

CANADA / JUDGMENT

S.K.B. v. J.S.B.

2025 BCSC 2308

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 2308 S.K.B. v. J.S.B.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.K.B. v. J.S.B.,

2025 BCSC 2308

Date: 20251126

Docket: E69891

Registry: New Westminster

Between:

S.K.B. also known as

A.S.K.

Claimant

And

J.S.B.

Respondent

Before: The Honourable Justice Armstrong

Reasons for Judgment

Counsel for the Claimant:

J.A. Thomson

Counsel for the Respondent:

G.K. Kang

Place and Date of Hearing:

New Westminster, B.C.

July 23, 31, 2025

Place and Date of Judgment:

New Westminster, B.C.

November 26, 2025

Introduction

- [1] On this application the respondent applies for various parenting orders concerning the two children of the parties' marriage and exclusive occupancy of their family home. The claimant seeks an order for retroactive child support under the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.).
- [2] The claimant and respondent are each 54 years of age. They were married July 31, 2005 and separated April 19, 2024. They have two children, E.B., born May 2007 (18 years old), and A.B., born January 2014 (11 years old).
- [3] This action is set for trial in September 2026.
- [4] There has been an alleged history of physical violence against the claimant by the respondent. There were incidents in 2024 and approximately 2018 but there have been no threats or issues since the parties separated.
- [5] The claimant obtained a protection order April 18, 2024; that order was extended several times but eventually vacated by Justice Lamb on January 30, 2025 (the Lamb order). In the interim, the respondent is alleged to have breached the protection order and is currently awaiting trial in Provincial Court on criminal charges relating to that alleged breach.
- [6] The respondent seeks a variation of the parenting terms in the Lamb order. He seeks terms of a new order that the children reside primarily with him and that the claimant's parenting time should be supervised by a professional supervisor and should be no more than two hours per week.
- [7] The respondent's alternative claim is that the parties should share parenting with an agreed upon schedule but the respondent should be granted sole parenting responsibilities as set out in s. 41 of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. He believes the claimant has abrogated her parenting responsibilities with regard to E.B.
- [8] The respondent contends that the claimant has failed to manage E.B.'s behaviours and that he is at risk of further criminal involvement because of the claimant's mismanagement of his adolescent behaviours. E.B. was recently convicted of serious criminal offences and is

continuing to flout his responsibility to the court while on an intensive support and supervision order. He was also charged with breach of his release conditions before entering guilty pleas on his other charges. The respondent argues that the claimant's failure to provide proper care and discipline disqualifies her from a parenting role with both children.

- [9] In addition to the parenting orders, the respondent seeks exclusive possession of the family home.
- [10] The respondent recognizes that the court cannot compel E.B. to live in a place without the child's consent and that in less than one year he will be 19 years old, at which point it will be beyond the parties' ability to control or influence his behaviours without his cooperation.
- [11] The respondent's chief concern is that the claimant's shortcomings and permissiveness with E.B. will be repeated with A.B. and, in her care, he will be at risk of following his brother into criminality.
- [12] The respondent is requesting an order for a s. 211 inquiry under the FLA and a "Views of the Child" Report.
- [13] The claimant contends that the parenting issues are mostly resolved by the parties' agreement to share a parenting schedule dividing the children's care equally. She contends the respondent unfairly blames her for E.B.'s difficulties with the law.
- [14] She supports the referral of the parenting issues concerning A.B. for a s. 211 report. She contends that A.B. does well in school and enjoys his social connections there. The children see the respondent regularly and with an equal division of parenting time A.B. will not be faced with the challenges of their elder son.

