
CANADA / JUDGMENT

S.L.W.B. v. D.A.B.

2021 BCSC 2115

COURT

Supreme Court of British Columbia

DECIDED

28 October 2021

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

2021 BCSC 2115 S.L.W.B. v. D.A.B.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.L.W.B. v. D.A.B.,

2021 BCSC 2115

Date: 20211028

Docket: E47597

Registry: Kamloops

Between:

S.L.W.B.

Claimant

And:

D.A.B.

Respondent

Before: The Honourable Mr. Justice Punnett

Reasons for Judgment

Counsel for the Claimant:

C. Oien

Counsel for the Respondent:

R. Lammers

Place and Dates of Hearing:

Kamloops, B.C.

September 3 and 16, 2021

Place and Date of Judgment:

Kamloops, B.C.

October 28, 2021

Introduction

- [1] There are two applications of the respondent, D.A.B., before the Court. First, the respondent applies to enforce parenting time as ordered in a September 2, 2014 consent order (the "Consent Order"). He also applies for an order for make-up parenting time and an order relating to communications between the parties. Second, he applies for an order that no party may change the school of the child to any other school without the written consent of the other party or an order of the Court. The latter application was prompted by the unilateral change of the child's school by the claimant in September 2021.
- [2] The claimant, S.L.W.B. applies to vary the Consent Order to restrict the respondent's parenting time to one weekend day a week with no mid-week parenting time and no overnight parenting.
- [3] As there was some urgency regarding parenting time and the issue of which school the child would attend on September 20, 2021, I issued a memorandum with reasons to follow, ordering that the claimant forthwith comply with the September 2, 2014 Consent Order by returning to the rotating parenting schedule. I also ordered that the child attend M.S.E.S. and that she not be moved to any other school without the written consent of the other party or an order of this Court.
- [4] These are the reasons for that order and other issues raised in the applications.
- [5] I understand that the parties have now obtained a date for trial as previously ordered. A trial is now set for July 11, 2022 for 10 days.

Background

- [6] There is one child of the parties' marriage, A.L.B. At the time of the 2014 Consent Order, she was three years of age. She is now 10 years of age.
- [7] An interim order of September 3, 2013 provided for interim joint custody with primary residence with the claimant with interim access to the respondent one day each weekend.
- [8] The parties divorced in December 2013 and each of the parties are now in new relationships.

- [9] The divorce order of December 16, 2013 provided, among other things, that the claimant and the respondent would have permanent joint custody of the child and that the child's primary residence would be with the claimant. It also ordered that, pending a supplemental report from Dr. Elterman, the interim order of September 3, 2013 would remain in effect. As a result, the respondent would have interim access to the child one weekend day per week but not overnight and on Wednesdays from 4:00 p.m. to 5:30 p.m.
- [10] Dr. Elterman prepared an initial report dated August 19, 2013 to assist the parties regarding parenting in which he concluded:

My recommendation in this case is that the parents share joint guardianship.

On the issue of parenting responsibility, I think that while A. is still primarily in the day-to-day care of Ms. B., that she should have the primary parenting responsibility at this time. A. is too young to have a 50-50 arrangement. I think, however, that it is worth pointing out that a goal by the time she enters Grade 1 would be to share her on an equal basis. For now, my recommendation to Mr. B. is to proceed slowly and I will lay out a proposed plan for increments in time that would be more age-sensitive.

I would recommend that for now, given her age and stage, that A. be with Mr. B. on one weekend day a week and that this alternate between a Saturday and a Sunday so that the parents can make other plans. I would recommend that the day of unsupervised access start at 9 am and finish at 6 pm so that Mr. B. can begin to have A. nap with him. It is obviously necessary for the child to be able to nap in the afternoon with a parent before they start having them overnight. Once the nap in the afternoon is accomplished, then one can begin to think about overnight visitation. It would be; my recommendation that once A. is 3 that the access be for a 24-hour period. If they are alternating Saturday and Sunday, then on the Saturday this would begin on Friday at 6 pm and finish on Saturday at 6 pm. If the alternate day is Sunday, this would begin on Saturday at 6 pm and finish on Sunday at 6 pm. I am recommending a more frequent access on a weekly basis rather than alternate weekends because I think that this is better for older children. When A. is 3 1/2 I would recommend that if they have spent 6 months with 24-hour periods that this be expanded to two 24 hour periods such that in addition to the weekend, A. would be with Mr. B. from Wednesday after daycare or preschool until before daycare or preschool on Thursday. I would recommend that they continue with this arrangement until A. starts kindergarten at which point there can be an update re-evaluation done to assess what would then be the best arrangement for her given what has taken place to that point.

