
CANADA / JUDGMENT

Slogoski v. Mullan

2015 BCSC 1810

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Supreme Court of British Columbia

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2015 BCSC 1810 Slogoski v. Mullan

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Slogoski v. Mullan,

2015 BCSC 1810

Date: 20150930

Docket: E150759

Registry: Vancouver

Between:

Felicia Anne Slogoski

Claimant

And

Mark Andrew Mullan, Donald Jack Mullan,

Petronilla Mullan

Respondents

Before: The Honourable Madam Justice Sharma

Oral Reasons for Judgment

The Claimant:

D. Karkairan

Counsel for the Respondents:

R. Yousefi

Place and Date of Trial:

Vancouver, B.C.

August 24 - 28, 31,

September 1 - 4,

September 14, 2015

Place and Date of Judgment:

Vancouver, B.C.

September 30, 2015

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I: INTRODUCTION

- [1] I delivered an abbreviated version of this decision in court on September 30, 2015 and said the full judgment would be published soon; this is that judgment.
- [2] This is a high conflict family case involving three young children: a girl aged six and two boys aged two and one. The children's mother (the "claimant") and father (the "respondent") accuse each other of violence and blame each other for the hostile nature of their relationship. Each seeks sole guardianship of and parental responsibility for their children. The affidavit material filed in support of a number of interim applications presents two vastly different pictures of their relationship and conduct. There were no witnesses to the violent episodes other than the claimant and respondent themselves. Thus, each person's credibility will determine, to a very large degree, the outcome in this case.
- [3] Regrettably, this degree of contradiction in the affidavit evidence is not uncommon. Parties can become so entrenched in their animosity and acrimony towards one another that they are loathe to agree with anything the other party says; when one says black, the other says white, and the truth is most likely grey.
- [4] This, however, is not one of those cases.
- [5] Instead, I prefer the respondent's evidence to the claimant's in virtually all instances of contradiction. The respondent is credible, reliable and honest. He testified calmly, with candour and humility. He acknowledged that at times his behaviour was unacceptable. He did not deny that he had abused alcohol in the past. He was contrite about the part he played in the volatile, unhealthy relationship he had with the claimant. But he has managed to make significant strides in turning his life around. The testimony of the witnesses called on his behalf was consistent with his evidence and with each other to a very large degree.
- [6] On the other hand, the claimant's testimony was often internally inconsistent, inconsistent with her previous sworn statements, contradicted or denied by the respondent's and his witnesses' testimony and sometimes illogical or lacking common sense. At times her evidence was contrary to her position in the litigation. I have found that some events she testified about did not happen.
- [7] Also, the tenor and content of her email and text messages was often inappropriate, unreasonable and nasty. This was at odds with her description about her conduct and statements she made about her parenting. I find her credibility and reliability as a witness to be severely impaired. While none of that departs from what I believe to be her genuine love and affection for her three children, viewing the whole of the evidence, I conclude it is not in the children's best interests to remain primarily in the claimant's care. In this decision, I explain why.

