

CANADA / JUDGMENT

Mainwaring v. Mainwaring

2025 BCSC 740

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 740 Mainwaring v. Mainwaring

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Mainwaring v. Mainwaring,

2025 BCSC 740

Date: 20250410

Docket: E240438

Registry: Vancouver

Between:

Anne Benedicte Mainwaring

Claimant

And

Mark Stewart Mainwaring

Respondent

Before: The Honourable Justice Branch

Oral Reasons for Judgment

Counsel for Claimant:

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Counsel for Respondent:

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W. Fernandes

Place and Date of Hearing:

Vancouver, B.C.

March 26, 2025

Place and Date of Judgment:

Vancouver, B.C.

April 10, 2025

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I. INTRODUCTION

[1] Before me is an application by the respondent seeking exclusive occupancy of the family home. For the reasons expressed below, I am prepared to grant that motion in part, specifically insofar as it relates to providing the respondent with exclusive possession of the larger home on the family's primary property. However, I couple that order with an order

that the claimant should have exclusive possession of the smaller laneway house on the property. I find that this arrangement is in the best interest of both the children and the parties since:

- a) it creates the necessary physical separation between the parties to lower the clear tension, which is, unfortunately, having a significant effect on the children; and
- b) while still allowing the children free and easy access to both parents.

II. BACKGROUND

The Parties, The Family Property, and the Children

- [2] The respondent was born on April 14, 1954 in Vancouver, BC. He will soon be 71 years old and is semi-retired.
- [3] The claimant was born on July 20, 1968 in Strasbourg, France. She is 56 years old and self-employed as a realtor.
- [4] The parties began living together in a marriage-like relationship on December 1, 2000, when the claimant moved into the respondent's residence, located at 4458 West 9th Avenue, Vancouver, BC (the "West 9th Property"). The parties were married on September 9, 2001.
- [5] There are three children of the marriage: X, born August 2003 (age 21); L, born January 2006 (age 19); and A, born April 2009 (age 16) (collectively, the "Children")
- [6] In or around 2006, the respondent sold the West 9th Property and used the proceeds of the sale for the down payment on another property located at 4776 West 4th Avenue, Vancouver, BC (the "Family Property"). The Family Property was purchased jointly in both the parties' names. As noted, the Family Property currently has two homes on its grounds - the main house where the parties and their children have been living (the "Main House") and a laneway house (the "Laneway House"). The parties agree that the two houses are approximately 100 feet apart. While the Laneway House is currently rented out, the parties agree that possession could be retaken after giving the current tenants four months' notice.
- [7] The Main House was built in 1927 and has three levels. On the top floor are four bedrooms and two full bathrooms. The first bathroom on this level has a tub. The second bathroom has a shower and is connected to the master ensuite. Since separation, the respondent has been sleeping in the master ensuite. The claimant has generally used one of the other bedrooms on this level.
- [8] The main floor has a kitchen, dining room, and a bathroom with a shower. The claimant's office is adjacent to these common areas of the home.
- [9] The basement contains a suite which was rented out as recently as 2024. However, it has fallen into disrepair. Neither party suggest that it would be suitable for either of them to live there full-time, although X does use it when he returns home from a local university.

[10] In terms of the children's living situation:

- a) X resides in an apartment on campus during the school week, but returns to the Main House on weekends and during school holidays and reading breaks. X intends to return to the Main House at the end of his classes in May for the summer months;
- b) In September 2024, L began attending university in California. He returns to the Main House for holidays and reading breaks. He has informed the respondent that he plans to return to the Main House for his summer break; and
- c) A is in Grade 10 and resides in the Main House while she attends a local private school.

[11] Pursuant to a consent order dated March 26, 2025, the respondent is paying all the major expenses for the Main House.

[12] The rented Laneway House has a full bathroom and two bedrooms. Its storage room has been used to store the claimant's staging material for her real estate business.

The Separation

[13] In or around early May 2023, the claimant told the respondent that she intended to move out of the Main House for a trial separation. She advised that her intention was to move into an apartment located at 1201 - 180 East 2nd Avenue, Vancouver, BC (the "Condo"). The Condo is owned by Mainframe Holdings, Ltd., a holding company owned solely by the respondent ("Mainframe Holdings").

