
CANADA / JUDGMENT

P.M. v. S.C.

2022 BCSC 1030

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 1030 P.M. v. S.C.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

P.M. v. S.C.,

2022 BCSC 1030

Date: 20220607

Docket: E55545

Registry: New Westminster

Between:

P.M.

Claimant

And

S.C.

Respondent

Before: The Honourable Justice Gibb-Carsley

Oral Reasons for Judgment

The Claimant, appearing in person:

P.M.

The Respondent, appearing in person:

S.C.

Place and Date of Hearing:

New Westminster, B.C.

April 12, 2022

Place and Date of Judgment:

New Westminster, B.C.

June 7, 2022

I. OVERVIEW

- [1] The claimant, P.M., and the respondent, S.C., have brought dozens of court proceedings since their separation in January 2012. Given the high conflict between the parties and the breakdown in communication between them, it appears that following and interpreting orders is more often than not settled by recourse to court applications as opposed to discourse.
- [2] While P.M. seeks 12 orders, the essence of his application is to dramatically increase his parenting time from that previously ordered by the court. P.M. asks the court to make him the primary parent of the parties' two daughters and reverse the current parenting schedule so that S.C. has care of the children for less time. The basis of his application is S.C.'s move from Surrey, British Columbia to Aldergrove, British Columbia which is approximately a 30-minute drive from her former residence, P.M.'s residence, and the children's current school. The move requires the children to change schools in September.
- [3] For the reasons that follow I will not order the relief P.M. seeks, but will grant him modest additional parenting time and vary the holiday parenting time schedule. I will also make conduct orders in an attempt to assist the parties in navigating the parenting schedule. In my view, the best interests of the children are best served with a modest variation to the current parenting time arrangements.
- [4] Given the ages of the children involved, I refer to the parties and their children by their initials in order to protect the children's privacy.

II. ORDERS SOUGHT

- [5] As noted above, in my view, the central issue is whether it is in the best interests of the children to significantly change the parenting time exercised by each parent. For completeness, I will reproduce all of the orders P.M. sought using the language from his notice of application. The orders sought are as follows:
1. an order to replace the current orders with various changes to the children's main residence and parenting time;
 2. an order of contempt in regards to section 3 (communication) of the final order;

3. an order to define and cover all holidays in the parenting arrangement;
4. an order for pickup and drop offs where the claimant and respondent need not be in the same place;
5. orders to help each party with attending any and all events;
6. an order to have each party share the responsibilities of both setting up and participating in extracurricular activities;
7. an order to make up all time lost by the claimant due to the respondent's action in denying access throughout the pandemic;
8. an order that the respondent pay the outstanding cost for the two prior court appearances;
9. an order for the respondent to respond within 48 hours to any request made by email;
10. an order for passports with restrictions of each party knowing as to travel plans and without restrictions for either party to deny access to the passports;
11. an order for costs including cost of the s. 211 report; and
12. an order stating the respondent not in any way interfere with communications between the claimant and the children no matter the platform, i.e. Facebook, Snapchat, social media of any kind, calling, texts or otherwise.

III. BACKGROUND FACTS

- [6] The parties began residing together in or about January 2004. They separated in January 2012.
- [7] The parties have two children together, K.C., aged 16, and J.C., aged 13 ("Children").
- [8] P.M. resides in Surrey.
- [9] As mentioned, S.C. previously resided in Surrey. She has recently moved to Aldergrove. S.C.'s new residence is approximately a 30-minute drive from her previous home, P.M.'s home and the Children's schools.
- [10] S.C.'s move to Aldergrove requires K.C. and J.C. to change schools next September. J.C. is changing from Grade 7 to 8, and was to change schools in September 2022 regardless of S.C.'s move to Aldergrove.
- [11] K.C. is going into Grade 11 next year.

A. Previous Orders

- [12] On November 7, 2014, Mr. Justice Sewell issued a final order after a trial held on September 30, October 1 and 2, 2014. Mr. Justice Sewell ordered the following parenting schedule:

The claimant will have parenting time with his children from after school every Wednesday until they start school on the following morning. The claimant shall be responsible for picking up the children from daycare on the Wednesday evening and returning them to school or daycare on Thursday morning.

The claimant will have parenting time with his children on a two-week rotation on the weekend.

[13] I understand that the above parenting schedule is interpreted to mean that P.M. has the Children on alternating weekends from after school on Friday until 7:00 p.m. on Sunday night and during the week from Wednesday from approximately 2:30 or 2:45 p.m. until Thursday morning.

[14] Mr. Justice Sewell's order also dealt with school vacations and holidays. A summary of the key orders regarding school holidays includes the following:

Christmas - the Children will spend alternating Christmases with each Party. In 2014, the Children will spend the entire Christmas holiday with the Claimant and that arrangement will continue on even number years. In 2015 and each subsequent odd numbered year the Children will stay with the Respondent up to and including Christmas Day and with the Claimant for the balance of the Christmas holidays.

