

CANADA / JUDGMENT

M.S. v. V.D.

2025 BCCA 84

COURT

British Columbia Court of Appeal

DECIDED

13 March 2025

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2025 BCCA 84 M.S. v. V.D.

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

M.S. v. V.D.,

2025 BCCA 84

Date: 20250313

Docket: CA50006

Between:

M.S.

Appellant

(Respondent)

And

V.D.

Respondent

(Claimant)

Before:

The Honourable Chief Justice Marchand

The Honourable Madam Justice Fenlon

The Honourable Justice Winteringham

On appeal from: An order of the Supreme Court of British Columbia, dated

[redacted date] (V.D. v. M.S., [redacted neutral citation],
[redacted docket number]).

Oral Reasons for Judgment

The Appellant, appearing in person:

M.S.

The Respondent, appearing in person:

V.D.

Place and Date of Hearing:

Vancouver, British Columbia

March 10, 2025

Place and Date of Judgment:

Vancouver, British Columbia

March 13, 2025

Summary:

The chambers judge dismissed the appellant father's application seeking an order preventing the respondent mother from immunizing their children against the human papillomavirus ("HPV"). The chambers judge authorized the respondent to immunize the parties' children against HPV at such time as she deems appropriate and imposed conduct orders, including an order prohibiting the appellant from speaking to the children about the HPV vaccine. The appellant submits the chambers judge erred by: (1) ignoring evidence about the risks associated with the HPV vaccine; (2) demonstrating bias against him and his views about the dangers of the HPV vaccine; and, (3) violating his rights by restricting the children's access to information about the risks of the HPV vaccine.

Held: Appeal dismissed. The appellant did not establish: (1) the judge ignored material evidence; (2) demonstrated a bias against him or his beliefs; or (3) improperly interfered with his rights. The judge correctly applied the best interests of the children test in the circumstances presented.

WINTERINGHAM J.A.:

Overview

[1] In 2005, the parties began living together, they married in 2009, and separated in 2017. They have two children, a daughter born in 2012 (L) and a son born in 2015 (C). Pursuant to a consent order dated June 13, 2022, the parties resolved the family law issues, including all matters dealing with the children. The consent order allowed for shared parenting responsibilities. If the parties could not agree, then for most of the parenting

responsibilities stipulated in s. 41 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], the respondent " may make the decision and [the appellant] is at liberty to apply to court under section 40 of the FLA".

- [2] In early 2024, the appellant filed a notice of application seeking an order preventing the respondent from immunizing C or L against the human papillomavirus ("HPV"). By order pronounced June 24, 2024, the chambers judge dismissed the appellant's application. The chambers judge authorized the respondent to immunize the parties' children against HPV at such time as she deems appropriate. The chambers judge also imposed some conduct orders, including an order prohibiting the appellant from speaking to the children about the HPV vaccine.
- [3] The appellant submits the chambers judge erred by: (1) ignoring evidence about the risks associated with the HPV vaccine; (2) demonstrating bias against him and his views about the dangers of the HPV vaccine; and, (3) violating his right to freedom of expression and belief and thereby restricting the children's access to all information about the risks of the HPV vaccine.
- [4] The respondent submits the chambers judge committed no error. The respondent says the evidence presented was carefully reviewed by the chambers judge and her review indicated no bias to either party. The respondent's position is that the children's best interests was the overriding factor governing the chambers judge's decision.