Background

- [15] On April 18, 2024 a protection order was issued by Associate Judge Nielsen without notice to the respondent. The respondent was absent from Canada at the time.
- [16] On June 7, 2024 Associate Judge Krentz extended the protection order on a without prejudice basis to permit the hearing of the respondent's application to vacate the protection order and vary the parenting arrangements.
- [17] The Lamb J. protection order was terminated and the court set weekly overnight parenting time for the respondent, granted conduct orders and directed the parties to complete the Parenting After Separation course within three months. The respondent was prohibited from attending at the family home.
- [18] The background to this family law dispute centred on the respondent's concerns that E.B. is out of control and his care has been mismanaged by the claimant and that the respondent is better qualified to exercise the bulk of parenting time for both children.

- [19] The claimant has remained living in the family home in Surrey, BC and the respondent lives in a new residence he obtained after April 2024. She has made all of the expenses associated with the family home but the respondent is applying for exclusive occupancy of the family home.
- [20] In the course of criminal proceedings against E.B. he entered into an undertaking to appear in Provincial Court on October 23 on allegations of extortion, criminal harassment and uttering threats to cause death or bodily injury between August 26, 2024 and October 11, 2024. He was charged with committing these offences and released on bail. On November 6, 2024, E.B. was released to the claimant on conditions including obedience to a house arrest condition requiring that he remain inside his residence at all times unless in the company of his mother, with written permission of his youth worker or obtaining healthcare.
- [21] The respondent claims he was not informed about E.B.'s criminal charges at the time and argues that the claimant has been excessively liberal in her care and monitoring of E.B. and that she is likely to be excessively liberal and inattentive to the needs of A.B. in the future.
- [22] The claimant said that E.B.'s mental health and legal problems started well before the separation and the respondent was also ineffective in managing E.B. He was absent from Canada from April 10, 2024 to April 19, 2024 while visiting India. It appears that before leaving, the parties resided together in their Surrey home. When he returned, he was served with the notice of family claim and a protection order granted April 18, 2024. This protection order was extended on May 16, 2024 and extended again June 7, 2024.
- [23] The parties attended a Judicial Case Conference ("JCC") on September 27, 2024 where various orders were made including an interim without prejudice order that the respondent pay child support to the claimant of \$600 per month commencing October 1, 2024.
- [24] The protection order was extended over the year but eventually vacated by Justice Lamb on January 30, 2025.

The Current Application

- [25] The respondent's sixth affidavit ("Affidavit 6") made June 26, 2025 sets out the basis for this application, focusing on E.B.'s activities while on bail and on probation, the respondent also focuses on A.B.'s alleged excessive time expended on his electronic devices.
- [26] The respondent's Affidavit 6 contains 73 paragraphs beginning with the usual affirmation that the respondent had personal knowledge of the facts and matters referred to except where they are stated to be based on information and belief "and where so stated I verily believe the same to be [true]".
- [27] Overall, this affidavit contains multiple assertions of fact based on impermissible hearsay, argument and speculation. Some of these include the following:

- a) In paragraph 16 of Affidavit 6, the respondent makes assertions of fact which he says he learned through E.B.'s probation officer and from a Pre-Trial Report attached to his affidavit that does not indicate the name of the author nor that the facts he asserts were based on information and belief of some other person. Moreover, in that paragraph he asserts that E.B. was driving with a learner's license, making late-night movements, using marijuana, vaping and drinking (often with the claimant present). Most likely he is relying on information from some other source or might have been speculating, but in either case he does not cite the name of the author nor does he affirm that these conclusions are based on information and belief.
- b) The respondent attached a document that purports to contain information, apparently from a GPS without explaining where or how he obtained this information. He might have the ability to track his son's movements but does not address the process used to obtain the data. Without any description of the source or mechanism of the information or the connection with E.B. or the source of his "information and belief" I cannot rely on those assertions.
- c) At paragraph 17, the respondent contends the claimant sold a vehicle "below market value" without confirmation of the source of that information.
- d) At paragraph 20 the respondent discusses information he relayed to E.B.'s probation officer indicating that E.B. would "pick up his brother after parenting by himself regularly in November and December 2024 despite court imposed restrictions" without identifying the source of that information.
- e) At paragraph 20 the respondent alleges that E.B. purchased a cell phone and was allowed to use same during his mother's absence. This allegation appears based on information and belief but the source of the information is not mentioned.
- f) At paragraph 23, the respondent alleges that E.B. drove a vehicle in violation of his bail conditions. It is clear the respondent was not present and does not indicate the source of that information.
- g) At paragraph 35, the respondent alleges that the claimant and her mother took E.B. to a car dealership in breach of his bail restrictions. He attaches a document purporting to prove the visit to the dealership. The origins of the document and information alleged by him to be true are speculative and included without mention of the details. The respondent did not observe this fact himself, nor did he indicate where the information came from.
- h) At paragraph 42, the respondent refers to a report under the Youth Criminal Justice Act, S.C. 2002, c. 1, evaluating E.B. The respondent contends that E.B. spent five months under two separate house arrest orders which were consistently breached while under the claimant's supervision. There is no basis for the conclusion that she was present during these breaches nor is the source of the firsthand observation of this behaviour identified.

