

CANADA / JUDGMENT

M.S.G. v. I.K.G.

2024 BCSC 651

COURT

Supreme Court of British Columbia

DECIDED

22 April 2024

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2024 BCSC 651 M.S.G. v. I.K.G.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

M.S.G. v. I.K.G.,

2024 BCSC 651

Date: 20240422

Docket: E53203

Registry: New Westminster

Between:

M.S.G.

Claimant

And

I.K.G.

Respondent

Before: The Honourable Justice Armstrong

Reasons for Judgment

Counsel for the Claimant:

S.J. Bobb

Counsel for the Respondent:

J.K. Broadhurst

H.E. Johnson

Place and Dates of Hearing:

New Westminster, B.C.

March 5, 7, 2024

Place and Date of Judgment:

New Westminster, B.C.

April 22, 2024

Introduction

- [1] These reasons concern the claimant's application for increased parenting time with the parties' nine-year-old child and the respondent's request for an extension of a protection order made February 10, 2023.
- [2] On February 7, 2022 the parties settled their long-standing family law dispute. That settlement and consent order (the "February Order") included an allocation of equal parenting time to the parties. Unfortunately, there has since been a deterioration in the parties' relationship and the respondent is concerned for her safety and the well-being of their child. These issues came before the Court on January 26, 2023, after which time a protection order (the "Protection Order") was made at the request of the respondent.
- [3] At that stage, the Court declined to vary the February Order; instead, it was suspended with leave to return after April 1, 2023. After considerable delay, the claimant's application came on for hearing on December 6, 2023 with reasons issued January 18, 2024: M.S.G. v. I.K.G., 2024 BCSC 90 (the "January Reasons").
- [4] The January Reasons include a discussion of the background circumstances and the Court's concerns with the credibility of the parties' affidavit evidence.
- [5] The claimant seeks a return to the parenting schedule set out in the February Order, under which the claimant and respondent shared parenting time equally.
- [6] The final resolution of these applications was adjourned until after April 2023 pending a review of the circumstances. The matter was then rescheduled to December 3, 2023 and further adjourned pending the January Reasons, where I ordered that the parties schedule cross-examinations on their affidavits before the Court. The primary reason for this was concerns with messages sent to the respondent, including nude photographs of her, and the claimant involving their child in the discord between the parties.

- [7] I formed the view that a variation of the February Order would produce a new final order concerning parenting that could have long-term consequences for the child and the parties. It was necessary for the parties to conduct cross-examinations on their affidavits to evaluate the credibility and reliability of the parties' evidence and to assess the parenting roles that would be in the best interests of the child.

The Respondent

- [8] On March 5, 2024, the respondent was cross-examined on her affidavits presented in these applications. She was asked about the February Order, which addressed allocation of parenting time and responsibilities, the retention of a parenting coordinator, and the establishment of a communications protocol. She agreed that this protocol was changed in September 2022.
- [9] In September 2022, the respondent observed a spike in the child's anxiety levels. He was expressing difficulties over the transition times between his parents' homes. He began informing her he did not want to go to school and was having stomach-aches. The respondent did not agree that the child was being bullied at school as suggested by the claimant, although he may have had some disagreements with classmates.
- [10] The respondent wanted to make changes to the parenting time schedule to help the child with his struggles over transitioning between homes. The claimant told her she was "making it up" and refused to accept the child was having difficulties. By December 2022 the claimant agreed to change the transition times. However, in January 2023, he threatened to take away the flexibility regarding those transition arrangements.
- [11] The child also expressed his concerns around transitioning between homes in part because he wanted to carry his toys back-and-forth between his parents homes. The claimant objected because he thought the child was too old to be taking his toys back-and-forth; he eventually took advice from the child's counsellor who indicated the toys were an important comfort device for the boy; the claimant relented.
- [12] Next, the respondent was asked about her assertions the claimant was becoming violent. She said that in December 2022 she had been out with friends when she received a call from the claimant suggesting she was on a date. The claimant swore at her and said the child was upset because she was dating; she informed him that she was out with friends and not on a date. She asked to speak to the child but he refused.
- [13] During this communication, the respondent observed that the child appeared to be frightened. On another occasion, the child returned home and asked the respondent if she had "a Bumble app on her phone" (a dating app) at the behest of the complainant. The child told her he was frightened of the claimant and said the claimant would ask him who his mother was with. The child said he was afraid of his father and complied with his requests to avoid making him angry.