II: HISTORY OF PROCEEDINGS

- [8] This case has come to trial on an expedited basis. The notice of family claim was filed on March 19, 2015. The respondent filed his response on April 21, 2015. The other respondents are the father's parents (the "Grandparents"), and they filed a response on April 22, 2015 and a counterclaim on April 24, 2015. In these Reasons I do not intend the phrase "the parties" to include the Grandparents. The respondent filed a counterclaim on July 20, 2015.
- [9] The respondent filed an application on May 11, 2015, seeking orders relating to the children. That application was heard before a master on May 20th and resulted in the respondent being granted supervised parenting time on a gradually increasing scale starting with six hours a week. The master also ordered the preparation of a report pursuant to s. 211 of the Family Law Act, S.B.C. 2011, c. 25 but counsel informed me that report is not likely to be ready before May or June of 2016.
- [10] It was not contested that up until these court orders were granted, the respondent had requested to see the children but the claimant refused. She decided that the respondent was not fit to see the children unless he agreed that he needed to undergo counselling.
- [11] At the same hearing the court granted other consequential orders including one, by consent and pursuant to section 183 of the Family Law Act, that prohibited the respondent and claimant from directly or indirectly communicating with each other except for the purpose of arranging a parenting schedule. In the course of delivering his reasons, the master stated:
- I am going to order that you go down and make arrangements to fix the trial date of January 11, [2016]. You both told me that your calendars are free on that day, and that is a day that the court has available. There is only one way this is going to get resolved, and that is through a trial. Interim applications of this kind just are not going to do it. As I said, the litany of contradictions rises to a very high level here.
- [12] On June 22, 2015 the claimant filed an application regarding the respondent's payment of child and spousal support. The same day the respondent brought an application to seek an earlier trial date because the claimant, despite the May 20 order, had denied him parenting time with the children. Both applications were heard on June 26, 2015. Among other things, the master moved up the trial date to start August 24, 2015. He increased the respondent's parenting time, ordered make-up parenting time and authorized the police or RCMP to enforce that parenting time. Because of the nature of the claimant's communications to the respondent, he further restricted the parties' communication to emails regarding only the timing and location of the exchange of the children. The master also ordered the claimant to provide specific documents to the respondent within 14 days including her application to BC Housing, copies of bank and credit card statements and receipts and any applications she had made to universities.

- [13] The claimant filed an application on July 3, 2015 seeking permission to travel with the children to Regina, Saskatchewan, where her family lives. She was also seeking a change in the respondent's parenting time, the payment of debt by the respondent, and other orders. The claimant was no longer represented by counsel and completed the application herself.
- [14] The matter was heard July 7, 2015. The master denied the claimant's application and ordered costs payable to the respondent. The master also required each party to give at least seven days' notice regarding any extracurricular activities that would take place during the other party's parenting time. The claimant was further restricted with regard to how she communicated with the respondent. Except in the case of a medical emergency, the claimant could only email the respondent between 9:00 a.m. and 6:00 p.m.
- [15] The claimant next filed applications on July 22 and July 27, 2015. The respondent also filed an application on July 27 and all three applications and a trial management conference were heard before a master on that day. The master granted 19 orders including preventing either party from bringing any applications for further interim relief prior to the trial. Most of the orders the master granted related to the management of the trial, including deadlines for the parties to provide information and documents to the other party. The claimant failed to comply with any of the court orders relating to trial preparation.
- [16] The claimant's application for travelling with the children to Regina, Saskatchewan was again dismissed. A number of other orders sought by the respondent were dismissed and a number of orders sought by the claimant were adjourned to the trial.
- [17] Notwithstanding the master's order that no further interim applications be filed prior to trial, the claimant did so on three occasions seeking relief that, for the most part, had already been denied to her.
- [18] The trial was scheduled for eight days; all eight days were occupied by evidence. Given the fact that the claimant is living with the children in a shelter and the circumstances under which the trial was expedited, I informed the parties that bringing stability to the children's living situation was a priority and ideally, should be resolved before the end of September. Because of scheduling difficulties, and with the parties' consent, I heard submissions restricted to the parenting issues in advance of and separate from the parties' submissions on all other issues, and indicated I would issue Reasons as soon as possible. Counsel will provide final submissions on all remaining issues at another hearing to be scheduled.
- [19] I pause to express the court's gratitude to Mr. D. Karkairan, who graciously stepped in mid-trial to represent the claimant, and to Ms. Yousefi, counsel for all respondents, for assisting the court and conducting themselves with civility and professionalism in this most difficult case.

III: RELIEF SOUGHT

- [20] The sole issue addressed in these Reasons is what parenting arrangements are in the best interest of the children.
- [21] The claimant seeks an order granting her sole guardianship of and parental responsibilities for the children with the respondent getting only limited supervised parenting time. In the alternative, she asks to remain the children's primary caregiver with them living with her and the respondent having parenting time with them on the weekends and possibly some weekday evenings.
- [22] The respondent seeks an order that the children primarily live with him and that he have sole guardianship and parental responsibilities. He says the claimant should be granted professionally supervised parenting time on Mondays and Tuesdays, with that access to increase incrementally if the claimant's "behaviour and psyche" improve. He also proposes William Storey be appointed as the parenting coordinator for two years and that Mr. Storey shall have liberty to make decisions respecting the children, with the parties to equally share the costs of his services.

