
CANADA / JUDGMENT

Malone v. Allar

2014 BCSC 1621

COURT

Supreme Court of British Columbia

DECIDED

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2014 BCSC 1621 Malone v. Allar

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Malone v. Allar,

2014 BCSC 1621

Date: 20140613

Docket: E141154

Registry: Vancouver

Between:

Jason Robert Malone

Claimant

And

Jennifer Louise Allar

Respondent

Before: The Honourable Madam Justice S. Griffin

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

Pamela S. Boles

Counsel for the Respondent:

Joseph K. Broadhurst

Place and Date of Trial/Hearing:

Vancouver, B.C.

June 12, 2014

Place and Date of Judgment:

Vancouver, B.C.

June 13, 2014

- [1] THE COURT: The parties are the parents of two young children, a son who I will refer to as B1, born in the spring of 2008 who is now six years old, and a daughter, B2, who was born in the fall of 2012 and who is therefore under two years old. I will refer to the claimant as the father and the respondent as the mother.
- [2] The father obtained two ex parte orders of this court addressing the fact that the mother was with the children in Wisconsin. The first ex parte order was made on April 29, 2014, and it ordered that the children be returned by the mother to Vancouver by May 4, 2014. The second ex parte order was obtained on May 6, 2014, and it ordered that the mother turn the children over to Donna Malone, the mother of the claimant, Mr. Malone, by no later than May 8, 2014, together with their respective passports to allow Donna Malone to travel with the children from the United States to Vancouver, following which she was to deliver the children to the father.
- [3] The mother now applies to set aside the ex partes orders or for alternative relief. An order granting short leave for the mother's application was served on June 10 by 2:00 p.m.
- [4] I pause to address a procedural point before turning to address the substance of the motion.
- [5] The father is represented by counsel, Ms. Boles. Ms. Boles had notice of this application, albeit short notice as mentioned. According to the affidavit of her client, her office is across the street from the courthouse. She did not show up in court at the time for return of the motion. She wilfully delayed her appearance until 11:10 a.m. and then showed up in court explaining that she had taken the time to prepare responsive materials. This is not a proper excuse for keeping the court and the opposite party waiting. The appropriate step would have been for Ms. Boles to show up at 10:00 a.m. to ask the court for an additional hour of time if it was needed to prepare responsive materials. Ms. Boles' choice of not showing up on time was to gain the result she wanted, an extra hour of time to prepare materials, without running the risk that the court would not grant her this time. This kind of practice, to try to do an end-run around the court process, is not to be condoned.

- [6] Despite the initial nonappearance of the father's counsel, the court delayed this proceeding until 11:05 a.m. and then commenced the hearing of the mother's application. Ms. Boles and her client arrived five minutes later and took part in the remainder of the application. I am satisfied that there was no prejudice to the father by reason of his counsel's choice not to show up on time. I note that I have only relied on the remarks made by counsel for the mother in the absence of the other party as are reflected in the served motion materials.
- [7] The father filed a cross-application which was to be heard today, June 13. Yesterday I gave leave for the father's application to be heard at the same time as the mother's. Both applications deal mainly with custody and access issues.
- [8] Leaving aside the details of each side's position, the mother was intending to and has returned with the two children to Vancouver today
- [9] Both parties agree that the court needs to change the ex parte orders to deal with whatever parenting arrangements the court finds appropriate pending further determinations of access and custody issues.
- [10] Family Rule 10-9(8) gives the court power to change or set aside an order made without notice.
- [11] Yesterday, at the close of submissions, I made an order suspending the ex parte order of Mr. Justice Melnick until today's reasons.
- [12] I am satisfied on the evidence today that the two ex parte orders ought to be changed. This is the first hearing in this matter in which both parties were present and there is new evidence that justifies changing the orders.

The Evidence

- [13] I turn now to summarize the evidence.
- [14] This couple's relationship started in 2007. They met in Mexico. The mother was from Wisconsin, the father from Vancouver.
- [15] The mother subsequently visited the father in Vancouver and became pregnant by him. The couple decided to move to California together in approximately September 2007.
- [16] The father's first affidavit in these proceedings, which was in support of the first ex parte order, explains that the couple moved back to Vancouver from California by January 2008. He did not explain why.
- [17] The mother's affidavit suggests that during the time they were in California, she became concerned about suspicious activities by the father including him carrying multiple prepaid cellphones that he would throw away and keeping strange hours. He purported to work at a hydroponic business.