- [14] The respondent acknowledged that in November 2022 she allowed their communication protocol to be changed in hopes this would improve their co-parenting of the child. Unfortunately, following this this relaxation in the protocol the claimant sent sexually harassing messages to the respondent, including a nude picture of her that only she and the claimant ever possessed.
- [15] The respondent made some compromises concerning the claimant's parenting of the child to facilitate his attendance at his sister's wedding. She agreed that the child could attend these events provided alcohol was not being served at any of the events. The claimant made application to court to permit him to attend events where alcohol was to be served; this application was refused by Justice Verhoeven.
- [16] She was uncomfortable with making changes as a result of prior communications with the claimant, but confirmed that working through a parenting coordinator was helpful.
- [17] The respondent's affidavit #16 chronicles a series of events that happened around December 2022. On December 15, the respondent encountered the claimant at their child's holiday concert; the claimant asked her about "her future plans romantically". She rebuffed his question. At another event on December 16, the parties both attended their child's soccer party; on that day the claimant had been drinking heavily and attempted to hug her. On the same day, she began receiving messages and calls from anonymous numbers as well as the claimant's phone number.
- [18] The respondent, through counsel, repeatedly requested the claimant to produce his Visa statements to explore his use of a service permitting users to obscure a source phone number for messages sent. She had made inquiries into a web service that charges individuals to use this type of service and explored how the service operates..
- [19] On December 17, the respondent told the claimant she was not comfortable with his messages or attempt to hug her. She had repeatedly told him she did not want to have conversations with him except in the context of their parenting roles concerning the child. The claimant replied saying he wanted them to be a family and he would get her a nice ring.
- [20] Between December 18 and December 28, the claimant began sending more inappropriate, harassing and abusive messages. He gave her two options; she would either reconcile with him or have a casual sexual relationship with him and no one else. Further, in these messages, the claimant:
- a) invited the respondent to discrete sexual encounters;
 - b) said he would not permit another man in the respondent's life to live in her home with the child;
 - c) asked her to "get off Bumble and stay single";
 - d) questioned if she had "had sex with anyone else"; and

- e) said that if she was staying single then he would be open "to do you know what".
- [21] These types of messages continued through December 2022 and into January 2023 including inappropriate emails on January 16, 2023 pestering her about her dating life and sticking to "option to, last option". He sent other inappropriate messages on the same day attempting to demean her family, telling her his father would be providing the child a new Shelby Mustang when he's 16 years old and that his father had given a check to teach "you losers a lesson"..
- [22] The respondent then began receiving messages from anonymous numbers that were threatening, cajoling and invasively harassing. The context of these messages provide clear evidence they were directed to the respondent and contained comments that I find originated with the claimant. They were similar in tone, referred to the respondent as "Inder", and contained the same obsessive focus on respondent.
- [23] The respondent also listened to messages on her family's voicemail in which the claimant said "your daughter is dating white boys". She recognized the claimant's voice.
- [24] Since February 2023 the parties have used a parenting coordinator and counsellor to communicate in regards to their child.
- [25] The respondent has been reluctant to change the claimant's parenting time due to a fear that it will upset the child and cause a return in his anxieties demonstrated in September 2022, notwithstanding that she permitted the child to attend the claimant's sister's wedding.
- [26] The Protection Order expired in February 2024; the respondent agreed that the claimant has not contacted her since the expiry of the order. Overall, the respondent said that she has experienced abusive treatment by the respondent over six years and has hateful feelings towards his family because of their involvement in the marriage.
- [27] The respondent said that with sufficient safeguards in place and the assistance of a parenting coordinator, it is possible that the claimant could have additional parenting time.
- [28] The respondent testified that the requirement for supervision of the claimant's parenting time is important because it gives the child much needed comfort of safety. He is frightened of the claimant.

The Claimant

- [29] The cross-examination of the claimant did not persuade me that his behaviours from September 2022 to the present reflect an adequate focus or appreciation of his behaviours on the best interests of their child. For reasons that follow, I did not find his evidence credible on the issues of communications sent by him (or by someone else at his direction). His communications indicate a relentless and obsessive focus on returning to a marriage-like relationship with the respondent and his willingness to involve their child in the conflict.

