately, in the circumstances, I am satisfied that the respondent has been given notice of the Application and the opportunity to participate. I do so with recognition of the Court of Appeal's decision and guidance on somewhat similar, albeit not analogous, facts in *Boone v. Jones*, 2023 BCCA 215. Specifically, although I accept that the respondent has applied for new Legal Aid counsel, I am not simply prepared to adjourn, without a formal application, the matter due to the respondent's limited participation. As the claimant has not had parenting time with the Child since November 9, 2024, it is not in the Child's best interest for this to continue simply because the respondent is waiting the appointment of what would be her third counsel: initial counsel at the pleading stage and the JCC; other counsel assisting but not formally on the record in the fall of 2024; and now new, as of yet unidentified, counsel in 2025.
- [10] Before turning to the substance of the Application, I also note that by coincidence, I was the presider at the judicial case conference in this action, which took place on August 9, 2024. I made, on my own initiative, an order that a notice of trial be filed within 60 days. That proved to be the appropriate order due to the conflicts in the evidence. However, there were conflicts over the appropriate length of trial and trial venue arising from my order.
- [11] Ultimately, the matter is now set for trial, pursuant to a consent order which the respondent signed on her own, in Vancouver for five days in May of 2025. The affidavits before me are, as noted, consistent with my initial observation that this matter, absent agreement between the parties, will require viva voce evidence and cross-examination given the stark conflicts in the parties' evidence to date.
- [12] Returning to the facts somewhat in this regard, the respondent has made various serious allegations against the claimant and, to a lesser extent, his family. One of those allegations is that Child was conceived as a result of a sexual assault committed on the respondent by the claimant. The claimant is now also presently charged with sexually assaulting the respondent, the offence date being sometime in March of 2024. It is a Surrey Provincial Court file. That charge is still in its very early stages, and the claimant has not yet been arraigned. The current release conditions in place, as amended, do not preclude the claimant from having parenting time with the Child. The entire content of the amended release conditions are contained at Tab 20 of the claimant's application record binder, and were perfected on December 18, 2024.

- [13] The claimant strongly disputes the allegation of sexual assault and is entitled to his Charter right to the presumption of innocence. His counsel concedes, however, that these charges are a relevant factor which the court must take into consideration when assessing the Child's best interests. As I conveyed in the course of the hearing when the respondent was not present, the court's only concern is the Child's best interests, and all orders must be made with that in mind.
- [14] Between June 30, 2024 and November 9, 2024, the claimant had seven supervised access visits with the Child -- supervised parenting visits with the Child is probably a more accurate description, given that the claimant is a guardian of the Child. In any event, the Child was almost three to approaching 3.5 years of age in these visits. The supervised parenting visits reports are, in my view, extremely positive. They are attached, in their entirety, as Exhibit I to the third affidavit of the claimant.
- [15] In the circumstances, I am satisfied that ongoing supervised parenting is not necessary. It is in the Child's best interests, in accordance with the governing legislation, to have meaningful parenting time with his father. To quote Justice Gomery, "supervision orders should only be made in exceptional circumstances. . . An order for supervised access [is accurately] described as 'just one small step away from a complete termination of the parent-child relationship': see *M.P. v. P.P.*, 2022 BCSC 1511 at para. 29.
- [16] I am further satisfied that the claimant has strong family support such that his mother can care for the Child in the absence of the claimant when he is attending school or work.
- [17] A complicating factor is that the respondent and the Child currently reside in the Lower Mainland, and the claimant resides in Kelowna. There are allegations about this being an unauthorized relocation. I am not going to decide that issue whatsoever today. However, the parenting schedule must, as a practical reality, take this into consideration. The claimant's application seeks what I would describe as a seven, seven, 14, 14 alternating schedule. It is a true shared parenting schedule. As I conveyed to counsel for the claimant before reserving to initially draft these oral reasons, and even before hearing from the respondent, that is too drastic a transition for a child as young as T who has not even seen his father, the claimant, since November 9, 2024.
- [18] Rather, in my view, the appropriate parenting schedule is one that gives the claimant slightly more than a one week block each month until trial, which takes into consideration his present work schedule. Specifically, with respect to the claimant's work schedule, he deposes that he works or attends school from 8 a.m. to 4 p.m. Monday to Friday and does not work weekends or long weekends. The work schedule of the respondent is not, at this point in time, a material factor as she is in receipt of government benefits and is not employed outside of the home or attending school.
- [19] The claimant's parents are prepared to take on responsibilities for driving the Child to and from the Lower Mainland in order to facilitate the claimant's parenting time. The claimant is also prepared to do the driving and pay for someone from the supervised access firm

formerly formally engaged to simply facilitate the transfer of the Child from the respondent to the claimant, and vice versa. Technically, this is not required under the terms of the claimant's present release conditions, but I made clear to counsel in submissions before the respondent logged on again that I was not going to entertain these parties, at present, directly exchanging the Child in person. The Child is too young to be put in a situation fraught with unnecessary potential for conflict.