- [18] In any event, there is evidence that from his time in California, the father was charged with three felony offences related to drug possession or trafficking and the possession of the proceeds of trafficking. There is an outstanding warrant for his arrest in relation to these charges in Orange County, California. The mother says that the father told her in early 2008 that he had been caught with nine pounds of cocaine and \$1 million and had bail set at \$1,500,000, that he had been released on a promise to provide information to the police about others, but then had fled back to Canada.
- [19] The father does not deny the charges, but denies the details of them as explained by the mother. His evidence remains very vague, but he suggests that the mother got him into the drug business and then speculates as to why he was arrested. I have to say his evidence on this was so vague that it lacked credibility or reliability.
- [20] Regardless, it has to be remembered that on the mother's own evidence, she has known about the outstanding charges against the father since March 2008.
- [21] The parties' first child, the son B1, was born in Wisconsin on April 21, 2008. The parties were both in agreement that the mother return to Wisconsin to give birth to B1. However, the mother says that, at the time, she was also reconsidering the relationship.
- [22] The mother returned to the relationship and Vancouver after only a few months away.
- [23] The relationship continued. On the mother's evidence, the father was abusive, yelling at her and pushing her regularly, and he regularly engaged in substance abuse, both use of alcohol and illegal drugs.
- [24] The mother returned to Wisconsin with her son for a period of time from April to September 2009.
- [25] The mother says that the father pleaded with her to return to the relationship and told her that he was getting counselling and had a job with his father's company. She wanted to believe him and returned to the relationship in Vancouver.
- [26] The mother says that after her return things did not get better. The father remained abusive towards her and continued to engage in substance abuse.
- [27] The mother says that in February 2010, she was driving home with the respondent from having dinner at the Arbutus Club when he became verbally abusive and then punched her in the face. She pulled over and called 911. The father left before the police arrived. She says that the father's brother, Ryan, took their child B1 while the police took pictures of her bruises. The mother says she has tried to get a copy of the police file to corroborate this.
- [28] The father says that these allegations are false, but then says they did have an argument, although he says it was about the mother's drinking.

- [29] The mother says that there were other incidents of physical violence in the home and that the father threatened to kill her if she called the police, and she did not call the police. She also says that he began growing marihuana in the home in 2011. She says that she objected, but he threatened her that she would lose the home and be jailed and their son would have no parents. She says that the situation in the home and threats and violence made her feel helpless.
- [30] The mother says she saw the son start to act out because of the father's behaviour and that the father would call the child insulting names and then hit him.
- [31] The parties' second child, the daughter B2, was born in Vancouver in the fall of 2012.
- [32] The mother says that she decided she had to be stronger for the sake of the children. She went to Mexico with her parents for one week in the beginning of March 2014 to discuss what to do. She left the children with the father during that time.
- [33] Counsel for the father suggests that this evidence belies the evidence of the mother that she had concerns about the father being violent. The mother's evidence is that she feared for the children in the short term, but in the end, decided she needed to be alone with her parents to get away from the father's controlling influence and to decide what to do.
- [34] There is evidence that when the mother was gone on this trip, the father ran up a lot of charges for alcohol at the Arbutus Club, close to \$2,000. He says in reply that he likes to buy drinks for friends.
- [35] The mother says that when she was away in Mexico with her parents, she came to realize that she needed to leave the father.
- [36] The mother says that on her return she told the father she wanted to leave and he became physically abusive. Later that month during a particularly abusive incident, she called the Vancouver Police Department. She says that the police told the father to leave for the night and he did. The father says that there was an altercation between them that night, but it was because of the mother's excessive drinking and he simply asked the police for a ride to another location.
- [37] A few days later, both parents signed a slip for the son's school where he was in kindergarten indicating that he would be absent from April 2, 2014, returning May 5, 2014.
- [38] With the father's consent, the mother left Vancouver with the children to visit her parents in Wisconsin on April 2, 2014. His evidence is that it was to be for a month only, but that the mother would "use the time to reflect on the future of their relationship". The mother's evidence is that she did tell him this because she was scared of him, but the suggestion in her evidence is that, in her mind, she had decided to leave him permanently.

