

CANADA / JUDGMENT

S.F. v. C.W.

2025 BCCA 422

COURT

British Columbia Court of Appeal

DECIDED

28 November 2025

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2025 BCCA 422 S.F. v. C.W.

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

S.F. v. C.W.,

2025 BCCA 422

Date: 20251128

Docket: CA50547

Between:

S.F.

Appellant

(Applicant)

And

C.W.

Respondent

(Respondent)

Before:

The Honourable Justice Riley

The Honourable Justice Edelmann

The Honourable Justice Mayer

On appeal from: An order of the Supreme Court of British Columbia, dated February 21, 2025 (C.W. v. S.F., Nanaimo Docket E86459).

The Appellant, appearing in person:

S.F.

The Respondent, appearing in person

(via videoconference):

C.W.

Place and Date of Hearing:

Vancouver, British Columbia

September 12, 2025

Place and Date of Judgment:

Vancouver, British Columbia

November 28, 2025

Written Reasons by:

The Honourable Justice Mayer

Concurred in by:

The Honourable Justice Riley

The Honourable Justice Edelmann

Summary:

The appellant challenges three orders pronounced after a hearing on February 21, 2025, concerning parenting time, decision-making authority for, and international travel with, the parties' children. She argues the judge erred by ignoring or misapprehending material evidence and by failing to apply a best interest of the child analysis. She further argues the judge demonstrated bias against her. Held: Appeal dismissed. The appellant did not identify any evidence that the judge forgot, ignored, or misconceived, which would have resulted in a different decision. Reading the judge's reasons together with the record, it is clear he was well aware of his obligation to consider the best interests of the children and did so. An informed person would not conclude the judge treated the appellant unfairly or failed to give due consideration to her arguments on the facts and law.

Reasons for Judgment of the Honourable Justice Mayer:

- [1] In this high conflict family law case, S.F. appeals three orders made by a chambers judge after a hearing on February 21, 2025. S.F. contends in making the orders, the judge demonstrated bias and erred, in summary, by ignoring or misapprehending material evidence and by failing to apply a best interest of the child analysis.

- [2] S.F. seeks to vary the judge's order that she and her ex-partner, C.W., share parenting time with their two children on a 2/2/5/5 schedule, with an order that parenting time be divided on a week-on/week-off basis, or alternatively, that C.W.'s parenting time be reduced. She seeks to vary the order leaving final decision-making authority concerning the children with C.W. and requiring the parties to retain a parenting coach to resolve disputes, with an order that she be granted final decision-making authority. She seeks to vary the judge's order requiring her to obtain C.W.'s consent to travel internationally with the children, with an order entitling any party to travel internationally with the children on two months' notice. Finally, she seeks an order for special costs.
- [3] Although in her notice of appeal S.F. also sought an order that C.W. be found in contempt for various alleged breaches of a Final Order made March 25, 2024, she abandoned this aspect of her appeal at the hearing before this Court. This was appropriate given S.F. advised the judge at the hearing on February 21, 2025, she was not seeking a contempt ruling.
- [4] For the following reasons, I conclude that the judge did not make the remaining errors alleged by S.F. and would dismiss this appeal.

Background

- [5] The parties were married in 2014, separated in 2018, and were divorced in 2024. They have two daughters who are currently eight and ten. During the parties' marriage, they resided together in Nanaimo, British Columbia. Their relationship began to deteriorate soon after their first daughter was born.
- [6] After the parties separated in November 2018, they resided for a time in different parts of the family home. In December 2018, with C.W.'s consent, S.F. took the children to Ireland, where she had been raised. When she returned, her impression was that C.W. began behaving differently, including no longer contributing to household expenses, intruding into her space in the family home, and threatening her.
- [7] In January 2019, S.F. filed an application in Provincial Court seeking a protection order, exclusive occupancy of the family home, and permission to relocate with the children temporarily to Ireland. The application did not proceed. She filed a further application in Provincial Court for a protection order in February 2019, which also did not proceed, as it had been overtaken by proceedings commenced by C.W. in the Supreme Court on January 11, 2019.
- [8] On January 14, 2019, C.W. obtained an order without notice to S.F., prohibiting her from removing the children from British Columbia, which he served on January 21, 2019. On February 21, 2019, S.F. decided to remove herself and the children from the family home. C.W., believing S.F. was about to flee with the children to Ireland, blocked her path as she was trying to get into a car to leave. S.F. alleged C.W. assaulted her as she attempted to leave and C.W. was arrested but later released. No charges were approved.

