

CANADA / JUDGMENT

M.J.P. v. A.E.

2020 BCSC 647

COURT

Supreme Court of British Columbia

DECIDED

27 April 2020

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

2020 BCSC 647 M.J.P. v. A.E.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

M.J.P. v. A.E.,

2020 BCSC 647

Date: 20200427

Docket: E23881

Registry: Fort St. John

Between:

M.J.P.

Claimant

And

A.E.

Respondent

Before: The Honourable Mr. Justice Armstrong

Reasons for Judgment

The Claimant appearing in Person:

M.J.P.

The Respondent appearing in Person:

A.E.

Place and Date of Hearing:

Fort St. John, B.C.

December 17, 18, 2019

Date of Written Submissions:

January 3, 2020

January 17, 2020

Place and Date of Judgment:

Fort St. John, B.C.

April 27, 2020

Introduction

- [1] This family law case was principally concerned with the parties' parenting roles with their two children. The amount of retroactive and prospective child support are also in issue. Some of the other property and spousal support issues have been settled between the parties.
- [2] The parties were not married but began living in a marriage like relationship on April 1, 2011 and they separated on March 5, 2015.

Background

- [3] The claimant is a 34 year old heavy equipment mechanic. He has lived in the Fort St. John area since 2008.
- [4] The respondent is a 43 year old office administrator with a local oil/coolant vendor where she has worked since October 2019. She earns \$23 per hour and works three days each week depending on the children's schedules. She has lived in Fort St. John since 2001.
- [5] The parties met in 2009 and in April 2011 the respondent moved into the Claimant's residence/farm about 40 km north of Fort St. John.
- [6] The parties were raising two children during their relationship;
 - a) D.A.E. born Jan 2009 (not the biological child of the claimant); and
 - b) B.A.P. born April 2012.
- [7] D.A.E.'s biological father has not been involved in her life in any way.

- [8] The respondent worked until their first child was born. She stayed home for the first year after D.A.E. was born. Approximately five months after she became pregnant with B.A.P., she stopped work and remained as the principal care giver for the children for the following 12 to 18 months. Then, after 1.5 years, she took a short term job for about 1.5 years.
- [9] The respondent has had no contact with D.A.E.'s biological father since the child's birth and has received no financial support from him. There was no evidence as to the status of the biological parent addressing that person's status as "guardian under s. 39(3) of the FLA.
- [10] The respondent had lived in and around Chetwynd and Farmington before moving to the claimant's residence in April 2011. Until that time, D.A.E. was cared for by friends and family while the respondent worked in the oil field.
- [11] The claimant has resided in the Fort St. John area since 2008. He received four years of education and training before qualifying as a heavy equipment mechanic. His current work schedule is Monday to Friday from 8 AM to 4:30 PM.
- [12] The origins of the breakup of this family are germane to the issue of ongoing parenting, not because of the fault of either party, but because the parties' behaviours were reflective of their ability to grasp and respond to the needs of the children.
- [13] The respondent said that from 2011 to 2015 the claimant's routine was disengaged from life in the family home. He would usually leave home for work before the respondent and children awoke and would return home after the children were in bed. He performed nominal home chores while the respondent did all of the housekeeping, gardening and child focused duties. She acknowledges that when the claimant was home and the children were awake, he would engage with them. Her chief complaint was that the claimant focused his efforts on his trucks and outside activities and would repair the homes of friends after work for drinks rather than returning to their home and functioning as a family. Home life became somewhat unpleasant and the respondent moved in with friends in March 2015. The respondent eventually moved to a residence in Rosa Prairie, approximately 20 minutes from Fort St. John; this is her current residence.
- [14] In 2017 the claimant's employer went into receivership.
- [15] In the spring of 2018 the claimant was absent from work on stress leave for nine months. He also had an accident and sustained soft tissue injuries.
- [16] Since returning to work, the claimant's current income is \$91,832 per year. In 2015 he earned \$113,534; in 2016 \$80,354; in 2017 \$81,389; and in 2018 \$41,685.
- [17] The claimant has also operated a business, Monte Creek Customs Ltd.; each party owned 50% of the shares in the company. The company owns some assets that were not settled at the time of the parties' settlement agreement.