- [39] When the mother was in Wisconsin in mid-April 2014, she informed the father that she was not going to return to him. The mother had not obtained any court order in relation to parenting or guardianship.
- [40] The father's evidence is that his efforts to speak to his son by telephone were frustrated by the claimant. He put in some evidence of this before the court at the time of the second ex parte order. He did not put before the court the whole of his text messages which show some verbal abuse and threatening behaviour on his part, nor did he put in the mother's message that he could phone the children at her mother's telephone number and his text messages indicating at least an initial resistance to doing so because of the long distance charges.
- [41] The father retained counsel in B.C. who wrote to the claimant seeking written confirmation she would be returning the children to Vancouver; failing which the father would apply in this court for an order compelling the return of the children. The letter explained that the father would then seek to enforce that order in Wisconsin.
- [42] Following this, the first ex parte order was applied for and obtained on April 29, 2014. This appears to have been delivered to the mother soon after.
- [43] There is an email dated May 1, 2014, by way of reply to notice of the order that appears to be from the mother's own father, Mr. Greg Friberg. This email is both cavalier and provocative in that it appears to show no respect for the court process here and refers to the fact that the father will be arrested on the outstanding charges if he attempts to visit the children in Wisconsin.
- [44] This latter email, which implied that the mother was going to deliberately ignore the April 29, 2014 order, was relied upon by the father to obtain the second ex parte order dated May 6, 2014.
- [45] Proceedings were then initiated by the father in Wisconsin to enforce this court's orders returnable May 8, 2014, in the State of Wisconsin Circuit Court, Family Court Branch, Dodge County. Through counsel, the mother and father agreed to an order in that court on May 8, 2014, whereby the mother would return the children to Vancouver by June 13, 2014, which is today, and would provide her Vancouver residential address to the father one week earlier. The order provided that the father would have access to the children within one day of their return to Vancouver. As well, the father was to have telephone or other e-communication with the children prior to the return at a minimum of every day between 6:00 p.m. and 6:30 p.m. Central Standard Time.
- [46] It is clear from the context of the proceeding before the Wisconsin Court that the Court was deferring to this Court's rulings on custody and access.
- [47] The mother had no employment in Vancouver when she lived here. She does have status as a permanent resident of Canada.

Legal Principles and Analysis

[48] I turn now to the legal principles and analysis.

[49] As mentioned, some of the evidence I have referred to was not before this court at the time of the ex parte orders. There is no question that this court needs to make some new orders regarding what parenting arrangements should apply to the children now that the mother has returned with them to Vancouver.

[50] It is too early to make any permanent orders. As well, the evidence before me on these applications has not been sufficiently fleshed out or tested and is very much in dispute.

[51] Any order concerning the parenting arrangements or contact with the children requires the court to consider the best interests of the children pursuant to s. 37(1) of the Family Law Act, S.B.C. 2011, c. 25. The circumstances to be considered include those set out in s. 37(2):

- (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
 - (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;
 - (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - (d) the history of the child's care;
 - (e) the child's need for stability, given the child's age and stage of development;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
 - (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
 - (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
 - (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

[52] Considering the child's best interests include considering the impact of family violence. Further, s. 38 provides in relation to family violence as follows:

38. For the purposes of section 37 (2) (g) and (h) [best interests of child], a court must consider all of the following:

- (a) the nature and seriousness of the family violence;
- (b) how recently the family violence occurred;
- (c) the frequency of the family violence;
- (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
- (e) whether the family violence was directed toward the child;
- (f) whether the child was exposed to family violence that was not directed toward the child;
- (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- (i) any other relevant matter.

[53] Family violence is not limited to physical violence. It is broadly defined in the Family Law Act as including psychological or emotional abuse and intimidation. The definition is:

"family violence" includes

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a family member,
- (c) attempts to physically or sexually abuse a family member,
- (d) psychological or emotional abuse of a family member, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
 - (iii) stalking or following of the family member, and
 - (iv) intentional damage to property, and
- (e) in the case of a child, direct or indirect exposure to family violence