- [9] On February 24, 2019, S.F. flew to Ireland with the children in breach of the January 2019 order. On March 4, 2019, C.W. obtained an order from the Supreme Court of British Columbia granting him sole custody of and parenting responsibilities for the children and requiring S.F. to return them to Canada. On April 30, 2019, C.W. flew to Ireland and commenced proceedings in the Irish High Court under the Hague Convention on the Civil Aspects of International Child Abduction, 1343 U.N.T.S. 89, Can. T.S. 1983 No. 35. He was ultimately successful on May 24, 2019, in obtaining an order declaring S.F. had wrongfully removed the children from Canada. S.F.'s appeal to the Irish Court of Appeal was unsuccessful. C.W. returned to Canada with the children on August 25, 2019, and S.F. returned afterwards.
- [10] A series of applications in the Supreme Court of British Columbia and resulting orders followed, which I will not review in detail. Of relevance, on September 4, 2019, the parties consented to an order under which, amongst other things, parenting time and parenting responsibilities were divided equally. After an application heard on December 5, 2019, a revised parenting schedule was implemented. By orders made on April 15 and 29, 2021, the parties were directed to obtain a s. 211 report from Dr. Mary Korpach, a registered psychologist, pursuant to s. 211 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], for an assessment of the children's parenting needs and the parents' abilities to meet those needs, and also for recommendations regarding parenting time.
- [11] On August 15, 2022, Dr. Korpach delivered her s. 211 report. She made a number of recommendations including, but not limited to, the following: the parties transition to an equally shared parenting schedule on a 2/2/5/5 basis within one year, and each retain a parenting coach and seek to resolve disputes concerning the other party with their coach before questioning the other parent or involving the authorities or medical professionals. On October 24, 2022, C.W. filed an application seeking orders to implement Dr. Korpach's parenting recommendations, but his application was adjourned with a direction that the parties secure an early trial date. The trial date was initially set to take place in July 2023 but was adjourned to October 2023, at S.F.'s request.
- [12] A 12-day trial took place in October and November 2023 and February 2024. In a final order pronounced March 25, 2024 (the "Final Order"), the judge granted the parties a divorce and made a number of orders concerning parenting time, parenting responsibility, and the retention of parenting coaches. In particular, the judge made the following orders:
- a) after the latter of S.F. completing 40 sessions with her parenting coach and a report being provided assessing her progress or within one year, the parties would move to a 2/2/5/5 parenting schedule;
 - b) the parties would seek to resolve disputes concerning the children through their parenting coaches but C.W. had final decision-making authority on major decisions involving the children;

- c) S.F. was prohibited from removing the children from Vancouver Island; and
- d) the parties would cooperate in procuring Irish and Canadian passports for the children, which C.W. would hold but would make available to allow the children to travel, so long as the parties first sought assistance of their parenting coaches and agreed on terms to ensure the children's safe return to Nanaimo.

Further, no applications, other than to settle the terms of the judge's order or to enforce it, were allowed for a period of six-months.

[13] On July 2, 2024, S.F. applied to vary the terms of the Final Order. She sought an order that C.W. be found in contempt for failing, primarily, to comply with the terms concerning communication between the parties. S.F. alleged roughly 27 breaches of the Final Order. She also sought to vary the Final Order by transferring final decision-making authority to a parenting coordinator or to her, implementing a different parenting schedule, and altering travel restrictions.

[14] Despite the order prohibiting fresh applications within six months of the Final Order, the judge decided to hear S.F.'s application. In reasons released July 24, 2024, the judge concluded C.W. had not complied with some of the communication and reporting requirements in the Final Order. The judge declined to find C.W. in contempt--largely because he found the parties shared responsibility for the breakdown in communication. The judge also declined to vary the Final Order, as he was not persuaded C.W.'s non-compliance constituted a material change in circumstances justifying the changes sought by S.F.. He concluded the level of conflict between the parties since the Final Order was made, and the resulting distress to the children, were not new. The judge did vary the travel restriction term in the Final Order, allowing S.F. to travel outside Vancouver Island with the children, with the consent of C.W. or a court order.

The February 21 and March 27, 2025 Hearings

[15] On January 13, 2025, S.F. filed a notice of application, seeking approximately 20 orders, and her application was heard on February 21, 2025.

[16] At the start of the hearing, S.F. summarized the relief she was seeking as follows:

THE RESPONDENT: In summary, Justice, I'm asking for the court to confirm the return to 50/50 parenting per your March 2024 order and to transfer decision making to me, both as supported by my parenting coach and for a number of - specific orders that with hindsight over the past 11 months will help ensure truly effective co-parenting, minimal conflict, compliance and an end to litigation all in the best interest of the children.

[17] Given the extensive application record before him, the judge outlined how he expected the application to proceed, including setting out his concern about the parties' repeated attendances at court:

THE COURT: But I'd like to put in some guardrails for both of you. And one of the things I'd like to hear from both of you in the course of your submissions, I know you prepared - you got this to tell me, but I want you to think about your own behaviour and what you would - you got would be willing to see in an order to address the other side's concerns about you. Because I think there are legitimate complaints on both sides

So I think if we could just turn the temperature down for both of you, the kids would benefit, and you would benefit this is not good for you to be coming back here over and over again and for the children. We've got to make some headway. And - and if - if the order isn't doing that, that's fine. We can tweak it. But on the other hand, we can't have an ongoing trial that - that just keeps continuing [ad infinitum].

- [18] In her submissions, S.F. submitted there had been a material change in circumstances, being C.W.'s alleged repeated breaches of the Final Order in the 11 months following its issuance. She confirmed she sought orders that she be granted final decision-making authority to "keep us out of court", that a week on/week off parenting schedule be implemented, and that she be allowed to travel to Ireland with the children for three weeks. S.F. specifically advised the court she was not seeking an order reducing C.W.'s parenting time.
- [19] In the course of hearing submissions from C.W. and S.F.'s reply, the judge pronounced a number of orders orally from the bench. Of relevance to this appeal, he ordered that starting on March 25, 2025, there would be a return to a 50/50 (week on/week off) parenting schedule. The judge declined to vary his previous order granting C.W. final decision-making authority but ordered each of the parties to retain a parenting coach to assist them in resolving disputes.
- [20] The judge ordered that C.W. cooperate in obtaining passports for the children, and that the parties would be allowed to travel with the children internationally, so long as they provided three months' notice of their intention to do so (with S.F. required to pay security of \$750 into court). He allowed S.F.'s application for authorization to travel to Ireland with the children, so long as she provided the required security. The parties were no longer required to provide notice for travel with the children within British Columbia and Alberta, so long as the travel took place during their parenting time. If the parties were to travel with the children elsewhere in Canada, one month's notice would be required.
- [21] To resolve the dispute with respect to communication, the judge ordered that the parties limit non-time-sensitive communication to one occasion per week, raising no more than three issues, with a requirement that the recipient respond within 24 hours, unless they requested additional time.
- [22] On February 24, 2025, the judge forwarded a memorandum to the parties confirming that upon reflection, he decided to change his order pronounced on February 21, to require C.W.'s approval for S.F. to travel outside Canada with the children. He removed the provision allowing S.F. to provide security for international travel, which he stated, "will not suffice to

alleviate the risk that the children, as before, will not be returned". In addition, he revised his order with respect to parenting time, ordering that a 2/2/5/5 parenting schedule would commence on March 25, 2025, as contemplated in the Final Order.