Spring Break - the Children will spend one week of each Spring Break with each of the Parties; and

Summer - The Respondent shall have three weeks of continuous parenting time with the Children during the summer holidays.

[15] On June 30, 2017, the parenting schedule ordered by Sewell J. was varied by Justice MacNaughton. Justice MacNaughton ordered that the respondent will have three weeks of uninterrupted parenting time during the summer holidays and the parties are to exchange all dates for the summer parenting time by March 1 of each year. Justice MacNaughton also ordered specific one-time parenting time arrangements for the summer of 2017. Specifically, that P.M. would have uninterrupted parenting time from July 19, 2017 to August 9, 2017 and also from August 11 to August 13, 2017.

[16] Justice MacNaughton ordered that the parties will alternate parenting time on the Thanksgiving holiday and S.C. will have parenting time on Thanksgiving in odd years and P.M. will have parenting time on Thanksgiving in even years.

[17] Finally, MacNaughton J. ordered that the parties are to exchange the Children at a certain 7-Eleven convenience store. I understand that the choice of the 7-Eleven for the location for the exchange of the Children was because the store was located between the parties' residences and was determined to be a neutral location to reduce conflict and friction between the parties when the Children were exchanged.

[18] On October 19, 2018, Mr. Justice Voith ordered that a s. 211 report be prepared to consider the following issues:

- a) parenting time, including holidays;
- b) recommendations for improving communications between the parties;
- c) the parties' access to passports for travel purposes; and
- d) an assessment of P.M.'s involvement with third parties, friends, and family during his parental access time.

[19] It appears there were difficulties in having the s. 211 report completed because S.C. did not provide the funds required to retain the author of the report, Dr. Krywaniuk, a registered psychologist. Further, S.C. did not make her partner available to Dr. Krywaniuk for an interview. P.M. brought a number of applications to advance the process of completing the s. 211 report. One resulting order placed before me was Master Cameron's April 2, 2019 order, in which S.C. was ordered to contact Dr. Krywaniuk on or before April 4, 2019 for the purpose of confirming her involvement in the s. 211 report.

[20] Dr. Krywaniuk completed the s. 211 report on December 8, 2020 ("211 Report").

[21] On March 22, 2021 and on May 13, 2021, further applications in this matter were brought before Mr. Justice Blok. The March application addressed a request of P.M. for a week of time with the Children in March 2021. The May application was in respect of summer parenting time and I reproduce what was ordered on the consent of the parties:

By consent, the Claimant will have uninterrupted parenting time with the Children during the Children's 2021 summertime holidays, for 3 weeks commencing July 28, 2021 to August 18, 2021, inclusive.

By consent, in all other respects the parenting time remains as set out in the Order of Mr. Justice Sewell made November 7, 2014.

By consent, the Respondent's 2021 summertime parenting time with the Children will commence August 19, 2021 and continue through to the start of school.

[22] I was not provided with an entered order version of Blok J.'s May 13, 2021 order, and am unsure if it was entered.

IV. ISSUES

[23] The primary issue to be resolved, despite P.M. seeking 12 orders, is whether it is in the best interests of the Children to change the current parenting time schedule and, if so, to what degree.

- [24] After addressing the parenting time application, I will also address conduct orders in an attempt to assist the parties in implementing the parenting time orders to advance the best interests of the Children.

V. POSITIONS OF THE PARTIES

- [25] I start by saying that it is clear to me that both S.C. and P.M. love and care deeply for their children. They both appear to want what they believe is best for the Children.
- [26] P.M. says that given S.C.'s move from Surrey to Aldergrove the children are required to commute long distances to school and will be required to change schools next September. He says this is not in the Children's best interest. As support for his argument he says that K.C. is anxious about changing schools in the middle of high school and J.C. will be further away from her friends and sports. In general, P.M. argues that S.C.'s move will require the Children to leave their settled routine of their life with their friends, school, and sports activities.
- [27] While not specifically stating so, P.M. appears to argue that S.C.'s move is a material change in circumstances that allows the court to vary Sewell J.'s previous order.
- [28] P.M. also says that it is in the best interests of the Children for them to live with him because S.C. does not support the Children's participation in extracurricular activities such as sports and tutoring. Specifically, he says that J.C. enjoys playing baseball, but that her participation in baseball - including P.M.'s desire to coach J.C. in baseball - is limited because S.C. in the past has not supported J.C. going to baseball.
- [29] P.M. asserts that K.C. needs tutoring to assist with math and he has arranged tutoring sessions at a tutoring facility, Sylvan Learning, while K.C. is with him, but that S.C. refuses to take K.C. to tutoring during S.C.'s parenting time. P.M. says that if K.C. lived with him for more time he would be able to take her to more tutoring appointments which could improve her proficiency in math.
- [30] P.M. also argues that S.C. limits his contact with the Children when he is the off-duty parent by refusing to allow him to have contact with the Children through electronic platforms such as computer-based video or texting applications.
- [31] Finally, P.M. complains that the holiday schedule - specifically, the summer holiday and long weekends - is a point of conflict between the parties as it is difficult for the parties to agree on how to interpret the parenting schedule.