[18] The claimant currently pays \$805 per month child support based on a Guideline income of \$84,226 under an order made at a Judicial Case Conference.

[19] He began dating a woman in July 2019; he currently resides in her residence largely because maintenance issues have rendered his home unusable. The children have spent time residing with him at his new partner's residence.

Positions of the Parties

The Claimant

[20] The claimant seeks a number of remedies including:

- a. the parties share joint guardianship of both children;
- b. parenting time should be divided between the parties with a gradual increase to equality;
- c. the parties engage in co-parenting counselling;
- d. that D.A.E.'s name be changed to include the claimant's name, i.e. E-P; and
- e. child support should be settled at the Guidelines amount.

[21] The claimant contends he has had a strong and caring relationship with the children. He contends that he is the only father figure D.A.E. has known and wishes to cement that relationship with a declaration that he is a guardian of D.A.E. and entitled to an equal parenting role with the respondent.

[22] He described his relationship with the children and levels of activity with particular emphasis on his residence and rural/farm life and activities experienced by the children.

[23] He said that he attended a parenting after separation course and counselling and has taken steps to repair the hurt to the children caused by the breakup of the relationship. He has a small herd of cows, horses and chickens.

[24] He testified that the children are becoming accustomed to caring for horses, caring for a pig and other animals. He owns an all-terrain vehicle that D.A.E. is capable of operating. He described his children's relationship with his sister and her children. There are friends living within 15 km. Overall, the claimant described an outdoor lifestyle punctuated with many activities that he asserts the children are keen participants in.

[25] The claimant would like to have equal parenting time with the children but accepts that a sudden change to equal time with both parents could be difficult for the children. He believes the children are comfortable in his home.

The Respondent

[26] The respondent argued that when in the claimant's care the children experienced issues with the environment at his residence. She contends there were concerns regarding hygiene and lack of structure and stability. She contends the claimant is currently not equipped to manage and care for the children for extended times that would be involved in an equal sharing of parenting time. She argued that any changes or expansion of the claimant's parenting time should be made on a graduated basis to permit the children time to adapt to the claimant's living circumstances.

Analysis

[27] I will deal with the issues in the following order:

- i. First, as it is a relatively discrete issue, I will deal with the claimant's request that D.A.E.'s name be changed to include his last name;
- ii. Second, I will deal with the issues concerning guardianship;
- iii. Third, I will discuss contact/parenting time with the children and the claimant's suggestion the parties undertake family counselling;
- iv. Fourth, I will deal with the issue of retroactive and prospective child support; and
- v. Finally, I will briefly discuss the issues concerning division of property and costs.

I. Name Change

[28] The claimant seeks to have D.A.E.'s last name changed to a hyphenated last name that includes his surname (i.e. E-P).

[29] M.H. v. A.M., 2016 BCSC 1664 [M.H.], discusses name changes under the s. 4.1 of the Vital Statistics Act, R.S.B.C. 1996, c. 479 [VSA]:

[154] The claimant also applies to amend J.M.'s surname to include his name, such that it would then be a hyphenated surname, comprising his and the respondent's names. On this issue, s. 4.1 of the VSA applies:

4.1 (1) The court may, in an order declaring a child's parentage, make an order

- (a) that the registration of a child's name be changed, or
 - (b) if the child's name has not yet been registered, requiring the child's name to be registered as specified in the order.
- (2) If an order under subsection (1) is in respect of a child's surname, the court must order the child's surname to be
- (a) the surname of a parent, or

- (b) a surname consisting of the parents' surnames hyphenated or combined in alphabetical order, in which case, section 4 (2) and (3) applies.
- (3) Before making an order under subsection (1), the court must
- (a) consider the best interests of the child, including the matters set out in section 9 (1) (a), (b) and (c),

[155] The "matters set out in section 9 (1) (a), (b) and (c)" are:

if the registrar general considers that a name that a person applying for registration of a birth or an amendment to a registration of birth seeks to give to a child

- (a) might reasonably be expected to cause
 - (i) mistake or confusion, or
 - (ii) embarrassment to the child or another person,
- (b) is sought for an improper purpose, or
- (c) is, on any other ground, objectionable,

[156] As can be seen from these provisions, the best interests of the child is the central consideration in determining whether there should be a name change

[30] In M.H. the claimant was a parent (para. 154). Section 1 of the VSA incorporates the definition of parent established under Part 3 of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. The claimant in the case at bar is not a parent and no declaration of parentage is being claimed; as such this section is inapplicable. However, the principle that "the best interests of the child is the central consideration in whether there should be a name change" is instructive.

