
CANADA / JUDGMENT

R.R. v. S.L.

2016 BCSC 1230

COURT

Supreme Court of British Columbia

DECIDED

15 April 2016

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

2016 BCSC 1230 R.R. v. S.L.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R.R. v. S.L.,

2016 BCSC 1230

Date: 20160415

Docket: E140421

Registry: Vancouver

Between:

R.C.R.

Claimant

And

S.M.L.

also known as S.M.R.

Respondent

Before: The Honourable Mr. Justice Butler

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

A.J. Rose

Counsel for the Respondent:

I.A. Pietrow

S. Purcarin, A/S

Place and Date of Trial/Hearing:

Vancouver, B.C.

April 4-6 and 8, 2016

Place and Date of Judgment:

Vancouver, B.C.

April 15, 2016

- [1] THE COURT: This is an application by S.L. (the "Mother"), to set aside three orders: a consent order of November 24, 2015 (the "Consent Order"); an ex parte protection order of November 30, 2015 (the "Protection Order"); and an order which requires the children to reside with their godparents and attend a school in Vancouver ("C. School") (the "Interim Residence Order"). I will refer to these three orders collectively as "the November Orders".
- [2] In addition, the Mother asks the Court to reinstate the parenting provisions of two previous interim orders which provided for equal parenting time, and seeks an order that the children attend school in Richmond.
- [3] R.R. (the "Father"), opposes the applications and says the Court should leave the Consent Order, the Protection Order, and the Interim Residence Order in place and give directions to Alyson Jones and the Family Forward Counselling Program (collectively the "FF Program"), to continue with the reunification program which was put in place by the Consent Order. The FF Program is operated by Alyson Jones & Associates, and Ms. Jones is the program director.
- [4] This is a high conflict parenting dispute. The parties brought applications to this Court on a number of occasions before the November Orders were made. I will set out a history of the court orders and some explanation as to the present, highly unusual, parenting situation. I will then set out my ruling on the applications. I have attempted to keep these reasons as succinct as possible in the circumstances. I have done so for two reasons: first, it is important that a decision be made quickly, as matters are currently at an unhealthy impasse; and second, this is an interim application and it would not be appropriate for me to make findings of fact on contested issues which will have to be decided when a final parenting order is made.

- [5] The position taken by the Mother invites the Court to consider the full history of the parenting dispute between the parties. Her position has required the parties to place a huge volume of material before the Court. There are many thousands of pages of affidavit evidence before me, including a large volume of material from the file of the Ministry of Children and Family Development (the "MCFD").
- [6] I have been invited by both parties to reach conclusions on the basis of all of the material, much of which is hearsay. Much as I might be tempted to make findings of fact, I have tried to avoid doing so, except where necessary to consider the applications before me. In spite of the volume of materials and the shortage of time, I have looked at those portions of the material to which my attention was drawn. In addition, I have tried to review other parts of the record which appeared to me to be relevant. However, I caution that, given the huge volume, there is no possible way I could review all of the affidavits and exhibits.

Background and History of the Proceedings

- [7] The parties began their relationship in 2000, were married on September 8, 2001 and separated on February 14, 2014. There are two children of the relationship: C1, who is 12 years old, and C2, who is nine years old. The parties met in Canada, but moved to England, the Mother's home, and lived there for an extended time. They moved back to British Columbia in 2013 and have been under personal and financial stress since that time.
- [8] On February 14, 2014, the same day the parties separated, the Father obtained an order for interim sole guardianship of the children on an ex parte application. The Mother brought an application to set aside that order on February 28, 2014. On that date, the parties entered into a consent order which allowed them to exercise equal parenting time on a split-week basis and required the Mother to refrain from the consumption of alcohol during her parenting time. The parents exercised equal parenting in accordance with that order for several months.
- [9] On August 14, 2014, the Mother applied to vary the order to give her primary residency of the children. Master MacNaughton heard and refused that application, and ordered that equal parenting be continued on an alternating-week basis. Master MacNaughton made a detailed order which covered numerous matters including:
- a mutual prohibition against the consumption of alcohol during parenting time;
 - the parties were required to communicate only by emails or text messages;
 - the children were required to attend a school in Richmond ("M. School"); and
 - the parties were to seek and confirm a trial date by August 30, 2014. I note parenthetically that this was never done.

- [10] On December 23, 2014, by consent, the parties agreed that a Views of the Child Report be prepared by a Family Justice Counsellor, and that the Director of the MCFD disclose its records concerning the parties from 2013 up to December 2014. There have now been a number of orders requiring production of the MCFD records, and those records have been produced from 2013 up to the present time.
- [11] The Views of the Child Report dated February 19, 2015 was delivered to the parties and the Court. The author found that the two children wanted to live full time with their Mother, but liked spending time with their Father.
- [12] On March 24, 2015, the Mother obtained an ex parte order suspending the Father's parenting time. The application was based on the allegation that the children were unsafe with the Father. The Mother appeared on the application without her lawyer, even though both parties had counsel at the time. She was required to serve the Father's lawyer with the application material and the order was to remain in effect until the application could be heard with full argument from both counsel.
- [13] On the present application, Ms. Rose, counsel for the Father, explained that she and counsel for the Mother had a great deal of difficulty in arranging a date to hear the Father's application to set aside the March 24 order. Ultimately, the application was heard on August 25, 2015.
- [14] Before that occurred, on June 18, 2015, the Mother attended in court without counsel and obtained an ex parte protection order preventing the Father from having any contact with the children and her. By its terms, that order expired on June 26, 2015.
- [15] The Father attempted to see the children in the period between March 24 and August 25, 2015, but the Mother refused to permit any parenting time, even though the protection order was in place for only one week.
- [16] On August 25, 2015, the Father's application to vacate the March 24 ex parte order and reinstate the order for equal parenting time was heard. The Mother opposed the application and applied for an order that C1 attend school at a school in Richmond ("S. School"). The application was heard by Saunders J., and he made an order (the "Saunders Order") which included the following:
- The ex parte order made by Master MacNaughton on March 24, 2015 was vacated and the order for 50/50 parenting time pursuant to the August 14, 2014 order of Master MacNaughton was reinstated effective immediately;
 - A s. 211 report is to be prepared by Dr. Krywaniuk;
 - The Mother's application to change C1's school to S. School was dismissed; and
 - Costs were awarded to the Father.

