

---

CANADA / JUDGMENT

## Munroe v. Elisseeva

2020 BCSC 1952

---

COURT

Supreme Court of British Columbia

DECIDED

10 December 2020

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

---

2020 BCSC 1952 Munroe v. Elisseeva

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Munroe v. Elisseeva,

2020 BCSC 1952

Date: 20201210

Docket: E55472

Registry: New Westminster

Between:

Garrett Ross Munroe

Claimant

And

Aita Elisseeva

Respondent

Before: The Honourable Justice Shergill

Reasons for Judgment

Counsel for Claimant:

L. Nambiar

Counsel for Respondent:

A. Kahlon

R. Roxborough

Place and Date of Hearing:

New Westminster, B.C.

October 21, 2020

November 27, 2020

Place and Date of Judgment:

New Westminster, B.C.

December 10, 2020

Table of Contents

I. Overview.. 3

II. Issues. 4

III. Background. 5

IV. Legal Framework. 9

V. Analysis. 11

A. Status Quo. 11

B. Best Interests of the Children. 13

1. Children's Health Concerns. 14

2. Parenting Issues. 16

3. Need for Stability. 18

4. Children's Views. 18

5. Parties Ability to Cooperate. 19

6. Section 211 Report 20

VI. Conclusion. 21

VII. Orders Made. 22

VIII. Costs. 24

## I. Overview

- [1] By way of Notice of Application filed September 28, 2020 ("NOA"), the claimant father seeks various orders in relation to his parenting time with the parties' two children. Specifically, the father wishes to reinstate his parenting time on a week-on/week-off schedule, in accordance with an agreement that he says was arrived at by the parties on July 17, 2018 (the "Agreement").
- [2] It is the father's position that:
- a) the mother unilaterally terminated the Agreement and changed the children's parenting time without consulting him; and
  - b) she was motivated for improper reasons, i.e., to put pressure on him to renegotiate the financial terms of their separation.
- [3] The respondent mother asserts that the father suddenly withdrew from the children's lives in March 2020, and that he should now be restricted to parenting time on weekends only. In support, the mother says as follows:
- a) there is no enforceable Agreement and the parties' informal arrangement for the week-on/week-off schedule was made under duress;
  - b) the father is unable to meet the children's needs because he: has been neglectful of the children; minimizes or denies their serious health concerns; has failed to or refuses to meet with the children's educational or health care providers; and refuses to facilitate their extracurricular activities; and
  - c) the children are no longer accustomed to being with their father on a week-on/week-off basis, and are distressed when they are left in the care of their father for extended periods of time.
- [4] The father denies all allegations made against him by the mother.

## II. Issues

- [5] The following orders are sought in the NOA:
1. The children be released to the father forthwith;
  2. The father be given compensatory parenting time with the children for a period of eight weeks, pursuant to s. 61(2)(c) of the Family Law Act, S.B.C. 2011, c. 25 ["FLA"];
  3. The parties to exercise parenting time pursuant to a written agreement of the parties entered into on July 17, 2018, as follows:
    - a. The schedule will alter every seven days and the parties will have joint parenting responsibilities;

- b. The children will spend Mother's Day with the mother; and
  - c. The children will spend Father's day with the father;
  - 4. A police enforcement clause permitting a peace officer to arrest the respondent if the officer believes on reasonable and probable grounds that the respondent is in breach of the terms of this order for parenting time;
  - 5. An order enjoining the respondent from discussing this litigation with the children, disparaging the claimant, and discouraging the children from spending time with the claimant; and
  - 6. Special costs or, alternatively, costs.
- [6] At the commencement of the hearing, counsel for the claimant advised the court that the claimant was no longer seeking compensatory parenting time.
- [7] Though there is no cross-application filed by the mother, she seeks an order to have a psychologist appointed to prepare a report under s. 211 of the FLA ("s. 211 report") to assess the needs and views of the children, and the ability and willingness of each party to satisfy their needs. It is the mother's position that I should receive and review this s. 211 report prior to making any interim orders granting parenting time in excess of the weekend-only parenting schedule that she agreed to.