Background

- [5] In the fall of 2023, L's school informed the parents that students could receive the HPV vaccination at the school. The respondent wished to have L vaccinated. The appellant objected.
- [6] Both parties discussed the vaccination with the children and shared information with them. As a part of the communication with L, the appellant showed her a video purporting to demonstrate the dangers of the HPV vaccine. The parties agree the video frightened L. After viewing the video, the respondent had L discuss the vaccine with an adult friend who works in healthcare and with their family doctor. The doctor stated that there was no medical reason why L should not be vaccinated against HPV. The respondent also provided L with some literature about the HPV vaccine.
- [7] The appellant applied for an order preventing the children from receiving the HPV vaccination. In support of the notice of application, the appellant presented a vast record (almost one thousand pages). The appellant's evidence included an affidavit from Dr. Sin Hang Lee (a pathologist working in Connecticut) attaching a number of articles and medical statistics purporting to establish the risks of the HPV vaccine; a 2017 decision of the United States Court of Federal Claims involving the death of a 21-year-old woman who had received the vaccine in 2007 and 2008 and later suffered a heart attack; and an affidavit from a parent in California who was in the midst of suing a pharmaceutical company, alleging her son

suffered debilitating injuries as a result of the HPV vaccine received in 2014.

Chambers judgment

- [8] The chambers judge commenced her reasons by citing s. 49 of the FLA, which permits guardians to apply to the court for directions concerning a child. The chambers judge noted the appellant sought an order prohibiting the respondent from having L or C vaccinated for HPV for a period of 24 months.
- [9] The judge next referred to the consent order and the allocation of parenting responsibilities: By consent, in accordance with section 40 of the FLA, for the exercise of any parental responsibilities,
- a. the parties must consult each other about any important decisions that must be made and try to reach agreement concerning these important decisions, provided that if they cannot agree in respect of making decisions respecting any of the parental responsibilities described in the remaining paragraphs 41(b),(c),(d),(e),(f) (save and except regarding the COVID-19 vaccination, addressed below),(g),(h),(i),(j),(k) and (l) of the FLA, [the respondent] may make the decision and [the appellant] is at liberty to apply to court under section 40 [of the] FLA.
- [10] The judge identified that s. 49 of the FLA permits guardians to apply to the court for directions concerning a child and the court "may make an order giving the directions it considers appropriate". The sole consideration on the application was whether receiving the HPV vaccine was in the best interests of the children.
- [11] The appellant took the position the children should not be vaccinated until the lawsuits pending in the United States against the vaccine manufacturer were resolved. The respondent took the position it is in the best interests of the children to be vaccinated against HPV at the age suggested by health professionals, which currently is around 12 years' old.
- [12] The judge summarized the evidence of the appellant, listing: (1) a 2017 American court decision; (2) an affidavit from a Connecticut pathologist; (3) an affidavit from a plaintiff in an American lawsuit against an HPV vaccine manufacturer; and (4) the appellant's attestation about his communications with a neurobiology professor at the University of British Columbia, Christopher Shaw.
- [13] The judge then cited the evidence presented by the respondent, which consisted of publications from government (primarily Canadian) health authorities. The judge preferred the evidence of the respondent, stating the evidence filed by the appellant was either: (1) not medical information (for example, the affidavits regarding the lawsuits in the United States); or (2) medical opinion based on limited and dated information. The judge also noted the neurobiology professor the appellant stated he had contact with was not accepted as an expert on immunizations in another family decision dealing with children receiving

vaccines.

- [14] Finally, the judge commented she was "concerned about [the appellant] showing the children disturbing videos and telling them that the vaccine will kill them in an effort to indoctrinate them into his way of thinking" (at para. 22).
- [15] The judge dismissed the notice of application and made the following orders at para. 23:
2. [The respondent] is authorized to have the children vaccinated against HPV at such a time as she deems appropriate. She may take such other steps that she deems necessary to prepare the children physically and/or emotionally for the HPV vaccine. She has sole decision-making authority regarding any and all decisions relating to the HPV vaccination and/or treatment;
 3. [The appellant] will not discuss or permit any third party to discuss the HPV vaccine or HPV generally with the children. This includes not showing them any information of any sort including social media regarding HPV or the HPV vaccine;
 4. [The appellant] will not discuss this litigation with the children;
 5. Neither party will speak negatively about the other in front of the children nor will they permit any third parties to do so. This is a term of general application but it also relates specifically to HPV and the HPV vaccination.