- [32] In response, S.C. had no new affidavit materials. The application record consisted of five binders of materials filed by P.M., but included affidavits S.C. filed in previous applications. I am satisfied that there was sufficient evidence before me in P.M.'s affidavits and S.C.'s previous affidavits and the submissions of both parties to be able to understand the issues and factual basis underpinning the application. I will now address S.C.'s position in response to the application.
- [33] S.C. says that the move to Aldergrove means she and the Children now live on a five-acre property with a pool and hot tub. The property is significantly larger than where she and the Children lived in Surrey. While there is currently about a 30-minute commute for the Children as they finish out the 2022 school year, the Children plan to transfer to a school in Aldergrove closer to her new home.
- [34] S.C. says that J.C. would be changing schools next year regardless of the move from Surrey to Aldergrove due to her grade. She also says that the move will not stop J.C. from playing baseball with her friends as she does now.
- [35] S.C. acknowledges that K.C. is anxious about changing schools next September as she goes into Grade 11.
- [36] S.C. appears to believe that P.M. enrolls the Children in activities such as baseball and tutoring during her parenting time on purpose. She says P.M. does so without first checking if she agrees to the extracurricular activity that occurs during her parenting time in an attempt to erode her parenting time.
- [37] S.C. says that a major area of conflict between the parties from her perspective relates to the current holiday parenting schedule. For example, S.C. points to the fact that the way the parenting time is set over the Christmas holiday means that she has limited time with the Children over Christmas and has not had New Year's Eve with the Children in eight years.
- [38] S.C. points to the 211 Report that recommends that the children remain with her under the current parenting schedule of Sewell J. In respect of parenting arrangements, the 211 Report provides the following opinion:

It is also my opinion these parents are not currently operating at a sufficient level in those parenting dimensions on which successful co-parenting is based and it appears to me likely attempting a fully shared parenting schedule would raise more issues than it would solve at the present time.

- [39] The 211 Report also provides the following recommendations:

Using that framework and on that basis there did not appear to be a clear reason to change the parenting arrangement. The children have experienced a lot of changes and unsettlement in their lives and their emotional health needs to be addressed. Stability in the various dimensions is an important element of this.

- [40] Finally, S.C. says that P.M. has sought the same relief, unsuccessfully, before the court in previous applications. S.C. says the repeated applications to change the parenting time are P.M.'s attempt to "judge shop".

VI. ANALYSIS AND DETERMINATION

A. Is this Application Properly a Chambers Application?

- [41] I have some reservation in making this decision based on affidavit evidence as it appears to me that P.M.'s request is such a dramatic shift in the parenting time arrangement that it is not a minor variance but an attempt to re-litigate the order of Sewell J.
- [42] As noted above, S.C. did not place new materials before me in response to the application. I allowed her to provide her comments on the affidavit evidence P.M. filed. It appeared to me that many of the points in respect of the move to Aldergrove were not in dispute, including driving time and the fact that the Children would need to change schools and live further from P.M.
- [43] I have concluded that I do not conduct a credibility analysis that a further trial of this matter would provide. I have considered P.M.'s evidence and argument and am satisfied I can move forward in determining this matter as an application.

B. Parenting Time

- [44] Pursuant to s. 47 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], the court may change, suspend or terminate an order respecting parenting arrangements if the court is satisfied that, since the making of the order, there has been a change in the needs or circumstances of the child, including because of a change in the circumstances of another person.
- [45] The requirement for a change of circumstances sets a threshold that must be met before an application can proceed on its merits: *Williamson v. Williamson*, 2016 BCCA 87 at para. 34 [Williamson].
- [46] In *Williamson*, the court held that the two-step process set out by the court in *Gordon v. Goertz*, 1996 CanLII 191, [1996] 2 S.C.R. 27 [Gordon] applies to s. 47 of the FLA as follows:
- [32] The first step in the analysis set out in *Gordon v. Goertz* is to "determine whether there has been a material change in circumstances since the making of the prior order": *Boychuck* at para. 14. The Court in *Gordon* explained what is necessary to establish a material change in circumstances:
- [11] The requirement of a material change in the situation of the child means that an application to vary custody cannot serve as an indirect route of appeal from the original custody order. The court cannot retry the case, substituting its discretion for that of the original judge; it must assume the correctness of the decision and consider only the change in circumstances since the order was issued....

[12] What suffices to establish a material change in the circumstances of the child? Change alone is not enough; the change must have altered the child's needs or the ability of the parents to meet those needs in a fundamental way. The question is whether the previous order might have been different had the circumstances now existing prevailed earlier. Moreover, the change should represent a distinct departure from what the court could reasonably have anticipated in making the previous order.

[Emphasis in original.]