IV: BACKGROUND

- [23] The parties were not married so all issues will be decided under the Family Law Act. They started living together in June 2007 and separated in January 2015. Their children were born in November 2008, March 2013 and May 2014. In early 2009, after the birth of their first child, the parties moved into an apartment owned by the Grandparents.
- [24] There is no dispute about the applicable law or legislation. Section 37 of the Family Law Act directs the court to only consider the best interests of the child when making an order respecting guardianship and parenting arrangements. There are allegations of family violence in this case and section 38 of the Family Law Act mandates the court to consider all of the factors listed in that section. In both sections 37 and 38, a number of factors overlap, and many facts are relevant to more than one factor.
- [25] By way of overview, the claimant describes that living with the respondent was like living with a time bomb, never knowing when he would explode with anger and violence. She claims to have been injured in many violent episodes and says that she was always the victim. She thinks the respondent is a "binge alcoholic" and says that about every 18 months he would "zone out" leaving the relationship for no apparent reason only to return later. They had many run-ins with police officers because of the violence. She testified that the respondent has threatened to kill her in the past. It has consistently been the claimant's position that the respondent needs alcohol and mental health counselling and until she is satisfied that he has admitted a need for counselling, he should not be allowed unsupervised visits with the children.
- [26] The respondent says his relationship with the claimant was toxic and that they should never have been together. He describes the claimant as emotionally controlling and physically aggressive. He admits the arguments sometimes escalated to physical altercations, but

according to him the claimant initiated the violence. He did acknowledge that he sometimes retaliated with physical force. He says the claimant was often intoxicated during these fights but admits he also drank, sometimes to excess. He admits he abused alcohol during part of the relationship, using it to self-medicate because of his profound unhappiness and frustration. He says he was socially isolated and rarely spent time going out with friends or colleagues.

- [27] It is clear this relationship was volatile and unhealthy. The parties broke up several times; the claimant either kicked the respondent out of their apartment after a fight, or he would leave the relationship. But they would reconcile and the cycle would repeat.
- [28] The respondent testified that he has become healthy and happy since the relationship ended although he admits to a period of depression after the break-up. He has, for the last six months or so, abstained from drinking alcohol except for one glass of wine. He submitted himself to random drug and alcohol tests, all of which detected no substances. He has entered a caring relationship and his current partner testified. She struck me as a reasonable, calm and caring person. His current partner and his parents testified and they attested to his sobriety and healthy state of mind.

V: THE BEST INTERESTS OF THE CHILDREN

- [29] Section 37 mandates the court to look at 10 factors when deciding what parenting arrangement is in a child's best interests. The court examines the child's health and emotional well-being, the nature and strength of the child's relationship with significant people in his or her life, and the child's need for stability given his or her age and stage of development [s. 37(2)(a), (c) and (e)]. The court must also take into account the ability of a person seeking guardianship, parental responsibilities or parenting time to carry out those duties and whether the proposed arrangement would put the child's safety, security or well-being at risk because of a need for the person to cooperate with the child's guardian [s. 37(2)(f) and (i)].
- [30] In this case, because of the children's young age I conclude that the history of the children's care is not as important [s. 37(2)(d)] as it may be in other cases; it is also inappropriate to canvass or consider their views [s. 37(2)(b)]. Two factors in s. 37 address family violence: the court must consider whether family violence was directed at the children, and if the person responsible for that violence was thereby impaired in his or her ability to care for the children [s. 37(2)(g) and (h)].

A. Family Violence

- [31] Family violence is defined in section 1 of the Family Law Act to include, among other things, physical abuse (not including the use of reasonable force to protect oneself or others from harm) and psychological or emotional abuse including intimidation, harassment, coercion or threats, stalking and intentional damage to property. Pursuant to section 38, the court is

obliged to consider certain characteristics of the family violence: its nature, seriousness and frequency; how recent it was; whether it was directed at or witnessed by the children and the impact that it may have had on the children's psychological and emotional safety, security and well-being; and, whether a person responsible for violence has taken steps to prevent more of it in the future.