Grounds of Appeal

- [16] On appeal, the appellant raises the following grounds:
- a) The judge erred by not reviewing all of the evidence he submitted.
 - b) The judge erred by demonstrating bias against him and his beliefs.
 - c) The judge violated his freedom of speech and the rights of his children to receive health information by preventing him from speaking with them about the HPV vaccine.
- [17] The appellant takes the position the judge erred by not considering the vast evidentiary record he presented at the application. At the hearing, he identified some of the evidence the judge ignored and that he believed supported his position the HPV vaccine was dangerous. That evidence included: (1) the affidavit of Dr. Lee; (2) the affidavit of the parent in California; and (3) the appellant's eighth affidavit, attaching records of individuals who experienced extreme outcomes, including death, purportedly linked to receiving the HPV vaccine. The appellant submits when the judge ignored this evidence, she interfered with his rights pursuant to Article 19 of the Universal Declaration of Human Rights (which provides that everyone has the right to freedom of opinion and expression and to hold such opinions without interference).

- [18] Further, by ignoring this evidence and interfering with his rights, the appellant submits the judge erred: (1) in granting the orders authorizing the respondent to have control of HPV vaccination decisions; and (2) prohibiting the appellant from communicating with the children about the HPV vaccine. In his factum, the appellant seeks an order that " the appeal be allowed and a new trial ordered so that the information originally submitted by [the appellant] can be rightfully reviewed and considered before judgment and that his freedoms and rights be respected ".
- [19] The respondent submits the appellant is simply repeating the same submissions he made to the judge. However, she adds the appellant now seeks to introduce " human rights and freedom of speech which were never part of the original hearing". The respondent notes the judge applied the correct legal framework when she identified the best interests of the children as the overriding factor governing the Court's decision. The respondent submits the judge considered the evidence of the Canadian health authorities and L's wishes and concluded, correctly, that it was in the best interests of the children to be allowed to have the HPV vaccination.

Standard of Review

- [20] In family law cases, the scope of appellate review is narrow: see *Barendregt v. Grebliunas*, 2022 SCC 22 at paras. 100-104, citing *Van de Perre v. Edwards*, 2001 SCC 60 at para. 11. In *Barendregt*, the Supreme Court of Canada emphasized " an appellate court may only intervene where there is a material error, a serious misapprehension of the evidence, or an error in law ": at para. 103, citing *Hickey v. Hickey*, [1999] 2 S.C.R. 518, 1999 CanLII 691 at para. 12, *Van de Perre* at para. 11. In *B.J.T. v. J.D.*, 2022 SCC 24 at para. 53, the Supreme Court of Canada noted that deciding what is in the best interests of a child " is a highly contextual and fact-driven exercise that involves a high level of judicial discretion ".

Analysis

Did the chambers judge ignore the appellant's evidence about risk?

- [21] The appellant has a genuine and sincere belief the HPV vaccine is unsafe for his children. It is evident he has spent a lot of time learning about the vaccine and its risks. In his factum and in his submissions before this Court, he carefully explained the evidence supporting his view of the vaccine.
- [22] On the other side, the respondent also carefully laid out the information she considered about the benefits and the risks of the HPV vaccine for the children. The judge was tasked with examining the evidence before her and then reaching a conclusion--taking into account the best interests of the children.
- [23] At the outset of her reasons, the judge set out s. 49 of the FLA and noted guardians are permitted to apply to the court for directions concerning a child. Section 49 provides the court " may make an order giving the directions it considers appropriate". The judge then

stated "[t]he sole consideration is the best interests of the child": at para. 4. Next, the judge, correctly in my view, set out the factors in s. 37(2) of the FLA and noted in order to determine what is in the best interests of a child, "all of the child's needs and circumstances must be considered ": at para. 6.