- [54] The term "coercive controlling violence" is used by some researchers to describe a pattern of "emotionally abusive intimidation, coercion, and control coupled with physical violence against partners"; Joan B. Kelly & Michael P. Johnson, "A Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions" (2008) 46:3 Fam. Ct. Rev. 476 at 478.
- [55] On the issue of family violence, there is evidence before me provided by the mother that alleges the father has a history of what would qualify as family violence: intimidation, physical violence, controlling behaviour, and difficulties controlling anger. In addition, she alleges criminal behaviour and substance abuse. This is all denied by the father.
- [56] There is also circumstantial evidence that is somewhat corroborative of the mother's evidence in the sense that it raises at least a suspicion regarding the father's activities.
- [57] There is evidence, for example, of an arrest warrant for the father issued in Orange County, California.
- [58] There is evidence that the father has written to the mother promising her a "westside" lifestyle which is a reference to the most expensive residential area of Vancouver. He also has membership in a private club, the Arbutus Club, in that part of the city and I have already referred to his spending habits there. He lives in a rental home in the westside area of Vancouver. His counsel submits that he is self-employed as a car detailer with an income of only \$35,000 a year, but there is no evidence currently before the court as to his income. Given that this preliminary glimpse of his lifestyle suggests he has much more spending money than would be explained by his alleged legitimate job, there is at least a suspicion raised about his alleged activity in the illegal drug trade.
- [59] There are emails from the father to the mother in which he apologized for his "old life," promises to "make it up to" her, and "never disappoint or let her down again", and he also apologizes for "the last seven years", promising to "start a fresh new life". All of this suggests some admission of bad behaviour on his part in the past. He also describes her as "the best mother that I've ever seen".
- [60] These types of pleading emails are interspersed with threatening emails. The threatening emails or text messages from the father to the mother show that he insults her and her parents, calling them hillbillies, and that he threatens to use economic pressure against her to destroy her in these legal proceedings and to obtain custody of the children.
- [61] The pattern revealed in the father's emails and text messages is that of apology, promises and inducements followed by threats when he does not get his way. This is consistent with the cycle in the relationship as described by the mother. However, as I have noted, she says that during their relationship the father was also physically aggressive and violent towards her.

- [62] I am mindful that in the immediate aftermath of a relationship breakdown, people can act badly and it does not necessarily mean they will continue to do so in the future.
- [63] There is also affidavit evidence of his prior common-law spouse, Amanda Solinas, that the father engaged in similar behaviour as that claimed by the mother in this case when they were together. She says that he was verbally and physically abusive to her, that he had even punched their daughter at one time in a rage, that he engaged in excessive use of illegal drugs and alcohol, and grew and sold marihuana. Again, the father denies this. He says it is inconsistent with her evidence that Ms. Solinas entered into a consent order for joint custody and guardianship with Mr. Malone in regards to their three children. I note, however, that the consent order was after Mr. Malone had started his relationship with Ms. Allar and this coincides with when Ms. Solinas says he began to "back off for a little bit." The consent order did state that the primary residence of the children would be with Ms. Solinas and she was given the right at first instance to make the day-to-day decisions and to decide any dispute.
- [64] The father suggests that the evidence of his prior common-law spouse is fabricated and that the two former spouses are conspiring against him. The notion that the former common-law spouse would be willing to provide false evidence in this case just to spite him does seem farfetched as there is a significant personal disadvantage to her becoming involved in this case, but I can make no conclusions in that regard today.
- [65] I recognize that Donna Malone, the father's mother, has sworn evidence that she suspects that the former common-law spouse is motivated by spite. Of course, Donna Malone is not entirely an independent witness. Furthermore, if the father has been controlling and abusive with the mothers of his children, his own mother might not have witnessed this behaviour. Controlling and abusive behaviour where one spouse intimidates and dominates the other can be carefully hidden from outside eyes.
- [66] There is also evidence that Mr. Malone has not been an active father in the lives of the three daughters by his previous relationship with Ms. Solinas and has not met his obligations to pay child support to her. He has paid nothing by way of child support since October 2011, according to Ms. Solinas's evidence, and in that year, paid only \$3,500 in total and paid only \$1,300 in total the previous year despite a consent court order in August 2007 that he pay \$1,000 per month. Ms. Boles submits that Ms. Solinas has resisted the father's efforts to set down a motion to cancel arrears, but the fact remains that it appears that he did not simply reduce his payments, he stopped making them unilaterally which does say something about how he perceives his responsibility as a parent.
- [67] None of this evidence as to the father's alleged abuse and poor behaviour as a parent was before the court at the time the ex parte orders were made.