- [32] The parties agree that they have had physical altercations during their relationship. The claimant says in none of those was she the aggressor, and she says they all involved the respondent being intoxicated. She denies drinking to excess. She testified that the violent episodes were too numerous to mention but she focussed her evidence on the incidents described below.
- [33] The respondent testified the violence, when it occurred, was initiated by the claimant's emotional or physical abuse. He says drinking was usually a contributing factor but that both parties were drinking or intoxicated. He denies the occurrence of a number of incidents described by the claimant.
- [34] In almost all instances where the respondent's and claimant's evidence differed, I have preferred the respondent's version because he is the more credible and reliable witness, and his narrative fit with the rest of the evidence much better than hers. The discussion below constitutes the findings I have made; not all of the claimant's contradictory evidence has been discussed.
1. Incidents with Physical Altercations
 - a. Halloween 2007

[35] The parties went to Trout Lake and lit fireworks; both were drinking a lot but the claimant became very intoxicated. They went to a movie. The claimant did not enjoy the movie and was being very vocal about that. In response to a patron asking her to be quiet, the claimant swore at that person and used a racial epithet. The respondent pulled the claimant out of the theatre at that point and wanted to get her home.

[36] As they walked toward home, the claimant was confrontational and belligerent. The claimant accused the respondent of infidelity. She started pushing and shoving the respondent. In response, he grabbed her in an embrace, lifting her slightly off the ground while telling her that he loved her. The respondent knew this gesture annoyed the claimant, but he claims he was trying to lighten the mood by being affectionate because that tactic had worked in the past. The claimant found the respondent's actions aggravating and pushed him away and off, eventually escalating to punching him in the face three or four times giving him a black eye. He did not retaliate, hit or kick her.
 - b. The towel bar incident

- [37] On the day the respondent finished writing his final exams, he went to a celebratory lunch with classmates and instructors. He then went to a party hosted by one of the classmates but he did not stay long. He drank at the lunch and party, and admitted he was probably drunk. He says he called and spoke with the claimant shortly after he got to the party. He could tell that she was upset. He decided to return home.
- [38] He got home at about 10:30 p.m. The claimant was upset and berated him for spending money on going out. They argued. They were yelling at each other. He went into the bathroom to take a shower and she followed him. He tried to leave, but she obstructed him and began pushing; they scuffled. She pushed him and he fell back against the wall, hitting the back of his head on a bracket to which a towel bar used to be attached but had been removed. He was cut and bleeding profusely. The claimant left with their daughter. The police showed up, but the respondent did not give a statement implicating the claimant. He was taken to the hospital and got stitches. He left the relationship that night and stayed with his parents for a time.
- [39] The claimant's version of this episode includes her accusation that the respondent put her in a choke hold from behind when they were in the bathroom. She claims that she managed to push herself up, which forced him back and that is when he hit his head. Her testimony during cross-examination about what happened next and how and when she got into her car with her daughter to drive away was inconsistent with her direct testimony. At one point, she contradicted herself on the stand within a few minutes. At times, her description of the sequence of events made no logical sense.
- [40] I find the respondent never put the claimant in a choke-hold. I find the claimant started the argument and the physical altercation although they both tussled. Only the respondent was injured in this fight, and it was a serious injury.
- c. August 2011
- [41] The parties went to watch a B.C. Lions v. Saskatchewan Roughriders game. They were both drinking heavily and after the game they went to a pub. The respondent remarked to the claimant that their waitress was a former classmate of his. The claimant became jealous and began making a scene. They argued loudly, and left the pub. The respondent went home on his own.
- [42] The claimant did not return to the apartment until about midnight. She claimed she sat at a fountain outside their building for over an hour. When she got home, the claimant says that for no reason the respondent pulled her by her hair to the floor, kicked her in the head and stomach and threw the phone against a wall, causing it to shatter. She said she was trying to get away but he tripped and grabbed her by the ankle and they fought some more.

[43] I am not persuaded her testimony is accurate. Instead, I find the claimant started an argument when she got into the apartment. I find they both are responsible for the physical altercation that ensued, but I do not find that the respondent kicked the claimant in the head or stomach. Nor do I find that the respondent was the instigator of the physical fight. The police were called and the parties spent the night in jail in separate cells but they were not charged.