[31] The VSA also contains the following provision:

Amendments respecting given names

10 (1) Subject to section 9 and except in a case to which section 4.1 or 26 applies, this section applies if a child's birth has been registered and an amendment to the registration is desired respecting the child's given name.

- (2) A parent having guardianship or another guardian of a child, with the consent of all other guardians of the child, or the child after the child has reached 19 years of age, may apply to the registrar general for an amendment in respect of a child's given name by providing
 - (a) an affidavit, in the form required by the registrar general, setting out the particulars of the amendment, and
 - (b) other documentary evidence satisfactory to the registrar general.

- (3) On being satisfied that the application under subsection (2) is made in good faith and on payment of the prescribed fee, the registrar general must amend the child's registration of birth.
- (4) An amendment under this section may be made only in respect of a name given to the child before the child reached 12 years of age.
- (5) An amendment to a registration of birth in respect of a given name must not be made except as provided in this Act.
- (6) A birth certificate issued after the making of an amendment under this section must be prepared as if the person's original birth registration had been made containing the given name as amended.
- (7) If a person whose signature is required under this section cannot be located after adequate search, the applicant and the registrar general may proceed without the certificate of that person.
- (8) The registrar general is to be the judge of the sufficiency of the evidence that the person cannot be located.

[Emphasis Added.]

[32] The claimant cannot presently apply under s. 10(2) because, as will be discussed below, he is also not a guardian of D.A.E. Regardless, s. 10(2) appears to deal only with given names, which is defined in s. 1 of the VSA as follows:

"given name" means a name other than a surname;

"surname" means a hereditary name, family name or last name;

[33] The application must be made under the Name Act, R.S.B.C. 1996, c. 328. Section 4 of the Name Act provides as follows:

Persons entitled to change names

4 (1) Subject to this section, a person who has attained the age of majority or, if the age of majority has not been attained, is a parent having guardianship or custody of his or her child and who is domiciled in British Columbia for at least 3 months, or has resided in British Columbia for at least 3 months immediately before the date of the application, may, unless prohibited by this or another Act, change his or her name on complying with this Act.

- (3) Subject to subsection (4), a parent having guardianship or custody of an unmarried minor child may, with the consent of all other parents having guardianship and other guardians of the child, apply to change the child's name, but, if the application is to change the child's surname to that of the applicant's spouse, the consent of the spouse is required.

- (4) If a person applies to change the name of an unmarried minor child who has attained the age of 12 years, he or she must first obtain the consent in writing of the child.
- (5) If a person whose consent is required under this Act
 - (a) is deceased or mentally disordered or cannot after reasonable, diligent and adequate search be located, or
 - (b) is, in the opinion of the registrar general, unreasonably withholding his or her consent,the applicant may, with the approval of the registrar general, proceed with the application without the consent of that person.
- (6) If, in the opinion of the registrar general, exceptional circumstances make it unreasonable to seek the consent of a person as required under this Act, the applicant may, with the approval of the registrar general, proceed with the application without the consent of that person.

[Emphasis added.]

- [34] Section 4 presents several hurdles to the claimant's request. First, on a plain meaning of the statute, it appears the only person who may apply under s. 4 is "a parent having guardianship or custody of an unmarried minor child". Section 1 of the Name Act similarly incorporates the definition of parent as established under Part 3 of the FLA. The claimant is not D.A.E.'s parent, nor does he have guardianship of D.A.E. at present (see discussion below). As such, it appears he has no standing to make an application. Second, even if the claimant does have standing to make an application, he also requires either the consent "of all other parents having guardianship and other guardians of the child" under s. 4(3). If one of those persons is unreasonably withholding consent it is possible to obtain an exception to this condition under s. 4(5).
- [35] The name change issue would need further argument; I am not prepared to grant a name change at this time.