### III. Background

- [8] The parties are both in their late thirties. The claimant is a practicing lawyer and the respondent is a licenced pharmacy technician and part-time instructor. They were married in August 2008. They have two children - K., who is 11 years old, and W., who turns 10 in a few weeks. When the parties' marriage ended with separation in August 2014, the children were approximately six and five years old respectively.
- [9] From August 2014 to July 2018, the parties operated on a variable parenting schedule, with the children mostly being in the care of their mother. The claimant was unhappy with the parenting arrangement, and sought equal parenting time. He filed a Notice of Family Claim in June 2018 and sought a week-on/week-off parenting schedule, as well as the finalization of the financial matters between the parties.
- [10] The respondent did not file a Response to Family Claim. Instead, the parties entered into settlement discussions, during which the respondent was represented by counsel.
- [11] On July 17, 2018, the respondent's counsel sent a without-prejudice communication to the claimant offering to resolve all outstanding matters. This letter included her agreement to both parties being guardians of the children, exercising joint parenting responsibilities, and a week-on/week-off parenting schedule.

[12] Though the parties did not sign a written agreement, the respondent confirms at paragraph 38 of her Affidavit #1 made October 14, 2020 that they came to an agreement, stating:

On July 17, 2018, my counsel wrote a letter to the Claimant agreeing to all his terms, including a week-on week-off parenting schedule and that about \$60,000 would be considered a loan from the Claimant to me. The funds were released from trust and I was able to complete on the purchase of the new residence. The claimant did not provide me with any form of written agreement.

[13] However, the respondent says that she never believed that increasing the claimant's parenting time with the children was in their best interests. Rather, her agreement to the week-on/week-off schedule was made under duress, as she was worried that if she tried to change the parenting schedule, the claimant would sue her and she would be at risk of losing her "new residence and the Children".

[14] Regardless of why the respondent agreed to the week-on/week-off schedule, there is no dispute that for the almost two-year time period between July 2018 and March 2020, the children shared their time equally with each parent, alternating one week between each parent's home.

[15] The government of British Columbia declared a state of emergency on March 18, 2020. During this time, the children were in the claimant's care. They expressed to their father concerns about the pandemic and their unwillingness to participate in any outdoor activities. The claimant completed his parenting time with the children on March 22, 2020, and the children were returned to the care of their mother.

[16] The parties' concerns about the pandemic grew. On March 25, 2020, the respondent suggested that the children stay with her for another week to minimize back and forth travel. The claimant agreed. Not long after, a member of the claimant's office staff was suspected of having COVID-19. The claimant was advised by HealthLink BC to self-isolate for two weeks, which he did. In mid-April, the claimant's infant child from his current relationship developed flu-like symptoms. The claimant began to exhibit similar symptoms a few days later, and was advised again to self-isolate for 14 days. On May 20, 2020, the claimant's elderly father was admitted to hospital for onset of fever, hypertension, nausea, vomiting and dizziness. He remained in hospital for four days, following which the claimant provided him assistance during his convalescence.

[17] Consequently, from March 27, 2020 to May 28, 2020, the claimant did not see the children. Though he kept in touch with the respondent, and made occasional inquiries into the children's well-being, he also does not appear to have had any significant electronic or other communications with the children during this period.

[18] On May 29, 2020, the claimant contacted the respondent so that he could resume his parenting time. The respondent was not agreeable to a return to the children's regular week-on/week-off schedule. She provided various reasons to the claimant, including that: she had planned a number of camping trips with the children in June; she did not want to disrupt the

children's school schedule; the children had gotten used to not seeing their father and did not wish to spend that much time with him; and the children needed to be eased back into staying with him. The claimant was upset and, after some back and forth communication, agreed to return the children on May 31, 2020 to accommodate the respondent's pre-planned camping trip on June 1.