(Emphasis added)

- [11] After receipt of Dr. Elterman's report the parties entered into a Consent Order dated September 2, 2014:
1. The Respondent will have access to the child, A. L. B., born December 18, 2010, (the "Child") on a four-week rotating schedule particularized as follows:

Week One: Commencing Saturday June 7th, 2014, the Claimant will drop the Child off at the home of the Respondent on Saturday at noon, and the Respondent will return the Child to the home of the Claimant on the following day, Sunday at noon.

Week Two: Commencing Sunday, June 15th, 2014, the Claimant will drop the Child off at the home of the Respondent at 9:00 am, and he will return the Child to the home of the Claimant at 6:00 pm the same day.

Week Three: Commencing Saturday June 21st, 2014, the Claimant will drop the Child off at the home of the Respondent at Saturday at noon, and the Respondent will return the Child to the home of the Claimant on Sunday, the following day at noon.

Week Four: Commencing Sunday, June 29th, 2014, the Claimant will drop the Child off at the Respondent's home on Sunday at 9:00 am, and he will return the Child to the home of the Respondent at 6:00 pm on the same day.

(the "First Rotation")

2. In addition to the access set out in the First Rotation, the Respondent will have the Child each Wednesday from after day-care at 4:00 pm to 6:00 pm when he will drop the Child off at the home of the Claimant.
3. The First Rotation will repeat until it changes on September 3rd, 2014, at which time, the Wednesday access described in paragraph 2 will be extended from pick up at day care on Wednesdays at 4:00 pm until the following day, when the Respondent will drop the child off at day-care on the Thursday morning at 7:30 am.
4. Commencing January 5th, 2015, the access schedule will be replaced by the following rotation, particularized as follows:

Week One: The Respondent will have the Child from Friday after day-care, until Saturday, the following day at 4:00 when he will drop the Child off at the home of the Claimant.

Week Two: The Claimant will drop the Child off at the home of the Respondent on Saturday at 4:00 pm, and the Respondent will return the Child to the home of the Claimant the following day, Sunday at 4:00 pm.

(the "Second Rotation")

5. In addition to the access times set out in the Second Rotation, the Wednesday overnight access visits as set out in paragraph 3 will continue.
6. It is not a breach of this Order if the Child is picked up or dropped off within 15 minutes of any time specified in this Order although the parties will employ reasonable efforts to comply with the times specified herein.
7. The parties will review the access schedule in September of 2015 with a view to determining if the existing schedule will meet the needs of the Child as she transitions into kindergarten.

8. The parties are at liberty to agree to other changes to this access schedule at any time.

...

- [12] The September 2014 Consent Order does not state whether it was made pursuant to the Divorce Act, R.S.C. 1985, c. 3 (the "DA") or the Family Law Act, S.B.C. 2011, c. 25 (the "FLA"). However, the notice of family claim filed seeks relief under the DA. The interim order and the Consent Order were therefore made pursuant to the DA. The counter-claim of the respondent was not filed until January 31, 2019. It advances claims under both the DA and the FLA.
- [13] The parties engaged a parenting coordinator but the parenting terms set out in the Consent Order remain in effect, as no agreement to vary was reached.
- [14] In early 2019, the respondent sought increased parenting time and applied for a number of orders regarding parenting of the child. On April 1, 2019, Dley J. ordered that an updated s. 211 report be obtained from Dr. Elterman. Justice Dley made further orders respecting the conduct of the parties as it concerned the child and the child's relationship with each parent. He also ordered that a judicial settlement conference occur once the updated report was complete and that the matter be set for trial.
- [15] The updated report from Dr. Elterman is dated June 24, 2019. He concluded:

The conclusion left at the end of this update is that I think A. actually has a better time at Mr. B's than she might let on to Ms. W. I think she enjoys the other children and the activities that they do together. I also factor in the idea that A. is somewhat concerned about the effect on her mother if she stays longer than one night. On the other hand, and this is significant, I think that Mr. B., despite having done a parenting and anger management course, continues to have problems around anger and with his reactivity. I suspect that he and Ms. G. have underplayed the extent to which they have come into conflict and I have concluded that an equal time arrangement would not be the solution to the types of exposure that A. would have. This issue of his reactivity is acknowledged by him and he says that it is something that he is working on. He needs to consider professional help skilled at this type of problem and perhaps examine the roots of why he reacts the way that he does. This may involve psychotherapy which would help him understand better some of the drives and motives that govern how he reacts.

For these reasons, I am not going to recommend a substantial change in the parenting schedule but I am going to recommend a continuation of the two 24-hour periods per week. I am recommending that every school vacation in the summer (once in July and once in August), Christmas (once) and Spring Break (once) that A. go on an extended 48 hour visit so that travel or other activities are possible. He should give Ms. W. a month's notice when he will take this. I don't think that it would be helpful to reduce the parenting time to day-only visits as A. has suggested but at the same time it seems premature to expand the parenting time to the extent Mr. B. wants. I do think that the irritant of picking the child up at daycare should be removed and that picking up from school be allowed. The parent's partners should be able to do the transfers too.

If Mr. B. wants to expand upon the time that he has with A., I believe that he needs to engage in some meaningful change that can assist in reducing A.'s anxiety around the time spent at his home.

[Emphasis added]

[16] The judicial settlement conference ordered did not occur, nor was the matter set for trial.

[17] The parenting arrangement under the existing Consent Order continued thereafter until June 2, 2021. On that date, during the respondent's parenting time, the child suffered an accident on a slip-n-slide at the respondent's home. He took her to emergency at the local hospital where she was diagnosed with a triplanar ankle fracture of her right leg. The child was released from hospital early on the morning of June 3, 2021 on crutches and was to avoid weight bearing and keep her leg elevated until the swelling subsided, at which point a cast would be considered. When she returned to the hospital on June 18, 2021, a cast was applied.

[18] There is a dispute over how quickly the claimant was advised of the incident, however once aware the child was in emergency she attended immediately. The respondent had overnight parenting with the child that evening and sought to return to his home with her upon her release from hospital. The claimant objected stating the child wished to return to her home. Most regrettably, this led to a confrontation between the parties in the presence of the child. This occurred despite the parties' awareness that their daughter has ongoing issues with their inability to communicate without conflict. Ultimately, the respondent acceded to the claimant's insistence the child return home with her.

[19] The respondent saw the child the next day, June 4, 2021, at the claimant's residence for about 45 minutes.

[20] Thereafter, the claimant terminated the rotating parenting schedule in the Consent Order. This despite the fact the parties had been complying with it from September 2, 2014 to June 3, 2021, a period of seven years. The claimant's explanation initially was that the child's physical and hygienic care during her recovery required the child remain in her care. However, even after the child was mobile and able to care for herself the claimant refused the respondent parenting time.

[21] The respondent did not see his daughter again until August 18, 2021, almost two and a half months later. Thereafter the claimant only permitted the respondent daytime visits of four hours on Wednesdays and eight hours on Saturdays with the child. Contrary to the terms of the Consent Order, the claimant denied the respondent overnight parenting time.

[22] The issue of the school to be attended by the child arose as the claimant and her new partner moved to another home in Kamloops in December 2020. The child continued to attend school in the claimant's previous neighbourhood until June 2021. There was no discussion between the parties about what school the child would attend thereafter. It was only in her Affidavit #8 filed August 5, 2021 that the claimant noted that starting in

September 2021 the child should be attending the school in the catchment area of her new home, B.E.S.

- [23] In a letter dated August 11, 2021, the respondent's counsel advised the claimant's counsel that the respondent did not consent to changing the child's school. Neither the respondent nor his counsel received a response to this letter.
- [24] The application of the respondent to enforce the existing Consent Order finally came before the Court on September 3, 2021, after three adjournments. At the conclusion of that hearing, counsel for the claimant was asked if the child would remain at her existing school and counsel advised that was not the case and that the child would be attending B.E.S. starting the following week. That resulted in the respondent's second application on short notice filed September 7, 2021 regarding the change of school.