II. Guardianship

Statutory Framework

- [36] Section 39 of the FLA provides steps to determine guardianship of children. In the event of separation, ss. (4) deals with the status of one party to a marriage like relationships who is not a guardian of the child;
- (4) If a child's guardian and a person who is not the child's guardian marry or enter into a marriage-like relationship, the person does not become a guardian of that child by reason only of the marriage or marriage-like relationship

- [37] The parenting arrangements and responsibilities set out in ss. 40, 41 and 42 of the FLA are restricted to only guardians of children. Section 40 also provides that only a guardian may have parenting time with respect to a child.
- [38] Applications to appoint guardians are dealt with under s. 51 of the FLA. An applicant is required to provide evidence respecting the best interests of the child regardless of consent or agreement with the other parent. Thus, the FLA removes any opportunity to grant parenting time to the claimant unless he becomes a guardian under s. 51.

Application

- [39] The claimant seeks an order appointing him joint guardian of the children. He contends he is the only "father" D.A.E. knows and is the biological father of B.A.P. In his notice of family claim, the claimant did not seek guardianship of D.A.E.
- [40] The claimant is not a parent of D.A.E. as defined under s. 26 of the FLA. To the contrary, D.A.E.'s biological father is a parent notwithstanding he has had no involvement with D.A.E. since birth or early in her life. D.A.E.'s biological father was not identified at the trial and has not contributed to her support or maintenance.
- [41] Although the claimant articulated a request to be joint guardian of D.A.E. and B.A.P., there is no formal application for guardianship of D.A.E. in his notice of family claim. Further, if the claimant wished to apply for guardianship of D.A.E., he was required to give notice to the biological father pursuant to s. 52(1) of the FLA (assuming the father is a "parent or guardian of the child affected by the application"--this point was not argued); no notice as given. The court may exempt an applicant from the requirement to give notice; that point was not argued most likely because the claimant did not seek such an order in his notice of family claim.
- [42] In the result, I am not persuaded that it would be appropriate to make any order in favour of the claimant concerning guardianship of D.A.E.

III. Contact/Parenting Time

- [43] As a result of the above, the claimant is presently a guardian and parent of B.A.P. (per s. 39 of the FLA), but not of D.A.E.

Case Law and Statutory Framework

- [44] The FLA allows for a non-guardian to have contact with a child under s. 59 but not parenting responsibilities:

59 (1) On application, a court may make an order respecting contact with a child, including describing the terms and form of contact.

- (2) A court may grant contact to any person who is not a guardian, including, without limiting the meaning of "person" in any other provision of this Act or a regulation made under it, to a parent or grandparent.
- (3) The court may make an order to require the parties to transfer the child under the supervision of, or require contact with the child to be supervised by, another person named in the order if the court is satisfied that supervision is in the best interests of the child.
- [45] As stated above, under s. 40(1) of the FLA, non-guardians cannot exercise parenting responsibilities.
- [46] The party seeking contact bears the onus of establishing that it is in the best interests of the child: *Kalafchi v. Yao*, 2015 BCCA 524 at para. 12.
- [47] As the respondent has raised some concerns regarding the claimant's ability to provide care, the following passage from *Bishop v. Wang*, 2018 BCSC 781, is also relevant:
- [46] The *Leveque* decision was applied recently by Skolrood J. in *M.H. v. A.M.*, 2016 BCSC 1664 at para. 70. In *N.D.T. v. T.F.T.*, 2016 BCSC 134 at para. 103, Saunders J. also adopted the approach set out in *Leveque* and related it to the best interests of the child principle found in s. 37(3) of the FLA, as follows:
- [103] It has long been recognized, however, that in cases dealing with the well-being of children a court is not obliged to reach specific factual conclusions as to what has transpired while children have been in their parents' care, in making an order respecting parenting arrangements: see *Leveque v. Leveque*, (1983), 54 BCLR 164 (BCCA) at para. 13. This principle is recognized implicitly in [s. 37(3)] of the Family Law Act, which provides only that the best interests of a child be advanced through an order that protects a child's physical, psychological and emotional safety, security and well-being to the greatest possible extent. This wording contemplates that evidence in family cases is often of a type that may be only suggestive of the truth, and that resists specific conclusions being drawn.
- [48] That statute further defines the best interests of the child in s. 37, which reads in relevant part:
- 37 (1) In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only.
- (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
- (a) the child's health and emotional well-being;
- (b) the child's views, unless it would be inappropriate to consider them;