- [23] On March 27, 2025, after receiving a copy of a draft order prepared by the registry, the parties appeared back before the judge. S.F. sought clarification of the judge's order concerning international travel and the parenting time schedule. With respect to travel authorization, she questioned why the judge did not also make it a requirement that C.W. obtain her consent before travelling internationally with the children. She sought clarification whether C.W. was required to provide written consent for her to travel internationally with the children. The judge explained he made the decision to revise his order regarding travel authorization, pronounced on February 21, before it had been entered for the following reasons:

THE COURT:

I remained concerned as I reflected on it about the history of this and the concern that [C.W.] expressed about what would happen in the event that the children were taken to Ireland and not returned. I - I know we discussed a bond during the hearing. And I didn't think in the end that that was adequate protection given the costs and potential risks involved.

- [24] With respect to the parenting time schedule, the judge explained why he reverted back to the 2/2/5/5 schedule contemplated in the Final Order:

THE COURT:

[with respect to the 2/2/5/5 schedule] that was simply because that was my order originally, and I didn't realize that I had made that order as to how would - I had forgotten that that was my order and that it was the recommendation of Dr. Korpach

- [25] The judge initially stated he would make the order instituting a 2/2/5/5 parenting schedule subject to review within six months. Later, the judge advised he was going to leave the order "as it is" and stated he expected the parties to attempt to resolve disputes with the assistance of their parenting coaches. The judge modified the draft order, setting the maximum period of time for a party to respond to communication from the other at three days. The order was entered on April 10, 2025.

On Appeal

- [26] S.F. contends the judge made a number of errors in making the February 2025 order. I would summarize the issues to be addressed in this appeal as follows:

- a) Did the judge ignore or misconstrue material evidence concerning:
 - i. C.W.'s alleged breaches of the Final Order; and
 - ii. alleged family violence, including coercive control and financial abuse?

- b) Did the judge err in law or fact in deciding to order a 2/2/5/5 parenting schedule?
- c) Did the judge err in law or fact in granting C.W. a veto over S.F. travelling outside Canada with the children?
- d) Did the judge fail to provide sufficient reasons for judgment, including reasons setting out a best interest of the child analysis?
- e) Do the judge's reasons give rise to a reasonable apprehension bias in favour of C.W.?

Fresh Evidence Application

- [27] Before turning to the issues in this appeal, I will address S.F.'s July 22, 2025, application for leave to adduce fresh evidence concerning events after the February 21, 2025, order was made.
- [28] In her argument, S.F. set out that she was seeking to adduce this evidence in support of her request for a number of new orders, including an order that C.W. receive significantly less parenting time.
- [29] In her July 21, 2025, affidavit, S.F. includes what she contends is evidence of C.W.'s repeated breaches of the judge's February 21, 2025, order, which demonstrate harm to the children's emotional, physical, and financial well being. Some of the evidence relates to C.W.'s delay in responding to S.F.'s request to travel to Mexico in October 2025 with her parents and the children, and his ultimate refusal of this request. S.F. also included evidence of other alleged non-compliance with the order including: the requirement that he respond to communication from her within the required period of time; failure to establish and deposit funds paid by the children's First Nations band into a trust; failure to pay his share of s.7, special and extraordinary expenses ("s.7 expenses"); failure to participate in a four-way meeting between the parties and their respective parenting coaches; and failure to send a parenting report after parenting time transitions.
- [30] In addition, S.F. seeks to rely upon her affidavit sworn August 12, 2025, setting out allegations of further breaches of the February 21, 2025, order by C.W.. She alleges C.W. refused to sign paperwork to set up a RESP for the children and failed to reimburse s.7 expenses and retain a parenting coach. In addition, she alleges C.W. sought to mislead the court by creating a false record of compliance with the requirement to set up counselling sessions for the children.
- [31] Finally, S.F. seeks to rely upon her affidavit sworn September 2, 2025, setting out what she contends is evidence of non-compliance with court orders and escalating family violence, further justifying a reduction in his parenting time. She described an occasion when C.W. provided an excuse for showing up late for his parenting time, which S.F. did not consider to be credible. She alleges C.W. was not being forthright about his efforts to schedule counselling for the children. She set out evidence concerning an occasion where C.W. did not respond to time-sensitive communication from her regarding arrangements for one of

the children's activities.