- [30] In analyzing the claimant's testimony on cross-examination, I have specifically taken into account the following portions from *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, 35006 (7 March 2013):
- [186] Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (Farnya [sic] at para. 356).
- [187] Finally, the court should determine which version of events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions" (*Overseas Investments (1986) Ltd. v. Cornwall Developments Ltd.* (1993), 12 Alta. L.R. (3d) 298 at para. 13 (Alta. Q.B.)). I have found this approach useful.
- [31] The claimant's responses were inconsistent "with the probabilities affecting the case as a whole" when combined with other concessions made in his evidence, and most importantly, the inconsistency of those denials with other evidence. Where the claimant denies sending messages attributed to other phone numbers, on the balance of probabilities, I do not accept his evidence. In part, those messages clearly identify the respondent as the recipient and contain information--such as the nude photographs of the respondent-- and other details that no one other than the claimant could have possessed or sent (other than the respondent herself). I am satisfied that the claimant did not send this photograph to any person other than the respondent.
- [32] The claimant denied sending some messages, could not remember if he had sent other messages, and was able to confirm that he had sent some messages.
- [33] Moreover, many of those messages contain communications consistent with other communications he admits to, indicating an obsessive desire to coerce the respondent into continuing a relationship with him.
- [34] Lastly, the claimant demonstrated his propensity to question their child about the respondent's activities in regard to a concert the child attended with her. There was no need for him to question the child on this point except to address his ongoing suspicions. He acknowledges discussing the breakup between he and the respondent with their child for no rational reason than to upset the child or upset the respondent.
- [35] I do not accept his claim to have spoken to the child about the respondent's attendance at a Drake concert the purposes of avoiding being in the same place where the respondent might have been that night. It was clear to me the claimant did not need to ask the child who the respondent would be with at the concert.
- [36] In the past, the claimant threatened to share this nude picture of her with others including Dr. Elterman who was at the time preparing a s. 211 report.

- [37] These conclusions I have reached are informed by evidence of things happening prior to separation and after. For example, the claimant was reported to be a heavy abuser of alcohol, drinking 10-12 drinks per day, three to four days per week, before separation. In cross-examination, he denied abusing alcohol. However, in his August 5, 2020 examination for discovery he said he would use alcohol in stressful periods of his life as a coping mechanism. There, he conceded, "it was alcohol abuse, yeah".
- [38] Also in cross-examination, the claimant attempted to resile from that admission and stated, "it depends on what abuse is".
- [39] There was an abundance of evidence before separation concerning his anger and propensity to control the respondent. In December 2018 the claimant communicated to the respondent that she should "shut her mouth", "act like a sheep" and "not mess with the wolves". She took this to be a threat.
- [40] Messages sent by the claimant to the respondent in December 2022 mark a significant change in his behaviour following the February Order. He was cross-examined with regard to multiple text messages he sent to the respondent beginning December 15, 2022 up to January 1, 2023, many of which were included in the respondent's affidavit. In this time, the respondent continually informed the claimant that she did not want to have conversations with him and asked him to stop sending messages about his desire to reunite with her. The number and frequency of the claimant's messages to the respondent demonstrates a near obsession he had with the respondent, continually asking her for a face-to-face meeting, discussing her life activities and requesting to reunite or engage in a casual sexual relationship. On December 19, 2022 the claimant sent 80 messages to the respondent between 7:10 AM and 9:43 PM. On December 20, she told him to stop; she said he was making her feel uncomfortable.
- [41] I will not canvass each of these exchanges except to note some of the claimant's comments, where he:
- a) accused her of talking with guys on Bumble;
 - b) said if she is looking to date people, their child should be made aware;
 - c) professed that deep down he wants to be a family (with the respondent) and wants to buy her a big ring. He kept discussing ways to "make it work". All the while, the respondent asked not to receive these types of messages;
 - d) said he cannot control how he feels and is upset;
 - e) proclaimed that deep down the respondent cares for him;