[20] With that in mind, here is the interim schedule that I have crafted to continue until further court order or written agreement of the parties pending trial. That schedule is as follows:

1. The Child shall be primarily resident with the respondent, save and except that the claimant will have parenting time with the Child as follows:
 - i. January 24, 2025, at 1:00 PM to February 2, 2025, at 1:00 PM;
 - ii. February 14, 2025, at 1:00 PM to February 22, 2025, at 1:00 PM;
 - iii. March 7, 2025, at 1:00 PM to March 17, 2025, at 1:00 PM;
 - iv. April 4, 2025, at 1:00 PM to April 14, 2025, at 1:00 PM;
 - v. May 2, 2025, at 1:00 PM to May 12, 2025, at 1:00 PM; and
 - vi. May 31, 2025, at 1:00 PM to June 9, 2025, at 1:00 PM.

[21] This is not a term of the order, but here is the rationale for the benefit of the parties as to how I have chosen these particular dates. As noted, the claimant generally works or studies until 4:00 PM on Fridays and starts work or school at 8:00 AM on Mondays. The transition times that I have crafted allow for maximization of the parenting time between the Child and the claimant outside of his school and/or work hours. 1:00 PM is also a convenient transition time for a child of T's age. Given the travel involved between Kelowna and the Lower Mainland nothing will be ideal, but this way the Child can either have breakfast or lunch in the normal course, or relatively close thereto, and this should not infringe upon his normal wake up and bedtime routine, save and except the practical reality that the Child may have a nap during the drive, but that is probably close to inevitably happening on occasion for a child of his age. All of the driving for the parenting time with the Child shall generally occur within daylight hours to improve road safety and minimize the impact of winter driving conditions. I have specifically balanced the two long weekends in play until the trial, namely the Family Day weekend and the Easter weekend, and I have factored in the trial, which is scheduled to occur in Vancouver, since it makes sense that the Child be in the care of the respondent, given that she resides in the Lower Mainland and the claimant will be travelling from Kelowna.

[22] Circling back to the terms of my order:

2. Having regard to travel and road conditions, the pickup and drop off of the Child may occur within 30 minutes of the time set forth in this order, provided that the respondent is notified by text or email of the delay. The parties are further at liberty to agree upon a modification of the timing of the parenting exchanges in writing, but consent of the respondent is not required for any parenting exchange that occurs within a 30-minute window of the exchange time set pursuant to this order.
3. K.K. or another member of the claimant's immediate family shall be permitted to pick up and drop off the Child at the respondent's residence for the commencement and conclusion of the claimant's parenting time. Alternatively, the claimant may arrange at his sole expense without contribution from the respondent, for a professional supervisor to pick up the Child from the respondent's residence and/or return him to the respondent's residence in accordance with the parenting schedule set by this order.
4. The claimant shall not attend at the respondent's residence for parenting exchanges of the Child, even if a member of the claimant's immediate family is present, unless otherwise agreed in writing.
- [23] This is not a term of the order, but so that you understand, M.B.K., you may accompany an immediate family member, but you need to remain at a neutral location, and they can come back and retrieve you after they have the Child. You are not to attend at the respondent's residence under any circumstances unless it is agreed in writing.
5. While the claimant has parenting time with the Child, the claimant shall be permitted to have his mother, K.K., care for the Child in his absence. The claimant may also enrol the Child in a licenced childcare facility and/or early childhood education centre during times when he is engaged at work or at school, provided he gives the respondent the contact information for this childcare facility or early childhood education centre and lists the respondent as a guardian and an emergency contact.
6. Given the current state of flux regarding the respondent's access to Legal Aid counsel, the respondent shall have liberty to apply to vary the terms of this order on seven business days' notice to the claimant's counsel.
7. In terms of the other orders, the judicial case conference order from August of 2024 already makes the necessary order under s. 39 of the Family Law Act regarding guardianship, so para. 1 of the claimant's notice of application is moot.
8. It is, however, appropriate to make an order that the parties share parenting responsibilities under s. 41 of the Family Law Act. Neither parent for the purposes of this interim order shall have final decision-making authority. That is an issue expressly left for trial.
9. The claimant is entitled to his costs of the Application simply as costs in the cause as he was substantially successful in obtaining unsupervised parenting time, albeit in a much more limited duration than was initially sought in the Application.

10. The signature of the respondent is dispensed with on the form of order, but a copy shall be provided forthwith upon entry to the respondent so that she may provide to her Legal Aid counsel once appointed.

"Hardwick J."

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Prepared on 29 October 2026 · Esheria