- [19] After a brief stay with their father from May 30 to May 31, 2020, the claimant next had the children on Saturday, June 6, 2020. The respondent asserts that the claimant agreed to return the children on June 7, 2020, but the claimant says that he was to keep them for a week. It is not possible to reconcile the competing accounts based on the evidence before me. What is clear is, that on June 9, 2020, W. messaged his mother asking to return home the next day. The messages suggest that W. was upset because: his dad was "rude" and made them "do stuff"; he missed his mother; and he was experiencing allergy symptoms. The respondent encouraged W. to stay with the claimant until Friday (June 12, 2020), and to "please give daddy a chance".
- [20] The claimant explains his views of why W. was unhappy in his care during this time. At para. 23 of his Affidavit #4 made November 2, 2020, the claimant says that W. was upset that his father took him for long hikes, which he found to be physically challenging. W. was also upset that K. would repeatedly make fun of his weight. The claimant also explains that W. wanted to return to his mother's home so that he could take prescription allergy medication. The claimant acquiesced and returned the children to their mother on June 11, 2020.
- [21] The claimant contacted the respondent on June 18, 2020. He asked to speak to the children that evening, and proposed a time when he could pick them up the following day so they could be transferred into his care on June 19. The claimant had plans for the children to attend his infant son's birthday celebration on June 20, 2020. The respondent did not return his message until the next morning, when she advised him she was busy and would talk to him later.
- [22] Later on June 19, 2020, the claimant received a lengthy letter from the respondent's counsel (the "June 19 letter") addressing parenting issues and financial matters. The June 19 letter set out the respondent's opinion that the claimant puts his "own wants and needs above the best interests of the children", thereby necessitating the respondent's intervention to limit his parenting time. The respondent's counsel proposed the following parenting schedule on a without-prejudice basis. This is essentially the same position that the respondent takes in response to this application, and the respondent does not object to the admission of this letter into evidence:
- You will exercise parenting time with the children on a weekly basis from Saturday at 10:00 am to Monday at 10:00 am or such time as the children start in-person schooling on Monday. As the children are presently schooled "remotely" rather than in-person, they would be returned to the care of our client each Monday at 10:00 am.

- Our client will exercise parenting time with the children during the balance of time.
- You will be responsible for both picking-up and dropping-off the children at the residence of our client.
- Either party may call upon the police to enforce the foregoing terms.

[23] After asking the claimant to confirm if he would consent to these terms, the letter reads as follows:

Until you and our client come to an enforceable agreement concerning a parenting schedule, the children will not be placed in your care and control. Of course, in any event, our client would continue to grant you reasonable contact with children by electronic means.

[emphasis in original]

- [24] Not surprisingly, the claimant did not agree to the terms proposed by the respondent. As a result, the children missed their step-brother's first birthday and did not see their dad on Father's Day (June 21).
- [25] The claimant began to prepare for a court application for parenting time. Those preparations were interrupted when, on July 4, 2020, the claimant's partner suffered a spontaneous abortion and medical crisis caused by excessive blood loss. She was rushed to hospital and required a blood transfusion. Her recovery was lengthy and protracted. As a result, the claimant did not file this application until September 28, 2020.
- [26] This application was originally set to be heard on October 9, 2020. However, on October 9, 2020 (the "October 9 Order"), Justice Harvey granted the respondent's request for an adjournment to October 21, 2020. The October 9 Order stipulated timelines for filing responsive material, and exempted the parties from the Judicial Case Conference process. It also provided for interim parenting time for the father, on a without-prejudice basis, to commence the same day. Pursuant to the October 9 Order, the father was given parenting time on alternating weekends from Friday after school to Monday mornings, with leave to bring a further application to extend his parenting time should the application not be heard on its merits by November 1, 2020.
- [27] On October 21, 2020, the parties appeared before me. The respondent sought an adjournment on the grounds that there was insufficient time set aside for the hearing. I denied the request for an adjournment, and proceeded to hear the application on its merits. The hearing did not complete. The matter was continued and completed on November 27, 2020.

#### IV. Legal Framework

- [28] I turn first to the legal framework governing such applications. In doing so, I note that this is an interim application. The primary purpose of interim orders is to preserve the status quo, and provide a short-term solution until issues regarding the best interests of the children can be fully canvassed at trial: *Fitzgibbon v. Fitzgibbon*, 2014 BCCA 403 at para. 22.
- [29] It is expected that given the interlocutory nature of the proceeding, the chambers judge will not have fulsome evidence before her, and is expected to make preliminary findings based on the evidence as it then stands: *Lit v. Lit*, 2018 BCSC 2023 at para 6.
- [30] Section 37 of the FLA confirms that the court may only consider the best interests of the child when making an order respecting parenting arrangements and contact. An order is not in the child's best interests unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.
- [31] Preservation of the status quo cannot supersede the best interests of the children: *L.A.Y. v. S.A.Y.*, 2019 BCSC 853 at paras. 40-42; *M.J.V. v. R.L.V.*, 2017 BCSC 1353 at para. 21.
- [32] Section 37(2) of the FLA provides a non-exhaustive list of factors that must be considered in determining a child's best interests. These include: the child's health and emotional well-being; the child's views, unless it would be inappropriate to consider them; the nature and strength of the child's relationships between the child and significant persons in their life; the history of the child's care; the child's need for stability, given their age and development; the ability of each parent to exercise their responsibilities; the impact of any family violence; whether the actions of a person responsible for any family violence indicates they may be impaired in their ability to care for the child or meet their needs; the appropriateness of an arrangement that requires the parties to cooperate; and any civil or criminal proceeding relevant to the child's safety, security or well-being.
- [33] The FLA recognizes both formal and informal parenting arrangements.
- [34] Formal parenting arrangements are addressed in s. 44 of the FLA. Pursuant to s. 44(1), the child's guardians may make an agreement respecting, amongst other things, the allocation of parental responsibilities and parenting time. Under s. 44(2), such an agreement is binding only if it is made after separation, or is made when the parties are about to separate, for the purpose of being effective on separation. Pursuant to s. 44(3), a written agreement respecting parenting arrangements that is filed in the court is enforceable under the FLA as if it were an order of the court.
- [35] However, under s. 44(4), the court is bound to set aside a parenting agreement if it is found not to be in the child's best interests. There is no requirement that a material change in circumstances must occur since the making of such an agreement before the court can intervene: *Nijjar v. Gill*, 2017 BCSC 1362 at para. 111.
- [36] Section 48(1) addresses informal parenting arrangements. It provides as follows:

48 (1) If

- (a) no agreement or order respecting parenting arrangements applies in respect of a child, and
- (b) the child's guardians have had in place informal parenting arrangements for a period of time sufficient for those parenting arrangements to have been established as a normal part of that child's routine,

a child's guardian must not change the informal parenting arrangements without consulting the other guardians who are parties to those arrangements, unless consultation would be unreasonable or inappropriate in the circumstances.

[37] As with formal parenting agreements, the presence of informal parenting arrangements does not prevent a child's guardian from seeking an order under s. 45 of the FLA.

## V. Analysis

### A. Status Quo

[38] There is no dispute that the parties arrived at an agreement on July 17, 2018, in relation to the allocation of parental responsibilities and parenting time, though the agreement was neither in writing nor filed in court. The respondent challenges the binding nature of the parenting agreement by alleging that she was under duress when she entered into it. There is insufficient evidence before me to come to a conclusion either way. However, I am able to resolve this interim application without needing to determine if the agreement was entered into under duress.

[39] Section 48 of the FLA asks this court to consider whether there exists informal parenting arrangements that have become a normal part of the children's routine. The uncontroverted evidence in this case is that the week-on/week-off schedule had become a normal part of the children's routine since July 2018. The parties followed the schedule from July 2018 to March 2020, a period of approximately 20 months. In my view, this was more than sufficient time for the week-on/week-off schedule to become a normal part of the children's routine.

[40] I turn now to consider whether the children's routine has changed since March 2020, such that the status quo no longer favours a week-on/week-off parenting schedule.

[41] In March 2020, as for many parents in British Columbia, the parties' lives were disrupted by the pandemic. From the end of March 2020 to the end of May 2020, a period of approximately two months, the children did not see their father for what are essentially pandemic-related reasons. I do not consider the claimant's absence from the children's lives during this period to have altered the status quo. Simply put, it was too short a time period to displace the previous 20-month routine.

- [42] The period from June 2020 to November 2020 was equally unusual and marked with uncertainty. While the court application was not filed for several months (for reasons that are understandable), it was abundantly clear to both parties that they were heading towards litigation. The evidence also leads me to conclude that the children were aware that the matter of how much time they would spend with their father was not settled.
- [43] It was not until the interim order made by Justice Harvey on October 9 that the father next saw his children. Since that time, the children have seen their father on alternating weekends.
- [44] There is no doubt that the children have spent considerably less time with their father over the past eight months when compared to what they had done in the preceding 20 months. However, I do not consider this reduction in parenting time sufficient to alter the status quo. From March 2020 to November 2020, the children's routine with their father has been in flux. There is no "new normal" routine for the children which can be said to have displaced the parenting time status quo which existed for almost two years until March 2020.