- i) At paragraphs 45 and 46, the respondent contends that E.B. was breaching his bail conditions without providing the source of that information and belief. He contends he monitored E.B.'s locations without describing how this was accomplished. He did not disclose the mechanism he may have used to identify E.B.'s locations as alleged. This information cannot be relied upon on this application.
 - j) At paragraph 46, the respondent contends that he witnessed E.B. driving a Mercedes automobile and drove in the car with E.B. without objection notwithstanding breaches of his sentence conditions. At paragraph 48 the respondent alleges that the claimant made efforts to alienate E.B. from himself without any factual assertions or admissible evidence given to support that allegation.
 - k) At paragraph 51, the respondent said that E.B. was permitted to attend a community college program from 6 p.m. to 9 p.m. He then says E.B. is "not attending the program and is instead using the school excuse to stay out late and drive, continuing to breach his conditions". The allegations in paragraph 51 are either argument or speculation, or based on some information and belief not disclosed in the affidavit.
 - l) At paragraph 55 the respondent engages in speculation and argument accusing the claimant and her mother of "emotional abuse" and "the threshold of family violence".
 - m) Paragraph 57 includes further speculation including the claimant's "passive or active approval" of E.B.'s behaviour.
 - n) At paragraph 59 the respondent contends the claimant is often absent from the home for a full week at a time or away for multiple days. Once again, these assertions are obviously not based on the respondent's personal observation but some form of hearsay from persons not identified in the affidavit.
 - o) At paragraph 60, the respondent engages in speculation and argument including the screen use history of A.B. based on documents attached to the affidavit. His knowledge of A.B.'s screen use is said to be based on observation and on "screenshots" and information received from A.B. However, the time frames mentioned do not correspond with the information in the attached exhibit.
 - p) Paragraph 73 represents argument and impermissible invasion of the claimant's communications with her solicitor, which should not have been included in this affidavit insofar as there was a breach of solicitor-client privilege.
- [28] The claimant's only affidavit in response to this application contains denials of facts set out in the respondent's affidavit. She explained that E.B. requested that she not discuss his criminal charges with his father. While now recognizing this was an error, she did not inform the respondent about the charges and limitations on E.'s activities at the time.