- [68] I pause to note that the outstanding charges were to a very limited degree alluded to in front of Mr. Justice Melnick as well as evidence that the mother may have been attempting to use the fact of these charges as leverage in retaining the children with her in the United States.
- [69] I accept that the father, for his part, says that the claimant has made up all of these allegations, except for the outstanding charges of which the father points out she has long known. I accept that there is a possibility that the allegations are false and I accept that it is a very difficult thing to prove a negative. In other words, it is difficult for him to prove that he was not abusive.
- [70] I also find that there is some evidence that the mother has not facilitated the father's request to speak to his son by phone and instead has put barriers in the way of this.
- [71] If the father's allegations are correct and the mother has fabricated evidence, it would show an intention to go to extreme measures to prevent the father having access to his children. This would be very serious and could result in her rights of access to the children being significantly curtailed, likewise, if she seeks to alienate the children against him.
- [72] The mother has until now been cavalier about this court's authority and acted unilaterally in taking the children out of the jurisdiction to the other side of a border she knows the respondent dare not cross. While I find significant fault in her behaviour in this regard, if her evidence is true, she may have been motivated by a need to take care of herself and her children and to escape a harmful situation. This cannot be an excuse, she made a very wrong choice, but I note that her actions do not necessarily mean that she should be punished in a way that is contrary to the best interests of the children. The fact that she has now respected this court's authority and returned to the jurisdiction speaks well of her.
- [73] I am persuaded on the evidence that, at a minimum, the children's two parents cannot immediately easily cooperate. There are very strong allegations back and forth between the parents and the relationship needs time to cool down. For this reason, I do not consider it appropriate to have an equal parenting regime immediately, but I do not say that will be impossible in the future.
- [74] The court's task today is very difficult. The court does not want to be manipulated by false allegations of abusive domestic relationships. However, we are talking about very young children in this case. Children are damaged in their development by exposure to violence and uncontrolled anger and substance abuse. The court cannot risk the well-being of those children if there is some credible evidence of risk. One has to accept that the statutory changes to the family law regime in this province, expressly requiring the court to take into account all shades of family violence in deciding what is in the best interests of the children, are meant to reinforce this point.

- [75] I observe that there were two police incidents between the parents. This does not prove who may have been the aggressor in those incidents, but the father did not allege in his ex parte applications that the mother was aggressive, violent, or engaging in substance abuse and did not disclose to the court on the ex parte orders anything about these incidents or that the parties' prior relationship had this level of volatility.
- [76] The father's escalating bullying approach in his electronic messages to the mother leads me to suspect that there is some truth in the mother's allegations.
- [77] No long-term solution to the parties' dispute can be determined today because of the state of the evidence. Rather, some interim steps need to be taken.
- [78] The principles governing a court's consideration of supervised access were summarized by Madam Justice Dardi in *A.B. v. C.D.*, 2011 BCSC 603, at paragraphs 30 to 31:
- [30] In *V.S.J. v. L.J.G.*, [2004] O.T.C. 460 at para.143 (S.C.J.), the court provided guidance as to the factors a trial judge should consider when restricting a parent's access, including:
1. The maximum contact principle;
 2. The right of a child to know and have a relationship with each parent;
 3. A limitation of a consideration of parental conduct to that conduct which impacts on the child;
 4. The risk of harm: emotional, physical and sexual;
 5. The nature of the relationship between the parents and its impact on the child;
 6. The nature of the relationship and attachment between the access parent and the child; and,
 7. The commitment of the access parent to the child.
- [31] In summary, the determination of the child's best interests, as endorsed by the Supreme Court in *Gordon*, requires a full and sensitive inquiry. The inquiry must have regard to all the relevant circumstances relating to a particular child's needs and the ability of the parents to satisfy those needs. Because the inquiry is highly individualized, it must be recognized that other decided cases are of assistance only in the limited sense of illustrating the application and interplay of the governing principles: *H. v. K.*, 2008 BCSC 660 (CanLII), 2008 BCSC 660 at para. 212.
- [79] Considering all of the circumstances and the current state of the evidence, I conclude that the best interests of the children will be best served by creating a parenting arrangement that progresses in stages allowing both parents the opportunity to engage in a positive co-parenting relationship, putting their mistakes behind them, and creating a situation where the children will have the benefit of good and stable relationships with both parents. Both parties must recognize that they are now under the microscope and will have to be on their best behaviour. This means acting reasonably, communicating civilly, cooperating with each

other, and being flexible enough to now and then compromise to assist the other parent's reasonable requests. This means also respecting boundaries and not taking advantage of the other or harassing the other.

- [80] Because of the children's young ages, the need to build a cooperative parenting relationship between both parents in order to secure a healthy environment for them, the need to create stability in their homes, and because I am of the view that there is sufficient evidence to raise concerns about the father's parenting abilities and the safety of the children in his care, I am going to start slow with the father's access regime, starting with supervised access.