- [17] Following the Saunders Order, the children refused to be transferred into the care of the Father to implement the 50/50 parenting time order. Further, C1 did not attend M. School as ordered. The Mother, contrary to the terms of the Saunders Order, enrolled him at S. School where she had just started to work as a teacher's aide. Then enrollment did not complete after the Father threatened a contempt application. Nevertheless, C1 refused to return to his previous school. As a result of these circumstances, C1 did not attend any school, although he went to S. School each day and was permitted to stay in the school.
- [18] Faced with these difficult circumstances, the parents decided to enroll in reunification therapy with the FF Program. A number of counselling sessions were held with the parties and some were held with the children, but little progress was made. C1 refused to attend school and the children refused to spend any time with the Father.
- [19] The issue of C1 wanting to attend at S. School remained in the forefront of discussions. In mid-October, the parties and their counsel asked Ms. Jones to provide a recommendation as to which school C1 should attend. She gave her recommendation on October 16, 2015 in a report which thoroughly set out the issues and concerns surrounding the school question. She also commented on the difficulties faced by the FF Program in having to make a recommendation, given the dynamics between the parents and children.
- [20] The report is sensitive to the problems facing the family and clearly focuses on the best interests of the children. Ms. Jones recommended that C1 attend at M. School with his sister, even though she recognized that it might be difficult to implement that recommendation because of C1's continuing refusal.
- [21] The recommendation did not move forward. C1 refused to attend at M. School. In spite of Ms. Jones' entreaties to the parents, the Mother continued to support C1's desire to attend at S. School. Based on the information I have reviewed, it is likely she also attempted to get support from other people to advocate for C1 to attend school at S. School.
- [22] In early November 2015, the Father decided to quit the FF Program. He set down an application for an order that he have sole guardianship of the children and that the children be required to attend a residential reunification program in the Okanagan. The application was never heard. Instead, the parties, with their counsel, entered into negotiations and ultimately agreed to continue to work with the FF Program.
- [23] On November 24, 2015, they agreed to the terms of the Consent Order.
- [24] It provided that the parties would continue to be enrolled in the FF Program, "including related reunification therapy, and cooperate with the process as directed by the clinical director, Alyson Jones until such time as the section 211 report is released or further court order." The Consent Order also included a term that the FF Program report to the court and to the parties. Other important terms include:

- e. By Consent, the Father, the Mother and the Children shall attend the FF Program at the first available date for the purpose of transferring the Children to the Father for a period of no less than four weeks or as directed by the FF Program (the "Immersive Period");
 - f. By Consent, any and all parenting time, communications, or interactions between the Parties and the Children are at the full discretion and direction of the FF Program;
 - g. By Consent, the Parties shall follow any reasonable treatment recommendations of the FF Program regarding parenting time and conditions as well as any other directions the FF Program makes;
 - j. By Consent, the parties will follow the recommendations of the FF Program regarding school for both Children.
- [25] The Consent Order is unusual because it provides such extensive powers to the FF Program and includes a police assist term. However, it was entered into by the parties with the benefit of legal advice from counsel who had acted for them for many months. The parties were cognizant of the untenable situation which was facing the family: the Saunders Order was not being followed; the children were refusing to spend any time with their Father; and C1 was refusing to attend school. By the end of November he had missed almost three months of school.
- [26] Once the Consent Order was entered, Ms. Jones advised the parties that the immersive period would start on November 25 and it would last four weeks. The children were to live with the Father and the Mother was to have limited contact. The Mother was asked to pack the children's clothing and bring them to the FF Program office for the exchange. The Mother was instructed not to tell the children about the plan in advance, as they were to be informed in a session with their parents and the counsellors.
- [27] When the children arrived at the FF Program office, they ran away. It was evident they had heard about the planned exchange. The Mother had not packed bags for the children.
- [28] The children were eventually apprehended by the police and the MCFD became involved. The children refused to go to their Father's home. Ms. Jones provided a detailed report of the entire incident. I accept her report of the discussions and the events which took place. She gave evidence at the hearing of these applications and, as I will explain, I found her to be a very careful witness. She reported events clearly and left inferences to be drawn by the reader or listener. Based on the detailed evidence from Ms. Jones, it is evident to me that the Mother actively undermined the process to which she had agreed. She failed to support the attempt to transfer the children to the Father's care for the immersive period, in spite of her agreement to support the recommendations and directions of Ms. Jones and the FF Program. It is very likely that she gave the children advance notice of the exchange.

- [29] Following the failure of the immersive plan on November 25, the parties, their counsel, and the children agreed to a one-day visit with the Father, which was set for November 28, 2015. Once again, the children ran away at the exchange and did not spend any time with the Father. They ended up with G.P., a friend of the Mother who attended at the site of the exchange. Again, it is likely that the Mother undermined this attempted visit.
- [30] Following the failure of these exchanges, Ms. Jones made detailed recommendations which were presented to the court on November 30, 2015 when the Father made the ex parte application for the Protection Order and the Interim Residence Order.
- [31] The recommendations formed the basis for those orders. In her November 29, 2015 report titled "[R.L.] Follow Up Progress Report With Additional Recommendations", Ms. Jones made the following comments:

There appears to be a pattern of disregard for court orders from [the Mother] so we feel we cannot [rely] upon [the Mother]'s cooperation and support of the court order as it presently stands. The FF Team has considerable concerns in regards to the stability of the environment with their mother at this point, and are recommending that the children be transferred to a stable environment. The children's welfare and best interests must be the highest priority.

[The Mother]'s disregard for instruction, orders and directions has [severely] impacted the stability of the children and deeply impaired the children's ability to have a relationship with their father.

- [32] The Interim Residence Order provided that the children should reside with their godparents and should immediately be enrolled at and start attending C. School. It also contained a police assist clause and provided that G.P. should have no direct or indirect contact with the children.
- [33] The Protection Order prevented the Mother from communicating with or having any contact with the children and restrained her from attending at the Father's residence or the children's school.
- [34] I note that in late January of this year, counsel for the Mother took the position that the two November 30th orders superseded the Consent Order, such that the Consent Order was no longer in effect. There was no basis for this position. The provisions of the Protection Order were clearly qualified by the following statement: "[u]ntil such time and in such manner as is specified as part of the Family Forward Reunification Program's treatment plan".
- [35] When the parties appeared before me on March 7, 2016, I indicated that the terms of the Consent Order were intended to be, and did remain, in effect after November 30, 2015.
- [36] Pursuant to the terms of the Interim Residence Order, the children were moved to the home of the godparents. On Monday, December 3, 2015, the children were to attend C. School. A disturbing incident took place as the children were being taken to school by the godmother. They ran away again and went to a "stranger's house". The incident is described in some

detail in the MCFD records. If the information in the reports from the police officers and the MCFD workers is accurate, it is clear that someone orchestrated the children's actions in an attempt to avoid having them live with the godparents and attend C. School.