[33] At para. 13, the Court summarized what the applicant must establish before proceeding on the merits of the application:

[13] It follows that before entering on the merits of an application to vary a custody order the judge must be satisfied of: (1) a change in the condition, means, needs or circumstances of the child and/or the ability of the parents to meet the needs of the child; (2) which materially affects the child; and (3) which was either not foreseen or could not have been reasonably contemplated by the judge who made the initial order.

[47] Only if the court is satisfied that a material change has occurred can it proceed to the second step of the inquiry to consider whether the best interests of the child mandate variation of the previous parenting order.

[48] Section 37 of the FLA provides clear instruction to courts when deciding questions of parenting time:

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 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.
- (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.
- (4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.
- [49] While not articulated by P.M., I understand that the two material changes in circumstance he says support his application are (1) S.C.'s move to Aldergrove from Surrey; and, (2) that the Children are older and have expressed to him their desire to spend more time with him.
- [50] In order for the change to be "material", thus justifying a change of Sewell J.'s order, it must "have altered the child's needs or ability of the parents to meet those needs in a fundamental way" and was "either not foreseen or could not have reasonably been contemplated by the judge who made the initial order": Gordon at paras. 12-13.
- [51] I am persuaded that S.C.'s move from Surrey to Aldergrove is a material change in circumstances that satisfies the first stage of the analysis under s. 47 of the FLA. My conclusion is based on the fact that as a result of her move, the Children are required to change schools and also travel a greater distance to spend time with P.M. during his parenting time. Having found that the move constitutes a material change in circumstances that has altered the needs of the Children because they will be residing further from P.M. and their previous neighbourhood, I can then move to the second stage of the analysis and consider the change to the parenting time and whether it is in the best interest of the Children.
- [52] In this application, I am guided by the conclusions and recommendations of Dr. Krywaniuk, the author of the 211 Report, who opined that stability is important for the Children. I am aware that Dr. Krywaniuk prepared the 211 Report 18 months ago, but having reviewed the report, I am satisfied that its conclusions and recommendations remain relevant to the parenting issues between the parties, and more importantly, it provides recommendations regarding what Dr. Krywaniuk opines is in the best interests of the Children.

[53] While I understand that P.M.'s concern is that the girls are moving to a new location that requires them to change schools, I conclude that the Children should remain with S.C. as the primary parent. To change the primary parent and parenting schedule at this juncture and in such a radical manner is not, in my view, providing the Children with stability. It is another change to a fundamental aspect of the Children's lives - where they are living and with whom they are spending the majority of their time - at a time when S.C. has already moved. I note that a factor in my decision is that S.C. now lives in a larger home with the Children, which she views as a positive development for them. I note that it appeared in the 211 Report that P.M.'s main critique of S.C.'s parenting ability was that she lived in a small trailer with the Children. Due to the move that critique can no longer exist.

[54] In his recommendations in the 211 Report, Dr. Krywaniuk considered whether it was in the best interests of the Children to vary Sewell J.'s order such that parenting time was split equally between S.C. and P.M. Dr. Krywaniuk's recommendation in December 2020 was that the primary parenting time should remain with S.C.:

In the previous court order, in which [P.M.] sought to have a 50/50 parenting arrangement, Justice Sewell commented he did not see [S.C.] as an incompetent parent, despite [P.M.'s] contention, and did not indicate concern about the children's living arrangement at the time. Consequently, he saw no apparent need to alter the parenting arrangements or responsibilities but [S.C.] was granted Final Say. Since that time, [S.C.] has upgraded the family living arrangements and I would agree she did not show any indication of being an incompetent parent.

[55] However, I am cognizant that the Children are eight years older than they were when Sewell J. issued his original order setting the parenting time. At the time of Sewell J.'s order, the girls were seven and nine years old, respectively. They are now teenagers. P.M.'s evidence is that the girls have expressed a desire to spend more time with him. This includes their wish to participate in sports and tutoring.

[56] Given the Children are older and my view from the evidence that extracurricular activities such as baseball, soccer and tutoring are important for the stability and well-being of the Children, I conclude it is warranted to increase P.M.'s parenting time. My decision is also guided by Dr. Krywaniuk's report in which he concluded that S.C.'s suggestion that P.M. might have additional parenting time on weekends extended to Monday morning was a positive development.

[57] Accordingly, I order that P.M.'s weekend parenting time set out in Sewell J.'s order be extended as follows:

- a) during the school year: P.M. will have parenting time on alternating weekends from Friday after school if it is a school day or, if Friday is a school holiday, on Thursday after school. P.M. will return the Children to school on Monday morning or, if Monday is a school holiday, on the Tuesday morning following the holiday Monday;

- b) during school breaks: P.M. will have parenting time on alternating weekends from Friday at 4:00 p.m. and will return the Children to S.C.'s care on Monday morning;
- c) for clarity, if there is a conflict with the other holiday or summertime parenting schedules in this order or in the previous orders of Sewell J. or MacNaughton J. that are not varied by this order, the holiday or summertime schedules of those orders prevail over P.M.'s weekend parenting schedule in this order.