- [32] S.F. described two incidents when one of the children was reluctant to go with C.W. during a transition to his parenting time. During the first incident, S.F. lifted the child and placed her in C.W.'s car, which she said she regretted doing. During the second incident a few days later, S.F. said C.W. used force to lift the child into his car because the child refused to go with him voluntarily. She attached still images of the incident to her affidavit, taken from video recorded by her parents.
- [33] In large part, S.F.'s affidavits include what can be fairly described as unsubstantiated argument regarding a number of C.W.'s alleged breaches of the February 21, 2025, order and the resulting impact on the children. During submissions, after questions from this Court, S.F. withdrew her allegation that C.W. had attempted to intentionally mislead the court below about the counselling sessions attended by the children.
- [34] In his responding affidavit, C.W. argues S.F.'s evidence raises "ordinary co-parenting disagreements", which do not go to the correctness of the February 21, 2025 order. He submits the evidence is speculative and does not establish actual harm to the children. In addition, he argues S.F.'s affidavits omit material facts. He raises one example concerning her allegation that he breached the judge's order to establish an RESP for the children. In his affidavit, C.W. attached an email sent to S.F. on August 8, 2025, in which he acknowledged an RESP had not been established for the children, despite the order requiring that be done. He proposed an alternative arrangement, stating, "I remain open to a collaborative solution that respects both the spirit of the order and the best financial outcome for the children. I have enclosed the records of the recent payments made to the girls."
- [35] Applications to adduce fresh or new evidence on appeal are made under Rule 59 of the Court of Appeal Rules, B.C. Reg. 120/2022. Rule 59(1) requires the party seeking to apply for leave to adduce evidence that was not before the court appealed from to file and serve a notice of application, supporting affidavit, and any written argument they seek to rely upon, at least 30 days before the appeal hearing date.
- [36] The test to determine if additional evidence should be admitted on appeal is set out in *Palmer v. The Queen* (1979), [1980] 1 S.C.R. 759, 1979 CanLII 8. The Palmer test includes consideration of the following criteria:
- (1) The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial.
 - (2) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial.
 - (3) The evidence must be credible in the sense that it is reasonably capable of belief.
 - (4) It must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.

Palmer, at 775.

- [37] Several issues arise in this application to adduce new evidence.
- [38] As a threshold issue, S.F. did not comply with the 30-day notice requirement in Rule 59. C.W. has sworn he was not served with S.F.'s July 21 and August 12 affidavits until August 13, 2025. S.F. confirmed she did not serve her September 2 affidavit until September 3 or 4, 2025. This late service prejudiced C.W.'s ability to respond to the allegations made against him.
- [39] More importantly, the majority of S.F.'s new evidence does not bear upon a decisive or potentially decisive issue in this appeal. The main thrust of her evidence is directed towards her request that this Court make an order significantly reducing C.W.'s parenting time, although she also seeks to vary the judge's order with respect to primary decision-making authority. With respect to the first request, as I set out earlier, S.F. specifically advised the judge she was not seeking a reduction in C.W.'s parenting time at the hearing on February 21, 2025.
- [40] Admission of additional evidence on appeal is rare, to ensure the matters in dispute narrow, rather than expand as the case proceeds through the appeal process. The overarching question is whether admitting the evidence is in the interests of justice: *R. v. Warsing*, [1998] 3 S.C.R. 579, 1998 CanLII 775 at para. 56; *Barendregt v. Grebliunas*, 2022 SCC 22 at para. 31. Determining the interests of justice question requires attention to the principles of finality, efficiency in the administration of justice, and respect for the role of the trial court: *Jiang v. Shi*, 2017 BCCA 232 at para. 8.
- [41] In general, courts have taken a "slightly more elastic approach" to the admissibility of fresh or new evidence in family cases to ensure relevant evidence is available to allow the court to conduct a best interest of the child analysis: *Barendregt*, para. 66. But, the existence of legislative schemes for varying parenting orders that address changes in circumstances post trial (and I would add post-application) should also be taken into consideration. This is because the admission of new evidence may be unnecessary as "litigation about ongoing parenting arrangements remains subject to court oversight": *Barendregt*, at para. 73. In this case, S.F. has recourse to the court below to seek a variation of parenting orders, for example, under s. 45(1) of the FLA, which provides the court with the jurisdiction to make orders concerning the allocation of parenting responsibilities, parenting time, implementation of an order, or resolution of disputes respecting an order.
- [42] It is not the function of an appellate court to retry an application heard in a court below. As was stated at para. 77 of *Barendregt*:

An appeal is designed to determine whether there is an error in the trial decision. In other words, the correctness of the previous decision -- and not the implications of subsequent events -- is the focal point in an appeal. This assessment is inherently retrospective, with the review typically circumscribed within the four corners of the judgment below. Here, finality in the original decision is preserved unless the court identifies a material error.

- [43] Admission of S.F.'s new evidence will result in an expansion of the matters in dispute in this appeal. As well, given its primary role in overseeing compliance with and enforcement of its orders, the court below is better suited to address S.F.'s allegations of breaches of the February 21, 2025, order by C.W.. The admission of the new evidence sought to be adduced by S.F. would, in my view, unnecessarily undermine the finality and order of the court below: Barendregt, at para. 74.
- [44] For these reasons and considering S.F.'s failure to comply with the notice requirement set out Rule 59(1), I would dismiss the application.

Analysis

Standard of Review

- [45] An appeal lies from an order or judgment and not from the reasons for judgment, although errors found in reasons for judgment may inform the validity of an order appealed: Rabey v. Bowen, 2022 BCCA 148, at para. 9; J.P. v. British Columbia (Children and Family Development), 2017 BCCA 308, at para. 60.
- [46] It is helpful to set out which of the judge's February 21, 2025, orders are at issue in this appeal:
1. As of March 25, 2025, the parties will move to an equally shared parenting schedule on a 2/2/5/5 schedule, as contemplated by the March 25, 2024 final order.
 4. The parties will each retain parenting coaches who are willing to assist in resolving conflicts that arise from time to time. They will instruct their parenting coaches to meet by way of video conference with all four individuals attending, whenever either party perceives that there is a conflict that cannot be resolved. Either party may ask to have such a conference convened, but no more often than once per month. The persons chosen as coaches must be a registered clinical counsellor.
 12. The parties will be able to travel with the Children as follows:
 - a. within British Columbia and Alberta without notice, provided it is within their own parenting time;
 - b. within the rest of Canada, with one month's notice; and
 - c. internationally, with three months notice.