- (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - (d) the history of the child's care;
 - (e) the child's need for stability, given the child's age and stage of development;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
 - (i) 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;
- [49] In considering the best interests of the child the court must assess the relationship between guardians and non-guardians and her sibling in its consideration of "all of the child's needs and circumstances".
- [50] In *L.J.G. v. N.B.*, 2017 BCSC 350 [L.J.G.], Choi J. set out the relationship between custodial parents' views concerning a child's best interests against the interests of a non-guardian. She said:
- [53] In *Fawcett*, Russell J. analyzed the role the custodial parent's views play in the best interests of the child test:
- [25] I agree with the respondent's counsel that s. 41 codifies a degree of deference to the guardian's views on issues concerning the child, so long as they are guided by the child's best interests. Thus, I find that s. 37 does not mean that the views of the guardian, as they relate to the enumerated parental responsibilities, are not relevant in considering what may constitute the best interests of the child.
- [28] Deference to the custodial parent's views has also been recognized in case law: see *Chapman v. Chapman*, 1993 CanLII 2598 (BC SC), [1993] B.C.J. No. 316 (S.C.). While *Chapman* does precede the passage of the FLA, it has been cited for several of the principles it enunciates, including giving deference to the custodial parent: *N.F. v. H.L.S.*, [1998] B.C.J. No. 1739, aff'd 1999 BCCA 398. In *T.F. v. K.R.C.*, 2010 BCSC 1808, the court in making its finding, said the following at para. 47, after considering *Chapman* and *N.F.*:

I am mindful of the principle that the court should generally accord considerable deference to the wishes of the custodial parent who is charged with the child's long term care.

- [51] It is appropriate to consider the reasonable views of the guardian parent so long as they are reflective of the best interests of the child: *Fawcett v. Read*, 2016 BCSC 310 [Fawcett] at para. 31.

[52] In L.J.G, Choi J. followed the conclusions reached by Russell J. in Fawcett, identifying additional issues for cases where non-guardians seek contact, including the need to consider the best interests test in harmony with the provisions concerning parenting responsibilities:

41 For the purposes of this Part, parental responsibilities with respect to a child are as follows:

- (a) making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child;
- (b) making decisions respecting where the child will reside;
- (c) making decisions respecting with whom the child will live and associate
- (d) making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location;
- (e) making decisions respecting the child's cultural, linguistic, religious and spiritual upbringing and heritage, including, if the child is an aboriginal child, the child's aboriginal identity;
- (f) subject to section 17 of the Infants Act, giving, refusing or withdrawing consent to medical, dental and other health-related treatments for the child;
- (g) applying for a passport, licence, permit, benefit, privilege or other thing for the child;
- (h) giving, refusing or withdrawing consent for the child, if consent is required;
- (i) receiving and responding to any notice that a parent or guardian is entitled or required by law to receive;
- (j) requesting and receiving from third parties health, education or other information respecting the child;
- (k) subject to any applicable provincial legislation,
- (i) starting, defending, compromising or settling any proceeding relating to the child, and
- (ii) identifying, advancing and protecting the child's legal and financial interests;
- (l) exercising any other responsibilities reasonably necessary to nurture the child's development.

Application

i. Current Status Quo

[53] Currently, the claimant exercises parenting time with the children (or, rather, parenting time with B.A.P. and contact with D.A.E.) on a three week schedule:

- a. week one from 5:30 PM Friday to 6 PM Saturday;
- b. week two Friday at 5:30 PM to Sunday at 6 PM;