- [37] According to the records, when the children went to the "stranger's house", they complained that they were "being forced to live with their godparents who harm them and visit their father who hurts them". Surprisingly, the "stranger" called a social worker rather than the police. The social worker attended at the house and contacted the school. Eventually the police became involved. When that occurred, the social worker gave her name, but refused to provide a business card. She gave an incorrect address for her home and for the location of the children. She later stated that she never said she was a social worker. The police eventually picked up the children. The MCFD advised that no social worker with the name given to the police worked for them. Following these circumstances, the MCFD apprehended the children.
- [38] These circumstances are set out in considerable detail in the Form A Report to the Provincial Court from the MCFD. The Form A Report summarizes the involvement between the MCFD and the family in the time period leading up to the children's apprehension. It notes that when the children were told that they were being apprehended, they both asked that they be allowed to return to their godparents rather than be placed in a foster home. C1 denied ever making any statement about being harmed by the godparents, even though this statement had been reported by the stranger and the "social worker". The children also indicated that they would prefer to stay with their Father rather than in a foster home. The MCFD decided to place the children temporarily with the godparents pending a further assessment.
- [39] The children remained in the care of the Director until the assessment was conducted. The Form B Report to the Provincial Court dated December 31, 2015 sets out the reason for the return of the children and states as follows:

Since the removal, the children have stabilized with their godparents. The children and the father are engaged in sessions with the Family Forward Program.

There Is a Supreme Court Order in place stipulating the children are to be in the care of the godparents for a period of stabilization while the children and the father continue with Family Forward. In addition, there is a Supreme Court Protective Intervention Order stipulating the mother is to [have] no contact, indirect or direct, with the children, which is police enforceable.

As there are Supreme Court Orders in place which are more than adequate to protect the children and ensure their safety/wellbeing, the Director is withdrawing from the proceedings now that the children are stabilized and Family Forward has a comprehensive plan in place.

- [40] At the end of January 2016, two further attempts were made to have the children spend overnight time with the Father. They were unsuccessful. During one of them, the children called the Mother, who spoke with them in violation of the Protection Order. Around the same time, the Mother retained new counsel who, inter alia, raised issues regarding the jurisdiction of the FF Program to continue to make enforceable directives regarding parenting issues.
- [41] After the attempted overnight visits with the Father in January, counsel for the Mother took the position that the FF Program could not direct any overnight parenting with the Father. Ms. Jones has followed that directive pending this hearing, and so no further attempts at overnight parenting time with the Father have taken place.
- [42] Ms. Jones reported on the current status of the children when giving evidence. She indicated that the children are now stabilized and doing well. They are attending school regularly, have developed a group of friends, and are performing well academically. A letter from the principal of C. School dated February 12, 2016 confirms this. She indicates that C1: fully meets all grade level expectations and demonstrates personal pride in completing all assignments to the best of his ability. He has formed new meaningful friendships with classmates and is well regarded by his peers. He is respectful to all of his teachers and peers, and appears to be happy in a comfortable caring, and consistent classroom environment.
- [43] C2 is reported to be: making friends and is often seen smiling and happily playing with peers at recess and lunch. Her teacher reports that she too is adjusting well to the classroom routines and doing well academically . She too appears extremely happy in a safe and caring classroom environment.
- [44] The principal reports that it is her recommendation that the children remain at C. School for the remainder of the current school year and beyond, if possible. Ms. Jones also states that she would be "deeply concerned for their stabilization if there was a move to any other school".
- [45] The Mother has completely withdrawn from the FF Program. She had one brief telephone conversation with Ms. Jones in early January 2016. She inquired as to how the children were doing, having been released from Ministry care. Ms. Jones advised that the children were settling in and doing well. She also indicated that she would do her best to "create a space" where the Mother could see her kids as soon as possible. Since that conversation, the Mother has had absolutely no contact with Ms. Jones or the FF Program.

- [46] In cross-examination, Ms. Jones agreed that the Mother should not have been separated from the children for so long. That was not the intent when the Protection Order was recommended. The FF Program is designed to work with both parents. Ms. Jones is anxious for the Mother to re-engage with the program and take part in counselling. As Ms. Jones advised the Court, the FF Program assigned two counsellors to the family: one for the parents and one for the children.
- [47] Ms. Jones reported that there has been a significant shift in the relationship between the children and the Father from the time when she first became involved with the family. The children barely acknowledged him at that time. Now they have a greater ease and rapport with the Father; they call him Dad and share feelings and thoughts. They have taken part in many activities with him. He sees them almost daily in the community.

Position of the Mother

- [48] The Mother argues that the materials filed in support of the numerous court applications and the decisions of the court prior to the Saunders Order fully support the Mother's position that the children should reside with her or, alternatively, that there should be equal parenting. The Views of the Child Report indicated that the children want to reside with the Mother. Master MacNaughton found that the children had been exposed to family violence in the form of emotional abuse of the Mother by the Father.
- [49] The record also shows that C1's wish to attend S. School is one firmly held by him. She argues that the Father's refusal to listen to C1's wishes is a significant factor to be considered.
- [50] In addition to the historical record, the Mother argues that the Court should rely on the expert reports of Dr. Yoram Minnes, C1's psychiatrist, and a report prepared by Dr. Allan Posthuma dated February 12, 2016.
- [51] The Mother says Dr. Posthuma's report confirms that she is mentally stable and is a capable parent. The suggestion made by the Father's counsel that the Mother is "insane" is entirely without merit. Further, she says that both experts' reports establish that the Mother has not been guilty of any alienating behaviour. Rather, she has attempted to support the children's relationships with the Father. She says that Dr. Minnes's report confirms that C1 is anxious, but that this comes from the Father's unreasonable behaviour and, in particular, from his refusal to let C1 attend school at S. School. She says no one has given C1 a rational explanation as to why he should not attend the school of his choice.
- [52] With regard to the Consent Order, the Mother says it should be set aside because there has been a change in circumstances since the order was made, and because there is now evidence of a substantial nature before the Court that was not available when the order was made. The Mother relies on the following changes of circumstances: first, the immersive period was to last only four weeks. It was never intended that the Mother be separated from the children for four months; and second, the FF Program is not working as the children

have yet to have a single overnight visit with the Father. The Mother also relies on the fact that the children are now living with third parties who are not their parents.

- [53] The Mother says that the expert reports of Dr. Minnes and Dr. Posthuma and the affidavits from lay witnesses who support the Mother's position are significant new evidence that is now before the Court, but was not available when the three orders were made. The individuals who have filed affidavits include an official from S. School, a woman who tutored C1 in the fall of 2015, and a number of friends and neighbours of the Mother.
- [54] In the alternative, the Mother argues that even if there has not been a change of circumstances, the Court can still vary the orders in question on the basis of the Court's *parens patriae* jurisdiction and on the basis of the provisions of s. 37 of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. The Court is able to consider the best interests of the children and make an order which is appropriate, considering the needs and circumstances of the children, taking into account those factors set out in s. 37(2).
- [55] The main argument advanced by the Mother is that the Consent Order and the resulting Protection Order have no basis in fact. She says there is no reliable evidence before the Court to support the suggestion that the Mother is alienating the children. The Consent Order has effectively changed the custodial arrangements and entirely eliminated her parenting time, without expert evidence and without a court hearing. The Mother says there is no basis on which her parenting time should have been so drastically restricted. This is particularly the case when the Protection Order is contrary to the children's wishes, as set out in the Views of the Child Report.
- [56] Finally, she says that the drastic change in parenting arrangements should not have been made without the completion and court consideration of the s. 211 report ordered by Saunders J. Dr. Krywaniuk has been retained as ordered and will see the parties within the next few weeks. The s. 211 report will likely be available in June or shortly thereafter. In the interim, the Mother says the 50/50 parenting arrangement should be reinstated.