[44] The respondent was contrite about this event, admitting it was a "brutal" fight. He regretted the incident but he took responsibility for his role in it. The claimant said she was blameless, and the violence was unprovoked. I prefer the respondent's version of events.

d. New Year's, 2015

[45] The parties visited the claimant's family in Saskatchewan with their children each year during the Christmas holidays. They had a tradition of leaving their children with the claimant's parents while they spent a night in a hotel. This past year, they went to a hotel in Moose Jaw. They both drank heavily. The respondent fell asleep in their room before midnight. He was awakened by the claimant kicking and yelling at him because he had not remained awake to ring in the new year. He responded and they had a physical fight hitting, punching and kicking. He testified that he is embarrassed by his behaviour and acknowledges it was wrong.

[46] He left the room and the claimant locked him out. He went to the lobby and by that time, the RCMP had arrived. They give him the option of getting and paying for another room, or spending the night in a cell at the police station, which he elected to do. He says when the claimant picked him up the next morning, she mocked him, claiming she got the better of him during their fight.

[47] The claimant's version of this incident is that the respondent was falling asleep or passing out in the hot tub, so she left him there and went back to the room on her own. She says some time later, the respondent came into the room, pinned her on the bed and punched her so hard on the forehead that she saw stars. She says this was unprovoked.

[48] I find the claimant instigated the fight because she was angry the respondent had fallen asleep before midnight. I also find that both parties participated in a physical altercation and they were both intoxicated. I do not find that the respondent punched the claimant in the forehead or that she "saw stars".

[49] Neither party made a statement to the RCMP at the time of this incident. However, at about the same time that the claimant started this litigation in March 2015, she travelled to Regina to see her family. She went to the Moose Jaw RCMP and made a statement about the above incident. A Saskatchewan warrant has been issued for the respondent's arrest. He has not yet spoken with the Saskatchewan RCMP or addressed that warrant but fully intends to do so once the trial was completed. The existence of this warrant has had no impact on my decision.

2. Events Exaggerated by the Claimant

- [50] I find that the claimant has exaggerated certain events in order to bolster her claim that the respondent was abusive towards her, and that he requires counselling.
- [51] The claimant says that when she was about five months pregnant with their third child, the respondent stabbed himself in the stomach with a knife. She says their second child was crawling around on the floor as the two argued, but I am not persuaded that it is true. I find the children were all asleep and did not witness this incident.
- [52] The parties had watched a Canucks game and both had been drinking. An argument started about the respondent living and working in Northern Alberta for two weeks at a time, a point of contention between them. The respondent was cleaning up in the kitchen and the claimant was "in his face", yelling.
- [53] The decision to move to Alberta had been made jointly because they needed more income. But the respondent admitted that he found the arrangement of living away from the claimant to be a welcome respite from what he knew was an unhealthy relationship. In that context, the claimant's complaints about him being away were very frustrating and on that night, he became very emotional. He says he felt he was at a breaking point. He grabbed a butter knife and poked his abdomen, hard enough that it did hurt. He was wearing a hockey jersey but there was no rip or tear in it. He did not break the skin. He immediately left and went down to the storage area in their building, not knowing what to do; he was flustered. He walked around outside. He says he returned within an hour.
- [54] The respondent admits his behaviour was juvenile. He testified he is ashamed of what he did. By way of explanation, but not excuse, he said that his frustration with the relationship had been growing and he felt trapped and depressed.
- [55] The claimant has championed this incident throughout this case as proof that the respondent has a mental illness, needs counselling and should not be near the children. In her version of events, the respondent stabbed himself with a knife with a long blade and wooden handle.
- [56] I find the claimant has exaggerated what happened and its significance. I accept the respondent's evidence that his actions were born of extreme frustration, and I do not find they represent a pattern of behaviour; this was an aberration. In my view, this incident is no indication of mental illness or any condition worthy of medical attention. Instead it was a harbinger of the dissolution of their relationship.