- [29] The claimant is also aware that E.B. does attend his community college program on a regular basis and reports that the probation officer regularly attends the home to confirm E.B.'s presence.
- [30] She observes that E.B. has improved his relationship with A.B. and other family members and she is not concerned about his friends he previously associated with.
- [31] Lamb J. vacated the protection order against the respondent and granted him parenting time with A.B. She concluded, rightly in my view, that E.B. should be at liberty to reside in either of his parents' homes. The court allowed that the respondent could make a further application to vary the interim parenting order she had made.
- [32] I have reviewed the evidence advanced by the respondent and recognize that E.B.'s behaviours are troubling to the point of being at significant risk of descending into crime.
- [33] The respondent says E.B.'s grandmother facilitated his acquisition of a very expensive Mercedes-Benz car which he drives without a driver's license. To the extent that this child may own or have access to a car of this type, he is demonstrating indications of a child "run amok". This child's difficulties began prior to the parties' separation and they must now both step up and provide their son guidance, restrictions and rules while living with them.
- [34] E.B. is making choices concerning where he wishes to stay and live and is clearly beyond the control of both parents. He is free to spend time with the respondent at his own discretion. The focus of this application was not on E.B.; rather, the question was whether claim lacked the capacity to care provide care and monitoring of A. B. F such that his continued residence with the claimant was no longer in the child's best interests. .
- [35] The respondent included various documents that appeared to identify A.B.'s use of a cell phone or tablet, which the respondent contends establishes that the claimant is not monitoring or managing the child's behaviours and that if this pattern of behaviour by the claimant and A.B. continues that child's safety and best interests will not be met.
- [36] Overall, I am not satisfied that the respondents admissible affidavit evidence is sufficient to persuade me on the balance of probabilities that a change in parenting roles should be granted. I can not rely on any of the documents relating to A.B.'s use of an iPhone, iPad, Xbox, Nintendo or similar electronic devices. Nor can I rely on his affidavit as admissible evidence to prove the location and whereabouts of E. B. from time to time.
- [37] Nothing in the evidence persuades me that the claimant is failing to act in the best interests of A.B. Albeit there may be some concern about the child's use of electronic devices, I cannot conclude that there is any evidence sufficient to change parenting or
- [38] Hopefully, the parties will be able to provide good counsel to their son E.B. and assist him to come back from the brink of his criminal propensities.

- [39] The claimant is aware that E.B. has problems with drugs and has mental health issues. His descent into serious crime is a factor that weighs on both parents and cannot be attributed to the historical roles of each parent..
- [40] The claimant was reluctant to discuss E.B.'s criminal problems directly with the respondent. She argues that he is currently well monitored on his probation order, and the parties can work with him to address problems with the assistance of his counsellor.
- [41] The claimant contends that the children can spend equal time with the respondent and that an alteration of that parenting regime has been agreed on at this time and change is not warranted.

Analysis

Parenting Time

- [42] Based on the evidence of the parties and the psychological report attached to the respondent's affidavit, I am convinced that E.B. was a child with significant mental health issues, drug use issues and behavioural issues prior to April 2024.
- [43] E.B.'s behaviours since the parties separated have been dreadful.
- [44] While I accept that both parents are concerned about their eldest son's welfare and safety, I do not accept that, on the evidence, the claimant is responsible, or solely responsible, for E.B.'s criminal proclivities and failure to abide by court conditions where imposed.
- [45] The claimant does not address her role or the role of her mother, Ms. A, in the acquisition of a \$45,000 Mercedes-Benz at the request of the child. This unexplained involvement is some indication that the claimant has poor judgement in her duty as a parent in failing to take steps to prevent her mother from funding this car purchase.
- [46] This is particularly so in view of the serious criminal allegations which E.B. has pled guilty to, along with some apparent breaches of his release order and the intensive support and supervision order.
- [47] At present, the parties are agreed that in the future, A.B. will reside with each parent on a schedule that will ensure A.B. spends equal time with each parent.
- [48] E.B. is 18.5 years old and will be an adult in less than six months. I recognize that he will be in need of guidance, advice and wisdom of his parents after becoming an adult. He is at a crossroads in his life that could result in long-term, serious consequences. These parents must make their best efforts to influence, guide and where possible direct E.B. and to help him chart a path forward that will extricate him from the criminal propensities he has shown. In my view, the parents must withdraw their support of his ownership of the Mercedes-Benz; the neither parent revived financial assistance to E.B. pay any expenses or costs related to this car. It does not appear that E. B. Has any independent income and if they act responsibly, E. B. will recognize that he cannot live a lifestyle that he has adopted.