Position of the Father

- [57] The Father says there is no basis whatsoever to set aside the Consent Order. There has been no change of circumstances which would support setting that order aside. Indeed, the evidence is clear that the current circumstances of the relationship between the children and the Father have improved dramatically since November 24, 2015. In other words, he says to the extent that there has been a change in circumstances, it supports continuation of the FF Program.
- [58] The FF Program was designed to reduce the stress and anxiety of the children and to improve their relationship with the Father. It is clear the program is working. C1 is now attending school. Both children are happy and well-adjusted at C. School. The children are spending time with the Father and are re-establishing their relationship with him.

- [59] The Father further argues that in order to set aside the ex parte Protection Order, the Court must hear that application de novo; in other words, the Court should consider whether, on all of the evidence, the order should be made. He says that nothing in the Mother's material addresses the fundamental unresolved issues which led to the Protection Order; the children did not have a healthy relationship with their Father and their Mother was unable or unwilling to facilitate that relationship. Even after agreeing to work with the FF Program, the Mother continued to advance her view that the children are unsafe with the Father. This is the case, even though the allegations she continually raises have been considered and dismissed by the MCFD. The Mother has continued to raise those issues before the Court on this application, in spite of the extensive investigations of the MCFD.
- [60] The Father also argues that it would be contrary to the best interests of the children to set aside the Protection Order. The MCFD apprehended the children because of the issues which led to the Consent Order and the Protection Order. The children were in the care of the Director for the month of December 2015, and were released only because "there are Supreme Court Orders in place which are more than adequate to protect the children and ensure their safety/wellbeing" and because "the children are stabilized and Family Forward has a comprehensive plan in place".
- [61] The Father agrees that it is unfortunate that the children have had no contact with the Mother for four months. However, that is entirely her fault. She withdrew from participating in the FF Program after agreeing to the Consent Order. She was advised by Ms. Jones that the FF Program was anxious to work with her to "create a space" for her and for the children to re-engage. She has refused to participate in the very program she put in place.
- [62] Finally, the Father says the FF Program has asked that the Court provide directives to it if the Consent Order remains in place. The Father says the Court should provide the necessary directives so that the FF Program can facilitate the preparation by Dr. Krywaniuk of the s. 211 report and the reintegration of both parents with the children.

Analysis and Ruling

- [63] Section 216(3) of the FLA, gives the court the power to change, suspend, or terminate an interim order. All of the orders which have been made in this proceeding, including the November Orders, are interim orders, and so the parties agree that this section applies to the Mother's applications.
- [64] The relevant provisions of s. 216 include subsection (3) and subsection (4):
- (3) On application by a party, a court may change, suspend or terminate an interim order made under subsection (1) if satisfied that at least one of the following circumstances exists:
- (a) a change in circumstances has occurred since the interim order was made;

- (b) evidence of a substantial nature that was not available at the time the interim order was made has become available.
- (4) In making an order under subsection (3), the court must take into account all of the following:
 - (a) the change in circumstances or the evidence, or both, referred to in subsection (3);
 - (b) the length of time that has passed since the interim order was made;
 - (c) whether the interim order was made for the purpose of having a temporary arrangement in place, with the intention that the arrangement
 - (i) would not adversely affect the position of either party during negotiations, during family dispute resolution or at trial, and
 - (ii) would not necessarily reflect the final arrangement between the parties;
 - (d) whether a trial has been scheduled;
 - (e) any potential adverse effect, on a party or a child of a party, of either making or declining to make an order under subsection (3).

[65] In *B.K. v. J.B.*, 2015 BCSC 1481, Holmes J. was asked to consider the applicability of s. 216 and s. 47 of the FLA to an application to vary a consent parenting order made at a judicial case conference. While the circumstances facing the court in *B.K.* are quite different from those before the Court in the present case, her comments regarding the scope of s. 216 are instructive here. She notes at para. 27 that while interim orders dealing with parenting must consider the best interests of the children, it will "not usually be "practicable" to conduct a complete consideration of those best interests within the inherently limited context of an interim application." At paras. 28 and 29, she explains the proper application of s. 216 to interim orders:

[28] Where a court is asked to exercise the authority under s. 216(3) by varying (or suspending or terminating) a parenting interim order already made, the court can properly start from the assumption that the interim order reflected the child's best interests insofar as those could be discerned at the time of the previous order. It is for this reason that s. 216(3) and (4) focus the court's attention on whether there is a change or new evidence since the previous order, and, if there is, on the factors in s. 216(4). Those factors relate mainly to the timing of the application to vary in relation to the previous interim order and the trial; the purpose of the interim order; and the potential adverse effects on the parties of varying or not varying the interim order.

[29] The factors for consideration under s. 216(3) and (4) thus do not expressly include the best interests of the child. Consistently with the long-standing approach, on interim applications, of protecting the status quo and providing short-term solutions until a closer and more complete examination is possible at trial, they require the court to focus on what, if

anything, has changed or emerged since the interim order was made, and to consider whether the new facts or evidence warrant a further change over the short-term. In the circumstances to which s. 216(3) and (4) apply, a full assessment of the child's best interests is not usually possible.

- [66] I note first that the Consent Order, which is the central order in this application, is not, strictly speaking, a "parenting order". This is because it sets out a process to facilitate future parenting by setting out the terms under which the FF Program will work with the family. Nevertheless, the comments of the court in B.K. are applicable to the situation here. The Consent Order was made on the parties' agreement that its provisions would reflect and facilitate the children's best interests. Accordingly, as noted in B.K., I must start from the assumption that the November Orders reflected the children's best interests, insofar as those could be determined when the orders were made. I must then consider whether there has been a change in circumstances since that time, or whether there is new evidence, of a substantial nature, which was not available when the order was made.
- [67] As Holmes J. notes, when a court is faced with an application to vary or suspend an interim order, the focus is on protecting the status quo, unless there is a relevant change in circumstances or new evidence.