[14] The respondent did not see the claimant at the Main House for the remainder of June and most of July 2023. In late July and throughout August 2023, the claimant periodically came back to the Main House. The respondent says he and the children found these "comings and goings" disruptive.

[15] On September 20, 2023, the claimant returned to the Main House. However, she continued to spend some time away from the Main House. The extent is contested.

[16] The parties' relationship did not improve after the claimant's return. The parties agree that they were separated by the end of January 2024, although they continued to live together in the Main House. However, the claimant continues to spend significant time away from the Main House. When she is at the Main House, she regularly comes home late.

Effect of the Current Living Circumstances on the Children

[17] In early 2024, the respondent told the claimant that he considered it best if she moved out of the Main House. The issue of exclusive occupancy has been discussed since then.

[18] The parties are largely not speaking to each other even though they reside in the same building and sleep on the same floor.

[19] The respondent asserts that:

- a) He has overheard the claimant making disparaging comments about him to the children.
- b) The claimant has been using cannabis in the Main House, which the respondent does not approve of. (This is contested);
- c) He has received the following reports from the Children:
 - i. L has stated that the tension he feels when he has been at the Main House causes him "massive" anxiety.
 - ii. A and X do not want the claimant to continue living in the Main House because she is so little involved in their lives, which creates a toxic environment when she is home.
- d) The claimant has effectively reneged on her responsibilities regarding the Children's care, with the exception of driving A to school on weekday mornings.

[20] In his affidavit dated February 14, 2025, the respondent says:

The environment in the Family Home is toxic .

[E]ven when she is home, [the claimant] will eat alone in her office or her bedroom.

[21] In terms of the claimant's perspective on the living arrangements, the claimant's former counsel alleged in a letter dated March 27, 2024, that the respondent's behaviour towards the claimant was "volatile and intolerable" and that "fits of rage against [the claimant] occurred on almost a weekly basis" and have caused "serious emotion and mental harm" to the claimant, which claimant's counsel characterized as family violence. The letter also noted that the claimant had "decided to move back to the Main House, notwithstanding the risks and the conflict between the parties".

[22] In August 2024, the respondent learned that the claimant had neglected to advise him that the tenants in a rental property had vacated the property, and the claimant had been using it. When the respondent asked the claimant why she hadn't informed him the tenants had left, the claimant responded by email on August 5, 2024:

With all the pressure at home, I have gone a few times in the condo 1307 since the last tenant left

Please note that I have the good intention to go back there a couple of times/couple of hours a day (to relax in this condo from the tension and hostility at home) until the arrival of the new tenants

With all this bullying and threats should I start to worry about my life as you have plenty of guns at home?

Should I put a restraining order on you?

You do not respect in any ways my privacy and my life

[23] In her affidavit dated March 10, 2025, the claimant deposes:

Since approximately October 2024 Mark has decided not to speak to me in person, which has actually helped to reduce the conflict in the Family Home since there are no more raised voices. When Mark has been present, while the situation is not necessarily harmonious it is not intolerable.

Dr. Elterman's Section 211 Report

[24] The parties retained Dr. Michael Elterman to prepare a Section 211 Report, which was delivered on December 19, 2024 (the "Section 211 Report").

[25] In the Section 211 Report, the claimant reported "emotional abuse" by the respondent. The claimant told Dr. Elterman that she had not slept at the Main House for four nights in two years. The claimant also told Dr. Elterman that her new partner does not live in Vancouver, that she travels to visit him, and that she planned to build a vacation house in Thailand.

[26] Dr. Elterman speaks to the effect of the current living arrangements on the children:

Ms. Mainwaring informed Mr. Mainwaring that she wanted to separate in May 2023 and shortly thereafter departed the home and returned in September 2023. The two parents have been living in the same house with an in-home separation since then. This has been an unfortunate situation because the arrangement has left a great deal of tension and irritation which has had a significant effect on the Children. (p. 34)

[Emphasis added.]