[58] In my view, this schedule is in the best interest of the Children because it allows them to have more time with P.M. and to provide the Children a greater opportunity to participate in additional extracurricular activities such as baseball and tutoring during his parenting time. In my view, given the Children will be living further from P.M. and their previous neighbourhood, the additional time with P.M. is in the Children's best interest. As I will discuss below, this is not to suggest that S.C. should not be encouraged to facilitate the participation of the Children in extracurricular activities during her parenting time.

[59] I am aware that this revised schedule means that on certain weeks if there is a school holiday on Friday, P.M. will effectively have care of the Children on Wednesday evening and then again on Thursday evening for the weekend. In my view this additional time is in the best interests of the Children for the reasons I stated above.

[60] I am also cognizant of P.M.'s concerns about the Children's lack of ability to sleep in on days in the summer when they are being exchanged between parents. It would be my hope that the parties could come to an agreement that morning exchanges on non-school days could be at a time that is both convenient for the parents as well as considerate to the Children's needs to be well-rested.

[61] It appears to me that much of the conflict or additional court applications are the result of perceived ambiguity in Sewell J.'s order. In my view both parties use the flexibility built into the parenting arrangements for holiday times to their own benefit, or at least to increase friction and conflict. While beside the point, I note that it appears to me that if the parties approached issues with a cooperative mindset, ambiguity in the order could be resolved amicably. In this case, the hostility between the parties has led to the need to resort to court applications to interpret Sewell J.'s order.

[62] Dr. Krywaniuk in the 211 Report commented aptly on the relationship between the parties:

Quite clearly, both parents are also unhappy with the situation but are governed by the enmity they have towards each other to the extent they can't seem to do the things that will make parenting work for them. It seems the approach has a favour [sic] of the "zero-sum game" where if one is to profit the other one must lose rather than a cooperative venture where the benefits become additive and therefore positive for all concerned. It is well-known that cooperative parenting requires a good level of cooperation, communication, flexibility, consideration and support for the other parent. There has to be at least a minimum level of trust and faith in the other parent and the willingness to discuss situations where important decisions need to be

made.

C. Location for the Children's Exchange Between the Parties

- [63] Given that S.C.'s residence has changed, it appears appropriate to me to vary the location of where the Children are exchanged between the parties.
- [64] I order that the exchange of the Children, at times they are not taken to school, to be at a location that, if not the parties' residence, is approximately equal distance between P.M.'s residence in Surrey and S.C.'s residence in Aldergrove. By approximately equal distance, I mean that it is within a two-kilometer radius from the driving mid-point between the two residences. The location must be a safe and public location for an exchange of the Children and chosen on the basis that it is in the best interests of the Children - including safety, convenience to the Children and the parties, and minimizing commuting time.

D. Holidays

- [65] In my view, Sewell J.'s order provided reasonable details of the allocation of holiday parenting time between the Parties. However, in the application before me it appears that a major source of conflict between the parties relates to holidays and holiday scheduling - primarily the Christmas and summer holidays. I will attempt to address some of those difficulties by modifying the dates for holiday parenting based on the submissions of the parties and the evidence before me.

Winter (Christmas) Holidays

- [66] Mr. Justice Sewell's order in respect of Christmas holiday granted P.M. more parenting time during the Christmas holidays than is allocated to S.C. This is a source of conflict between the parties. As such, I have modified the parenting time schedule over Christmas holidays to mirror the alternating years model of the Thanksgiving holiday parenting schedule of MacNaughton J. In my view this will allow the parties and the Children to have certainty and consistency over the Christmas holiday and spend time with both parents over each Christmas holiday.
- [67] Accordingly, parenting time over the winter school holidays will be divided as follows. Starting in December 2022 and in each subsequent even numbered year, P.M. will have parenting time with the Children from the last day of school in December to December 26 at 3:00 p.m. In December 2022, and each subsequent even numbered year, S.C. will have parenting time with the Children from December 26 from 3:00 p.m. to January 2 at 3:00 p.m. Commencing in December 2023 and in each subsequent odd numbered year, S.C. will have parenting time with the Children from the last day of school in December to December 26 at 3:00 p.m. Commencing in December 2023 and in each subsequent odd numbered year, P.M. will have parenting time with the Children from December 26 at 3:00 p.m. to January 2 at 3:00 p.m.