Issues

- [68] Taking that approach on these applications, I will consider the following issues:
1. Has there been a change of circumstances since the November Orders were made, such that the Court should vary, suspend, or terminate those orders?
 2. Is there new evidence of a substantial nature which was not available when the November Orders were made, such that the Court should vary, suspend, or terminate those orders?
 3. Even if there has not been a change of circumstances or substantial new evidence, is it in the best interests of the children to vary, suspend, or terminate the November Orders?
- [69] As I will explain, I would answer all of these questions in the negative. In other words, I am of the view that there has not been a change of circumstances or substantial new evidence requiring the Court to suspend or terminate the November Orders. In addition, the best interests of the children are furthered by leaving those orders in place.
1. Has there been a change of circumstances since the November Orders were made, such that the Court should vary, suspend, or terminate those orders?
- [70] The Mother did not attempt to argue that the circumstances facing the family when the parties entered into the Consent Order are different from the circumstances of the family at the present time. This is significant. She did not make that argument because she could not establish that there has been a change of those circumstances. The situation facing the family was well known to the parties and their counsel when the Consent Order was entered

into. The court had ordered equal parenting and the children were refusing to spend any time with their Father, even though they had previously willingly participated in a shared parenting situation. The parties were fully aware of the allegations which had been made by each of them against the other. The Father maintained that the Mother was unstable and that she was causing psychological harm to the children. The Mother maintained that the Father had anger management issues and that the children were unsafe in his care. The MCFD had explored these issues for some time. Counsel and the parties had contested these issues in the court applications. The Consent Order was made with the full knowledge of the dysfunctional circumstances which the family was facing.

- [71] Instead of advancing an argument based on a change of the family's circumstances, the Mother alleges that there have been two significant changes arising from developments that have occurred since the November Orders were made. First, the FF Program immersive plan was intended to only last four weeks. The Mother says there was never any intent that she be separated from the children for four and a half months. Second, she says it was anticipated that the FF Program would help facilitate a relationship between the Father and the children, but that it has failed; the children have yet to have a single overnight visit with the Father.
- [72] It should be apparent that these are not changes in circumstances; rather, they are allegations that the FF Program has not succeeded and that it is no longer in the best interests of the children to leave that plan in place. This is not a change of circumstance issue; it is an argument that the November Orders should be suspended or terminated because those orders have resulted in a parenting situation that is contrary to the best interests of the children. This issue is more properly considered under the third issue I have outlined.
- [73] While the "changes" relied on by the Mother do not support an argument based on a change of circumstances, it is worthwhile examining the children's circumstances as at the present time, compared to the circumstances at the end of November.
- [74] When the November Orders were made, the family was under tremendous stress. The children were not spending any parenting time with the Father. C1 had not attended school for almost three full months. The children were extremely anxious. This was clearly evident from all of the evidence before the court, including the November report of Dr. Minnes.
- [75] The fact that much of the stress was focused on the school issue is unfortunate. There was no reason for the anguish that this issue was causing the children. The court made an order. It was not followed or appealed. Contrary to the Saunders Order, the Mother enrolled C1 in S. School and continued to promote it with him. Eventually, the parties sought a recommendation from Ms. Jones and she provided her considered recommendation. However, the Mother paid no heed to the recommendation and continued to promote the change of school for C1. This issue became the battleground for the parents' dispute. The FF Program quite properly decided that the children should attend school elsewhere. The

Mother could not accept this and continued to force this issue and the level of anxiety and stress escalated.

- [76] In any event, the circumstances facing the parties were well known to them when they entered into the Consent Order. The parties gave the FF Program extensive powers to attempt to ameliorate the unfortunate family situation. As soon as Ms. Jones made recommendations, as she was required to do pursuant to the Consent Order, the Mother failed to support the recommendations and thus undermined the FF Program.
- [77] I do not accept that what has happened to the family as a result of the Mother's failure to live up to the terms of the Consent Order is a change in circumstances which supports a termination of that order. If that were the case, any parent in a high conflict case could attempt to actively undermine a court order in an attempt to effect a change of circumstance.
- [78] More importantly, the changes in circumstances which have occurred since the November Orders were made are, in fact, positive. I have outlined those changes above: C1 is attending school; both children are doing well academically and socially in their new school; and the children are beginning to re-establish their relationship with the Father. In short, their circumstances have stabilized. Of course, this was the intent of the FF Program and of the November Orders.
- [79] I must acknowledge that there is a danger that the terms of the Protection Order could negatively impact the children's relationship with the Mother. However, that question is more properly considered under the third issue. When I consider that issue, I take into account what should be obvious to the Mother: the way that she can re-engage with the children is by taking part in the FF Program and taking advantage of the counselling offered to her.
- [80] In summary, the Mother has failed to establish a change of circumstances. To the extent there has been a change of circumstances, it does not support terminating the November Orders. The reasons for the parties entering into the Consent Order still exist, as do the circumstances explained by Ms. Jones which led to the granting of the Protection Order.
2. Is there new evidence of a substantial nature which was not available when the November Orders were made, such that the Court should vary, suspend, or terminate those orders?
- [81] The new evidence relied on by the Mother, which she says is of a substantial nature, is the expert reports of Dr. Posthuma and Dr. Minnes, although she also relies on the new affidavits of her friends and acquaintances. I will deal with these separately.

Dr. Posthuma

- [82] The Mother was referred to Dr. Posthuma for a psychological mental health assessment. He delivered a report dated February 12, 2016 that provides opinions on four issues: 1) the Mother's mental stability and mental health condition; 2) whether the Mother's actions are

the cause of the estrangement between the Father and the children; 3) should full-time care of the children be transferred to an estranged parent before there has been a determination as to the cause of estrangement; and 4) what is the Mother's capacity to care for and parent the children at the present time. The Father says the report is inadmissible and, in the alternative, that no weight should be given to the opinions on issues 2 to 4, as Dr. Posthuma has not seen the children or the Father.

- [83] The first question to consider is whether I should admit Dr. Posthuma's report in evidence. I have decided that I should do so, but only with regard to the first issue considered by him. The question of the Mother's mental stability has been raised throughout these proceedings by the MCFD, by Ms. Jones, and, in a very unfortunate way, by counsel for the Father. In correspondence dated January 29, 2016, counsel stated, in reference to the Mother, "In my opinion, she needs a litigation guardian as she is insane." Dr. Posthuma refers to that comment in his report, but found that the Mother has no signs of thought or mood disorder. He opines that it is "highly improbable" the Mother has a mental illness. He is also of the opinion that she does not require a litigation guardian.
- [84] It was entirely inappropriate for counsel to make the kind of comment contained in the January 29 correspondence. There was no cause for a bald allegation of insanity. Cases like the present, which involve extreme levels of conflict, can cause high emotion in the parties and counsel alike. However, that does not excuse unwarranted personal attacks in the course of the litigation.
- [85] Nevertheless, it is evident from my review of the evidence that people dealing with the Mother have noted their concerns about her behaviour on many occasions. That behaviour has raised concerns about her emotional status insofar as it affects her parenting and decision-making. I need only refer to the evidence given by Ms. Jones regarding the Mother's behaviour on November 25, 2015 at the time of the failed exchange. Ms. Jones had concerns that the Mother could not provide stability for the children because she would quickly change from giving full support for the program to stating that she would not be protecting the children if they were allowed to go with their Father. Ms. Jones described her behaviour as "irrational" and said she was not making sense. The children were exhibiting elevated emotional levels, but the Mother could not provide cohesive leadership.
- [86] I have admitted and also accept Dr. Posthuma's opinion on question 1, that the Mother does not have a mental illness and does not require a litigation guardian. However, I cannot give any weight to his opinions on the other three questions. My reasons for not doing so are twofold; he offers opinions on matters without an adequate foundation for those opinions; and he offers opinions on issues which are not in issue on this application.
- [87] The opinions offered have an inadequate foundation because Dr. Posthuma has not met with or assessed the children or the Father. In spite of not having done so, he offers opinions on the cause of the estrangement between the Father and the children. I do not understand how he can purport to give such an opinion with such limited information.