- [57] The claimant further claims that during a trip to Seattle the respondent jumped out of the car while it was still moving, causing their daughter to begin screaming hysterically in fear for his safety. The claimant also says on one occasion the respondent was high and drunk and intentionally ran into traffic on a busy downtown street. She says the respondent's behaviour was frightening and along with the "stabbing" incident, these events illustrate the respondent has a tendency toward self-harm.
- [58] I prefer the respondent's evidence about these events and find the claimant has exaggerated both the events and their significance. According to the respondent, while driving to Seattle, the claimant became angry and frustrated at the directions the respondent was giving her. She was yelling and denigrating him. He knew the situation would escalate so he asked the claimant to pull the vehicle over so that he could get out, sparing their daughter from witnessing another fight. The claimant pulled over and came to a stop; he then got out of the vehicle and sat nearby, returning some 20 minutes later hoping the claimant had calmed down. As to the other incident, the respondent assumes the claimant is referring to an incident when they were arguing in public on their way home and to get away, he jay-walked across Hastings Street. He denies it was unsafe to cross the street.

3. Unsubstantiated Allegations

- [59] There are a number of incidents that the claimant testified happened that the respondent flatly denies. In all instances I find that the events did not happen.
- a. The claimant's fight with her sister
- [60] In the summer of 2014, the respondent and claimant drove to Regina with their two sons; the claimant's father had already flown to Vancouver and taken their daughter back to Regina by plane, and then the two of them went camping.
- [61] In the late evening on the day the parties arrived, the claimant and her sister got into an argument. The respondent's interjected at one point to tell the claimant's sister "not to speak to his wife that way". The sisters' argument escalated into a physical confrontation in which the claimant's sister bit the claimant on the arm.
- [62] The claimant's mother testified. She did not witness the beginning of this event, but saw the two sisters were physically fighting and was worried enough that she called the police. She did not implicate the respondent in the incident.
- [63] The claimant testified that the respondent and her sister were arguing and at one point he pushed her sister, who was pregnant at the time. The claimant says that in an attempt to end the argument, she tried to grab her sister's cell phone to throw it outside hoping her sister would leave to retrieve it, at which time the claimant would lock her sister out of the house. This did not work and instead, the sisters started fighting. This explanation is dubious, at best.

- [64] In any event, I find the respondent did not push the claimant's sister. He had no involvement in the physical fight between the two sisters, and limited involvement in the argument.
- b. Forcing their daughter to eat salad
- [65] Both parties described their daughter as a picky eater. The respondent said they decided at one point to take a firm stand with her. They made the young girl sit at the table until she finished all of her salad. The young girl sat at the table while the parties yelled at her loudly, over a long period of time. At one point, the claimant put a forkful of salad in their daughter's mouth and forced the girl's mouth shut; the girl spit the food out. Apparently a neighbour called the police in reaction to the commotion. An officer spoke to the daughter alone and then the police left without incident.
- [66] The claimant makes the serious allegation that the respondent hit his daughter, and forced her to sit and continue eating after she had vomited on the table. Yet, the claimant said she did not enter the kitchen until the police arrived so she could not have seen the respondent hit their daughter or force her mouth closed. I also find it difficult to believe that the claimant would have remained in a different room while the respondent was yelling loud enough to trigger the neighbours to call the police.
- [67] After the police left, the claimant says the respondent asked their daughter if the police questioned her about being hit. Their daughter confirmed she was asked but that she said that her father did not hit her. The claimant says the respondent praised their daughter for that answer. The claimant infers from that conversation that the respondent did hit their daughter.
- [68] The respondent says that conversation never took place and he never hit his daughter. He denies the daughter vomited. He says the claimant was involved in this incident the entire time. I believe him and reject the claimant's evidence about this event.
- c. The missed punch
- [69] The claimant testified the respondent aimed to punch her in the head while she was holding their daughter, who was about eight months old at the time. She testified that during an argument, the respondent motioned to punch her in the face but she turned away in time and he ended up hitting the baby in the nose. She did not seek medical attention or call the police. The respondent denies this incident in its entirety.
- [70] I find the claimant has fabricated this story. During cross-examination, she demonstrated how she reacted when the respondent attempted to hit her. Respondent's counsel starting by suggesting the claimant was holding the baby upright, facing her; the claimant replied dismissively that "the way you hold a baby" (gesturing) is in a cradle position. The claimant says she stood holding the baby with its head cradled in her left elbow. As the respondent moved to punch her in the head, the claimant says she leaned her head back and turned her body to the left such that the baby was moved further away from the respondent. She claims that the respondent ended up punching the baby in the nose, even though he was aiming for

her (the claimant's) face, and even though the baby's head would have been further away than the original location of the claimant's face.

