

CANADA / JUDGMENT

S.S.C.M. v. A.C.W.

2025 BCSC 1865

COURT

Supreme Court of British Columbia

DECIDED

6 August 2025

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

2025 BCSC 1865 S.S.C.M. v. A.C.W.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.S.C.M. v. A.C.W.,

2025 BCSC 1865

Date: 20250806

Docket: E222977

Registry: Victoria

Between:

S.S.C.M.

Claimant

And:

A.C.W.

Respondent

Corrected Judgment: The text of the judgment was corrected at paras. 2, 3, 11, 18, 19, 20 and 21, and the names were anonymized on September 25, 2025

Before: The Honourable Justice Morley

Oral Reasons for Judgment

(In Chambers)

Counsel for the Claimant

(by videoconference):

L. MacLean, K.C.

F. Maclean

Agents for Counsel for the Respondent:

J. Nelson

T. Grewal

Place and Date of Hearing:

Victoria, B.C.

August 6, 2025

Place and Date of Judgment:

Victoria, B.C.

August 6, 2025

- [1] THE COURT: All right. I am going to give very brief reasons right now.
- [2] I am going to dismiss A.C.W.'s application that parenting time may occur in Texas, which would require adjusting the current non-removal from British Columbia order. The reasons are as follows.
- [3] This application creates a dilemma because I consider it important that these boys have a continuing relationship with their father and, as of right now -- leaving aside for a moment whether that is because of his own actions or not -- he is only allowed to have physical parenting time with them in British Columbia, but does not yet have permission to come to Canada. That means his relationship with them is confined to video conferencing.
- [4] What I have to do here is balance the potential harm to the boys in sustaining a relationship with their father only electronically until his ability to come to Canada can be worked out against the potential risk of -- to put it as neutrally as I can -- a jurisdictional dispute in which where they are physically located becomes a piece in that puzzle.
- [5] Making their physical location a piece in a jurisdictional game would absolutely not be in their interests, regardless of whether that is characterized as abduction or wrongful retention. It would fundamentally interfere with their attachment with their mother and also, potentially with their father and the father's family. It would be very detrimental.
- [6] So, the question really comes down to this: how does a delay in physical parenting time with A.C.W. and the harm involved in that to the children's best interests weigh against the risk of a renewed battle over where they are located?

- [7] The question of the right jurisdiction to address their needs has now been addressed by both the American and Canadian courts. To be sure, that is going through appeals in the U.S. Fifth Circuit and in the British Columbia Court of Appeal. That is perfectly legitimate. But it is not legitimate if where they physically are becomes a piece in a game to further that dispute. Whether I call that "abduction" or "wrongful retention" or not, any substantial risk of that would be contrary to their best interests and cannot be countenanced.
- [8] On the other side of the equation, the question is to what extent A.C.W.'s need to obtain permission to visit Canada from the border authorities is a serious problem.
- [9] The evidence before me is that he was admitted, without any problem, into Canada more than 10 years ago. He has no criminal record since then. S.S.C.M. is prepared to provide a letter of support to the Canadian border authorities. My own opinion may also have some weight with those authorities.
- [10] That opinion, based on reviewing a substantial evidentiary record is that A.C.W. represents no threat whatsoever to public safety in Canada and it is very important for his continued relationship with his children that he be permitted to come to Canada.
- [11] I do not have jurisdiction to interfere with the decisions of border enforcement, but I would urge them to take my finding into account when they are making their decision.
- [12] I am not satisfied that A.C.W. has moved with maximum dispatch to try to get approval to enter Canada. The evidence of what he has done is a bit stale at this point, over a month old. He indicated in his reply that he has applied to a whole host of police organizations, including the Oak Bay Police. I think that is surely overkill. There is no suggestion at all that A.C.W. has ever committed a crime in Oak Bay, or that he has even been there.
- [13] Once A.C.W. has made an application, we will see what the customs and border authorities do. If they allow him entry, then he can see the boys. If, contrary to my expectation, they refuse him entry, I would consider that a material change in circumstances. That would absolutely mean that he could come back and seek a variation of the non-removal clause from British Columbia. There is no question about it. But, until that happens, and even if there are delays that are beyond his control, I am not persuaded that they are so great that they represent a serious interference with his ability to have a relationship with these boys, or their interest in maintaining that relationship.
- [14] On the other side is the risk that A.C.W. will move them to Texas or some other jurisdiction. If it was a question of trying to establish beyond a reasonable doubt or even on a balance of probabilities that he will abduct them, then I would agree that this has not been established.
- [15] However, there is expert evidence before me that suggests there is a real risk. And I accept that expert evidence to that degree.