- [88] In *M. v. M.*, 2015 BCSC 1297, the court was faced with a similar situation. Dr. Glen Caddy, a psychologist, provided an opinion on alienation and parenting without having met the father or the children. The report was offered in the course of a trial of a parenting dispute. Dr. Caddy critiqued the report prepared by the s. 211 author. His report was adversarial and ultimately the court concluded that it went beyond the proper confines of an expert report. While the situation in *M. v. M.* is somewhat different from the situation on this interim application, one of the main reasons the court found Dr. Caddy's report to be inadmissible was the fact that "he reached conclusions and made diagnoses regarding the respondent and the children without having met them": para. 168.
- [89] While Dr. Posthuma's report is not as objectionable as the report in *M. v. M.*, he nevertheless has ventured to offer an opinion which goes far beyond his limited foundation of fact and information. He has opined that the Mother is not responsible for the estrangement without any assessment of the children and the Father. He has not observed the children with either parent. I also doubt that he reviewed the MCFD material in any detail. He says he received records from the MCFD, but his report makes no reference to any of the information in that huge volume of material. He also does not refer to any of the findings or observations contained in the extensive FF Program materials and reports, except to say that they are "difficult to reconcile" with his examination of the Mother.
- [90] He refers to some other material which tends to support the Mother's position, without referring to or accepting any of the material which tends to support the Father's position. In other words, his report appears to be advocacy or argument, relying only on part of the material without consideration of the material which is contrary to his client's position.
- [91] The second reason I will give no weight to his opinions is that he offers views on matters which go far beyond what the Court is being asked to consider on this application. This is an application to set aside the November Orders. It is not an application to determine the cause of the estrangement between the children and the Father. While the Consent Order and the other two November Orders appear to be based on an assumption that the Mother's influence on the children has been harmful to or unhelpful for a possible reunification with the Father, the question of cause is not directly before the Court on this application.
- [92] Accordingly, it is not appropriate to consider Dr. Posthuma's opinion in response to question 2. This is particularly the case as the s. 211 report, which will have to consider this question directly, has yet to be prepared.
- [93] Dr. Posthuma's opinion in response to question 3 is not at all relevant to the issues on this application. As I have noted, the question as to the cause of the children's estrangement is not before the Court and neither is the question of transferring "full-time care" to an estranged parent. Overnight parenting visits for the purpose of reunification therapy are not "full-time care". No determination will be made on this application on full-time future parenting arrangements. The question before the Court is whether the Consent Order entered into by the parents is to continue to be in force.

- [94] Dr. Posthuma's opinion on question 4 is also objectionable, given the lack of a proper foundation. He never saw the Mother parenting the children. Further, as I have noted, the capacity of the Mother and Father to parent is not challenged on this application. The background to the November Orders and this application is a 50/50 parenting order. Such an order assumes that both parents have that capacity. Further, to the extent that an opinion is to be provided to the Court on that issue, it should come from the s. 211 author who was appointed by the Saunders Order.
- [95] In summary, I conclude that Dr. Posthuma's opinion is not new evidence of a substantial nature. As I have indicated, I accept his opinion regarding the mental status of the Mother; however that is not new or determinative. It was assumed at the time of the November Orders that she did not have a mental disorder and that she did not need a litigation guardian. With regard to his other opinions, they are either based on an inadequate foundation or are irrelevant to the matters before the Court on these applications.

Dr. Minnes's Reports

- [96] I have read Dr. Minnes's reports and considered them in arriving at my decision in this matter. The first two reports of Dr. Minnes fall into a different category than the report of Dr. Posthuma. Dr. Minnes offers opinions within his proper area of expertise which are based on an adequate foundation - his assessment of C1 which was performed for the MCFD.
- [97] However, it is significant that Dr. Minnes has not, as I understand it, seen C1 since sometime in the fall of 2015. Further, his information about the possibility of C1's attendance at S. School is based on a limited perspective. Unlike Ms. Jones, he has not assessed the challenges facing the entire family and is not attempting to find the best solution for reunification. His reports are of assistance in providing an assessment of C1's level of anxiety as of the dates of his assessments, but are of limited assistance beyond that.
- [98] In his report of March 25, 2015, Dr. Minnes states:

[C1] is an 11-year-old boy presenting with a clinical picture suggestive of an anxiety condition. the clinical impression of him is that his presentation is much more accurate within the context of an Acute Stress Disorder or an Adjustment Disorder with Anxiety.

The picture of his anxiety presentation is very much isolated to the last couple of years, and is characterized by symptoms that are mostly related to the current situation within the family.

It is quite apparent that his high level of anxiety is related to exposure to various behaviors of his father and to his experiences when he is staying with him.

- [99] In the report of November 6, 2015, Dr. Minnes states:

I have learned from my discussion with Ms. Khan that an intervention process with [C1]'s parents was put in place (mandated by the court) with the "Alison Jones program". I would strongly recommend, knowing how long these interventions may take, that the issue of [C1]'s going to

school will be addressed and resolved first so he is [allowed] to return to normal functioning at least with this part of his life. (schooling). The urgency of this matter is high as the longer the process takes, the higher is the risk for a dangerous and potentially harmful behavior, acted out by [C1].