However, [S.F.] must obtain the prior written approval of [C.W.] for all travel outside Canada with the children. The parties will, within one month of being asked, complete whatever form the other party asks for to facilitate permitted travel.

- [47] Each of these orders involve parenting arrangements. Such decisions are inherently an exercise of discretion. As a result, this Court must act with restraint and only intervene where there has been a material error, a serious misapprehension of the evidence, or an error in law or principle. An omission is only material if it leads to the reasoned belief that the trial judge forgot, ignored, or misconceived the evidence in way that affected the result: *Van de Perre v. Edwards*, 2001 SCC 60, at paras. 11, 13 and 15; *L.D.B. v. A.N.H.*, 2024 BCCA 61, at para. 30.
- [48] Absent one of these errors, "this Court has no jurisdiction to interfere with the exercise of the trial judge's discretion in determining what custodial arrangements are in the best interests of a child": *Yu v. Jordan*, 2012 BCCA 367 at para. 9, referring to *Van de Perre* at paras. 14-15.

Did the judge ignore or misconstrue material evidence?

- [49] In my understanding, distilling S.F.'s arguments down, she contends the judge erred as follows:
- a) by ignoring evidence which she submits established repeated non-compliance with the terms of the Final Order by C.W.;
 - b) by misconstruing evidence in determining that her communications were inappropriate or excessive; and
 - c) by ignoring evidence of family violence including "financial abuse" or other "coercive behaviours".
- [50] I will deal first with S.F.'s submissions that the judge ignored or misconstrued evidence of non-compliance with the order requiring that the parties respond to communication from the other in a timely manner and how they communicate.
- [51] A contextual reading of the judge's comments during the February 21, 2025, hearing demonstrates he was aware of S.F.'s evidence concerning alleged breaches of the order requiring the parties to respond to communication in a timely manner. The judge stated as follows early in the hearing:

THE COURT:

And as I said to you in my last judgment, the last time you were before me, the -- the -- it was a term of my order that you respond quickly and promptly particularly for trial-related communications. But that requires that you both be disciplined about the communication so that they're capable of being responded to. And so we need to see some progress on that front. Both on -- on -- your complaint, -- [S.F.] that you need answers and [C.W.]'s complaint that you can't overwhelm him with a constant barrage so that all he's doing is responding to emails and trying to sift through them to figure out what really is in here that is a point that I need to respond to

[52] After further exchanges between the judge and S.F., she appeared to acknowledge it would be appropriate for her to curtail the number of times she sought to communicate with C.W.:

THE RESPONDENT:

That -- these are -- I -- I can appreciate your point that I could -- I would absolutely agree to having one weekly communication of -- of a -- if there's any whatever broad things are coming up that need to be discussed.

[53] Given these exchanges and the fact that in the February 21, 2025 order, the judge made specific orders regarding communication consistent with S.F.'s concession, I would not accede to her submission the judge ignored this evidence.

[54] Similarly, with respect to S.F.'s allegation the judge ignored evidence showing C.W. breached the order requiring him to take the children to counselling, I note the following exchange:

THE RESPONDENT: You gave him a chance in July, and he told you right here when we appeared before you, he told you he was working with his coach. He hasn't been working with his coach. He told you he's getting the girls counselling. He hasn't been. My point is I'm back here, and this has taken a huge toll on me. It's too much.

THE COURT: Okay. When we leave today, we will have done something about that. So there -- there is going to be progress on the communications, so we'll make orders today to ensure that that improves. Counselling, I'm on board with that. I -- I've wanted to see that happen. If it has -- it sounds like it's -- it's been -- it's underway.

[55] From this exchange and the terms of the February 21, 2025 order, it is apparent the judge considered the evidence concerning alleged non-compliance with the requirement that the parties facilitate counselling for the children. He ordered the parties to arrange for the children to have counselling for at least 12 months, to instruct the counsellor to report to them, and to attend sessions as the counsellor advises.

[56] With respect to S.F.'s allegation the judge ignored evidence demonstrating C.W. breached the order requiring him to pay his share of s.7 expenses, I note the following exchange, which occurred after the judge questioned S.F. about not paying child support pursuant to his order:

THE RESPONDENT: Well, I felt, Justice, that -- that it was -- I -- I disagree that I was taking to my own hands. I think not following your orders was taking -- that the claimant took it into his own hands by not following your orders.

THE COURT: Which order do you mean?

THE RESPONDENT: The Section 7 expenses and to bring disagreements about funding -- major disagreements to the coach.

THE COURT: So was it agreed that the lacrosse equipment was a Section 7 expense?

THE RESPONDENT: The registration. Sorry. The -- no. We haven't agreed anything. And yet, he'd agreed to her playing lacrosse. He hadn't paid the school fees. He was not responding to me whatsoever. These things had to be paid for.

[57] Again, from this exchange and others in the transcript, as well as the terms of the February 21, 2025, order, it is apparent the judge considered the evidence concerning alleged non-compliance with the order concerning payment of s. 7 expenses. Amongst other things, he ordered the parties would each have the right to identify one activity for each child with the costs to be shared so long as they provided notice with respect to cost, subject to an agreement between the parties regarding additional activities.

[58] With respect to S.F.'s allegation, the judge ignored evidence regarding C.W.'s breaches of the order requiring him to engage with a parenting coach, the following extracts from the transcript make it clear the judge was aware of and considered relevant evidence:

THE COURT: But I -- but I thought I just heard about his work that he's being doing with his therapist.

THE COURT: But he told me he's been doing it since -- well, before I got involved.