- [24] After setting out the legal test, the judge turned to the evidence. The appellant provided the judge with extensive information he says supports his contention the HPV vaccine is dangerous.
- [25] In her reasons, the judge outlined some of the evidence tendered. She did not identify each and every item filed but the judge did comment on some of the very evidence the appellant suggested had been missed, including Dr. Lee's affidavit; the 2017 decision of the United States Court of Federal Claims; and the affidavit from Ms. Colbath, the mother in California who commenced a lawsuit against a pharmaceutical company for causing harm to her son (at paras. 9(a)-(c)).
- [26] The appellant did not point to any part of the judge's reasons that demonstrate the judge ignored his evidence or that she, in the appellant's words, "cherry-picked" the evidence. Rather, it is my view the judge simply preferred the evidence offered by the respondent. The respondent's evidence constituted publications from health authorities in Canada (including publications from the Canadian Cancer Society, Fraser Health Authority, and Public Health Agency of Canada). After reviewing the evidence, the judge concluded these publications "make clear that health authorities/experts in Canada favour the HPV vaccine and recommend that it be administered to pre-teens" (at para. 16).
- [27] The judge then went on to explain her reasons for preferring the evidence from the public health authorities in Canada over the evidence presented by the appellant. For example, she found the material about the U.S. lawsuits did not constitute medical information. The appellant is correct that there are outstanding lawsuits against HPV pharmaceutical companies, manufacturers, and distributors. The judge noted, however, that the existence of a lawsuit alone was insufficient to establish the appellant's point about risk. In addition, the judge's assessment of Dr. Lee's opinion was one available to her. She reviewed Dr. Lee's opinion and noted its limitations, including that some of his research is outdated. Finally, the judge questioned the opinion proffered by Christopher Shaw, the neurobiology professor. The judge stated she put no weight on Mr. Shaw's information because the appellant did not provide his background or his qualifications to render the opinion about the adverse risks of the HPV vaccine. The judge also noted Mr. Shaw's evidence had been rejected by another judge in a B.C. proceeding: *M.J.T. v. D.M.D.*, 2012 BCSC 863, at paras. 108-109.
- [28] After reviewing the evidence presented by the parties, the judge tied her assessment to the legal test governing her decision, the best interests of the children:

- [21] Having considered all of the evidence and the submissions I am satisfied that [the appellant's] wait and see approach is not in the best interests of the children. I accept the advice of the health authorities in Canada who are entrusted with protecting public health that it is in the best interests of the children to get the HPV vaccination. I am further satisfied that it is in the best interests of the children to get the vaccination at the age when it is most effective, as determined by [the respondent].
- [29] In his factum, the appellant explained there were many details contained in the publications that he tendered at the hearing and it was obvious the judge had not reviewed the material with the depth required.
- [30] The judge is not required to grapple with every piece of evidence or every argument advanced by the parties in her reasons for judgment: see *Coast Mountain Aviation Inc. v. M. Brooks Enterprises Ltd.*, 2014 BCCA 133 at para. 74; *R. v. Burns*, [1994] 1 S.C.R. 656 at 664, 1994 CanLII 127.
- [31] The judge described the evidence material to the decision. She was not required to explain her acceptance or rejection of each and every item presented. In my view, the appellant has not established that the judge ignored (or "cherry-picked") the evidence he tendered. On the contrary, the judge simply preferred the evidence of the respondent and explained in her reasons why that was so. I would not accede to this ground of appeal.

Did the chambers judge demonstrate bias?