- f) talked about deleting his Bumble account and whether he and the respondent want another child; he clearly wished to have counselling to repair their relationship. The respondent accepted counselling may assist in working through parenting issues but rejected all of his invitations to work on their future together;
- g) said it is embarrassing to him that others see the respondent on Bumble, notwithstanding that they were long since divorced;
- h) proposed that the respondent and he have a "casual relationship" which he described as "if you know what I mean". He is clearly seeking a sexual relationship with her. He repeatedly said that he will not accept his son living with another man who might be in the respondent's life.
- i) continually discussed the child's response to his relationship to other women and, more importantly the respondent's potential for dating.
- j) insisted that their child be informed about the respondent's dating practices after separation and clearly caused the child much distress; and
- k) continually proposed reconciliation and residing in the same residence; the respondent indicated she has no desire to achieve any kind of reconciliation with the claimant, save as arises in the context of their child's care.

Analysis

- [42] As indicated in the January Reasons, the evidence tendered by the respondent concerning events after February 10, 2023 is suggestive that she has been the victim of family violence since December 2022: see FLA s. 184 (a-d) and (f).
- [43] Between June 2017 and February 2022, this Court issued six protection orders against the claimant. In November 2018, the claimant entered into an undertaking to abstain from communicating with the respondent. I concluded that the more directed communications beginning in November 2022 constituted family violence warranting the Protection Order. These communications were upsetting and formed a backdrop for continuing communications in December 2022 and January 2023.
- [44] In one of these messages, the anonymous sender (attributed to the claimant) threatened to kill the respondent if she dated anyone else other than the person sending that message. As previously mentioned, she also received messages from the claimant putting her on notice that she could accept one of two options going forward; she would either have casual sex with the claimant or return to a relationship with the claimant.

- [45] In mid-December 2022, he continued to express a desire to live with the respondent and repeatedly pressed her for meetings. As an example of his persistence, while the respondent was out for dinner, the claimant phoned her nine times in a span of 50 minutes. He acknowledged sending a string of messages where he used foul language and told her to explain to their child what she was doing.
- [46] When I granted the Protection Order, I concluded the claimant's prior conduct was psychologically and emotionally abusive and demonstrated a pattern of coercive and controlling efforts directed at the respondent.
- [47] I also concluded that since November 2022 messages received by the respondent constituted family violence because they were similarly emotionally and psychologically abusive and contained threats to the respondent's personal safety and security. For the purposes of the respondent's request for a new protection order and the claimant's request for parenting time based on the February Order, I rejected the claimant's assertions that he did not send some of the messages, or cause them to be sent.
- [48] Regarding the present applications, there were many issues raised where credibility and reliability of testimony were key factors. The claimant submits that he has not sent any messages to the respondent since April 2023.
- [49] The analysis performed by Justice Dillon in Bradshaw is frequently relied upon to describe key elements involved in assessing credibility as follows:
- [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Farnya [sic] v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [*Farnya*]; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356).
- [187] It has been suggested that a methodology to adopt is to first consider the testimony of a witness on a 'stand alone' basis, followed by an analysis of whether the witness' story is inherently believable. Then, if the witness testimony has survived relatively intact, the testimony should be evaluated based upon the consistency with other witnesses and with documentary evidence. The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison. Finally, the court should determine which version of

events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions" (*Overseas Investments (1986) Ltd. v. Cornwall Developments Ltd.* (1993), 12 Alta. L.R. (3d) 298 at para. 13 (Alta. Q.B.)). I have found this approach useful.

- [50] These comments resonate with conclusions reached in the long-standing authority of *Faryna v. Chorny* (1951), [1952] 2 D.L.R. 354 at 357, 1951 CanLII 252 (B.C.C.A.) in which the Court said:

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

- [51] These authorities inform my conclusions taken from the cross-examinations of both parties.

- [52] The respondent contends that after the Protection Order was granted, she began receiving abusive messages from anonymous numbers which she believed originated with the claimant. She said that in March 2023, she received the two nude photos of herself from phone numbers that were not specifically associated with the claimant.

- [53] In the past, the claimant had threatened the respondent that he might send photos of her to her family and friends, as well as to Dr. Elterman who was, at the time, preparing a Section 211 report. In particular, he sent her a message in May 2018 that said:

Just a fyi i dont want to see personal messages pictures or screenshots because then i will have no choice but to show the same of you. So play fair i play fair. I dont want hotel bookings and hotel naked sex pictures in the courts. Or even washroom sexting pics. Not fair to [the child].