THE COURT: All right. Well, I think there should be some transparency about this My previous order didn't have specifics about how many sessions.

COURT: Well, what's Ms. Hamel? Is she not a counsellor?

THE RESPONDENT: She acts as a parenting coach and has training in that. But either way, aside from that, he didn't involve her for five months until I made my application to come before you.

THE COURT: All right. So -- so what would you like to see happen?

[59] Again, from this exchange and para. 4 of the February 21, 2025, order, it is apparent the judge considered the evidence concerning alleged non-compliance with the order requiring the parties to engage with a parenting coach. The judge ordered the parties to retain a parenting coach to resolve conflicts regarding the children and set out specifics regarding how and how often the parties would meet with their respective coaches.

[60] Finally, S.F. contends the judge ignored evidence of conduct by C.W., which she alleges constituted family violence, including coercive control and financial abuse. During submissions before the judge on February 21, 2025, S.F. advised on two occasions that she was not seeking a finding of family violence on C.W.'s part. One example is as follows:

THE RESPONDENT:

While I do believe, Justice, that the claimant is in contempt of court for willful breach of the order and that his behaviour could constitute family violence, I'm not seeking such findings today. I don't want the court to get bogged down in the contempt. I don't want to escalate conflict. That's why instead, in the interest of ending litigation, I remain hopeful that sharp corrective action that reflects both parties' demonstrated capabilities and both parties' demonstrated ability

to comply and orders that are designed to eliminate opportunities for abuse will finally allow healthy co-parenting to become a reality.

- [61] Given that S.F. did not seek a finding of family violence, it is entirely understandable that the judge did not address the issue in his oral reasons. In addition, C.W. would not have felt it necessary to respond to allegations of family violence, as they were not raised against him.
- [62] Typically, because a Court of Appeal is a court of error, it is reluctant to engage issues not advanced in the court below: *Stahlke v. Stanfield*, 2010 BCCA 603 at para. 22. Ultimately, the court is required to balance the interests of justice in deciding whether to allow a new argument to be raised: *Zeligs v. Janes*, 2016 BCCA 280 at para. 66.
- [63] In my view, due to the prejudice that would result, it is not in the interests of justice to allow S.F. to raise family violence as a new issue on appeal. As S.F.'s claim of family violence is not at issue on this appeal, her argument that the judge erred by not considering evidence of family violence falls away.
- [64] To conclude this issue, I am not satisfied S.F. has identified evidence the judge forgot, ignored, or misconceived--which would have resulted in a different decision. S.F. impermissibly asks this Court to reweigh the evidence that was before the judge and arrive at a different conclusion, which is not consistent with the deferential standard of review that applies in the context of parenting orders. I would not accede to this ground of appeal.

Did the judge err in law or fact deciding to order a 2/2/5/5 parenting schedule?

- [65] S.F. contends, in general, that the judge erred in law deciding to maintain the 2/2/5/5 parenting schedule set out in the Final Order because he did not conduct a best interest of the child analysis in making this decision. As part of this argument, S.F. contends the judge erred in relying on the s. 211 report prepared by Dr. Korpach, which by the time of the February 21, 2025, hearing was four years old.
- [66] S.F. also contends the judge failed to consider allegations that C.W. committed a number of acts of family violence in deciding to order a 2/2/5/5 parenting schedule. On this latter point, for the reasons set out earlier, I would not accede to this argument on the basis that it was not raised in the court below.
- [67] Dealing first with the judge's reference to Dr. Korpach's report, I would not accede to S.F.'s argument that the judge relied only on this report or erred in relying on it at all. I will explain why.
- [68] In his February 24, 2025, memorandum to the parties, the judge explained he was ordering a 2/2/5/5 parenting schedule as "contemplated in [his] order of March 25, 2024 and Dr. Korpach's report" [emphasis added]. During the follow up hearing on March 27, 2025, the judge confirmed that when he pronounced the order during the February 21, 2025 hearing, he had forgotten his previous order, which contemplated that a 2/2/5/5 would be implemented within one year, consistent with the recommendation of Dr. Korpach.

- [69] I see no error of law or fact in the judge relying on Dr. Korpach's report. This report was prepared to determine the children's needs and in consideration of the parents' ability to satisfy those needs. S.F.'s primary objection to the judge's reliance on this report appears to be that it is a four-year-old report. In fact, Dr. Korpach provided her report to the parties in August 2022 and the hearing and reasons that are the subject of this appeal took place in February 2025--approximately two-and one-half years later. In any case, in my view, the judge's reasons for judgment pronounced on March 25, 2024, demonstrate he was aware of the advantages and disadvantages of relying on s. 211 reports:
- [66] This court has previously observed that reports prepared pursuant to s. 211 of the FLA, and its predecessors " are, almost invariably, a valuable source of information for a court faced with the onerous task of making fundamentally important decisions about the welfare of the child in the wake of a marital breakdown" (see *Smith v. Smith*, 2014 BCSC 61, at para. 12). In *Wu v. Sun*, 2006 BCSC 1891, such reports were described as the "eyes and ears" of the court.
- [67] I would add that a report of this kind will almost always offer valuable insight, beyond what the court process may yield, by virtue of the fact that the author has specialised expertise and has been able to spend far more time interacting directly with the parties, the children and others in a less formal and constrained setting than a courtroom.
- [68] However, it is also clear that, despite these advantages, the court is not bound by the conclusions and recommendations in a s. 211 report, but must make its own independent assessment: *K.B. v. J.B.*, 2015 BCSC 704 ...
- [69] Having reviewed Dr. Korpach's report in light of the evidence adduced by the parties at trial, including Dr. Korpach's testimony, I am not persuaded that Dr. Korpach displayed any undue bias or that her conclusions are unreliable, on the grounds suggested by [S.F.] or otherwise. On the contrary, I am satisfied that the analysis, conclusions and recommendations in the report rest on a sound evidentiary, analytical and clinical footing.
- [70] With respect to S.F.'s submission that the judge failed to conduct a best interest of the child analysis, I would not accede to this argument. Although the judge did not specifically refer to the mandatory best interest of the child considerations set out in s. 37 of the FLA, I would conclude, reading his February 21, 2025 reasons and his previous reasons for judgment, he was well aware of his obligation to consider the best interests of the children and did so.
- [71] By way of example, some relevant comments from the judge during the February 21, 2025 hearing are as follows:
- a) With respect to the parenting time:
- I -- I -- I fully expect, [S.F.], that from your point of view, the children need more time with you, and they want -- they'll benefit from having more of you in their lives, and I'm prepared to accept that, and that's what was in my original order. But on the other hand there -- you know, there needs to be improvement on how you interact and how you resolve conflict.