## **B. Best Interests of the Children**

- [45] I have concluded that the week-on/week-off schedule was a normal part of the children's routine. Maintaining the status quo would mean returning the children to this regular routine. However, I must consider whether returning to the status quo on an interim basis would be against the children's best interests.
- [46] In making that determination, I am mindful that the parties have contradictory views about many of the events which have transpired, which raises issues of credibility that I am not in a position to fully resolve. Nevertheless, to determine what parenting arrangement would be in the best interests of the children on an interim basis, I will need to engage in some weighing of the evidence.
- [47] The claimant's evidence appeared reliable and largely consistent with the documentary evidence. Most of the statements made were detailed, factual and responsive to the issues. While there were some discrepancies in his evidence, they were minor and did not detract from my view of the overall reliability and credibility of his evidence. In arriving at this conclusion, I have considered the respondent's allegation that the claimant is not credible because he made misrepresentations to the court at an earlier hearing held before a different presider. As I advised counsel, I am not in a position to address those types of matters in this hearing. The forum to resolve credibility issues is at a trial: Fitzgibbon at para. 22.
- [48] I had a number of concerns about the respondent's evidence which bring her reliability and credibility into question. There were inconsistencies in her evidence, and many described events lacked specificity or attribution as to the source of her knowledge. Other statements were simply speculation, opinion, or argument. She had a tendency to use unnecessarily inflammatory language to describe interactions between the claimant and the children. In

some instances, the respondent mischaracterized facts. For example, at para. 70 of her Affidavit #1, in reference to the period from March 27, 2020 to May 28, 2020, the respondent says, "By the end of May 2020, the Claimant had not said so much as a word to the Children for a period of about 3.5 months." In actual fact, this period was only two months.

[49] I turn now to the specific concerns raised by the respondent regarding the children's best interests.

1. Children's Health Concerns

- [50] In May 2019, a pediatrician recommended to the mother that K. be assessed for high functioning autism. On July 16, 2019, K. was diagnosed as being on the autism spectrum. According to the respondent, K. has difficulty communicating his feelings, finds disruptions in his routine distressing, and experiences aggression and social withdrawal. However, at para. 43 of her Affidavit #1, she avers that K. is "relatively high functioning academically bright and can usually go about his day-to-day life without significant disruptions".
- [51] The mother says that the father is in denial of K.'s autism diagnosis and has refused to attend any pediatric appointments for K.
- [52] The claimant admits that he missed one pediatric appointment, but denies that the respondent told him about any others. The claimant acknowledges that prior to the psychological assessment, he was resistant to an autism diagnosis. Following the positive diagnosis, the claimant accepted that K. is autistic, but believes him to be on the "very minor end of the [autism] spectrum". The claimant acknowledges that K. has issues with non-compliance at school, but that these have improved with age. Though K. has emotional outbursts, these are infrequent. The claimant does not consider K. to be "disabled" and does not wish the diagnosis to "define" K. He contends that K.'s condition is not as serious as the respondent makes it appear.
- [53] Based on the evidence before me, I find that the claimant is appropriately attuned to K.'s medical needs flowing from his autism.
- [54] I also find that the claimant is sufficiently attuned to W.'s health needs. He is appropriately concerned about W.'s significant weight gain during the early months of the pandemic. He is also aware of W.'s emotional needs when he is subjected to ridicule and disparagement by K. In order to address W.'s concerns, the claimant took him to see his family doctor in October 2020. When W.'s family doctor expressed concerns that W. may be depressed and that he should receive counselling from a registered counsellor or psychologist, the claimant tried to address this with the respondent.
- [55] The respondent asserts that the claimant does not prioritize the children's mental health and refuses to consent to them attending counselling. As such, she expresses the belief that the claimant will not take the children to attend counselling during his parenting time.

- [56] This contention is not supported by any objective evidence. There are numerous examples in the affidavit material of the claimant taking leadership on health issues regarding the children. As with many of the other allegations made against the claimant, I find that the respondent's opinion about the claimant's engagement with the children's mental health care providers is coloured by her view that only her perspective is the correct one.
- [57] I accept the claimant's explanation as to his reservations about commencing counselling with Ms. van der Heul. He was concerned about her apparent lack of specialization as well as her location in Langley. When the pandemic hit, the claimant was reluctant to have the children's bubble expand to include counselling sessions, as he was worried that a future lockdown could result in the interruption of counselling services, which he believed would cause more harm to the children. The claimant was also concerned that W. was not benefiting from sessions with Dr. van der Heul, and wished for W. to attend a different counsellor in order to see "if there is a better fit so that his depression and obesity can be treated". These are reasonable concerns for any parent. They enhance, rather than detract from, my view of his capability in meeting the needs of the children and prioritizing their mental health.