[27] L reported the following to Dr. Elterman:

[L] says that he will come back to Vancouver during the school break, and he will come back at Christmas and stay with dad if he stays in the home. Mom will go to an apartment and he'd rather stay in the house rather than an apartment.

[28] A advised Dr. Elterman as follows:

[A] says that her mom leaves early in the morning and comes home late at night

[A] says that she is generally happy with her life but she wishes that there was more peace and less stress. Asked what is making her most unhappy she says that it is how unnecessary most of this is and how long it's taking. [] I asked A how she sees the arrangement going forward. She responds that she wants to live with dad primarily because her mom has her own life. She says that mom comes to the house to sleep. Mom will have her own apartment and "her 20 year old life with new guys". [] [A] says that mom isn't mourning the loss of her family. She says that it is irritating that she gets dressed up to go out every night and comes back late.

[A] says that it bothers her that her mother goes out to party and comes home late or doesn't come home or comes home in an Uber because she is so [sic] intoxicated to drive. She says "maybe she is dating but maybe she should prioritize me". A says "maybe if you and your family are going through a divorce it shows a lack of compassion to be dating rather than taking care of your children"

[A] says that she feels like mom is not only divorcing her husband but the children. She says "it feels like that because she doesn't listen and she is barely there". I put to her whether she believes that her mom has divorced the children. She responds "yes, she has already left us. Divorce is like ending your relationship and she has done that with me even more so she has ended her relationship with [X]"

In my second interview with [A] when brought by [the claimant] the messaging from her was actually a lot more positive and optimistic. She spoke about her mother's absences and change in behaviour but she also started speaking about missing the relationship they used to have

I do think, however, that over time there needs to be a path forward to improve the relationship and for [the claimant] to have a path to express her thoughts and feelings to mend this relationship.

[Emphasis added.]

[29] Dr. Elterman ultimately recommends the following for A's living situation:

I think that initially [A]'s primary residence should be with Mr. Mainwaring with a goal of her spending more time with Ms. Mainwaring

At the same time I believe that there does need to be a set schedule and that it not just be left up to them to negotiate on a week-to-week basis. It would be my recommendation in this regard that [A] go to Ms. Mainwaring after school on Friday and remain with her until noon on Saturday. I would also recommend that on Tuesday Ms. Mainwaring be able to pick up [A] from school and have dinner with her and return her to Mr. Mainwaring at 7:30 p.m

I believe that with minimum and competent counselling the situation between [A] and [the claimant] can improve quite quickly. I want to reiterate that I think that it is important for [the respondent] to also be on-side and support the kind of balance that is achieved when children have a relationship with both of their parents.

[Emphasis added.]

[30] In Minutes of Settlement dated December 20, 2024, the parties agreed to pursue co-counselling for A and the claimant.

[31] I note that Dr. Elterman was not presented with, nor did he consider, the option of either party living in the Laneway House.

[32] A trial date is currently set for November 17, 2025 for 16 days. This is the first trial date obtained by the parties.

III. ANALYSIS

A. The Test

[33] Section 90(2) of the Family Law Act, S.B.C. 2011, c. 25, authorizes the court to make an interim order for exclusive occupation of the family residence by a spouse. The test for exclusive occupancy under s. 90(2) is as follows:

- a) shared use of the property is a practical impossibility; and
- b) on a balance of convenience, the applicant is the preferred occupant.

Hohmann v. Hohmann, 2024 BCSC 100 at para. 14.

[34] "Practical impossibility" requires something that "makes the situation intolerable or unacceptable in an objective sense": J.P. v. R.M.H., 2024 BCSC 1135 [P. v. H.] at para. 46. The court's primary consideration on an exclusive occupancy application is the best interests of any children: Hohmann at para. 13. Where the best interests of the children are not being met by reason of the tension and stress created by a shared living arrangement, this first part of the test will generally be satisfied: Hohmann at paras. 31-32.