Conclusion

- [81] I conclude as follows.

1. The father will have supervised access to the children on an alternating weekly basis. On week 1, for one week night from 5:00 p.m. to 7:00 p.m. and I will hear submissions as to the best night. On week 2, on Saturdays from 9:00 a.m. to 4:00 p.m. and Sundays from 9:00 a.m. to 4:00 p.m. Week 1 will be next week with the father's access being on the chosen week night. For example, if it is a Wednesday night, then it will be Wednesday, June 16, from 5:00 p.m. to 7:00 p.m. Week 2 will be the weekend of June 28 and 29 with the father's access on the Saturday and Sunday.
2. The supervision will be provided by the father's mother, Donna Malone, or any adult agreed to by Ms. Allar. The supervision is not required for the entire visit, but is required for a minimum of two hours each visit.
3. There will be a parenting book accompanying the children on their visits to their father and on return to the mother. Each parent will fill in the book information that would be helpful to know if in the shoes of the other parent. For example, if the youngest child normally takes a one-hour or two-hour nap at 2:00 p.m. each day, that is the kind of information that should be shared.
4. Each parent will provide a telephone number for the other parent to reach him or her in cases of emergency.
5. The mother will initiate a telephone call from the son to the father at 6:00 p.m. each Tuesday and Friday and it is to be at a fixed telephone number to be supplied by the father.
6. The mother will surrender whatever travel documents and passports she has for the children to her lawyer to hold in trust and to not release without written agreement of the parents or further court order.
7. Both parents are confirmed as guardians of the children.

8. There will be reciprocal restraining orders restraining either parent from leaving the Lower Mainland with the children absent the other party's written consent.
 9. The father did not provide any evidence in reply to the mother's claim for \$5,000 support on a without-prejudice basis. The mother's evidence is that she has not worked in Vancouver, she currently has no job here, and does not have the financial means to support herself. The father has not placed before the court any financial information regarding his finances. This is somewhat surprising since he claims to be in the process of an application to set aside his support order with respect to his other family. I will order the father to pay to the mother as interim child support a lump sum of \$2,000 payable by June 18 and an additional amount of \$1,000 per month on the first day of every month beginning in July until the order is varied.
 10. Any application to vary the support order can proceed as a fresh hearing. This order regarding support will be without prejudice to any adjustments made by a court once there is a proper hearing regarding child support and there is proper evidence regarding the financial circumstances of the parties. I have determined the amounts based primarily on the father's lifestyle and, as well, the evidence that he gave the mother \$1,000 to enjoy when she was in the United States.
- [82] In addition, the mother applies for a protection order. The father's response position is if there is going to be a protection order, there should be mutual protection orders. However, there is no evidence that the father is in need of a protection order regarding the mother.
- [83] I do find that the evidence supports the mother's request for a protection order. This is to be drafted as a separate order in accordance with Form 54 and is granted in the terms requested in item 4 of the mother's notice of application. The only exception is there needs to be a provision that allows for communication.
- [84] I will not order cross-examination on all of the affidavits filed to date as requested by the father. The parties are free to agree to this or to apply in the future for this. In the meantime, both parties have the right to examine for discovery the other. What I am trying to do is avoid a situation where the support systems for each parent are put under attack by the other parent in this litigation. In my view, it is better to try to calm down the strife between the parties and cross-examination of all deponents is likely to simply amplify it. I do recommend that the parties engage in production of documents on an expedited basis including financial records so that the ability of each parent to support the children can be better understood.
- [85] MS. BOLES: Sorry, My Lady, can you just clarify that for a moment? I just was reading the application -- my note.
- [86] THE COURT: Yes. I said I recommend that the parties engage in production of documents on an expedited basis including financial records so that the ability of each parent to support the children can be better understood --