## 2. Parenting Issues

- [58] The respondent lists a number of issues which cause her "a great deal of concern with regard to the Claimant's parenting". These include: what she characterizes as his "old-school view of parenting", where the children are left alone to play and given chores if they express boredom; the claimant's failure to take the children to extra-curricular activities, with the exception of karate; and his willingness to allow them to watch television sometimes for more than "six hours per day". With the exception of the allegation of six hours or more of daily television, none of these assertions are alarming. As for the excessive television viewing, the respondent provides no evidence as to how she could possibly know what was going on inside the claimant's home.
- [59] The respondent alleges that in the winter of 2019, the Claimant sent the children to school on a number of occasions without lunches. Apparently, the school principal told the mother that she would report the claimant to the Ministry of Children and Family Development if the children were sent to school again without food. The claimant explains that, on two occasions, the children tried to convince him to give them candy for lunch. The claimant refused, and offered them healthy lunch options instead. The children did not like these options, and chose to go to school without lunch on those two days. I do not find anything neglectful in those interactions. It is not unusual for a parent to tell a child that they must eat the food that is given to them, or go hungry. While it may have been an uncomfortable experience for the children, there is no evidence that it was harmful.
- [60] The respondent also complains that the claimant does not support the children's involvement with Kumon. The children have been involved in this activity for a number of years, and the respondent wants them to continue. The claimant finds Kumon to be time

consuming, with little tangible benefit for the children. He says that the children "despise" Kumon, and he has chosen not to force them to do their Kumon homework given what limited time he has with them. These concerns of the father are reasonable. They reflect a difference in opinion about the benefit of keeping the children in Kumon. The father's lack of regard for Kumon does not equate to a lack of regard towards the children's education or wellbeing.

[61] The respondent also complains about incidents which predate July 2018. They include vague allegations of physical abuse dating back to 2016 or 2017 which are denied by the father. The evidence falls far short of establishing that the claimant perpetrated family violence against either of the children. The fact that the respondent agrees to the father having unsupervised parenting time with the children raises serious doubt as to the veracity of the allegations. Even if the respondent's evidence is to be believed, I am unable to conclude that the father is impaired in his ability to care for the children or meet their needs on account of these historical allegations. There is no suggestion that the children have been physically harmed by the father during the 20 months when he had them on a week-on/week-off basis, or that they are at future risk of harm.

[62] I also do not accept the respondent's contention that the father voluntarily exited from the children's lives at the end of March 2020, thereby exhibiting a lack of regard for the impact that this would have on the children's emotional well-being. I have already discussed the unusual circumstances of the pandemic which necessitated that the father temporarily cease seeing the children, and the subsequent events from June to November 2020 when the respondent's legal counsel became involved. I am satisfied that the father is acutely aware of the emotional needs of the children and the impact that both of the parties' actions have on the children's well-being.

### 3. Need for Stability

[63] The evidence does not support a conclusion that the mother is able to provide the children with a more stable living environment than the father. Rather, the children's need for stability weighs in favour of the parties returning to the arrangement that existed prior to March 2020.

[64] There is no doubt that the events of the past eight months have caused a serious disruption in the children's lives. Due to the pandemic, schools were closed for a considerable period of time. When they re-opened, there were new safety protocols which had to be followed. The children have expressed concern and anxiety to their father about the pandemic and a reluctance to be outdoors. Returning to the status quo of a week-on/week-off schedule will provide them with the comfort of a predictable routine which they had become accustomed to. It will offer stability during a time when so many things are unpredictable.

### 4. Children's Views

[65] The respondent argues that the children are unhappy being with their father on a week-on/week-off schedule. She submits that the children's health and emotional well-being are compromised by forcing them to spend time with their father when they do not wish to. The father says that the children enjoy spending time with him, but concedes that the different parenting approaches between the parties may cause the children to view their mother's household as being more "fun" than his own.

[66] Even if I were to accept the respondent's evidence about the views of the children, it would not be appropriate to place much weight on it. The children are still quite young, and are not of an age or maturity level where they would be considered capable of forming their own opinions. I also note that the parties have different parenting styles which no doubt impact how the children respond to being at each parent's home at any given time. Their wishes are an unreliable measure of what is in their best interests.

#### 5. Parties Ability to Cooperate

[67] I have some concerns about the mother's actions in this case which affect my view of her ability to cooperate with the father. By operation of s. 48 of the FLA, it was incumbent upon the mother to consult with the father before unilaterally changing their longstanding parenting arrangement in June 2020. Meaningful consultation requires more than just advocating for one's own position. It requires listening to the other parent's concerns in an effort to arrive at a mutually agreeable solution. In my view, the June 19 letter from respondent's counsel made it clear that the respondent was not interested in having any meaningful consultation with the claimant.