[35] Moving to the second part of the test, identification of the preferred occupant is an objective test that requires the court to examine the situations of the parties and weigh the relative disadvantages to each party if the application is granted or not granted. The court is required to consider factors such as:

- a) any acquiescence or delay;
- b) the conduct of the parties;
- c) the economic position of the parties;
- d) alternate living accommodations available to either party; and
- e) any other relevant circumstances:

P. v. H. at para. 47.

[36] The best interests of any children are paramount at this stage of the analysis as well. The considerations for the Court when determining the best interests of the children are set out at s. 37(2) of the Family Law Act.

[37] In particular, the court will not lightly disrupt the continued occupation of dependent children and the parent with whom they primarily reside: M.M.E. v. S.B.T., 2024 BCSC 1567 at para. 31, citing Longo v. Longo, 2013 BCSC 1578.

[38] In J. v. S., 2008 BCSC 549, Master Taylor approached this issue as follows:

- [12] [The] children have been placed squarely in the middle of the sniping between the parties. In essence, the children have been caught in the crossfire. This is not what this court considers to be in their best interests. The children should be and must be protected from the extreme animosity and upset which exists between the parties. It may be that the plaintiff is exaggerating and magnifying the difficulties between herself and the defendant, but she is reacting to the defendant's presence in and around her and, for whatever reason, the children are caught in the middle.
- [13] For these reasons, I deem shared occupancy of the residence on Cypress Street to be a practical impossibility. Accordingly, I grant the plaintiff's motion for exclusive possession of the property and contents

B. Further Case Law Guidance

- [39] In *A.A.M. v. D.C.M.*, 2022 BCSC 2362, in response to the claimant wife's application for exclusive occupancy, the respondent took the position that, while their shared living situation was not entirely pleasant, it was not intolerable, and the parties were able to be cordial with one another. Justice Donegan did not agree and found superficial cordiality to be insufficient when considering the tense environment to which the children were being exposed:
- [40] Objectively, the situation is intolerable and unacceptable for the parties and their children. That the parties can remain superficially "cordial" to one another as the respondent describes is not the only consideration, and it fails to recognize what, objectively speaking, I see as really happening in the home on the evidence adduced. The parties have had fights and arguments for years now. They have not shared a bedroom since at least the beginning of 2020 and have not been intimate since well before that. They each bear deep resentments toward the other, as detailed in their affidavits. Their children have been exposed - they live in the home - to these resentments and this conflict for some time.
- [42] The respondent's suggestion that he have exclusive use of the downstairs living room as his sleeping space and the main floor bathroom for his use is not practical or acceptable
- [45] In any event, no matter what date is ultimately found to be the parties' date of separation, the evidence does not support the respondent's contention that the parties have been living in the home together "mostly harmoniously". Rather, it supports the claimant's contention that the environment in the home has been very difficult and hostile. It is a situation that simply cannot continue.
- [46] The whole of the evidence demonstrates that the respondent has not accepted, or at least until recent times has not accepted the parties' separation. He wants to remain in the home with the children in circumstances that are financially favourable to him and believes that all that is required is for him to remain cordial. This ignores the reality of the situation. The children have been exposed to marital discord for far too long. Living in the same home with many shared spaces will only aggravate that discord and further expose the children to

it.