- [54] The respondent said that in 2016 she had sent two nude photographs of herself to the claimant and had never sent them to anyone else.

- [55] Further, the respondent said that in August 2023, after a friend posted a picture of her at the PNE, she received a message from someone named "Jason" who said she had sex with Jason. The respondent made inquiries of a local website confirming that, for a fee, individuals can send messages that appear to come from an unrelated number but in fact come from the person initiating the communication.

- [56] In late August 2023, the parties' child informed the respondent that the claimant had asked him if she was going to a concert. He also asked, "who is your mom going with" and "are your mamas [uncles] going?" She contends that the phrase "uncles" in Punjabi is a contextual way of asking if she was going with male friends.

- [57] The respondent received many other troubling messages from anonymous numbers that were not directly attributable to the claimant. Nonetheless they contain some content that was very specific to the respondent and referenced details of a trip she previously took with the claimant to Mexico.

- [58] More messages were sent to the respondent in March 2023 including a reference to the respondent's name, with comments about caring for their son and "buddies coming to meet her". One mentioned nude photographs of the respondent and contained a plea for her to "come sleepover".
- [59] In the claimant's affidavit, he denied threatening to kill the respondent, but admitted complimenting her on her Bumble and Hinge dating profiles. This message was received by the respondent around January 16, 2023 showing the image of a gun and the words, "Your only mine"; "Pop pop is 1 call away"; "You'll be my girl forever any new guy going to get his [s**t] pushed in"; "No dates no one else"; "Dont push me [I.K.G.]". This message also included a reference to the respondent's friend who she had dinner with on December 28, 2022. That evening, the claimant made 21 phone calls to the respondent between 6:05 PM and 6:55 PM, nine of which were from the claimant's telephone. The claimant sent an abusive text demanding she call him and explain to their son what she was doing. He said the child was crying. The claimant asked the respondent to call their son about her activity that night. She called the child and the claimant forced the child to ask her why she was on "a date with a guy". The child appeared confused and sad.
- [60] The child told the respondent approximately four times in January 2023 that the claimant had been interrogating her about her dating life. He told the child not to tell anyone. The child was visibly frightened and upset by these encounters.
- [61] It was clear throughout this period that the claimant was behaving in an invasive and threatening manner. It was also clear the claimant was speaking to their child about the respondent's activities and causing the child to be distressed. The claimant denied an extensive stream of communications to the respondent which implied a threat to kill her, that she was "his only" and telling her to get off dating sites.
- [62] The claimant acknowledged he had, in the past, hired a private investigator to watch the respondent. However, he could not remember sending the text saying "I had private investigators posted outside of Sandman. We have video of everything..
- [63] On another occasion, he texted the respondent that the child was "crying your (sic) on a date" he is crying and it is "all your fault"..
- [64] There has clearly been a history of family violence initiated by the claimant against the respondent that continued well into 2023. The claimant's admitted behaviours include inveigling the child to report on his mother's activities, questioning whether the respondent was dating, informing the child he believed the respondent was dating and, most recently, asking the child about who the respondent was attending a concert with. Several times, the claimant discussed the respondent's dating with the child which caused the child considerable upset and fear.