Preliminary Issue

- [25] The claimant raised the issue of whether the DA or the FLA applies on these applications, submitting that the DA applies. The respondent submits the FLA can also be relied on in the circumstances of this case given the issue of enforcement of an existing order is specifically addressed in ss. 61 and 62 of the FLA, but not in the DA hence, there are no "operational inconsistencies" between the two acts. See *Y.Q. v. J.D.*, 2021 BCSC 943, para. 45.
- [26] The jurisprudence that has developed under the FLA is of assistance in addressing an allegation of wrongful denial of parenting time. As a result, the parties addressed the issue under the provisions of the FLA treating that as the basis for analysis of the issue.

Position of the Respondent/Applicant

- [27] Regarding the enforcement of the parenting time set out in the Consent Order, the respondent notes the claimant has denied him 226.5 hours of parenting time as of July 13, 2021. He submits the child's injury was not such as to impede his parenting time and that he and his current spouse could have cared for the child. He seeks an order requiring compliance with the Consent Order, an order for make-up parent time and an order that each parent inform the other of scheduled medical appointments.
- [28] The respondent opposes the application of the claimant to vary the present interim parenting arrangement given it has been in place for over seven years and the matter has been ordered to proceed to trial.
- [29] Regarding the application to prevent the move of the child to a new school the respondent notes the child has been attending the same school for the past six years, no notice of intention to change the child's school was given to him and there is no application before the Court to effect the change.

Position of the Claimant

- [30] Concerning the termination of parenting time the claimant submits there has not been a pattern of breaches, just a single incident that caused her to stop complying. She submits the child's relationship with her father is a source of stress for the child and that as of the spring of 2021 parenting with the child's father is not in the child's best interests. The claimant submits it was the hospital incident that brought her concerns about the respondent's parenting to a head and caused her to file her application to seek variation of the Consent Order, albeit only after the respondent applied to the Court. Had he not done so, it is unclear if and when she would have done so.
- [31] The claimant submits it is in the best interests of the child that the school change she has made continue. She submits this is because the new school is in the neighbourhood where the child primarily resides, will expose the child to children in the local neighbourhood and avoids the need for the child to be driven across town as required by attendance at her former school.

Enforcement of Parenting Time Order

- [32] Section 61 of the FLA addresses orders that may be made where parenting time is wrongfully denied:

Denial of parenting time or contact

61 (1) An application under this section may be made only

- (a) by a person entitled under an agreement or order to parenting time or contact with a child, and
 - (b) within 12 months after the person was denied parenting time or contact with a child.
- (2) If satisfied that an applicant has been wrongfully denied parenting time or contact with a child by a child's guardian, the court on application may make an order to do one or more of the following:
- (a) require the parties to participate in family dispute resolution;
 - (b) require one or more parties or, without the consent of the child's guardian, the child, to attend counselling, specified services or programs;
 - (c) specify a period of time during which the applicant may exercise compensatory parenting time or contact with the child;
 - (d) require the guardian to reimburse the applicant for expenses reasonably and necessarily incurred by the applicant as a result of the denial, including travel expenses, lost wages and child care expenses;

- (e) require that the transfer of the child from one party to another be supervised by another person named in the order;
 - (f) if the court is satisfied that the guardian may not comply with an order made under this section, order that guardian to
 - (i) give security in any form the court directs, or
 - (ii) report to the court, or to a person named by the court, at the time and in the manner specified by the court;
 - (g) require the guardian to pay
 - (i) an amount not exceeding \$5000 to or for the benefit of the applicant or a child whose interests were affected by the denial, or
 - (ii) a fine not exceeding \$5000.
 - (3) If the court makes an order under subsection (2) (a), (b) or (e), the court may allocate among the parties, or require one party alone to pay, the fees relating to the family dispute resolution, counselling, service, program or transfer.
- [33] Section 62 of the FLA sets out the circumstances in which denial of parenting or contact is not wrongful:

When denial is not wrongful

62 (1) For the purposes of section 61 [denial of parenting time or contact], a denial of parenting time or contact with a child is not wrongful in any of the following circumstances:

- (a) the guardian reasonably believed the child might suffer family violence if the parenting time or contact with the child were exercised;
- (b) the guardian reasonably believed the applicant was impaired by drugs or alcohol at the time the parenting time or contact with the child was to be exercised;
- (c) the child was suffering from an illness when the parenting time or contact with the child was to be exercised and the guardian has a written statement, by a medical practitioner or nurse practitioner, indicating that it was not appropriate that the parenting time or contact with the child be exercised;
- (d) in the 12-month period before the denial, the applicant failed repeatedly and without reasonable notice or excuse to exercise parenting time or contact with the child;
- (e) the applicant
 - (i) informed the guardian, before the parenting time or contact with the child was to be exercised, that it was not going to be exercised, and

(ii) did not subsequently give reasonable notice to the guardian that the applicant intended to exercise the parenting time or contact with the child after all;

(f) other circumstances the court considers to be sufficient justification for the denial.

(2) If, on an application under section 61, the court finds that parenting time or contact with a child was denied, but was not wrongfully denied, the court may make an order specifying a period of time during which the applicant may exercise compensatory parenting time or contact with the child.

[34] In *K.R. v. J.W.*, 2016 BCSC 225, Betton J. undertook a fulsome analysis of ss. 61 and 62 of the FLA. He stated that compliance with parenting time set out in an agreement or order is not optional. He concluded at para. 65:

[1] The sections are not limited to discreet events of wrongful denial. While available in such circumstances, they are also available to address more nuanced circumstances where cumulative effect of a pattern of conduct, including words or actions, results in a loss of parenting time.

[2] Where a child is resistant to scheduled parenting time, the source of that resistance must be examined to determine if the parent has fostered it. Further, that parent's response to the resistance must be examined to determine if it is situationally appropriate so as to avoid the result being characterized as a denial of parenting time.

[3] Where a parent entitled to parenting time agrees or acquiesces to forgoing scheduled parenting time, the circumstances must again be reviewed to determine whether there was, in fact, a denial by the other parent. For example, a parent who agrees or otherwise does not compel the child or the other parent to accommodate the parenting time may have had little practical choice in the face of the actions or words of the other parent. The fact of an agreement or acquiescence alone does not absolve the other parent of potential responsibility for wrongful denial.

[Emphasis added.]

[35] Ultimately, the broad discretion bestowed on the Court by ss. 61 and 62 is consistent with the legislative objective of the FLA making the best interests of the child the only consideration (paras. 56-58). Courts dealing with interim applications, as in this case, should proceed with caution and restraint (para. 64).

Discussion

[36] The claimant clearly denied the respondent parenting time contrary to the Consent Order. The claimant however submits her denial of parenting time was not wrongful pursuant to ss. 62(1)(a) and (f) of the FLA.