b) With respect to communication between the parties:

it was a term of my order that you respond quickly and promptly particularly for trial-related communications. But that requires that you both be disciplined about the communication so that they're capable of being responded to. And so we need to see some progress on that front. Both on -- on -- your complaint, -- [S.F.] that you need answers and [C.W.]'s complaint that you can't overwhelm him with a constant barrage so that all he's doing is responding to emails and trying to sift through them to figure out what really is in here that is a point that I need to respond to, what really matters to the children that we need to address as opposed to all of these other things that get dredged up.

And try and avoid the mudslinging because I know -- you're -- you're both feeling aggrieved. I get it. And you both have lots to tell me about how hard it's been, so let's try and improve things. Let's try and make the most of our time and think about what would be useful to both of you and particularly the children because all of us have to be focused on them and what's going to improve their lives in all of this; okay? Bearing in mind that I think you're going to get back to equal time in March.

c) With respect to sharing of s.7 expenses:

So I'm receptive of putting some limits around your communications to address that. We can talk about Section 7 expenses for the children and how they get funded. That's -- that's important. And I think there's room for agreement. I think you both want what's best for the children, so we can talk about what you spend on them. And -- and how you share those expenses. And -- and I think you're going to have to come up with a mechanism for agreeing on what is an appropriate expense.

d) With respect to the children moving and back and forth between the parties' homes:

[C.W.] has a legitimate complaint about putting pressure on the children about what gets taken back and forth from house to house. That's not good for them either to put them in the middle of that. So we've got to see some progress. So those - those are the kind of list of things

[72] In conclusion on this issue, I am not satisfied S.F. has identified an error of law or evidence that the judge forgot, ignored, or misconceived. Again, I am of the view that S.F. impermissibly asks this Court to reweigh the evidence concerning allocation of parenting time and arrive at a different conclusion than the judge. I would not accede to this ground of appeal.

Did the judge err in law or fact in granting C.W. a "veto" over S.F. travelling outside Canada with the children?

[73] S.F. takes issue with the judge's finding of fact that there was a risk she would not return to Canada if she was authorized to travel to Ireland with the children. She submits the s. 211 report prepared by Dr. Korpach, despite being four years out of date, confirms she was not a flight risk. S.F. argues the evidence demonstrates C.W.'s reasons for refusing to consent to international travel had nothing to do with his concern that she would not return to Canada but because of "his need for control, obstruction and coercion".

[74] There was evidence before the judge concerning the basis of C.W.'s opposition to S.F. taking the children to Ireland. In his affidavit filed February 18, 2025, C.W. stated he opposed a three-week trip "due to the young ages of our daughters and the history of past and ongoing concerns regarding S.F.'s decision-making and compliance with court orders". He sought an order, if international travel was authorized, that S.F. post a financial bond--as had been recommended by Dr. Korpach. With respect to whether S.F. remained a flight risk, he referred to Dr. Korpach's report where she stated:

[S.F.] does not appear to be an immediate flight risk, given the current stability of her work, home, and relationship. However, should external circumstances deteriorate (e.g., the current relationship breaks down, her business falters), impulsivity and self-focus will likely prevail, and the children will need to be protected against her impulsivity. Similarly, with any significant negative life stressor, consideration should be given to protecting the children from poor verbal boundaries from [S.F.]. Should she wish to travel across borders with the children, consideration should be given to requiring her to post a financial bond, returnable upon the safe and timely return of the children.

[75] S.F. also contends the judge erred in law by not considering that denying her authorization to travel to Ireland with the children violated their s. 6(1) Charter rights and their rights protected by Article 8 of the UN Convention on the Rights of the Child, 1577 UNTS 3, Can TS 1992 No. 3.

[76] S.F.'s argument the judge's order that she obtain C.W.'s consent to travel internationally breaches Article 8 of the UN Convention on the Rights of the Child was not raised in the court below. As I set out earlier, this Court will generally not consider an argument raised for the first time on appeal and I do not consider it to be in the interest of justice to allow S.F. to advance this new argument now.

[77] At the hearing on March 27, 2025, S.F. did make brief submissions on infringement of the children's mobility rights under s. 6(1) of the Charter arising from the judge's order regarding international travel:

THE RESPONDENT:

As an immigrant, I'm the only parent with family overseas. And without fair and achievable parameters for international travel, I believe this would be a Charter violation and exposes the children to family violence.

THE RESPONDENT: There are -- there were [indiscernible - away from microphone] exactly made that would not deny my children the right to travel outside of Canada, which is a protected Charter right, and their access to half of their culture. It is -- and I've already talked -

[78] It is apparent from the judge's response that he did not ignore S.F.'s submissions or relevant evidence:

THE COURT: [S.F.], you've made the submission, and I understand why you're concerned about this. [C.W.], I -- are there conditions that you would be prepared to agree to allow international travel?