[68] In her categorical refusal to allow a return to the week-on/week-off schedule that the children had become accustomed to, the respondent chose to take advantage of the father's decision to prioritize the children's health and safety during the pandemic. In so doing, the respondent's actions were reprehensible, unjustifiable, and went against the children's best interests.

[69] However, at this juncture, I believe it is still possible for the parties to re-develop a working relationship for the best interests of the children. Though the parties may initially find it difficult, an equal shared parenting arrangement that requires the parties to cooperate would not be inappropriate given their history of cooperation. There is strong evidence that despite their different parenting styles, the parties have managed to work through their differences over the six years following their separation. For almost two of those years, they maintained an equal shared parenting schedule and shared parental responsibilities. While the respondent has been less than cooperative over the past six months, I believe that the parties are more than capable of putting their differences aside, so as to focus on the needs of the children.

[70] Though I make no order in this regard, I strongly encourage the parties to take a parenting after separation course, and to engage a parenting coordinator should the need arise.

## 6. Section 211 Report

- [71] The respondent submits that this Court should not permit the father to exercise interim parenting time in excess of two overnight stays each weekend, unless the court has ordered, received, and considered a s. 211 report to determine the needs and views of the children, and each parent's ability and willingness to satisfy those needs. The respondent wishes me to make such an order, and to have the father share in half the cost of the s. 211 report.
- [72] The claimant does not consent to an order for a s. 211 report. He objects to the respondent seeking such an order without making an application in accordance with the Supreme Court Family Rules, B.C. Reg. 169/2009 ("Rules"). He also says that such a report is unnecessary, will cost in excess of \$20,000, and will deplete his limited financial resources.
- [73] Section 211 reports are but one means of obtaining evidence about the views and needs of the children, and the ability and willingness of a party to satisfy those needs. Not every case that involves parenting issues requires a s. 211 report. This is one of those cases. I do not consider it necessary to have a s. 211 report for the purposes of this hearing. There is sufficient evidence before me to make an interim parenting order without such a report.
- [74] I also question the respondent's intentions in asking for a s. 211 report at this stage. The respondent has been preparing for this litigation since June 2020. She has had ample time to bring an application to seek a s. 211 report, if she truly believed that one was necessary. Her request that the court defer any decision that would revert the parties to the week-on/week-off schedule, until receipt of a s. 211 report, serves only to delay matters to the benefit of the respondent. No doubt it is not lost on the respondent that the longer the children are prevented from seeing their father on an equal shared basis, her chances improve for shifting the status quo in her favour.
- [75] While it is possible that a s. 211 report may be useful at the trial of this matter, it would be unfair and unjust in the circumstances of this case, for such an order to be made without requiring the respondent to make a formal application.

## VI. Conclusion

- [76] It is evident that both parents love their children, are capable of meeting their needs, and the children have a strong bond with each of them. For almost two years, they spent their time equally with each parent. The pandemic brought drastic changes to the parties' lives, which resulted in a temporary disruption to the children's regular routine. Though this disruption has been prolonged due to the mother's refusal to return to the children's regular parenting schedule with their father, it has not resulted in a change to the status quo.
- [77] I conclude that it would be in the children's best interests for the parties to share in the parenting responsibilities, and to return to the week-on/week-off shared parenting schedule that existed between the parties prior to March 2020. To minimize disruption to the children's current routine, the week-on/week-off schedule will commence during this winter

school break. Thereafter, the parties are to maintain the week-on/week-off schedule pending trial, with the exception of Mother's Day and Father's Day, when the children are to spend time with the parent whose day it is.

- [78] With respect to clause 1 of the relief sought in the NOA, there is no need to order that the children be released to their father forthwith, as they are currently exercising parenting time with their father pursuant to the October 9 Order, and will continue to do so pursuant to the order herein.
- [79] As the claimant did not pursue his request for compensatory parenting time at clause 2 of the NOA, no order will be made in that regard.
- [80] With respect to the relief sought at clause 4 for a police enforcement clause, the material suggests that the mother does not oppose such an order, provided that it is mutual. However, I do not believe that a police enforcement clause would be in the children's best interests. Granting the police the power to apprehend a parent to ensure that a party complies with a court order regarding parenting time is an extreme remedy that should only be reserved for the rarest of circumstances: *Wilson v. Garbella*, 2017 BCSC 748 at para. 69. Those circumstances do not exist in this case. There is no evidence to suggest that the parties will not comply with a court order once it is pronounced. As such, the request for a police enforcement clause is denied.
- [81] Finally, I wish to address the matter of a conduct order sought at clause 5. I do not think that a conduct order aimed specifically at the respondent is appropriate. Rather, it would be more appropriate to make a mutual order enjoining each party from discussing this litigation with the children, disparaging the other parent, and discouraging the children from spending time with the other parent. This will ensure that both parties remain on their best behaviour in front of the children.

