

CANADA / JUDGMENT

N.J.D. v. B.J.D.

2024 BCSC 1743

COURT

Supreme Court of British Columbia

DECIDED

18 September 2024

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

2024 BCSC 1743 N.J.D. v. B.J.D. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: N.J.D. v. B.J.D., 2024 BCSC 1743 Date: 20240918 Docket: E212226 Registry: Vancouver Between: N.J.D. Claimant And B.J.D. Respondent Before: Associate Judge Harper Reasons for Judgment The Claimant, appearing in person: N.J.D. The Respondent, appearing in person: B.J.D. Place and Date of Hearing: Vancouver, B.C. September 13, 2024 Place and Date of Judgment: Vancouver, B.C. September 18, 2024 Table of Contents Introduction.. 3 Background.. 3 Applicable Legal Principles. 4 The Parties' Positions. 6 Discussion and Decision.. 7 Summary of Orders. 9

Introduction

- [1] In this family law case, the claimant mother, Ms. D., seeks an order that the parties' child, H., born May 9, 2019 ("H."), be enrolled at Simon Fraser Elementary School ("Simon Fraser"), which is in the catchment district where Ms. D. lives (Olympic Village in Vancouver). She also seeks a number of ancillary orders relating to school and extracurricular activities.
- [2] The respondent father, Mr. D., opposes the application but has not brought his own cross-application. In his application response, Mr. D. seeks an order that H. be enrolled at Sherwood Park Elementary School ("Sherwood Park"), which is in the catchment district where Mr. D. lives (Deep Cove in North Vancouver).
- [3] H. is currently not attending school at all because of the dispute.

Background

- [4] The parties began living together in a marriage-like relationship in June 2009. They married in October 2017 and separated in July or August 2021. Before separation, the family lived in the False Creek neighbourhood in Vancouver. (False Creek and Olympic Village are so near each other as to be indistinguishable for the purposes of this application).
- [5] It is not clear from the evidence where Mr. D. moved to immediately following separation, but it is clear that he has been living in Deep Cove for at least the last couple of years.

- [6] The first court order in this proceeding was made by Master Muir by consent on September 10, 2021. The relevant provisions for the purposes of this application are:
- a) The parties share all parental responsibilities with respect to H.;
 - b) The parties have equal parenting time of H. on a rotating four-day schedule;
 - c) Each party picks up H. at 4:30 p.m. at the start of his or her parenting time;
 - d) The pick-up and drop-off of H. is at Ms. D.'s home or in a public place in Vancouver, as agreed between the parties.
- [7] A further order was made at the judicial case conference on October 20, 2021 which included a consent order that the parties set a five-day trial. A five-day trial was scheduled for December 5, 2022. That trial date was adjourned and a new trial was set for April 3, 2024 for three days. The April 3, 2024 trial date was struck by order made February 28, 2024. Ms. D. says this was because Mr. D. failed to file his trial brief. Ms. D.'s trial brief filed in preparation for the April 3, 2024 trial date makes it clear that she was seeking an order that she be able to enrol H. at the school in her catchment district. Neither party took steps to seek a court order regarding H.'s enrolment in school until Ms. D. obtained short leave on August 29, 2024. That is the application before me.
- [8] Despite the parties being required to make parental decisions jointly, they were unable to agree on which preschool H. would attend. Consequently, H. has attended two different preschools at the same time--one near Ms. D.'s home and one near Mr. D.'s home. I gather from the submissions I heard that the enrolments in the two preschools were made unilaterally and without the consent of the other party. Applicable Legal Principles
- [9] The parties are obligated to jointly make decisions about which school H. should attend. The parties each frame the order they seek as the court ordering H. to be enrolled in the school of their choice. However, the court does not take over the parental responsibilities from the parties. When parties who share joint parental responsibilities are unable to agree, the court is required to allocate the decision-making responsibility to one parent. The legal principles the court takes into account on such an application are grounded in ss. 37(1), (2), and (3), 40(3), 41(d), and 45(1)(a) of the Family Law Act, S.B.C. 2011, c. 25, which read: Best interests of child 37 (1) In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only.
- (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 the person's 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 the person's 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.
- (3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being. [] Parenting arrangements 40 []
- (3) Parental responsibilities may be allocated under an agreement or order such that they may be exercised by
- (a) one or more guardians only, or
 - (b) each guardian acting separately or all guardians acting together. [] Parental responsibilities 41
- For the purposes of this Part, parental responsibilities with respect to a child are as follows: []
- (d) making decisions respecting the child's education and participation in extracurricular activities, including the nature, extent and location; [] Orders respecting parenting arrangements 45
- (1) On application by a guardian, a court may make an order respecting one or more of the following:
- (a) the allocation of parental responsibilities; []
- [10] As the parties are self-represented, they were not able to provide to the court any further legal argument other than their position that the best interests of H. favour their respective choice of school. The Parties' Positions
- [11] Ms. D. says that the court should order H. to be enrolled at Simon Fraser for the following reasons:

- a) Simon Fraser is located near Ms. D.'s residence and reachable by public transportation;
- b) Ms. D. has family support (her mother and stepfather) who live across the street from where she lives who can assist with transportation of H.;
- c) Ms. D. has a new job with the Vancouver Airport Authority located at the Vancouver International Airport, which is a long commute from Sherwood Park;
- d) the current four-day rotation for parenting time would be difficult to work with if H. attended Sherwood Park;
- e) Mr. D. has unreliable transportation;
- f) there is a risk Mr. D. will be caught in traffic and unable to pick up H. in time for school; and
- g) as a compromise, Ms. D. proposes that H. be registered in a cross-boundary school, Laura Secord Elementary, which is about mid-way between the parties' residences at Knight Street and East Broadway.