- [87] MS. BOLES: Yes.
- [88] THE COURT: -- but I make no order in that regard. I am simply recommending it. I also leave the father to take his own counsel on this, but I have found it helpful in other cases, when allegations like those made here are advanced, to have drug testing of the accused party. So I encourage the father to do drug testing of his hair samples by an independent laboratory if he wishes to try to disprove that he is engaging in ongoing illegal drug use.
- [89] The mother submits that I ought to make findings of material non-disclosure by the father to the court at the time of the ex parte orders. I am not sure it is necessary to make these findings. I am very leery of doing so because the most material evidence that has been newly revealed is that of the father's alleged family violence and issues with substance abuse and that evidence is hotly contested. Rather, the orders I make are based on my consideration of all the affidavit evidence before me as a hearing de novo.
- [90] In making my ruling, I emphasize that there has not yet been a fair opportunity given to either side to challenge the evidence of the other side through cross-examination. The present judgment is given in urgent circumstances with a history of volatility in the relationship and the need for the court's involvement in deciding the immediate parenting arrangements.
- [91] I do not grant the mother's application that she be permitted to return to Wisconsin with the children and reside there on an interim basis. However, the mother is at liberty to come back to court to pursue that remedy and other relief as she sees fit. Likewise, the father is at liberty to come back to court to increase his access if this is unable to be worked out between the parties.
- [92] I will order that before either party comes back to court that there be what I call a cooling-off period of six weeks to allow an opportunity to see how the co-parenting arrangements work. What I am really hoping is that they will work and both parties will see the benefit in cooperating and eventually working out reasonable co-parenting arrangements.
- [93] I will order that the parties attend a judicial case conference. I am going to set a date, 2:00 p.m., on a date during the week of July 14th. I am going to give you each time to look at your calendars. I will repeat some of these terms if you have missed any of them, obviously. The only exception, of course, about not coming back to court will be for cases of true urgency which will have to, of course, be established by the party coming back to court.
- [94] When I said not for another six weeks, to be specific, I order that the parties not bring on further applications until the week of July 21st at the earliest unless there is an urgency. So, again, what I am aiming for is a JCC during the week of July 14th. I am hoping that that gives the parties time to exchange information, to settle down, to get into a co-parenting routine.

[DISCUSSION RE JUDICIAL CASE CONFERENCE SCHEDULING]

- [95] THE COURT: All right. Why do we not make it -- if I set it at 2:00 p.m. on a Thursday, there is bound to be time. Some other things in the week are bound to have opened up. So Thursday, July 10.
- [96] MS. BOLES: Thursday, July 10, okay, at 2:00 p.m.?
- [97] THE COURT: Yes.
- [98] MS. BOLES: All right. My Lady, if you have concluded, I do have some clarification?
- [99] THE COURT: I just -- no, I have not yet.
- [100] MS. BOLES: Ah, okay, perfect.
- [101] THE COURT: I will just come back.
- [102] MS. BOLES: I will hold my clarifications.
- [103] THE COURT: Right, thank you.
- [104] At least two days before the JCC, but hopefully sooner, I ask the parties to exchange proposals as to changes in the parenting arrangement and proposals as to what school they feel B1 should attend in September.
- [105] Lastly, I also order that a Family Justice Counsellor assess each parent's parenting abilities and the children's needs and prepare a s. 211 report to be paid for by the court and --
- [106] MS. BOLES: Thank you.
- [107] THE COURT: -- and Madam Registrar, you will have to fill out the form and fax it to the Family Justice Centre.
- [108] That completes my ruling other than some missing details and some clarification that you are certainly free to ask. I will need to hear submissions on the best way to arrange for pick-up and delivery of the children.
- [109] MS. BOLES: Yes. That would, of course, be part and parcel of the clarifications.
- [110] THE COURT: Right --
- [111] MS. BOLES: And I have a couple of other questions.
- [112] THE COURT: And I need to hear about what week night is the preferable week night. Wednesday is the middle.
- [113] MS. BOLES: 6:00 p.m. is the phone call time. I know I confirmed that.
- [114] THE COURT: Okay.
- [DISCUSSION]

[115] JASON MALONE: I was just wondering if the 5:00 to 7:00 -- my daughter, I know she goes to bed like right around seven o'clock and so --

[116] THE COURT: Okay, she goes to bed that early?

[117] MS. BOLES: And that is why --

[118] THE COURT: So I was trying to get before bedtime, so --

[119] JASON MALONE: Yes.

[120] MS. BOLES: And that is part and parcel of my clarification with respect to this because obviously -- and it all works tongue and groove with the transport because if time is being taken up --

[121] THE COURT: Right.

[122] MS. BOLES: -- of his access of him driving somewhere --

[123] THE COURT: Okay. Well, what I would like to do is stand down for 10 minutes to speak about some of the mechanical issues between the two of you and maybe some adjustments. The idea is to give the father --

[124] MS. BOLES: Two hours.