## VII. Orders Made

- [82] Pursuant to section 39 of the FLA, the parties are joint guardians of the children.
- [83] Pursuant to section 41 of the FLA, the parties are to jointly share parental responsibilities with respect to the children.
- [84] The parties shall exercise parenting time on a shared parenting schedule as follows:
1. The interim parenting schedule imposed by Justice Harvey at clause 1(d) of his order pronounced October 9, 2020 shall continue until Friday, December 18, 2020, such that the father shall exercise parenting time with the children on alternating weekends from Friday after school until Monday morning at the time of school drop-off.
  2. The father shall have the children from after school on Friday, December 18, 2020, until 3:00pm on Friday, December 25, 2020;

3. The mother shall have the children from pick up at the father's residence on Friday, December 25, 2020, at 3:00pm until Friday, January 1, 2021 at 3:00pm.
  4. The father shall have the children from pick up at the mother's residence on Friday, January 1, 2021, at 3:00pm, until drop off at school in the morning on Friday, January 8, 2021.
  5. Thereafter, the parties shall continue a week-on/week-off parenting schedule such that the parent exercising parenting time with the children is to drop-off the children at school on Friday mornings, and the other parent is to pick up the children from school Friday afternoons.
  6. The parent who drops-off the children at school on Friday morning at 9:00am will continue to be responsible for the children until the commencement of the other parent's parenting time on Fridays after school.
  7. In the event that school is not in session on a Friday, the exchange is to occur on Friday afternoon at 3:00pm with pick up from the other parent's residence, or another location as agreed to by the parties.
  8. The children shall spend Mother's Day with the mother, and Father's Day with the father, as follows:
    - a) In the event that the children are with their father on Mother's Day, the mother may pick up the children from the father's home at 9:00am on Mother's Day, and keep them overnight until 9:00am the next morning.
    - b) In the event that the children are with their mother on Father's Day, the father may pick up the children from the mother's home at 9:00am on Father's Day, and keep them overnight until 9:00am the next morning.
  9. The parties are at liberty to change this parenting schedule by consent.
- [85] Pursuant to section 42(2) of the FLA, the parent who is exercising their parenting time with the children may exercise the parental responsibility of making day-to-day decisions affecting the child and having day-to-day care, control and supervision of the child.
- [86] Subject to the following, a parent is responsible to take the children to all medical appointments, school activities, extracurricular activities, or sports activities that fall during that parent's parenting time:
1. Neither parent is permitted to enrol the children in extracurricular activities which impinge on the other parent's parenting time, without that other parent's prior consent.
  2. Subject to a medical emergency, neither parent is permitted to schedule medical or other appointments in relation to the children's health, education or welfare, without first consulting with the other parent and finding a time and date that is convenient to both parties.

3. In the event that a parent schedules or becomes aware of a medical or other appointment in relation to the children's health, education or welfare, that parent is required to immediately notify the other parent, regardless of whether the appointment falls during that parent's parenting time or the other parent's parenting time.
- [87] Pursuant to s. 227 of the FLA, both parties are enjoined from discussing this litigation with the children, disparaging the other parent, or discouraging the children from spending time with the other parent.
- [88] The relief sought at clauses 1 and 4 of the NOA is dismissed.
- [89] The respondent's application for a s. 211 report is dismissed. The respondent is at liberty to bring an application seeking a s. 211 report for use at the trial of this matter, by making an application in accordance with the Rules.

### VIII. Costs

- [90] Costs ordinarily follow the event. The claimant has had substantial success, and is entitled to his ordinary costs of this proceeding in any event of the cause.

"Shergill J."

---

### Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE      <https://www.bccourts.ca/jdb-txt/sc/20/19/2020BCSC1952.htm>

CASE PAGE              <https://chat.esheria.ai/case-law/canada/munroe-v-elisseeva-2020>

Prepared on 25 October 2026 · Esheria