- c. week three Friday 5:30 PM to Saturday 12 noon; and
 - d. at other times as may be agreed on between the parties.
- [54] The children have attended school at Upper Pine School. This school is approximately 30 km north of Fort St. John. The school is 20 km from the claimant's house and 20 km from the respondent's home. The children take a bus to and from school and to the parties' homes. D.A.E. is in grade 5 and B.A.P. is in grade 3.
- [55] There was testimony concerning which school was optimum for the children. The claimant said their current school was close to friends and his family and would be the best location for their education. The respondent indicated an intention to change schools to one closer to the town of Fort St. John.
- [56] The claimant currently lives in his girlfriend's home where he cares for the children during his parenting time. This situation was brought about because of plumbing problems in the claimant's home caused by a broken water pipe. This has been a fairly long-standing problem and the claimant is not certain when he will be able to complete the repairs and return to his home.
- [57] The claimant's property is across the street from his girlfriend's home and he is able to service his livestock and maintain his property. When the children are with him they also spend time in and about his farm and with the animals.
- [58] Although the respondent was off work from January 2012 until April 2013, she worked until the summer of 2014. From then until separation the respondent stayed at home and cared for the children until after separation when she returned to work in the fall of 2015. I accept that the respondent was largely responsible for the care of the children throughout their time together. The claimant functioned adequately in the home and with the children when he was present and the children awake. He did some childcare but the bulk of that responsibility fell to the respondent.
- [59] It was apparent from the testimony of both parties that they are loving parents of both children and have had significant roles in their lives. Prior to separation, the claimant's role in the family was limited by his work schedule and some social choices he made. The respondent contended that before separation, the claimant chose to be with his friends and drinking after work, over opportunities to be at home when the children were awake and participate in their affairs. The claimant denied that his drinking habits were a cause of the respondent's disaffection and decision to separate in March 2015. He did not deny spending considerable time at friend's homes after work and that he spent time in his company shop to do his own vehicle repairs.
- [60] The respondent contends that the children's hygiene and cleanliness in the home were not maintained when visiting the claimant. She believed he did not adequately deal with the children's persistent rashes in their private areas.

- [61] She cross-examined the claimant concerning friends he had invited to stay in his home, his drinking post separation, children's hygiene and sleep when they were with him. Although he did not concede problems in each of these areas, it is clear that some of the respondent's concerns were warranted, if not to the level of concern she described.
- [62] The claimant said that he took a parenting after separation course and believes the respondent does not wish to communicate with him.
- [63] When he took stress leave from work in 2017/2018, he was overwhelmed by the consequences of breaking up with a prior girlfriend. He now says that he can cope with these type of stresses and believes he can provide good care for the children. He has known his current girlfriend since September 2018 and they began dating in July 2019. Although he seems to be residing with her, he seemed uncertain concerning his future in that relationship.
- [64] When he was on stress leave, the claimant's engagement with the children was substantially diminished. He did not participate in the children's activities nor did he seek extra time notwithstanding his absence from work due to his stresses.
- [65] He contends the children's current school is close to his residence and is in an area where the children have friends and members of his family (and their children) with whom they socialize.
- [66] The claimant recognized that some friction and mistrust exists between his sister, her children and the parties' children. He has had some friction with his sister but believes their current relationship is good and he contends the children continue to want to visit his sister's home.
- [67] He conceded that he stopped paying child support on the advice of his counsel when the respondent travelled to Saskatchewan.

ii. Analysis

- [68] The parties share common goals and concerns for the best interests of these children notwithstanding their differences. The family came apart because of the gradual erosion in the relationship between the parents and without any single precipitating event.
- [69] The claimant wants an increased parenting role; the respondent agrees that his role with the children can be expanded. She prefers a more gradual expansion of his role and responsibilities with the children but worries about his behaviour around friends, his treatment of the children in his care, and his frequent changes in his relationships. He does not have a fixed plan for a long-term relationship with his current girlfriend but confirmed there are prospects of a continuing relationship.