- [37] The first justification relates to her claim that the child might suffer family violence. Specifically, that family violence has occurred in the presence of the child consisting of fighting between the respondent and his wife, particularly at night. She relies on statements the child has made to her and text correspondence between the child and the respondent's step-daughter respecting events in his home.
- [38] The claimant deposes in her Affidavit #7 filed July 21, 2021 that:
25. On May 2, 2021, A. came home after being at the Respondent's and said that the Respondent and Ms. B. were fighting really badly again and this time Ms. B. hit the Respondent in the chest. The Respondent then pushed Ms. B. out the door and locked it. He told her that she could not come back in until she calmed down. A. said she felt scared and hid in her room.
 26. On May 8, 2021, A. again came home from the Respondent's and said that the Respondent and Ms. B. again were fighting and swearing at each other. She said that the Respondent was mad at Ms. B. about items he wanted her to get rid of. She said that Ms. B. then decided she was going to leave and the Respondent threw Ms. B.'s lamp over the fence and it landed in front of her car. Ms. B. drove away and the Respondent kept on throwing Ms. B.'s stuff on the ground.
 27. On May 12, 2021, I received a call from A.'s principal, Gordon Cummings, who advised that A. had had an anxiety attack at school and was brought in to see him from the lunch monitor. A. spoke to the principal about her feelings around going to the Respondent's home and her concerns. It was at this time that I made my decision that I needed to do something to help A. and make an application to change the parenting schedule. Throughout the years I have been hopeful that things would change with the Respondent and that A. would be happy to be over at his house. It appears things are getting worse and A. is showing some very obvious signs of trauma that she is experiencing. It sounded like she was quite definite with the principal about her feelings.
 28. I would like to speak with the Respondent in a reasonable manner about the difficulties that A. is experiencing and what effect what he does at his home has on A. Unfortunately, every time I do try and talk with him reasonably, he becomes very angry, even when the counsellor is involved.
- [39] The respondent acknowledges that he and his wife have arguments but denies that they are frequent and states that the child has never seen them argue. He deposes he and his wife have sought counselling together and that he also attends counselling to deal with his anger. He denies the allegation he has "interrogated" A., and the other allegations set out above.
- [40] The respondent deposes that A. has a good relationship with her step-siblings in his home and with his wife. Further, that he and A. have a good time together and enjoy participating in a number of activities. He notes that in 2017 the claimant through her counsel suggested that he give up guardianship of A., and that in return she would not seek child support from him evidencing the claimant's desire to have him out of their child's life.

- [41] The present allegations of the claimant date back several years. She alleges they became more of a concern in the spring of 2021, yet she took no steps to vary the parenting regime prior to July 23, 2021. Instead, she unilaterally terminated the respondent's parenting time. While the claimant states that she contemplated a court application, she only brought one after the respondent applied to enforce the Consent Order. In my view, the concerns she now raises were of insufficient significance for her to take steps to vary the existing order at an earlier date. Even now, her allegations are only a significant concern if parenting time is overnight. Many of her allegations are historical, yet such did not result in her restricting parenting time when they first occurred. In addition, her initial refusal only related to health and hygiene issues while the child was recovering from her injured leg. The other concerns were only raised in response to the respondent's application.
- [42] As noted, despite the order of Mr. Justice Dley that the matter be set for trial, neither party did so. The nature of the dispute, the allegations made and the issues of credibility require a trial, not resolution by a chamber's application on affidavit evidence. However, notwithstanding the need of a trial in this matter, on this interim application I am not satisfied the level of violence alleged has occurred, nor that it has substantially affected the best interests of the child.
- [43] An allegation of family violence must be supported by evidence of physical or emotional harm because of parental conduct. In *M.W. v. N.L.M.W.*, 2021 BCSC 1273, Veenstra J. said this:
- [105] While the provisions as to family violence in the DA came into effect only recently, the FLA provisions have been in effect for several years. Given that the provisions in each statute are similar (although not identical), the jurisprudence that has developed under the FLA is of assistance in interpreting both.
- [106] As noted in *R.W. v. P.C.*, 2017 BCSC 998 at para. 76:
- [76] In cases where family violence is alleged, it is the obligation of the court to assess the evidence provided and determine whether or not it had indeed occurred and its extent. It is insufficient for one party to merely allege that she was the subject of abuse. The court must consider the evidence provided by both parties as well as other witnesses to determine what had taken place over the course of the marriage.
- [107] Thus, the proper approach is to first assess the allegations of family violence, and then to consider whether any family violence found to have occurred "substantially affects", or at least is relevant to, one of the factors listed in DA s. 16 or FLA s. 37.
- [108] The court should also be careful not to label conduct as "family violence" where there is no evidence the child has suffered any physical or emotional harm as a result of the parents' conduct. The provisions of the FLA relating to family violence are intended to address a serious social issue and to protect children and spouses from actual harm or danger: *C.L.M. v. M.J.S.*, 2017 BCSC 799 at para. 365.