- [49] The claimant's mother has acted badly in facilitating the purchase of this motor vehicle entry should be admonished for that decision and enabling behaviour.. Both parents must now take steps at this time to effect changes in E.B.'s life.
- [50] The parties recognize that this court cannot effectively make parenting orders at this time that are inconsistent with E.B. wishes. The parties must collaborate in an effort to monitor his behaviour and provide advice, guidance and direction to him.
- [51] However, the admissible evidence does not support an interim order depriving the claimant of her parenting role with A.B. He is apparently doing well in school and has lived with her in the family home since the parties separated.
- [52] I am not persuaded it will be in the best interest of A.B. to change the current parenting arrangements such that the respondent becomes the sole caregiver for A.B.
- [53] I recognize that this family likely needs counselling in order to be better equipped to manage their relationship with E.B. and work with him.
- [54] In my view an early s. 211 inquiry into A.B.'s best interest and any risks posed by E.B.'s influence on him is warranted and I make that order.
- [55] Division of parenting responsibilities will likely depend on the respondent's work schedule. Justice Lamb set out a parenting schedule that recognized that E.B. would be at liberty to decide where he would participate in parenting time with the respondent. In my view, that conclusion applies to both parents.
- [56] I will vary the Lamb J. order to incorporate the current regime whereby both parents will share equal parenting time with A.B. and E.B., with E.B. being encouraged to spend time with both parents but not under any order.
- [57] The s. 211 report should be requested as soon as possible; once it is received, either parent may make a further application to address issues that emerge from that inquiry.

Exclusive Occupancy of the Family Home

- [58] I will not order any change in the occupancy of the family home at this time

Child Support

- [59] In the claimant's notice of family claim, she seeks child support under the Divorce Act and the FLA.
- [60] Claimant's counsel indicated the interim child support request was made under the Divorce Act and I will accordingly deal with this claim under that Act.

- [61] On September 27, 2024, the parties attended a JCC at which the respondent was ordered to pay the plaintiff \$600 per month for the support of the parties' children, commencing October 1, 2024 and payable on the first day of each month thereafter. This interim order was made on an interim without prejudice basis. On this application, the claimant has not applied to vary that order; rather she seeks an interim support order in the first instance. I will address the claimant's application as an application to vary the September 2024 order.
- [62] The respondent opposed the granting of a support order and argued the evidence informing the assessment of child support was inadequate. He contends support should be resolved at the trial of the matter, particularly in view of the claimant's position at this hearing.
- [63] In *Santelli v. Trinetti*, 2019 BCCA 319, the Court of Appeal addressed variation of a child support order as follows:
- [123] There is no provision in the Divorce Act to vary an interim order for corollary relief. Interim orders can only be varied pursuant to the court's inherent jurisdiction and in compelling circumstances: *Janmohamed v. Janmohamed*, 2014 BCSC 107 at para. 45. Under the FLA, a court may vary an interim order if there has been a change of circumstances or if there is evidence of a substantial nature that became available after the order was made: s. 216(3). The fact that variation applications are not easily pursued encourages parties who want to contest an interim order to wait to trial where the court can embark on an in-depth analysis of all of the circumstances to make a final order. This occurs frequently in trial courts.
- [64] Interim child support is governed by ss. 216 and 217 of the FLA which provide as follows:

Court may make interim orders

216 (1) Subject to this Act, if an application is made for an order under this Act, a court may make an interim order for the relief applied for.

- (2) In making an interim order respecting a family law dispute, the court, to the extent practicable, must make the interim order in accordance with any requirements or conditions of this Act that would apply if the order were not an interim order.

Interim orders before changing, suspending or terminating orders

217 If an application is made to change, suspend or terminate an order, an interim order for the relief applied for may be made only if the court is satisfied that

- (a) a change in circumstances has occurred since the order that is the subject of the application was made, and
- (b) the hardship to a party of denying interim relief before the application is heard outweighs the hardship to any party of granting interim relief.