[71] The claimant's testimony defies logic and the physical actions she describes make no sense. Unless their daughter was very small or developmentally delayed such that she could not lift her head or keep a straight back, I do not believe the claimant would be "cradling" an eight month old baby as she gestured.

d. The claimant's broken nose

[72] The claimant says that the respondent punched and broke her nose sometime in 2007. She did not seek medical attention and did not call the police. In fact, she claimed she did not even realize her nose was broken until many years later when an acquaintance remarked that it looked broken. During cross-examination the claimant said she had been in pain for about two weeks after the punch but did not seek medical help because the pain was not excruciating. She said there had been no bleeding. She also added details about the incident during cross-examination that she had not mentioned during her testimony in chief.

[73] The respondent says this event never happened. The claimant had never mentioned anything about having broken her nose before this litigation was started. I find the respondent did not punch the claimant in the face and did not break her nose.

e. The day after the claimant confirmed she was pregnant the first time

[74] The claimant says the morning after finding out from the doctor that she was pregnant the first time, the respondent got on top of her in bed, pinned her down with his hands on her neck and said if she did not abort the pregnancy he would have nothing to do with her.

[75] The respondent denies this event occurred. According to him, he had already left the relationship and was renting another apartment when they discovered the claimant was pregnant. He had no desire to get back together with the claimant when she told him she was pregnant, but he did accompany her to the doctor to see if it was true. Even then he did not feel the pregnancy was a sufficient reason to return to an unhealthy relationship and the parties did not reconcile for a number of months. He says he eventually changed his mind because he wanted to be involved in his child's life.

[76] The Grandparents' testimony supported the respondent's version of events, as did the claimant's mother's. She described finding out her daughter was pregnant over the phone. The mother said she was thrilled because this was to be her first grandchild. In cross-examination she remembers her daughter was subdued because she was "all alone" since the parties had broken up at that point. Asked to confirm the parties were not together at that point, the mother backtracked and questioned aloud when the parties had broken up, suggesting the respondent left after he found out about the pregnancy. I find it more likely than not that her original testimony was accurate. I do not find that she was intentionally lying in modifying her answer, but that most likely she was recalling what the claimant would have told her mother sometime after the litigation had started. In any event, I am

satisfied that the event described by the claimant did not happen.

4. Conclusions about Family Violence

- [77] The violence that occurred in this family was not directed at and did not occur in front of the children. I do find, however, that while the parties were together, some physical violence and emotional abuse was intermittently a defining feature of their relationship; on occasion the degree of violence was serious. I find the claimant was primarily responsible for initiating physical altercations, and her intoxication was often a contributing factor. The respondent also shares blame for his drinking and involvement in the physical fights. In his testimony, he took full responsibility for his actions.
- [78] However, I also find that the claimant was controlling and emotionally abusive towards the respondent. I believe the respondent's testimony that the claimant often belittled him, calling him stupid and that he did not deserve her; she was easily suspicious and jealous and easily prone to anger.
- [79] The claimant's email communication corroborates the respondent's position in this case and reveals the claimant's offensive remarks about the respondent's partner and parents. The respondent described having classic symptoms of a person suffering the emotional and psychological toll of an unhealthy relationship: feeling isolated, trapped, depressed and self-medicating with alcohol. He finally ended the relationship and since then, he has taken steps to turn his life around. This has resulted in a dramatic improvement in his mood and outlook.
- [80] Not once during her testimony did the claimant accept responsibility for her behaviour. She views herself as the only victim in the relationship, and thus, she has taken no steps to change her pattern of behaviour. At the same time, she has a skewed sense of her character and capacity as a parent that was not borne out by any other evidence. On the contrary, her email and text communications revealed her character to be as the respondent described.
- [81] I therefore conclude that, viewing the evidence as a whole, the nature of the violence and the context in which it occurred, does impair the claimant's ability to carry out parenting responsibilities and is likely to harm the emotional well-being of the children.