After hearing from C.W., the judge confirmed the revised order set out in his February 24, 2025 memo, requiring C.W.'s approval for international travel and removing S.F.'s ability to post security.

[79] S.F. characterizes the judge's order with respect to international travel as granting C.W. with a "veto". In my view, S.F. mischaracterizes the judge's order. Although he gave C.W. final decision-making authority with respect to international travel, his reasons demonstrate he expected the parties to attempt to resolve disputes regarding international travel through negotiation. In particular, during the hearing on March 27, he advised the parties they should seek to work through this issue with their parenting coaches, and if they were not able to agree, they could come back to court.

[80] On this issue, I am not satisfied S.F. has identified a serious misapprehension of the evidence, or an error in law or principle justifying appellate interference. I would not accede to this ground of appeal.

Reasonable Apprehension of Bias

[81] S.F. contends her exchanges with the judge during the February 21, 2025, hearing demonstrate a reasonable apprehension of bias by the judge. Many of the examples raised by S.F. are blended with her argument concerning her allegations that the judge either ignored or misconstrued material evidence. I will summarize her key allegations.

[82] During an exchange with S.F. concerning material change of circumstances, the judge stated, "I think you both have to accept you're both good people, and you both want the best for your children." Shortly afterwards, seemingly to explain the court's role in a family case, the judge stated, "[t]he problem is the court isn't--it's a very blunt instrument as you both have--have already seen. It's expensive. I'm not a trained family therapist, so I can only help you so much." On another occasion, when discussing with S.F. how she intended to review relevant law, the judge asked S.F. to summarize what she wanted to say concerning the law. S.F. contends these comments by the judge "illustrate a pattern of clear bias" against her.

[83] S.F. takes issue with other remarks she contends show bias. These include the judge appearing to sympathize with C.W.'s responses to S.F.'s complaints about alleged breaches of terms in the Final Order regarding communication style and frequency, questionable

accusations of improper behaviour, and sharing of s. 7 expenses. S.F. refers to the judge's decision to permit C.W.'s mother to speak in court, as he did not provide the same permission to her father. She also refers to the judge's comment at the March 27, 2025, hearing, which suggested he did not recall previously ordering that a parenting coach was required to approve C.W.'s refusal to allow S.F. to travel internationally with the children. Finally, S.F. contends the judge did not provide her with an opportunity to review relevant caselaw when he asked her to "summarize what you think you want to tell me about the law".

[84] S.F. contends when the record is considered as a whole, the disparity between the deference shown by the judge to C.W.'s evidence and hers demonstrates bias.

[85] The following summary of the test for reasonable apprehension of bias was provided in a recent decision of this Court, *L.D.B. v. A.N.H.*, 2023 BCCA 480:

[72] In *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25, at para. 20, the Court reaffirmed the test for a reasonable apprehension of bias:

what would an informed person, viewing the matter realistically and practically - and having thought the matter through - conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.

[73] The Court also set out principles applicable to allegations of bias. There is a strong presumption of judicial impartiality that is not easily displaced. The test requires "a real likelihood or probability of bias" as a result of which, a judge's individual comments should not be viewed in isolation. Allegations of perceived judicial bias must be considered in the context of the circumstances and in light of the whole proceeding: *Yukon Francophone* at paras. 25-26.

[86] Having reviewed the exchanges between the judge and the parties during the February 21 and March 27, 2025, hearings, I am not satisfied an informed person would conclude the judge did not treat S.F. fairly or give due consideration to her arguments on the facts and law. Rather, the judge took great pains to encourage collaboration and offered both parties an opportunity to express their concerns.

[87] I would not accede to this ground of appeal.

Did the judge fail to provide sufficient reasons for judgment?

[88] S.F. contends the judge failed to provide sufficient reasons. Appellate intervention on this basis is only warranted when the reasons, considered with the record before the judge, do not permit meaningful appellate review: *Zhao v. Fang*, 2022 BCCA 227 at para. 22.

- [89] In this case, the judge provided oral reasons during the course of submissions made before him. He did not provide written reasons for judgment. This is understandable, given the judge had previously made the Final Order (and subsequent orders for which he had provided extensive written reasons), he was acting in a de facto case management role, and what was before him on February 21, 2025, was, in essence, a variation application.
- [90] With respect to the level of detail required in reasons, judges are not required to set out every piece of evidence or address every argument advanced by the parties: *McKenzie v. Lloyd*, 2018 BCCA 289 at para. 35. This Court has stated, "[o]ne does not expect to find in oral reasons the depth of analysis displayed in a reserved [written] judgment. This does not mean evidence was overlooked or misunderstood. For there to be such an error, its presence must be demonstrated with particularity": *Garda v. Osborne*, 72 B.C.A.C. 101, 1996 CanLII 2963 at para. 31.
- [91] In my view, the only alleged deficiency in the judge's reasons particularized by S.F. concerns an alleged failure to address the best interests of the child factors set out in s. 37 of the FLA. Although the judge did not specifically refer to these factors during the course of the hearings on February 21 or March 27, 2021, the reasons, together with the record, are sufficient to permit appellate review. As set out earlier, I would not conclude the judge failed to conduct this analysis or failed to provide sufficient reasons.
- [92] I would not accede to this ground of appeal.

Disposition

- [93] I would dismiss the application to adduce fresh evidence, and I would dismiss the appeal.

"The Honourable Justice Mayer"

I AGREE:

"The Honourable Justice Riley"

I AGREE:

"The Honourable Justice Edelman"

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