[125] THE COURT: -- a week night with the children where he can have dinner with them before they are, obviously, falling asleep, and the pick-up and delivery times will have to take into account the fact that the mother is just coming back to Vancouver. I am presuming she is not going to have a car, but I do not know that. So you are going to have to try to have some discussions about that. I will give you 10 minutes --

[126] MS. BOLES: Yes, I am presuming she does. So there you go, but --

[127] MR. BROADHURST: I do not think so.

[128] MS. BOLES: Thank you.

[PROCEEDINGS ADJOURNED]

[PROCEEDINGS RECONVENED]

[DISCUSSION]

[129] THE COURT: All right. I am going to order that the Family Justice Counsellor s. 211 report investigation not start until September 2014. I am sure they will be happy to hear that because they probably do not even start them until --

[130] MS. BOLES: I do not know what they are at right now.

[131] THE COURT: -- until 2015, but --

[132] MS. BOLES: They will be like, "What so early?"

- [133] THE COURT: Yes. Secondly, I am troubled about how to arrange for the pick-up and delivery of the children. Really, there is no evidence that the mother has a car. I am told that she is staying in someone's home other than her own in Delta and I cannot make inferences that she has permission to borrow someone's car.
- [134] So what I am going to do is I am going to change the access times, but I am going to provide that the father pick up the children from the mother's residence -- she is to inform him if she changes residence, obviously, currently the one in Delta -- at the appointed time, and we will talk about that in a moment, by showing up in his car at the appointed time, texting her a text message to say he is there, and then waiting for her to send the children out to the car or to deliver them to the car. He will not be in breach of the protection order by doing so.
- [135] So there has to be a carved-out exception to the protection order. Since he is to pick them up and deliver them and because of the time to get to Delta, I am going to change his access time on the one weeknight to be a full day that week. So from, let us see, 9:00 a.m. to 4:00 p.m. on the Wednesday.
- [136] MS. BOLES: And, My Lady, with respect to her attending at the car, I am fearful on behalf of my client --
- [137] THE COURT: Of false allegations?
- [138] MS. BOLES: There you go, and it cannot be --
- [139] THE COURT: He can bring -- he will have to bring someone with him.
- [140] MS. BOLES: The problem is there are not a lot of people who can go --
- [141] THE COURT: I know.
- [142] MS. BOLES: -- in our age group, I would describe loosely, who are not working who can go and say --
- [143] THE COURT: I know.
- [144] MS. BOLES: -- "Sure, I will take three hours and drive to Delta and back" --
- [145] THE COURT: I know.
- [146] MS. BOLES: -- "twice in a day." I mean it is just -- he is at risk -- perhaps the order can be that she can cause a third party to deliver them to the car?
- [147] THE COURT: Right, but I do not know --
- [148] MS. BOLES: That is my fear. If ever there is going to be a case for false allegations, this is it and, according to her, she is so terrified of his violent nature, that is the last thing she would want.

[149] THE COURT: -- I do not have any evidence of other people that can assist her at that home other than children.

[150] MS. BOLES: Well, my client can take the stance, his children and the Solinas live there. He knows -- I mean he can identify cars. I have seen them at the cars. So I mean there should be an obligation on Ms. Solinas -- or, sorry, Ms. --

[151] THE COURT: Yes, all right.

[152] MS. BOLES: -- to find out if she can borrow a car.

[153] THE COURT: I am persuaded that the arrangement for delivery of the kids by her will be that she will cause a third party to --

[154] MS. BOLES: Okay.

[155] THE COURT: -- take them from the residence to the car --

[156] MS. BOLES: That sorts the problem.

[157] THE COURT: -- and so the revision to the protection order --

[158] MS. BOLES: Yes.

[159] THE COURT: -- will be simply that his appearance at the house at the allotted time for pick-up and delivery of the children is not in breach of the order.

[160] MS. BOLES: Fair enough, that solves the problem entirely.

[161] THE COURT: All right. Mr. Broadhurst, I am going to ask you to draft the order. As I said, I will order a transcript of the reasons so people can have them. All right. This --

[162] MS. BOLES: We will work together on that.

[163] THE COURT: I know your client is not happy today, but it has to proceed in stages and --

[164] MS. BOLES: He appreciates that.

[165] THE COURT: -- hopefully it will work.

"S.A. Griffin, J."

The Honourable Madam Justice Susan A. Griffin

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