Uninterrupted Summertime Holiday

[68] The parties stated that a source of conflict between them was the summertime holiday schedule which was set by Sewell J. as a 3-week continuous period of time without a specified date range. The flexibility appears reasonable as the parties may want to change holiday plans from year to year. However, P.M. and S.C. appear to disagree as to how to interpret and implement the current summertime holiday parenting schedule. I also understood both parties to argue that in the summer a four-week block of holiday would reduce tension and conflict between the parties and would therefore be in the best interest of the Children. It was important to S.C. to have the last part of the summer in order to prepare the Children adequately for school in September. P.M. wished to not have a block of time always in the middle of summer as there were different events that were in the early July and August that he might want to attend with the Children. I have attempted to accommodate the wishes of both parties. In respect of the summertime holiday I order as follows:

- a. each year, S.C. will have uninterrupted parenting time from 3:00 p.m. on August 10 to the start of the school year;
- b. in 2022, and subsequent even numbered years, P.M. will have uninterrupted parenting time from 3:00 p.m. on June 30 to 7:00 p.m. on July 26;
- c. in 2023, and subsequent odd numbered years, P.M. will have uninterrupted parenting time from 3:00 p.m. on July 11 to 7:00 p.m. on August 9;
- d. the alternating weekend parenting time will continue in the first weekend after the end of the above Uninterrupted Summertime holiday time for both P.M. and S.C.

[69] In respect of the summertime parenting order, I am guided by the evidence of the Parties, particularly S.C., that she requires time at the end of the summer to prepare the girls for school. My decision is also based on the consent order before Blok J. on May 13, 2021, related to the 2021 summer holidays. In that consent order, the Parties consented to P.M. having 3 weeks of uninterrupted parenting time from July 28, 2021 to August 18, 2021 and S.C. having three weeks of uninterrupted parenting time from August 19, 2021 to the start of school. I have followed generally the dates of Blok J.'s order as it was agreeable to the parties last summer and appears to accord to the schedule proposed by S.C.

[70] I have extended the uninterrupted holiday time from three weeks to approximately four weeks on the basis that I understood both parties to suggest to me that a four-week block of uninterrupted parenting time in the summer would alleviate stress and reduce conflict. Further, the time at the end of the summer should have some more flexibility to account for the potential variation in the commencement date of school after Labour Day weekend that might shorten the Children's holiday time with S.C. I note I have attempted to give similar additional time to P.M. to keep the summer holiday parenting time for each party's time with the Children equal.

E. The Children's Contact with Off-Duty Parent

- [71] The Children's ability to have reasonable and generous contact with the off-duty parent is important to their well-being, as s. 37(2)(a) of the FLA requires me to consider. In my view, the Children should have reasonable and generous ability to initiate communications with the other parent by telephone or other electronic communications, particularly during the time in which a new schedule is being implemented. However, it is important that the off-duty parent not interfere or undermine the parenting time of the on-duty parent.
- [72] Based on the evidence before me, I find that conflict between the parties has been exacerbated from issues regarding communications between the parties initiated by the off-duty parent during the other parent's parenting time. This appears to particularly so in respect of P.M.'s contact with the Children while they are with S.C.
- [73] In 2014, Sewell J. dealt with this same issue between the parties:
- [26] [P.M.] has asked for an order that the children call him daily. I am reluctant to make such an order. It seems to me that such an order could lead to unnecessary conflict over whether it is being complied with. The day to day demands of parenting and other pressures may make such an arrangement impracticable, and I wish to avoid an order that will lead to further conflict. I therefore declined to make an order requiring daily telephone contact. However, I do direct that each parent cooperate in permitting the children to call either of them if the children wish to do so, and that the parties do not unreasonably interfere with telephone calls from the parent to the children while they are living with the other parent.
- [74] In 2022, with the ubiquitous use of cell phones by adults and children, contact can be made in many forms and at all times. In my view, just because it can be made, does not mean it should be made. My review of the evidence supports that while the opportunity for a child to contact the off-duty parent is important, it is not a two-way street giving the off-duty parent license to contact his or her child while the child is with the other parent.
- [75] In an attempt to lessen the conflict by providing more guidance on the nature, frequency and duration of contact between the Children and the off-duty parent, I make the following conduct orders pursuant to s. 227 of the FLA:
- a) the parties are to facilitate contact initiated by the Children to the off-duty parent by allowing and facilitating communication by electronic means including, but not limited to, Facebook, social media, calling, and texts between the Children and the off-duty parent, when the Children are with the on-duty parent;
 - b) the off-duty parent may initiate communication with the Children when are with the on-duty parent, except in cases of emergency, no more than once per week between 7:00 p.m. and 8:00 p.m. for a duration of no longer than 15 minutes, on Tuesday night for P.M. when the Children are with S.C. and on Wednesday night for S.C. when the Children are with P.M.; and

- c) for clarity, these conduct orders regarding communication between the Children and the off-duty parent apply to holiday and summertime parenting schedules.
- [76] Given the acrimony between the parties, I also order the following conduct orders regarding how the parties should conduct themselves in communications with each other and the Children. I order that the parties shall:
- a) put the best interests of the Children before their own interests;
 - b) encourage the Children to have a good relationship with the other parent and speak to the Children about the other parent and that parent's partner in a positive and respectful manner; and
 - c) make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication or argument in front of the Children.
- [77] Further, the parties will not:
- a) question the Children about the other parent or time spent with the other parent beyond simple conversational questions;
 - b) discuss with the Children any inappropriate adult, court or legal matters; or
 - c) blame, criticize or disparage the other parent to the Children.
- [78] Finally, I order that each party is to respond to written communication from the other party within 48 hours of receiving a written communication. This includes email messaging. By ordering this requirement, it is not my intention to encourage frequent or aggressive emails between the parties. Parties should communicate with each other in a respectful manner and limit the communications only to matters of significance and importance that relate to the best interests of the Children.