- [70] I accept that the claimant's engagement with the children has been intermittent and has improved during times when he has been in other relationships. His involvement in multiple relationships in a short time coupled with the serious emotional crisis resulting from the breakup of his penultimate relationship and resulting absence from work for many months in 2018, justifies the respondent's concern as to the claimant's stability.
- [71] Over the years, the respondent has been the primary caregiver for the children in particular during the last five years since the parties separated. The claimant's contact with the children was interrupted significantly when he was on stress leave and seems to have improved significantly since he has formed his relationship with his new girlfriend.
- [72] The claimant's circumstances in and around his own home and farm appear idyllic at some level. However, he has not been able to repair or maintain his house to a level that would accommodate the continued presence of the children with him in the home.
- [73] For whatever reason the claimant's lawyer advised him to stop child support payments; he must have been aware that interrupting his support would adversely impact the children. Although the respondent had travelled to Saskatchewan and he was anxious about their absence from BC, he failed to recognize their move was a temporary safety measure to allow the respondent secure surroundings within which to care for the children during the time immediately following their separation; it was most likely in the children's best interest.
- [74] There is little doubt the claimant cares for both children and is able to attend to many of their needs. As the children grow older they will need the wisdom and support of both parents to succeed and prosper.
- [75] The children are bright and intelligent children who have excelled in their schooling. The respondent has developed a structure and routine that should be encouraged. The children's activities at school, in singing, in music, in church attendance, and scholastics are commendable. D.A.E. is well-connected to the claimant's farm and lifestyle that is open to both children at his residence. The children have struggled with the claimant's multiple changes of partners but seem to be content and connected with his current girlfriend.
- [76] Arrangements for contact time and parenting time can never be cast in stone because children grow and their needs evolve. Optimum schedules and the best interest of the children do not necessarily require equal parenting time allocated to each parent.
- [77] In this case, I must take into account that the claimant cannot become a guardian of D.A.E. and cannot be assigned parenting responsibilities under the FLA. However, in this unusual circumstance the claimant has a very important role to play in D.A.E.'s life in addition to B.A.P.
- [78] The claimant will be a joint guardian of B.A.P. but not D.A/E.

- [79] In this case, the legislation defers to the parental wishes of guardians because of the impact of s. 40(1) of the FLA. In this case, the deference to the respondent's views focus on D.A.E. Given the close relationship between D.A.E. and B.A.P., there will be some impact on B.A.P. where decisions must be made for D.A.E. that are not part of the claimant's role.
- [80] The parties did not address the question of guardianship in any fulsome manner at trial. It may be that the respondent would like to encourage the claimant to become joint guardian of both children with her. If that is her view, I grant the parties liberty to make further submissions on the question of guardianship of D.A.E. and the question of service of application materials on D.A.E.'s biological father.
- [81] Overall, I conclude that it will be in the best interests of the children that the respondent and claimant will be joint guardians of B.A.P. but that in the event of disagreement regarding decisions affecting the children the respondent will have final decision making authority. With special focus on education, the respondent must be equipped to make decisions concerning moving the children to a new school. She will, of course, discuss any changes with the claimant before selecting a new school but, she will be vested with the decision-making authority on this and other subjects in the event of disagreement with the claimant.
- [82] I find that the history of the children's care and the divided roles available to the claimant warrant investing the respondent with final decision making authority in the event of disagreement with the claimant.
- [83] If the claimant disagrees with any decision made by the respondent in regard to B.A.P., he will have liberty to make application to the court to review those decisions and revisit the question of decision-making authority. Otherwise, the respondent's decisions concerning the matters set out in s. 41 of the FLA concerning D.A.E. will be hers alone except as affected by this order.
- [84] In my view, the current schedule of the children's contact with the claimant is somewhat impractical because the respondent is restricted to no weekend time with the children. Conversely, the claimant's contact with the children and parenting role with B.A.P. and contact with D.A.E. should be expanded within limits to further strengthen their relationships.
- [85] I find that it would be in the best interests of both children to be in the claimant's care on alternating weekends from 3 PM (after school) on Fridays to 8 AM (start of school) on Tuesdays. On those weeks when a statutory holiday occurs, the children will also be in the claimant's care from Fridays until Tuesday mornings at 8 AM.
- [86] The children will be in the claimant's care for an interrupted period of four weeks during either the months of July or August each year. The claimant will inform the respondent of the four-week period that he requests for the upcoming summer months by May 1 of each year. In weeks not chosen by the claimant, the respondent will have uninterrupted parenting time with both children.