- [16] First, A.C.W. has engaged in what I and the U.S. District Court found to be wrongful retention in the past. Further, I see a pattern of use of litigation in a way that is disproportionate and excessive and I have some concerns that it represents controlling behaviour. I am not saying A.C.W. does not have the right to pursue litigation within his rights, but the quantity of litigation is disproportionate, and that is one of the risk factors that is addressed in the expert opinion.
- [17] A.C.W. should be commended that he has obtained many years of sobriety. All the evidence before me is that maybe leaving aside whether he would be a good primary parent for the boys, which is something that has to be decided later, the evidence is that he is a loving father and I have no concerns about his ability to look after them on vacations. I leave to subsequent determination either by myself or someone else as to whether he would be an appropriate primary parent, but I do not have any concerns about him looking after their boys for a few weeks.
- [18] My concern, though, is that I do not think A.C.W. has taken responsibility for the fact that he did not abide by my August 2, 2024 order. That order was made at the suggestion of his counsel, presumably on his instructions, and it was made despite S.S.C.M.'s concern of abduction. It was for the benefit of promoting the boys' relationship with their father, since there was inevitably going to have to be a continuation of the hearing, the children were still in British Columbia, and there was no British Columbia order in place yet that ordered the children to be returned to Texas.
- [19] After the order was made, S.S.C.M. suggested -- and I think this was reasonable in the circumstances -- the paternal grandfather as her designate to bring the boys back to Victoria. He was the one who picked them up in Victoria. I am not persuaded by the evidence that it was ever clearly communicated to her that the paternal grandfather was unable or unwilling to return them. I think in the circumstances that it was A.C.W.'s responsibility to notify her of this fact and to propose an alternative. I am persuaded that A.C.W. did not do so in pursuit of a strategy, which was to use the Texas courts instead, to effectively obtain relocation. It has already been determined that this was wrongful retention contrary to the Hague Convention. In addition, in my view, this was a deliberate decision not to abide by my order, despite the fact that it was at his counsel's suggestion and it benefitted him.
- [20] I therefore remain convinced that the finding I made that he intentionally breached my order was correct. The evidence, on a balance of probabilities, is that A.C.W. -- possibly from the outset, but certainly very shortly after the boys came to Texas -- had decided not to return the boys here, despite agreeing to an order requiring them to come back at the end of August 2024. I do not see any reasonable way to interpret the sequence of events consistent with any intention on his part to have the boys returned, or to provide them to the maternal grandmother in Texas. I see no evidence, that I accept anyway, that such a proposal was communicated to S.S.C.M. When S.S.C.M. did travel to Texas, A.C.W. had already obtained an ex parte order that she could not come back here. It required her instead to engage in very

limited and supervised parenting time. This was the very opposite of an intent to abide by my order.

- [21] That might not be fatal to A.C.W.'s application now, if he were prepared to take responsibility for his actions last summer. But he is not. That fact, in addition to the risk factors identified in the expert report, means I cannot rule out, or consider as negligible or lacking in a foundation, the risk that if I were to give it to him the opportunity of having the boys in Texas again, he would see this as an opportunity to once again embroil them in a jurisdictional dispute. This is not an acceptable risk.
- [22] Again, I am not saying I find he will do this on a balance of probabilities, let alone at a reasonable doubt standard. But I find it is a sufficiently weighty risk that, in light of the fact that it would have such a negative impact on the best interests of these two boys, it is in their overall best interests that the non-removal from British Columbia order remain in place.
- [23] This can be revisited once A.C.W. has attempted to get permission to come to visit Canada and has either been denied - in which case there will have been a material change of circumstances -- or has been successful, has engaged in parenting time here and can either, pessimistically, show some problem with that, or, more optimistically, show that more successful parenting time exchanges indicate a mitigated risk.
- [24] But, as of right now, I think the risk of another retention or abduction outweighs the impact on the boys of waiting and seeing what the Canadian border authorities do.

[SUBMISSIONS RE COSTS OF THE APPLICATION]

[25] THE COURT: I am going to award costs of this application at Scale B in any event of the cause.

[26] Thank you. We are adjourned.

"The Honourable Justice Morley"

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/25/18/2025BCSC1865cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/s-s-c-m-v-a-c-w-2025-bcsc-1865>

Prepared on 28 October 2026 · Esheria