F. Extracurricular Activities

- [79] P.M. argues that S.C. is denying the Children the ability to participate in extra-curricular activities. The specific activities mentioned were baseball and soccer for J.C. and math tutoring and soccer for K.C.
- [80] S.C. says she is supportive of the Children participating in extracurricular activities, but says that she has activities she does with the Children during her parenting time and P.M. schedules activities during that time to undermine her time with the Children.
- [81] In my view, extracurricular activities including sports and tutoring are in the best interest of the Children. Especially given the girls are changing schools, it may be that there is continuity and stability found in sports that contributes to the well-being of the Children. Accordingly, I direct that the parties are to facilitate the Children's enrollment in sports and tutoring programs and make efforts to ensure the Children are available to participate in those activities. The parties are to communicate in writing prior to enrolling the Children in

sports programs or tutoring, but consent will not be needed from each parent to have the Children enrolled in the programs. The party who has not enrolled the Children in the activity is to make best efforts to have the Children participate in the activities during his or her parenting time, but is not required to do so.

G. Denial of Time During the COVID-19 Pandemic

- [82] P.M. also seeks an order for additional parenting time to compensate him for time he says he was unreasonably denied during the COVID-19 pandemic. He alleges that on several occasions he was slightly late to pick up the Children at 2:30 p.m. due to his increased work responsibilities during COVID-19. In those instances, he says that S.C. showed no flexibility in allowing him to pick up the Children at a later time and, as such, denied him his parenting time.
- [83] While not articulated as such, it appears P.M. is seeking a remedy under s. 61 of the FLA, respecting wrongful denial by S.C. of parenting time.
- [84] As I understood the evidence, S.C. says that if P.M. was unable to pick up the children at the 2:45 or 3:00 p.m. from school, S.C. would pick up the Children and P.M. would lose his parenting time for that weekend or weeknight. In other words, in S.C.'s view, P.M. failed to abide by the agreed school pickup time and so he lost the parenting time for that evening. I do not feel I have sufficient evidence on this issue to make a determination as to whether there was a wrongful denial of parenting time. As such, I dismiss this aspect of the relief sought by P.M., but do so without prejudice to him to bring a future application should S.C. unreasonably deny parenting time to P.M. Again, it seems like the heart of this complaint is hostility between the parties and a failure to communicate, which is not in the best interests of the Children.
- [85] I also take the opportunity to observe that if these allegations are true, the lack of flexibility of S.C.'s behaviour in not allowing P.M. parenting time when he was late for a pickup on the schedule might technically be correct, but is not in my view in the best interests of the Children. Such behaviour aggravates an already tense situation and puts S.C.'s animosity towards P.M. above her concern for her Children to spend time with their father. I discourage such behaviour by either party in the future. For parenting arrangements to work successfully, there needs to be at least some cooperation and flexibility between the parties.

H. Providing Passports

- [86] P.M. also seeks an order that the Children's passports be made available to either party to facilitate international travel. This request seems reasonable to me as given there will be weeks of uninterrupted parenting time by both parties, there may be opportunities for international travel. This request seems to be in the best interest of the Children because it allows them to experience travel with their parents. As such, I order that either party, on 2

weeks notice to the other party of the international travel plans for the Children, shall receive the Children's passports.

I. Monetary Orders Sought

- [87] P.M. seeks orders for fines and costs against S.C. as well as orders that she pay for her portion of the 211 Report. I will not make such orders. The evidence provided to me indicates that P.M.'s child support payments have remained the same since 2014 although his income has varied, and in some years, increased significantly. For example, Sewell J. set P.M.'s Guidelines income for child support at \$68,000 in 2014. However, his 2020 income tax return indicates that his line 150 income was \$81,243.
- [88] Given P.M.'s child support payments may need to be adjusted, I will make no order that has a financial consequence against S.C. It may be that if those amounts are adjusted and arrears calculated, P.M. owes S.C. amounts that are larger than any amounts he now says she owes him. If that is not the case, P.M. is free to bring his application for his monetary orders at a later date. However, it is my hope that the parties can resolve the financial issues by cooperation and consent without the need for further adjudication.