- [40] In *Longo*, the father was granted exclusive occupancy as the preferred occupant because he had primary care of the child, and the Court was satisfied that "the child should continue to reside in the home. The home is the only one that [the child] has known since birth. It is close to friends and family and thus affords a significant measure of security to this child in what is otherwise a very stressful time for her": at para. 34.
- [41] In *Cummings v. Chen*, 2023 BCSC 245, Justice Wilkinson denied the claimant spouse's application for exclusive occupancy of the former family home located in West Vancouver. The parties had no children together. The claimant had moved out of the former family home two years earlier upon the parties' separation, but wanted to return to live in the family home with the respondent. While the court acknowledged the existence of potential friction and discomfort between the parties, it was able to resolve this due to the respondent's offer to reside on the lower floor of the property to allow the claimant to occupy the two upper floors. The court was satisfied that, given the respondent's offer to occupy the smaller lower floor, it would not be practically impossible for the parties to continue residing together.
- [42] In *Khomutskaya v. Sidorov*, 2020 BCSC 1024, the court dismissed the claimant wife's application for exclusive occupancy of the family home. The claimant and her adult son alleged that they were accosted and physically attacked by the respondent, whereas the respondent made the reverse allegation. Ultimately, the court was unable to make the findings necessary to conclude what took place on the day of the incident, stating, "the evidence of family violence as defined in the Act is equivocal at best": at para. 15. While the court did not grant the claimant's application for exclusive occupancy of the entire family home, it did grant exclusive occupancy of the bottom floor bedroom and garage to the respondent, while the claimant was given exclusive occupancy of the rest of the townhouse: at para. 16.
- [43] In *Corness v. Sola*, 2024 BCSC 519, the court dismissed the parties' respective cross applications seeking exclusive occupancy of the family home. In *Corness*, the applicant alleged that there were occasions of family violence and that these incidents supported a finding of practical impossibility. However, the evidence was largely disputed, and the court found that "the evidence does not establish that either party is at future risk due to family violence such that their continued cohabitation at the Property is a practical impossibility": at para. 57. The court noted that there was a furnished basement currently rented out in the home and that, ideally, the parties would take steps to terminate the tenancy of the basement so the claimant could live in this self-contained space. Until that could take place, the court ordered that each party would have exclusive access to different areas of the home: at paras. 66, 82.

[44] In *M.A. v. B.S.A.*, 2024 BCSC 2058, Justice Gibb-Carsley denied the claimant wife's application for exclusive occupancy of the family home in North Delta. The parties had three minor children aged 11, 12, and 16. The family home was approximately 6,000 square feet. There was an upstairs suite consisting of the main and upper floor with all the necessary living amenities (about 3,500 square feet) and a basement suite of about 2,500 square feet, which contained a home theatre, two bedrooms, exercise room, laundry and kitchen. The claimant resided in the upper suite, and the respondent resided in the basement suite. The children moved between the upper and lower suites as part of an equal parenting schedule. The Court found no evidence that the current living arrangements were negatively impacting the children, and further, the parties were not sharing common living space. Justice Gibb-Carsley noted:

[33] I distinguish this case from more typical circumstances in which parties may be forced to live together under the same roof while sharing amenities and living space in crowded situations which would undoubtedly add to an already stressful time during the breakdown of a marriage.

[34] The parties are not sharing the Family Home in the manner other individuals might be sharing a house because of the significant size of the home and its design. The Family Home has separate access to the living areas. As set out above, the Basement Suite is 2,500 square feet, has a home theatre, a home gym, a pool table, a number of bathrooms and bedrooms, and a kitchen. I also understand it has a separate entrance and both units are self contained. The Upstairs Suite and Basement Suite are approximately equal in square footage and are essentially self-contained living units. Indeed, it is of assistance to contrast the living circumstances of the parties in the case at bar to those described by the Court in *Khomutskaya* in which the Court found it not a practical impossibility for the parties to continue to share a kitchen and bathroom.

[Emphasis added.]

C. Application of the Test

1. Practical Impossibility

[45] I find that continued co-occupancy of the Main House is a practical impossibility:

- a) Looking first, as one should, at the children's best interests, L has said that he has "massive anxiety" when he is home, and A has described her desire for "more peace and less stress".
- b) The respondent describes the situation in the Main House as "toxic".
- c) Although the claimant asserts that the situation is not intolerable, she has complained about emotional abuse and admits that the parties are not speaking much.
- d) Dr. Elterman has opined that the current shared living arrangement is having a significant effect on the Children.

- e) The layout of the Main House is such that it is impossible to alleviate the current conflict and stress caused by the shared living arrangements without an exclusive occupancy order, given that both parties accept that the basement suite is not in a suitable condition.
- [46] While I accept that joint occupancy of the Main House has been shown to be a practical impossibility, I do not find that there is any practical impossibility associated with the claimant moving into the Laneway House, which she is prepared to do. This is developed further in my discussion of the balance of convenience below, but to directly address the points that formed the basis for my conclusion on the Main House:
- a) The children's and the parties' complaints primarily flow from the direct interactions between the parties, which would be substantially reduced if the claimant occupied the Laneway House 100 feet away.
 - b) Although A is upset by the claimant's "comings and goings", she will be less exposed to those if the claimant is in the Laneway House.
 - c) Dr. Elterman's evidence and opinions focused only on the situation of the parties together in the Main House; he was not presented with the Laneway House option.