- [109] The best interests of a child are promoted and protected by making orders that contemplate the real and substantial risks to their safety, security and well-being, in respect of both the possibility of a risk apprehended by the court actually existing or becoming manifest, and the risk of potential harm to a child as a result, and the risk of possibly harming a child's interests by any order that might be too broad: *N.D.T. v. T.F.T.*, 2016 BCSC 134 at para. 103.
- [44] The claimant also relies on s. 62(1)(f) of the FLA that denial is justified in "other circumstances the court considers to be sufficient justification for the denial." The claimant submits that "sufficient justification" does not have to rise to the same level of justification as under ss. 62(1)(a) to (e).
- [45] Subsection (f) refers to "other circumstances" in order to allow the Court to consider circumstances other than family violence to the child, impairment by drugs or alcohol while parenting, illness confirmed by a physician to make parenting time inappropriate, as well as repeated failures to exercise parenting time. That is, matters of significance. In my view, the section allows for consideration of other behaviors not of lesser concern but rather of a different type. "Sufficient justification" is something of similar significance. Subsection (f) is not preceded by the word "or" that would perhaps indicate circumstances of lesser importance. I do not accept the claimant's submission that the issue need not rise to the same level of significance as the other subparagraphs.
- [46] While the respondent acknowledged that he and his wife argue and have disputes (although he denied that these occur in the presence of the child) and while that may, if viewed by a child, be scary for a child, it is not what the provisions relating to violence address. Further, he and his spouse have received counselling.
- [47] The claimant submits the Court should take a holistic view of the situation, that the mother has never since the beginning stated there should be no parenting, and that the way matters were progressing led her to do what she thought was in the best interests of the child. The claimant notes there is no evidence she is alienating the child, nor did Dr. Elterman suggest that was the case.
- [48] Counsel for the claimant refers to *D.M.F. v. T.J.D.*, 2021 BCSC 1249 for the concept of the best interests of the child pursuant to s. 37 being "the prism through which all considerations related to parenting are to be considered" (para. 72). The alleged family violence must also be assessed in light of factors relevant to the best interests of the child: see s. 38, FLA.
- [49] It is clear from a review of the evidence including the two reports from Dr. Elterman that the claimant regards her role as that of primary parent and that she believes she is entitled to restrict the respondent's parenting time. The claimant submits however that she has been supportive of, and has endeavored to compel the child to spend time with her father. This is in direct contradiction to her communications, lack of flexibility and overall conduct and attitude towards the respondent.

- [50] The claimant's allegations are due less weight because of her failure to apply to the Court promptly to seek variation of the Consent Order. Her delay in applying for a variation undermines her claim of the significance of the respondent's alleged conduct.
- [51] While a close parent-child relationship is important, it appears that the child is aware of her mother's willingness to engage in conversation and negative commentary about time spent with the respondent. The claimant is clearly of the view that she has the best interests of the child in mind, but that the respondent does not.
- [52] This raises the concern that the child is telling her mother what she knows her mother wishes to hear. Dr. Elterman raised this concern in his second report. At 10 years old, the child should not be put in the position of inadvertently making a decision not to see her father based on what she perceives her mother's wishes to be.
- [53] Such encouragement raises concerns regarding whether the child is seeking to curry favor with her mother by doing so. She may be telling her mother what she knows her mother wishes to hear. This is a 10-year-old child, and at that age she should not be essentially making the decision based on what she perceives her mother wants.
- [54] There is no evidence of family violence directed to the child. Justice Veenstra in D.M.F. stated:
- [94] I start with a consideration of the maximum contact principle, keeping in mind that it is only one aspect of the best interests of the children analysis: K.W. v. L.H., 2018 BCCA 204 at para. 132. Despite my concerns with respect to Mr. D.'s credibility, the family violence I have found him to have engaged in, and the unfounded allegations he has made against Ms. F., nothing I have heard or read in this case persuades me that it is appropriate to depart from that principle.
- [55] I am not persuaded the allegations of family violence are of such significance that a variation of the Consent Order is justified. Contact with the respondent is to be maintained. Parenting was working for many years prior to June 2021, and Dr. Elterman supported parenting time for the respondent, including overnight time, while aware of the respondent's anger and spousal relationship issues.
- [56] As a result, I am not satisfied the claimant was justified in denying the respondent's parenting time. For these reasons I ordered that compliance with the September 2, 2014 Consent Order is required and that the established parenting schedule remain in place.