- [32] The appellant submits the judge was not impartial. He asserts the evidence of her impartiality can be found in her reasons for judgment and points to para. 22. The appellant submits the judge's use of the word "indoctrinate" proves this bias. The respondent offers a dictionary definition of indoctrination and contends the judge's use of the word fairly captured the circumstances of what occurred with the video. In her factum, the respondent submitted, "[the appellant] showed the children videos which in his own words were scary. [The appellant] expressed no other viewpoint, such as the potential vaccine benefits". The respondent submits "indoctrination" accurately described the appellant's conduct and the use of the word does not reveal any bias or impartiality as alleged.
- [33] Impartiality is the fundamental qualification of a judge. As the Supreme Court of Canada stated in *Wewaykum Indian Band v. Canada*, 2003 SCC 45, "[t]he essence of impartiality lies in the requirement of the judge to approach the case to be adjudicated with an open mind" (at para. 58). Given its importance to our judicial process, there is a presumption of impartiality that carries considerable weight:

59 ... and the law should not carelessly evoke the possibility of bias in a judge, whose authority depends upon that presumption. Thus, while the requirement of judicial impartiality is a stringent one, the burden is on the party arguing for disqualification to establish that the circumstances justify a finding that the judge must be disqualified.

- [34] The test for bias " is whether a reasonable and informed person, with knowledge of all the relevant circumstances, viewing the matter realistically and practically, would conclude that [a] judge's conduct gives rise to a reasonable apprehension of bias ": see *Miglin v. Miglin*, 2003 SCC 24 at para. 26, internal citations omitted.
- [35] It is clear from the appellant's factum and from his oral submissions that the video, and its impact on L, featured heavily in the hearing before the judge. It is my view that neither the single use of the word "indoctrinate" nor the reasons as a whole, reveal any bias on the part of the judge. As I have stated, the appellant believes strongly in his position. The judge was not so persuaded--based on the evidence presented. The appellant has not demonstrated based on the judge's reasons or the record of the proceedings, that " a reasonable and informed person, with knowledge of all the relevant circumstances, viewing the matter realistically and practically, would conclude [her] conduct gives rise to a reasonable apprehension of bias ". I would not accede to this ground of appeal.

Did the chambers judge violate the appellant's free speech rights or otherwise err by prohibiting further discussion about the HPV vaccine?

- [36] The appellant submits the judge interfered with his rights of freedom of speech and expression, particularly with respect to the order prohibiting him from communicating with the children about the HPV vaccine.
- [37] The respondent notes the appellant's human rights submission is a new argument presented on appeal. That is, she submits the appellant did not advance a submission about the violation of his human rights before the judge.
- [38] It is my view the appellant's submission on this point is not properly before us. The interplay between a parent's constitutional rights and the best interests of the child is not always straightforward (see for example, *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46 at paras. 38, 72, 1999 CanLII 653).
- [39] In any event, it is my view the appellant has not demonstrated an error on this point; the legal test for the judge to consider was the best interests of L and C and that is the test she applied. As stated earlier, the scope of this Court's review of family law matters (such as this one) is narrow and deference is owed to the judge's exercise of discretion in determining what is in the best interests of the children.
- [40] I turn to the prohibition over the appellant's future communications with the children about the HPV vaccine. The appellant submits the judge should not have imposed this order limiting his right to communicate with the children.
- [41] The parties made clear the video shown to the children was the subject of considerable discussion at the hearing before the judge. The appellant had a lawyer representing him (though the parties were self-represented before us). The judge's order is broad. In some circumstances, a conduct order, such as this one, may need to be confined. In this case, it is apparent the appellant had sufficient opportunity to discuss the HPV vaccine and its risks

with his children. He agrees the video frightened L. However, he justified its disturbing subject matter with her need to be informed. In the circumstances of this case, I would not disturb the conduct orders. There was a basis in the record for the judge to impose them, the appellant had legal representation at the hearing when this topic arose, and the appellant had an opportunity to communicate with his children about the subject matter before the order was imposed. The appellant has a remedy available to him under s. 49 of the FLA should he wish to communicate with the children about the HPV vaccine in the future.

[42] I would not accede to this ground of appeal.

Disposition

[43] For all of the reasons set out, I would dismiss the appeal.

[44] MARCHAND C.J.B.C.: I agree.

[45] FENLON J.A.: I agree.

[46] MARCHAND C.J.B.C.: The appeal is dismissed.

"The Honourable Justice Winteringham"

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