2. Balance of Convenience

[47] I find that the balance of convenience:

- a) favours granting the respondent exclusive possession of the Main House;
- b) does not favour removing the claimant from the Family Property entirely; and
- c) favours giving the claimant exclusive possession of the Laneway House.

[48] Beyond the facts noted above in relation to the practical impossibility test, I reach these conclusions on this aspect of the test based on the following factors:

- a) In terms of the balance of convenience supporting an order that the respondent have exclusive possession of the Main House, the Main House is the only home that L and A have known, and X has lived in the Main House since he was 3 years old. Court-sanctioned living arrangements generally permit children to continue to reside in the same home should they wish to do so and so long as the resources are available to sustain that choice. The children have all indicated a high level of attachment to the Main House.
- b) Dr. Elterman has recommended that the respondent be the primary parent responsible for A's care. Since the separation, the respondent has assumed primary responsibility for A's care. As such, it makes sense for the respondent to possess the building in which A will reside: Longo at para. 34.
- c) The respondent has been incurring most of the expenses associated with the Main House: A.A.M. at paras. 51-53;

- d) The claimant's commitment to the Main House appears to be more tenuous in that she has spent a good deal of time since separation outside of the Main House.
- e) It is clear to me that, without necessarily attributing blame, the claimant's presence in the Main House is the primary source of the stressful environment within the home. The respondent is upset by the claimant's alleged cannabis use. A is upset by the claimant's late-night "comings and goings". The intense physical proximity accompanied by a lack of normal human interaction between the parties has created stress. All of these problems should be almost completely negated should the claimant live in the Laneway House.
- f) The Section 211 Report and the respondent's evidence indicate that the children feel distant and abandoned by the claimant. Forcing the claimant to live away from the children will only worsen this problem.
- g) The claimant indicated that she was prepared to move into the Laneway House should the Court conclude that the situation in the Main House was intolerable.
- h) Having the claimant in the Laneway House will provide the children with the maximum contact with the claimant. The Laneway House is sufficiently large that some, if not all, of the Children could also stay over with the claimant at any time.
- i) The respondent's preferred solution to the difficulties with the current living arrangement was to have the claimant move into one of the other offsite apartments controlled by the parties. I do not see that this solution has any advantage over the claimant moving into the Laneway House:
- i. Under either option, there is going to be a lag period during which any current tenant must be given notice;
- ii. I do not find the situation so intolerable that the parties cannot continue to be in the Main House over this notice period. I have minimal concern about family violence. Hopefully, the fact that a solution is on the horizon will, in and of itself, lower the stress and anxiety in the Main House during this interim period;
- iii. Under either option, there was going to be a loss of rental revenue;
- iv. Having the claimant live on a separate property would make the children's ability to access both parents as and when they wish more difficult. The parties have a unique ability to establish a living arrangement where the children can drift back and forth between the two residences and two parents at their discretion. Given the age of the children, they are going to largely be in control of when and where they spend time with each parent. The Laneway House solution allows an easy exercise of that right by the children. To use the respondent's terminology at the hearing, the children have an easily exercised ability to "retreat" to the Main House should they become uncomfortable with anything that occurs in the Laneway House.

- j) I find the respondent's worry that there will still be a "cloud" of stress over the entire Family Property to be overstated. The physical separation should be sufficient to ensure that the parties have minimal interaction: Cumming at paras. 50-52. Regarding the parties' allegations of disparagement, which have added to the stress and upset, both parties indicated that they would be open to a non-disparagement clause. I encourage the parties to develop a consent order in this respect.
- k) Although the four-month notice period will take the parties reasonably close to the current trial date, there is no guarantee that the trial will proceed as scheduled. Further, I find that the order is in the best interests of the parties and the fact that there are legal impediments to implementing the proper solution as quickly as one might like should not prevent the order from being made at all.
- l) Possession of the Laneway House will give the claimant easy access to her real estate staging materials.