[12] Mr. D. says that the court should order H. to be enrolled at Sherwood Park for the following reasons:

- a) Sherwood Park is only a 10-minute walk from Mr. D.'s home as opposed to Simon Fraser being a 15-minute bus (or car) ride from Ms. D.'s home;
- b) Mr. D. works from home and can get H. to and from Sherwood Park without needing to use before or after school care, whereas Ms. D. would require before and after school care if H. attended Simon Fraser because Ms. D. has to get to work at the Vancouver International Airport (she works regular office hours); and
- c) Mr. D. is willing to do 100% of the transportation of H. to and from school regardless of whose care H. is in. In other words, Mr. D. will pick up H. at Ms. D.'s home in the morning and return him to her care at the end of the school day, either to Ms. D. if she is home from work, or another caregiver (such as Ms. D.'s mother or stepfather). Discussion and Decision

[13] Both parties live in desirable areas in Vancouver. Each neighbourhood has much to offer in its own way. I have no doubt that H. would receive an excellent education in either school. Unfortunately, the parties live some distance apart and transportation is the major factor for the court to consider on this application. Before separation, the parties lived in the False Creek area. It was Mr. D. who chose to move to Deep Cove. He says this was because of cheaper rent, but if so, it was a costly decision in terms of the impact on co-parenting and, more importantly, on H.'s well-being. It would have been easier on H. if Mr. D. had stayed in the pre-separation neighbourhood. However, H. has had to deal with shuttling between households for three years now and he appears to have coped with it. There is no evidence from either party that H. is negatively impacted by the shuttling, even though, because of the parties living so far apart, he was compelled by his parents to attend two different preschools at the same time which must have been confusing for him. In short, H. is a

"commuter child" and he will continue to be shuttled back and forth between his parents' homes regardless of where he attends school.

- [14] I have carefully considered each parent's proposal. Each proposal has merit. I have determined that Mr. D. should be allocated the parental responsibility of enrolling H. in kindergarten for the 2024-2025 school year. The challenges of commuting and the parties' work schedules tip the scale slightly in favour of Mr. D.'s choice of school. Mr. D. has more work flexibility and his home is a short walk to Sherwood Park. If H. attends Simon Fraser, it would be a longer trip to get to school. My determination that H. should attend Sherwood Park is influenced by Mr. D.'s offer to do 100% of the transportation even when H. is in Ms. D.'s care. Mr. D. testifies that the commute is "easy, fast and predictable". Therefore, Mr. D. will be solely responsible for all transportation. He must fulfil his commitment to do 100% of the transportation, including making a back-up plan in case he has an emergency and cannot provide transportation.
- [15] As an associate judge, I have limited jurisdiction. I can only make an interim order pending further order of the court on application if there is a material change of circumstances, or pending trial. The orders I am making might turn out to be unworkable and therefore not in H.'s best interests. Either party may set the action down for trial. A trial date might be available before the end of the school year. If the trial judge determines that attending Mr. D.'s choice of school is not in H.'s best interests, there is time to make that change.
- [16] I would recommend that the parties address the parenting time schedule. Given the challenges of commuting, they might want to consider a more conventional week-on/week-off arrangement. Ms. D. has proposed a five-day rotation, but Mr. D. objects for reasons that are unclear. To be clear, the orders I am making are not in any way intended to foreshadow a change in the overall 50/50 shared parenting arrangement. Also, Mr. D. must not use the school enrolment order to attempt to dominate the decision-making on H.'s extracurricular activities and the like. Mr. D. says in his affidavit "I have taken an active role in [H.]'s extracurricular life by enrolling him in many activities, such as sports and community programs, and I have consistently been able to participate in getting him to and from these activities". The court reminds the parties that all decisions regarding H.'s extracurricular activities must be made jointly in accordance with the consent order made September 10, 2021 because extracurricular activities are one of the parental responsibilities set out in s. 41 of the Family Law Act that the parties agreed in that order would be shared.
- [17] I will adapt the ancillary orders that Ms. D. seeks in the summary of orders below. (Ms. D. seeks an order regarding how the cost of extracurricular activities should be shared, but such an order is beyond the scope of the evidence and the submissions I heard and will have to be pursued on a future application or at trial if required). Summary of Orders
- [18] I make the following orders:

- 1) The order of Master Muir made September 10, 2021 is varied to the following limited extent: Mr. D. may exercise the parental responsibility without the written consent of Ms. D. in order to enrol H. at school for the 2024-2025 school year.
- 2) All subsequent school years will require the parties to agree on which school H. will be enrolled in.
- 3) If the parties are unable to agree on which school H. will be enrolled in for the school years 2025-2026 and beyond, either has liberty to seek a court order.
- 4) Mr. D. will be solely responsible for transporting H. to and from school even when H. is in the care of Ms. D.
- 5) Mr. D. will ensure that H. arrives at school on time and that Mr. D. picks H. up promptly at the end of the school day.
- 6) If H. is unable to attend school due to illness, the party responsible for H.'s care at that time shall notify the school and the other party of the absence, providing reasons for the absence.
- 7) For greater certainty regarding paragraph 1 c. of the order of Master Muir made September 10, 2021 and s. 41(d) of the Family Law Act, neither party will enrol the child in before-school care or after-school care or any extracurricular activity except with the written consent of the other party even if the proposed after-school care or extracurricular activity is to occur only during the parenting time of the party who seeks such enrolment.
- 8) Each party will bear their own costs of the application. "Harper A.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/24/17/2024BCSC1743.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/n-j-d-v-b-j-d-2024>

Prepared on 29 October 2026 · Esheria