VII. ORDER

- [89] In summary and in response to the specific orders sought by P.M., the Court orders that:
1. the order of Mr. Justice Sewell of November 7, 2014, and the order of Justice MacNaughton of June 30, 2017, are varied only to the extent necessary to give effect to this order;
 2. the Children's main residence will remain S.C.'s residence;
 3. P.M.'s weekend parenting time set out in clause 1(b) of Sewell J.'s order is varied as follows:
 - a. during the school year, P.M. will have parenting time on alternating weekends from Friday after school if it is a school day or, if Friday is a school holiday, on Thursday after school. P.M. will return the Children to school on Monday morning or, if Monday is a school holiday, on the Tuesday morning following the holiday Monday;
 - b. during school breaks, P.M. will have parenting time on alternating weekends from Friday at 4:00 p.m. and will return the Children to S.C.'s care on Monday morning; and
 - c. for clarity, if there is a conflict with the other holiday or summertime parenting schedules in this order or in the previous orders of Sewell J. or MacNaughton J. that are not varied by this order, the holiday or summertime schedules of those orders prevail over P.M.'s weekend parenting schedule in this order.
 4. The summertime parenting schedule in clause 2(f) of Sewell J.'s order is varied as follows:

- a. S.C. will have uninterrupted parenting time from 3:00 p.m. on August 10 to the start of the school year regardless of whether August 10 falls on a weekend when the Children are scheduled to be in P.M.'s care;
- b. In 2022, and subsequent even numbered years, P.M. will have uninterrupted parenting time from 3:00 p.m. on June 30 to 7:00 p.m. on July 26;
- c. In 2023, and subsequent odd numbered years, P.M. will have uninterrupted parenting time from 3:00 p.m. on July 11 to 7:00 p.m. on August 9; and
- d. The alternating weekend parenting time will continue in the first weekend after the end of the above Uninterrupted Summertime holiday time for both P.M. and S.C.
5. the order of contempt is adjourned;
6. the Christmas parenting time schedule set out in clause 2(a) of Sewell J.'s order is varied as follows:
 - a. Commencing December 2022, and in each subsequent even numbered year, P.M. will have parenting time with the Children from the last day of school in December to December 26 at 3:00 p.m.;
 - b. Commencing December 2022, and each subsequent even numbered year, S.C. will have parenting time with the Children from December 26 at 3:00 p.m. to January 2 at 3:00 p.m.;
 - c. Commencing December 2023 and in each subsequent odd numbered year, S.C. will have parenting time with the Children from the last day of school in December to December 26 at 3:00 p.m.; and
 - d. Commencing December 2023 and in each subsequent odd numbered year, P.M. will have parenting time with the Children from December 26 at 3:00 p.m. to January 2 at 3:00 p.m.
7. pickups and drop-offs of the children between the parties will be at a location to be determined by the parties approximately equal distance between S.C.'s Aldergrove residence and P.M.'s Surrey residence;
8. the application for P.M. to have additional parenting time to make up for parenting time he says he was unreasonably denied is dismissed;
9. a party shall respond to an email within 48 hours of an email being received from the other party;
10. in respect of communications between the parties:
 - a. the parties shall:
 - i. put the best interests of the Children before their own interests;

- i. encourage the Children to have a good relationship with the other parent and speak to the Children about the other parent and that parent's partner in a positive and respectful manner; and
- ii. make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication or argument in front of the Children.
- b. the parties shall not:
 - i. question the Children about the other parent or time spent with the other parent beyond simple conversational questions;
 - ii. discuss with the Children any inappropriate adult, court or legal matters; or
 - iii. blame, criticize or disparage the other parent to the Children.
- 11. the parties are to facilitate the Children's enrollment in sports and tutoring programs and make efforts to ensure the Children are available to participate in those activities. The parties are to communicate in writing prior to enrolling the Children in sports programs, but consent will not be needed from each parent to enrol the Children in the programs. The party who has not enrolled the Children in the activity is to make best efforts to have the Children participate in the activities during his or her parenting time;
- 12. on two weeks notice to the other party detailing the planned international travel itinerary, the party providing notice shall be provided the Children's passports;
- 13. the parties are to facilitate contact initiated by the Children to the off-duty parent by allowing and facilitating communication by electronic means including, but not limited to, Facebook, social media, calling, and texts between the Children and the off-duty parent when the Children are with the on-duty parent;
- 14. the off-duty parent is to initiate communication with the Children while the Children are with the on-duty parent, except in cases of emergency, no more than once per week between 7:00 p.m. and 8:00 p.m. for a duration of no longer than 15 minutes, on Tuesday night for P.M. when the Children are with S.C. and on Wednesday night for S.C. when the Children are with P.M.;
- 15. for clarity, these conduct orders regarding communication between the Children and the off-duty parent apply to all parenting time, including holiday and summertime parenting schedules;
- 16. no order for costs will be awarded for previous court appearances; and
- 17. the Registry will prepare this order.

[Submissions on costs, clarification of order to parties, and revision of times for pick-up and drop off of Children]

VIII. COSTS

[90] Given the essence of the claimant's application was to significantly change the parenting time, which I have denied, the respondent has been substantially successful in this application. Accordingly, I award costs of this application to the respondent payable by the claimant in any event of the cause and payable within 30 days of the pronouncement of this order.

"Gibb-Carsley J."

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