3. Authority

[49] I appreciate that the order I have granted is somewhat unique in that it effectively grants exclusive possession over separate parts of a single plot of land. However:

- a) There is little practical difference between such an order and orders granted requiring that the parties live:
 - i. on separate floors or suites within the same home (as was ordered in Cumming, Khomutskaya, and Corness); or
 - ii. in a nesting arrangement in which the parties live over alternate weeks in the same home: see E.J.M. v J.R.M., 2019 BCSC 2466 at paras. 84-90.
- b) The facts here call for a unique approach in that there are two homes on the same plot of land (this situation may begin to arise more frequently as municipalities seek to encourage density through the development of laneway housing). In M.A., the Court remarked on the unique features of the house at issue there in determining the appropriate outcome: at para. 34.
- c) The jurisdiction to make such an order does exist, in my view. The order is simply interim pending trial. Further, I find that the term "family residence" in s. 90 refers to the building in which the family lived and not necessarily the entire property, at least in cases where there are multiple residences on the same plot of land. I note first that the term "residence" is only defined for the purposes of Part 9 of the Family Law Act (dealing with protection from family violence) at s. 182 to mean "a place where an at-risk family member normally or temporarily resides". Section 90 itself speaks in the singular, and as such does not appear to foreclose a "residence by residence" analysis where there are multiple residences on the same property, one of which is the "family residence". In Sangha v Sangha, 2021 BCSC 932 at para 13, the court referred to "the family residence, the farm buildings and fields,"

suggesting a division between the main family residence building and other buildings.

d) In terms of the possession of the Laneway House:

i. I find that I can make the required order having regard to s. 91(2)(a) which allows the court to make interim orders "for the possession of property". The Laneway House and its contents must at least qualify as "property", if nothing else.

ii. Given Dr. Elterman's report, I find support for the order above in s. 49, pursuant to which a child's guardian (such as the respondent) may apply to a court for directions respecting an issue affecting the child, and the court may make an order giving the directions it considers appropriate.

iii. Finally, pursuant to s. 222(d) and s. 227(c), I can make an order requiring the parties to take appropriate action "to facilitate arrangements pending final determination of a family law dispute".

4. Form of Order

[50] The fundamental order is that the respondent have exclusive occupancy of the Main House, and the claimant have exclusive occupancy of the Laneway House. However, I appreciate that there may be practical niceties regarding such an arrangement that the parties may wish to address. I grant leave to the parties to prepare and submit a protocol to govern this arrangement that could be Schedule "A" to the final form of order. For example, I am aware that the claimant has been using office space in the Main House. I am hopeful that reasonable accommodation in that respect can be made without the need for further assistance from the Court. If the parties cannot agree on a protocol, either has leave to arrange a 9:00 a.m. hearing via MS Teams to discuss whether other directions must be made, always in service of minimizing stress for the parties' children.

[51] The order should provide that it will be in place "until further order of the Court or written agreement of the parties". This will allow the parties to freely adjust the order should they both agree that it has become unworkable or if a different approach becomes more viable.

[52] Given that:

i. I have relied on the parties in terms of the ability to give notice to the current tenants of the Laneway House; and

ii. The tenants may disagree with the proffered interpretation, in which case their rights will clearly be interfered with by the terms of this order;

the order shall be served on the tenants, and the order shall provide that they shall have leave to apply to this Court to set aside or amend the order within two weeks of receiving such notice. This is without prejudice to their right to seek any statutory or contractual remedies. Any hearing in this respect can also be set at 9:00 a.m. via MS Teams.

IV. CONCLUSION

[53] Given that neither party initially proposed the Laneway House solution, unless either party seeks to make costs submissions, I would order that each party bear their own costs. If either party does seek a different costs order, they can arrange a 9:00 a.m. MS Teams hearing before me on a mutually agreeable date.

"The Honourable Mr. Justice Branch"

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