- [100] Dr. Minnes's report of February 23, 2016 falls into a different category. He appears to have gone beyond the purpose for which he was retained. He responds to questions asked by the Mother's counsel, does not do so in the form of an expert report, and offers opinions about the Mother, even though he was retained by the MCFD to identify the proper interventions for C1, and not for the court or for legal purposes.
- [101] I accept that Dr. Minnes was attempting to be helpful and have reviewed his recent report. He has explained his views, which have been formed by his interviews with C1 and the Mother. However, I do not regard it as substantial new evidence given the way in which it has been solicited and brought into court.
- [102] I conclude that Dr. Minnes's reports are not substantial new evidence. Of course, the report of March 25, 2015 is not new. The parties were aware of that report and the opinions offered in it at the time the November Orders were made. The parties were also likely aware of the information contained in the November 6, 2015 report, although it was not before the court. The reports indicate that C1 had an acute stress disorder or an adjustment disorder with anxiety. These are the diagnoses which the FF Program intervention was intended to target. As I have indicated, the program has addressed the primary concern put forward by Dr. Minnes. C1 is back at school and the stress caused by the school attendance issue has been resolved. The fact that the FF Program intervention has addressed that issue is not mentioned in Dr. Minnes's February 23, 2016 report. I would have expected him to comment on this. The fact he has not done so is another reason to give little weight to the latter report.
- [103] The final report, although well meaning, was not provided in accordance with court rules, is given without reference to the facts or assumptions on which it is based, and goes beyond his assignment from the MCFD. I do not regard it as substantial new evidence; rather, it is an attempt (not by Dr. Minnes, but by counsel) to turn his earlier reports and opinions into a new report about parental alienation and parenting issues.

Affidavits of the Mother's Supporting Friends

- [104] As I have indicated, I have also read the affidavits of the individuals who were asked to provide supporting evidence. I have considered this evidence, but do not find it to be substantial in relation to the issues before the Court.

- [105] Before leaving the issue of new evidence, it is important to note that the vast bulk of the evidence before the Court on this application was historical and predated the November Orders. I was taken by the parties to detailed evidence about their relationship, their parenting, the court applications, the involvement of the MCFD, and the work done with the FF Program. I was even taken to audio tapes from February 2014, which recorded the parties' abusive treatment of each other in the presence of the children.
- [106] While this application is said to be based on "substantial new evidence", the arguments of the Mother were almost entirely focused on the historical evidence. In other words, the applications were based in large part on evidence which was known and available when the Consent Order was entered into.
3. Even if there has not been a change of circumstances or substantial new evidence, is it in the best interests of the children to vary, suspend, or terminate the November Orders?
- [107] The Mother argued, and I accept, that the court retains the jurisdiction to change, suspend, or terminate an interim order, even if there has been no change of circumstance and no substantial new evidence: see, for example, *A.B. v. T.R.*, 2013 BCSC 1798 at paras. 25-36.
- [108] Pursuant to s. 37(1) of the FLA, when making an order regarding care of and parenting time with children, the court is required to consider only the best interests of the children. In doing so, it must consider all of the circumstances, including those factors set out in s. 37(2). If it is in the best interests of the children to vary or suspend an order, the court must do so regardless of its finding about the existence of a change in circumstances.
- [109] While the applications before the Court do not directly deal with what would normally be described as parenting orders, the orders in question have a direct effect on the care and parenting of the children in the short term, and so the Court must have regard to s. 37(1) and (2) of the FLA. The Court must consider the best interests of the children.
- [110] The main issue in the unusual circumstances of these applications is whether it is in the best interests of the children to continue the November Orders. Even though there is no change in circumstances and no new evidence of a substantial nature requiring a variation of the orders, the present circumstances clearly require the Court to consider or to question if the best interests of the children are furthered by leaving the orders in place.
- [111] Two issues are of particular concern. First, the Mother has not seen the children since the end of November 2015. It is now four and a half months since she last had parenting time with the children. The children were closely bonded to their Mother prior to the Protection Order. As the Mother argues, separation from her has the potential to result in psychological harm to the children.

- [112] Second, the children are residing with their godparents. This must be a difficult situation for that household. There is no evidence from the godparents about the current circumstances of the children or how they are managing with the unusual and unplanned temporary parenting arrangement. It must be remembered that neither the immersive period nor the placement with the godparents was anticipated to be long term, and yet the situation has remained in place since the start of December.
- [113] Another concerning issue raised by the Mother and conceded by the Father is that the family is running out of money. Considerable sums have been spent on legal counsel and on the FF Program. The s. 211 report will be costly. This four-day application was extremely expensive. The funds which were in trust following the sale of the properties in the U.K. have almost been dissipated. Of course, if the Consent Order is not set aside, there will be ongoing expenses for the FF Program.
- [114] While these are serious concerns, they must not be considered in isolation. The Mother's arguments focus on the potential harm that could arise from the fact that the children are separated from her and are not living with either parent. However, the Court must consider what alternatives are available to the present situation.
- [115] The factors which lead me to conclude that it is in the best interests of the children to leave the November Orders in place include the following:
- 1) The Mother's plan is to reinstate the 50/50 parenting as directed in the Saunders Order. That would place the children right back into the situation they were in when they decided to attempt reunification counselling with the FF Program. The children would be put back into a situation of considerable stress and anxiety. C1 was not attending school and the children were spending no time with the Father. The issues which caused the parties to attempt reunification therapy would be unresolved if the Saunders Order was reinstated.
 - 2) Under the November Orders, the children have stabilized. C1 is attending school and both are doing well at C. School. The level of stress and anxiety to which the children were exposed in the months prior to the November Orders has been significantly reduced.
 - 3) I accept the views of Ms. Jones regarding the progress of the FF Program and the benefits it has provided. I also accept her view that it would be harmful for the children to be returned to the situation which existed prior to November 24, 2015.
 - 4) As I have already noted, Ms. Jones was an excellent witness. I found her to be fair and reasonable in her observations and reporting about the family. Contrary to the arguments of the Mother, I found her to be unbiased and open-minded. She explained why she is of the view that the Mother has not supported the program and has undermined its effectiveness. I accept that evidence.
 - 5) My conclusions regarding Ms. Jones and the FF Program are based on my review of her reports and my assessment of her as a witness. However, I find some support for these conclusions in the comments of Abrioux J. in *M. v. M.* In the difficult circumstances in that

case, he concluded that it was in the best interests for all of the members of that family to attend for an intensive course of therapy with Ms. Jones as soon as possible. In arriving at that conclusion, he made the following comments at paras. 319 and 320, which I would adopt and apply to the circumstances of this case:

- [319] I was most impressed with Ms. Jones. I found her to be an objective, fair, and compassionate professional therapist. The fact the parties have some reservations in resuming treatment with her and that some of the children complained a year ago that they did not believe Ms. Jones was listening to what they were saying indicates to me that she is exactly what this family needs at the present time.
- [320] That is because the reservations expressed in her regard appear to indicate that Ms. Jones and her team were being as fair and impartial as they could be in 2014. They were telling the parties and some of the children what they needed to hear, not what they wanted to hear. She and her team were clearly touching nerves that required exposure such that the considerable difficulties this family was facing could be dealt with in an appropriate therapeutic manner.
- 6) I cannot accept the proposal for counselling and family support put forward by the Mother. While the service proposed is free, and thus has some advantage for the family, there is no evidence before me regarding the qualifications of the proposed counsellor or whether she has experience in providing the kind of support required for a family in need of reunification therapy in stressful circumstances. Ms. Jones was asked about the proposed counsellor and did not know of her. She indicated, and I accept, that reunification counselling is a very specialized field. There is no reason to believe the proposed counsellor could provide the required services.
- 7) While it is extremely unfortunate that the Mother has had no contact with the children for four and a half months, a good deal of the blame for that situation must rest with her. It was never anticipated that she have no access to the children. The intent of the November Orders was to leave in place the Consent Order, pursuant to which the parties agreed that the parenting time communications and interactions between the parents and children were at the discretion of the FF Program. If the Mother had supported the FF Program, she would have been able to re-engage with the children. The fact that she took the position that the Protection Order did not permit any access to her was at odds with the position of the Father. This issue was clarified when the parties appeared before me on March 7th. She could have started to re-engage and seek supervised parenting time, but she decided not to do so, presumably to support the position she has taken on this application.
- 8) While it is unfortunate that the children have remained with the godparents for so long, there is no evidence to suggest that the living situation of the children is contrary to their best interests or that the current placement with the godparents cannot continue, at least in the short term. In that regard, I note that the MCFD was prepared to release the children from apprehension only because their situation had stabilized with the godparents. Further,

the children were released into the care of the godparents because the children were engaged in sessions with the FF Program. It would be inadvisable to suspend or terminate the November Orders when those orders provided the stability and protection the children require, according to the Form B Report prepared by the MCFD.

- 9) Finally, the most important step for putting a parenting plan in place is to have Dr. Krywaniuk prepare the s. 211 report. It is impossible for this to proceed in the usual way. Given the present situation, it is essential that his assessment be carried out with the cooperation and involvement of Ms. Jones. That cannot happen if the November Orders are suspended.

[116] In short, I conclude the best interests of the children are best served by continuation of the November Orders.

[117] In arriving at this decision, I have not disregarded the Mother's argument that the recent decision in *Williamson v. Williamson*, 2016 BCCA 87, should be applied to the circumstances of this case. She says the November Orders should be set aside on the same basis the order in *Williamson* was set aside. That order required children to attend a residential reunification program. In *Williamson*, the court stated as follows at para. 46:

[46] Here, the chambers judge made what amounts to draconian orders, changing custody, guardianship and parental rights to access to the children, and cutting off contact with one parent, the father, without finding him 'guilty' of alienation. In my view, such a drastic order should never have been considered absent a finding of alienation on the part of the father, and absent careful consideration of alternative remedies besides the FRRP [a residential reunification program], which has been described as a "last resort"

[118] In *Williamson*, the court emphasized the seriousness of a finding of alienation and that courts should not make drastic parenting orders, absent proper expert evidence with the benefit of a full hearing. I accept those principles and the comments of the court in *Williamson*. However, the situation in the present case is quite different, such that the decision is distinguishable.

[119] First, the reunification therapy offered by the FF Program is quite different from the controversial residential program which was ordered in *Williamson*. The distinction between these programs was discussed in *M. v. M.*

[120] Second, and most significantly, the parties' participation in the FF Program in this case was by consent. The parties agreed to use the services offered by Ms. Jones to deal with the family crisis. I have explained how the situation changed such that the Mother has not had contact with the children. It has resulted from her own failure to cooperate with the very program she agreed to institute. This is very different from the situation in *Williamson* where the court ordered the participation in the residential program against the wishes of one of the parents.

[121] Third, the November Orders were never intended to be "drastic parenting orders" that changed custody, guardianship and parenting rights. The immersive period was to last for a limited time. As a result of the events which have occurred since the Protection Order was made, it has affected parenting rights, but only on a temporary basis. The residency of the children with the godparents was endorsed by the MCFD following the apprehension of the children. It has lasted longer than anyone anticipated only because of the actions of the Mother. She has the ability to re-engage with the children at any time by participating in the FF Program.

[122] For all of these reasons, Williamson is distinguishable.

[123] That concludes my reasons for the ruling today, but does not quite end the matters I must consider.

[124] Ms. Jones indicated to the Court that the FF Program requires some direction as to how they are to continue with their mandate. This was requested, given the positions taken by counsel for the Mother, which have limited the steps that Ms. Jones felt the FF Program could take in relation to the children.

[125] In her testimony, Ms. Jones described what she wanted to work towards in the next two months:

- She would like to transition the children into the Father's care.
- She would like the Mother to return to the program and start to have contact with the children under the guidance and direction of the FF Program.
- If everyone is cooperating and the children are able to successfully reintegrate with the Father, they would also be reintegrated with the Mother.
- She would determine if the Mother's access should be supervised and, if so, how. She would also determine when unsupervised access could take place.
- She would like to consult with Dr. Krywaniuk as to how to re-introduce the contact between the Mother and the children for the purpose of preparation of the s. 211 report. The Mother would have to cooperate in that process.

[126] I accept all of these goals as proposed by Ms. Jones. I will not issue specific directives as to how to accomplish these goals because that will be within the discretion of the FF Program to determine. I will reiterate, however, that the terms of the Consent Order are still in effect, such that Ms. Jones has the discretion to determine when and how parenting time, communications, and all interactions between the parties and the children take place. There is no need to provide any clarification of the Protection Order, as the prohibition against communicating with or contacting the children is already qualified by the term: "[u]ntil such time and in such manner as is specified as part of the Family Forward Reunification Program's treatment plan".

[127] The only other directions I will order are as follows:

- a) The reporting requirement contained in paragraph 1.b.i of the Consent Order is changed to provide that the FF Program shall report to court every four weeks. The reports shall be in writing and provided to the parties' counsel and to the Court through Supreme Court Scheduling. These reports shall be directed to my attention.
- b) The FF Program shall provide to the parties, by April 26, 2016, a plan which sets out the proposed schedule for moving forward with reunification of the children with the Father and re-establishment of contact and reunification of the children with the Mother.
- c) On an ongoing basis, the Mother shall immediately advise the FF Program of any contact or communication she receives, either directly or indirectly, from either one or both of the children.
- d) The Mother shall provide, by April 22, 2016, copies of her telephone records (land line and cell phone) from December 1, 2015, up to the present time to counsel for the Father. She shall provide copies of monthly phone statements on an ongoing basis within seven days of receipt until otherwise ordered or agreed by the parties.
- e) Finally, I will remain seized of any applications in this matter.

[128] That concludes my reasons. What I do want to say is that I will make myself available at 9:00 in the morning if the parties require clarification or further applications. However, unfortunately, I am not available for the next two weeks because I will be away. However, after that I will certainly, on short notice, be prepared to hear the parties either at 9:00 in the morning or 4:00 in the afternoon.

"Butler 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/16/12/2016BCSC1230.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-r-v-s-l-2016-bcsc-1230>

Prepared on 28 October 2026 · Esheria