- [65] The claimant has repeatedly tried to dictate the respondent's post-separation life, asserting that she will not be permitted to form a new relationship in which their child will be cared for by the respondent and a new partner.
- [66] The claimant acknowledged sending multiple messages where he communicates a need, desire or obsession with reuniting with the respondent. The respondent asserts that she does not want to have any relationship with the claimant except as necessary in the context of their parenting obligations. She repeatedly asks the claimant to stop messaging her. He ignores the respondent's plea.
- [67] Many messages received by the respondent did not appear to come from the claimant's usual telephone number. He denied being the source of those communications. The claimant denied sending the message containing the nude photograph in 2023; he claimed that he had deleted them from his phone and he had not given the photograph to anyone else.
- [68] The claimant was asked repeatedly to produce his Visa records to enable the respondent to investigate the possibility he used a website to send the text messages anonymously. The claimant has unreasonably refused to do so. I infer that, in addition to the other evidence about these messages, he has done so to avoid the discovery of his use of different numbers to mask his messages. I do not accept his denial; on the balance of probabilities, he is the only person who could have sent this picture to the respondent (or who could have organized someone else to do so).
- [69] In my view, the claimant's testimony lacks harmony with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable" as discussed in *Faryna and Bradshaw*. Taking into account these comments concerning the credibility of witnesses, I have concluded that the claimant's testimony is not believable on the issue of his involvement in sending messages to the respondent including the nude photographs.
- [70] There are multiple instances in cross-examination of the claimant where his lack of credibility and reliability persuade me that he has not been truthful.
- [71] The claimant's behaviour in engaging the child to question the respondent reporting to the child his suspicions that the respondent was dating and discussing the breakdown of his marriage to the respondent, highlight my concerns as to his credibility and the risks inherent in the claimant having unrestricted/unsupervised parenting time. Not only has he demonstrated an inability to govern his behaviour in accordance with the best interests of the child, he has been untruthful with the court on multiple points. His inability to honestly accept his shortcomings represents a deeper and more troubling aspect of his overall ability to parent their child.

- [72] The claimant expresses deep love and affection for their child and sadness at the limited amount of time he can be with him. However, the child remains a focus of his obsession with the respondent's life, including her dating practices, after divorce that he is unable to manage or control himself or his suspicions. He appears inappropriately focused on the possibility that the will not be in a relationship in the future. Since the making of the Protection Order, the claimant's troubling behaviours continued, albeit with less frequency.
- [73] In determining what parenting regime would be in the child's best interests, the Court remains deeply concerned with risks to the child if the claimant is to have an expanded unsupervised parenting time. Conversely, it will be in the best interests of the child to develop a loving and productive relationship with the claimant. The child is now nine years of age and will, within a few years, be able to express his own preferences for the parenting schedule divided between the parties.
- [74] In the circumstances, it is challenging to conceive of a parenting regime that will foster the safety, security and confidence necessary for the child to flourish. The claimant contends that the child's best interests would be served by returning to the equal division of parenting roles. In my view, there must be an expansion of the claimant's role with the child to ensure that they form a healthy, balanced and safe relationship, free from the claimant's more obsessive inclinations to coerce the respondent into a relationship with him.
- [75] In *K.M.N. v. S.Z.M.*, 2024 BCCA 70 the Court of Appeal discussed the type of inquiry involved in determining the best interest of a child in the context of a fractious family breakup:
- [2] Assessing the "best interests of [a] child [for purposes of a parenting order] is a heavy responsibility, with profound impacts on children, families and society": *Barendregt v. Grebliunas*, 2022 SCC 22 at para. 8. It is also a highly "individualized and discretionary" inquiry: *Barendregt* at paras. 9, 97.
- [76] In my view, the claimant's patterns of behaviour and measure of self-control have not matured to the point that he does not pose some risk to the child absent supervision. It may be that the simple passage of time since October 2023 will be demonstrative of his changing attitudes and abilities.
- [77] However, for the present I am satisfied that the claimant should have parenting time with the child for up to seven hours on alternating Saturdays alternating up to seven hours on alternating Sundays. After 60 days following these reasons, the claimant will also have parenting time beginning at the end of school days on Wednesdays from 3 PM to 7 PM.
- [78] I am satisfied that in the interim, the claimant's parenting time should be supervised. In my view, professional supervision has been helpful but, in the ongoing schedule the parties must come to an agreement on a mutually acceptable non-professional supervisor. In the absence of an agreement, the parenting coordinator will have authority to designate a supervisor to monitor the claimant's parenting time or the claimant's parenting will continue to be supervised.