- [87] Notwithstanding para. 85, the parties will divide parenting/contact time over Christmas vacations in alternating years with the first week beginning Friday night after the end of school for seven days with one party and the next seven days with the other except that the party enjoying the first week of time with the children will also enjoy Christmas eve from 6 PM to Christmas Day at 1 PM with the other party caring for the children from 1 PM Christmas Day to 9 AM Boxing Day.
- [88] Spring break will be divided equally between the parties. Parenting during the first week of Christmas break (2020) and spring break (2021) will begin with the respondent and alternate each year thereafter.
- [89] The parties will be free to adjust this schedule by agreement in writing.
- [90] When the children are in the care of one parent under this order, the parent with care of the children will ensure the children attend at and are involved in all regular activities that may occur in that timeframe.
- [91] The respondent will consult with the claimant regarding all activities she may decide B.A.P. should be engaged in and the parties will make their best efforts to reach agreements on these activities. Failing agreements, the respondent's decisions will prevail unless the claimant asserts that the respondent's decisions are not in the best interest of the children in which case he will have liberty to apply to review the respondent's decisions.
- [92] If the parties are unable to co-manage the children's activities with mutual agreement, either party is at liberty to make further application for the appointment of a parenting coordinator for B.A.P. if such person is accessible to them in Fort St. John.
- [93] I find that the above-noted schedule will optimize the health and emotional well-being of the children. The children have a strong relationship with both parents although the respondent's role and responsibilities for D.A.E. are somewhat different.
- [94] It will be important for this parenting schedule and the roles of the parties to be revisited in the future. In part, if the claimant is able to achieve greater stability and certainty in his future, and the parties are able to manage their respective roles through mutual cooperation, broadening the claimant's parenting role and contact with the children would likely be in their best interest. Thus, the parties are granted liberty to seek changes in the schedule not earlier than two years from the date of this order.
- [95] I contemplate that after the passage of two years, if further application is required by either party, a s. 211 investigation into the views of the children could provide appropriate guidance to the court. In the meantime, I will not order counselling to take place but consider the services of a counsellor may assist the parties greatly in addressing issues that might arise.
- [96] This restriction does not prevent either party from making application to vary the order in the face of unusual circumstances not foreseen at this time.

IV. Child Support

[97] the claimant's line 150 incomes since 2015 were as follows:

- a. 2015 - \$113,534
- b. 2016- \$80,354
- c. 2017- \$81,389
- d. 2018 -\$41,685

[98] The claimant's 2019 income will be \$91,832.

[99] The Federal Child Support Guidelines, SOR/97-175 set out the amounts of child support the claimant was bound to pay from 2015 forward. For 2015 his obligation was \$1,698 per month; for 2016 his obligation was \$1,248 per month; for 2017 (up to September 2017) \$1,258 per month; for 2018 \$658 per month; and going forward from 2019 support will be \$1,413 per month. He paid \$1,200 per month from separation until September 2017 and \$805 per month for the balance of 2017, 2018 and 2019.

[100] Overall, I calculate the claimant's arrears of child support to be \$16,474 (2015- \$4,482; 2016- \$576; 2017- \$3,452; 2018- (-\$1,764); and 2019 to present \$9,728). Going forward, based on the information provided at trial, the claimant's child support obligations will be \$1,413 per month.

V. Property

[101] At the outset, I was informed that the parties had reached a settlement agreement concerning spousal support and the respondent's interest in the matrimonial home. In exchange for settlement of her spousal support claim and her interest in the home the claimant was to receive the sum of \$20,000 payable over 48 months. I was informed the parties did not address settlement of the claimant's business because time did not allow for resolution of that issue.

[102] The respondent testified that their company owns three trucks related to his business and one truck had recently been sold for parts to pay for accounting fees. No information was provided concerning the settlement of the farm business including the livestock; absent any evidence I will not make any decision regarding those assets. If the parties are unable to agree about the value of the claimant's business including the equipment and vehicles owned by the claimant, then the question of the valuation of all assets not settled by the settlement agreement will be referred to the registrar with a direction that they conduct an inquiry and certify the result of this valuation.

[103] The parties were equal shareholders in the company; it is entirely impractical to divide the assets between the parties. If there is no agreement the assets are to be listed for sale at the valuations made by the registrar and the proceeds of same divided equally after the cost of sales are paid and the respondent will transfer her shares in the company to the claimant. I accept that this solution may not be practical, but in the absence of any other evidence this will be the process for dividing the balance of the parties' assets.

V1. Costs

[104] The parties will be at liberty to make written submissions as to cost of this proceeding. In the absence of submissions, I would order the parties to bear their own costs of this action.

"Armstrong 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/20/06/2020BCSC0647.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/m-j-p-v-a-e-2020>

Prepared on 25 October 2026 · Esheria