[65] In *Loesch v. Walji*, 2008 BCCA 214, the Court referred to the factors usually informing an application for interim child support:

[20] Thus, the central factors that are usually to be considered on an interim application for either child or spousal support are the means or ability to pay support, and the needs of the spouse and children.

[41] In *Myers v. Myers* (1995), 17 R.F.L. (4th) 298, 65 B.C.A.C. 226, Finch J.A. (as he then was), speaking for the Court, stated at para. 10:

"Need" or "needs" are not absolute quantities. They may vary according to the circumstances of the parties and the family unit as a whole. "Need" does not end when the spouse seeking support achieves a subsistence level of income, or any level of income above subsistence. "Needs" is a flexible concept and is one of several considerations which a trial judge must take into account in deciding whether any order for spousal support is warranted.

[66] The parties have agreed that commencing August 1, 2025 the children will reside with both parents and that their incomes are sufficiently close to equal that neither will claim child support after August 1. In any event, this is a decision that must be made by the trial judge at the granting of the divorce.

[67] Although child support is the right of the child, the claimant's concession that interim support would not be enforced recognizes that there is no immediate need to vary the existing child support order save and except for the reduction in the child support payable for E.B. after his 19th birthday.

[68] This is not a question of the children's entitlement to support retroactive to the date of separation. An interim support order can be revisited by the trial court when it assesses the past and present Guidelines incomes of the parties.

[69] Because the parties are agreed that they will commence parenting of the youngest child on an equal basis on August 1, 2025 and that no support will be payable by either party after August 1, I will not change the current interim order. Moreover, there are gaps in the financial disclosure provided by the parties and questions concerning the Guidelines income attributable to each of them in the child support analysis.

[70] The claimant requested this order for a variation of the interim support order, coupled with her representation that payment of child support or enforcement of any order would not be pursued until the conclusion of this proceeding. She contended the amount owing would be \$16,230 after deducting the amount paid or payable under the September 2024 interim child support order.

[71] The JCC orders for interim child and spousal support were made pursuant to ss. 15.1(2) and 15.2(2) of the Divorce Act and can only be varied in exceptional circumstances: *Janmohamed v. Janmohamed*, 2014 BCSC 107 at para. 45.

- [72] In my view, this is a case in which the question of retroactive child support should not be decided on an interim basis but resolved by the trial judge after presentation of all relevant information. Interim child support orders are intended to meet the needs of children on an ongoing basis pending trial. The amount of retroactive support can be dealt with after a full trial of the issues, and it would serve no useful purpose to make an order at this stage without complete information.
- [73] I accept that the claimant was entitled to make this application on a de novo basis because the JCC order was made on an interim without prejudice basis. However, there is a dispute concerning the Guidelines income of the respondent. His income in the years 2024, 2023 and 2022 was variable and inflated over his historical earnings due to his opportunities for substantial overtime work. An inquiry into work hours and overtime pay will be essential in determining the retroactive support payable by the respondent. Although these types of calculations for the purposes of interim support can be performed, the evidentiary basis for a determination is sufficiently unclear in this case such that there will not be any practical benefit in attempting to vary the current interim order.
- [74] If the claimant's request for child support was intended to meet the current and ongoing needs of the children, a different approach could be taken. But, insofar as the claimant does not seek payment or enforcement of the arrears of child support, I find that the entire question of retroactive and prospective child support should be addressed in the trial.

Conclusion

- [75] I am satisfied that the Lamb J. order should be varied to divide the parenting responsibilities for these children equally between the parties.
- [76] I direct that the parties obtain a s. 211 report concerning the best interests of A.B. Initially, the parties will equally bear the cost of the preparation of this report with the ultimate burden of those costs being decided by the trial judge, or by agreement.
- [77] The application to retroactively vary child support is dismissed.
- [78] I make no order as to costs at this time. If either party seeks an order for costs, submissions should be made within 30 days of this order and any response to those submissions provided within 15 days of receiving the other party's submission.

"Armstrong J."

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