- [79] The claimant agrees that the parties continue to retain a parenting coordinator on the same terms as initially made. I order the parties to retain a parenting coordinator for a period of one year provided that either party may apply to extend the term of a parenting coordinator for an additional one year.
- [80] In this case there is a need to protect the respondent from the claimant who has, in the recent past, continued to demonstrate an inability to accept that their marriage has ended and that their joint focus must be restricted to ensuring the child receives the best care possible.
- [81] Protection orders under ss. 183-185 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] are intended to shield individuals from the actions and behaviours of another that creates risk of family violence.
- [82] Fitch J. (as he then was), framed the inquiry regarding the perception of risk in *S.M. v. R.M.*, 2015 BCSC 1344:
- [52] I am obliged to consider the claimant's perception of risks to her own safety. Having done so, I am compelled to the conclusion that her experience of intimidation, harassment, coercion, and thinly-veiled threats at the hands of the respondent, and her perception of the risks flowing therefrom, are grounded in the evidence. Collectively viewed, I am satisfied that the communications were designed to, and did, instill fear.
- [83] As Justice Schultes noted in *Morgadinho v. Morgadinho*, 2014 BCSC 192:
- [59] The purpose of these provisions is obvious -- to recognize the danger to vulnerable family members that can arise in these often-volatile relationships and to ensure that courts have the means of ensuring the safety of those who are at risk. The broad and inclusive definition of "family violence" recognizes that the kinds of harm that can be inflicted in this situation extend beyond the infliction of physical violence.
- [84] I am satisfied that the risk of physical or emotional and psychological violence toward the respondent and the child is continuing and the claimant's behaviours that became problematic in December 2022. In this case, the respondent must be shielded from this behaviour.
- [85] I have no doubt the respondent continues to experience the type of family violence that emanates from behaviours that undermine her sense of safety, security and peace of mind. Taking into account the mandatory assessment of the child's best interest under ss. 37 (1),(2) and (4) of the FLA, I find that based on the child's health and emotional well-being, history of the child's care and the impact of family violence on the child, unsupervised parenting time is not yet in the child's best interests. I am not satisfied the claimant has the ability, in exercising parental responsibilities, to act responsibly and with a view to safeguarding the emotional well-being of the child.

- [86] Notwithstanding these concerns, I am cognizant of the value to the child of having a good relationship with the claimant. I am satisfied that the claimant is not a risk to the child's physical well-being but must be restricted in his interactions with the child to ensure he is not visiting his desire for a relationship with the respondent on the child.
- [87] Further, I am satisfied that for some period of time the respondent must be protected from the claimant's demonstrated interests in pursuing and controlling her. Thus, I am prepared to make a protection order in favour of the respondent for one year because absent restrictions on the claimant's behaviour, family violence is likely to occur in the form of the type of communications referred to above.
- [88] This is a difficult assessment, and finding the correct balance is fraught with some uncertainty. I recognize the respondent's concern that changes in parenting time may cause some upset or stress for the child but the parties will need to deal with those concerns by way of a mutual approach. If the parties cannot agree if there are concerns with the child's welfare stemming from the changes in parenting ordered herein, the parties have liberty to bring an application dealing with those concerns.
- [89] I accept the claimant wishes to increase his involvement in the child's life and assume a larger parenting role. At this juncture I do not have confidence that he is fully aware of the risks he poses to the respondent and the child if his behaviours do not change. This parenting order will be reviewable after six months to enable the court to determine if the claimant's circumstances have changed to a degree that obviates the risk of "family violence" to the respondent and their child and has become capable of assuming a larger role in parenting of the child.
- [90] In order to provide an avenue toward final resolution of these issues, I make the changes to the claimant's parenting on an interim basis. Thus, I will adjourn his application so as to permit the review of the order to be made with the expectation that the claimant may be able to demonstrate sufficient changes in his behaviours to warrant an expansion of parenting time.
- [91] I do not expect that the protection order made here will be necessary for more than one year. This order will include supervised parenting time for up to seven hours on alternating Saturdays and Sundays as set out above. After 60 days, the claimant's parenting time will be increased to include Wednesdays of each week from after school until 7:30 PM.
- [92] The terms of this order will also include the following:
- a) The parties will communicate only by text message, through the parenting coordinator, or through counsel.
 - b) Text messages exchanged between the parties will address only issues concerning the well-being and needs of the child. Neither party will delete any text messages sent to the other for one year after a message is sent.

- c) The claimant is expressly prohibited from having any discussion or conversation with the child concerning the respondent's family or the respondent's personal life.
- d) The parties will need to collaborate on the claimant's parenting time schedule during summer months and other holidays. Adjustments to accommodate these occasions should be made by the Parenting Coordinator.

[93] I have not dealt with costs of this application; either party may make submissions on costs within 30 days.

"Armstrong J."

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