Change of School

- [57] The claimant submits her decision to withdraw the child from M.S.E.S. and enroll her in B.E.S. was in A.'s best interests primarily because:
- a) her primary home is in the B.E.S. catchment area and the change removes the need for her to travel to and from school by car twice a day;

- b) that the child does not have friends at M.S.E.S. and that attending a neighbourhood school will allow her to make friends in the area;
- c) the two schools are parallel schools, hence the child's education will not be affected by the move;
- d) the child will be able to walk to and from school;
- e) that the child wants to attend the new school.

[58] The claimant alleges that the respondent did not object to the move, although I note he was not informed about it. She submits the onus was on him to bring an application to address the school issue as he should have inferred the change was being made. The claimant also submits the inability of the respondent to communicate with her made any discussion of the issue difficult and that, in any event, the respondent is only concerned with securing equal parenting time, not the best interests of the child.

[59] In seeking to place the onus on the respondent to prevent the claimant from making a unilateral decision to move the child to a new school, the claimant fails to acknowledge her responsibility to consult with the respondent about such decisions and to apply to the Court for direction if they are unable to agree. She ignores the fact that they are both A.'s guardians and have shared responsibilities in that regard.

[60] The claimant also submits that as primary parent she can make day-to-day decisions concerning the child such as the change of school. I reject that moving a child from one school to another is such a decision. It is clearly a significant decision in which both parents are entitled to have input.

[61] As counsel for the respondent's counsel aptly put it: the claimant acts and then asks for forgiveness instead of first seeking permission.

[62] Oddly, while emphasizing the importance of potential new friends in the area of the new school, the claimant is dismissive of the child's relationships with children at the school she has attended for six years. There is no evidence the child was not doing well there. The claimant's unilateral actions must not be condoned. The status quo in relation to the child's school is what is in her best interests pending any agreement by the parties or a court order. Nor is there an application before the Court seeking such a change.

[63] For these reasons, I ordered that the child be forthwith returned to M.S.E.S. and that she not be moved to any other school without the written consent of the other party or an order of this Court.

- [64] The respondent sought an order relating to make-up parenting time however there is insufficient evidence before the Court to address such in any detail. That matter is adjourned. It is best addressed at trial. As the issue of holiday time was raised by the respondent but not in the relief sought in the application, and it was not addressed in detail by the parties in submissions, nor in the evidence, it is adjourned as well.
- [65] The respondent also sought an order under s. 61(2)(g) that given the wrongful denial of parenting time, the claimant pay to the respondent for the benefit of the child the sum of \$5,000. I decline to make such an order as this is the first wrongful denial by the claimant over the past seven years.
- [66] The claimant seeks a non-evaluative view of the child. Given the child is now 10 years of age and is caught between two parents at odds, I am of the view such may assist the Court at trial. A qualified individual shall conduct the assessment and shall explore the child's perspective on attending the respondent's home for parenting time and the reasons for the child's views regarding such attendance. The costs of the assessment are to be shared equally.

Orders

- [67] As ordered on September 20, 2021, the application of the respondent to enforce the Consent Order of September 2, 2014 is granted.
- [68] The application of the claimant to vary the Consent Order is dismissed.
- [69] As ordered on September 20, 2021 the parenting of the child shall continue in accordance with the September 2, 2014 Consent Order.
- [70] Also as ordered on September 20, 2021, the child shall attend M.S.E.S. and not be moved to any other school without the written consent of the parties or an order of this Court.
- [71] The pick-up and drop off of the child at the school may be performed by the parties or their respective spouses.
- [72] Each parent shall forthwith inform the other parent of all scheduled medical appointments once the appointment is made.
- [73] A Hear the Child report shall be obtained from a qualified assessor, with the costs to be shared equally.
- [74] The parties asked that I remain seized of the matter for matters arising before trial. Subject to my availability, I will remain seized.

Costs

[75] Costs would normally follow the event. The respondent has been substantially successful. However, counsel for the claimant sought leave to address costs upon receipt of these reasons. If the parties do not resolve the issue of costs, they are at liberty to apply.

"R. D. Punnett, J."

The Honourable Mr. Justice Punnett

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/21/21/2021BCSC2115.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/s-l-w-b-v-d-a-b-2021>

Prepared on 27 October 2026 · Esheria