B. The Children's Health and Emotional Well-being

- [82] I find that the claimant's conduct and attitude has a substantial impact on the children's best interests, especially their emotional well-being and it is therefore important to take her behaviour into account pursuant to s. 37(4) of the Family Law Act.
- [83] The claimant has demonstrated that she has no compunction implicating the children in disputes she has with the respondent and the Grandparents. I find it very likely that this will harm these young children's emotional well-being. For example, the claimant told the children that the respondent is "sick" and needs help and that is why they did not see him for months, and cannot stay overnight with him. The claimant believes there is nothing wrong

with her telling the children this and she was unapologetic about it. Even if her belief was reasonable, and I find it was not, it is inappropriate for her to share her perceptions about the respondent's mental health with their very young children. The fact that her perceptions are inaccurate makes her comments that much more damaging.

- [84] Another example is the claimant's telling the children that their father would not let them visit their maternal grandparents in Saskatchewan, even though that was the subject of the claimant's unsuccessful court application. On another occasion, the claimant allowed their daughter to send text messages to the respondent that said "you're a jerk", "daddy poop" and rows of emoticons depicting excrement.
- [85] These incidents are representative of the claimant's general inability to separate her personal animus towards the respondent from her responsibility as a parent to act in the children's best interests. In my view, her inability has a negative impact on the children's emotional well-being and is likely to interfere with the bond between the respondent and his children.
- [86] Another example of the claimant's inability to prioritize her children's needs is the attitude she exhibits and encourages her children to exhibit toward the Grandparents. She submits that the Grandparents lack moral judgement because she says they kicked her and the children out onto the street. I find this did not happen and the claimant's insistence that it did is a potent illustration of her failure to take responsibility for the consequences of her own behaviour.
- [87] After the parties separated, the claimant continued to live in their apartment with the children. Unfortunately, there was a flood in the building on February 20, 2015 and the apartment suffered extensive damage. This required the claimant and the children to move out so that repairs could be done. The Grandparents offered that the claimant and children could live at their house but the claimant declined.
- [88] Despite repeated and urgent requests, the claimant refused to move out of the apartment with the result that the restoration company was unable to access the apartment to start repairs. She also continued to deny the company access. This created an unsafe environment in the apartment because of the likely presence of mold. Notwithstanding the potential risk to the children's health, the claimant was uncooperative, uncommunicative and rude to the building manager, the respondent's father and the restoration personnel, calling the latter "morons" and "idiots". The building manager testified and her evidence was more consistent with the Grandparents' testimony about these events.
- [89] This placed the respondent's father in a difficult position; the claimant simply would not leave the apartment. As the apartment sat stagnant, its condition was likely deteriorating. The respondent's father claimed that it was not until the claimant was promised \$5,000 for living expenses from the restoration company that she agreed to leave.

- [90] The restoration company was reluctant to work in the apartment unless it was assured the claimant would not cause further problems. Given events up to that point, I find that the Grandparents had no choice but to post an eviction notice which then permitted the restoration company to enter the premises and start much needed repairs, and prevented the claimant from causing more disruption. But this notice was only posted after the claimant had already left, and at a point when the claimant agreed in her testimony that it was not suitable for her and the children to be living there because of its condition.
- [91] I find the claimant had no intention of moving back into the apartment while it was being repaired and therefore, her insistence that the Grandparents "threw" the claimant and the children out on the street is inaccurate, and an unfair characterization. Yet the claimant maintains the Grandparents are "bad people". To make matters worse, the Grandparents received a phone call from their granddaughter in which they could hear the claimant prompting the child in the background to ask why the Grandparents had kicked them out of their home.
- [92] In addition to the testimony in this case, I find the claimant's written communications illustrate the negative impact her behaviours and attitudes will more than likely have on the children, and their relationship with their father and Grandparents. I reproduce here a few representative samples of the content and tone of the claimant's written communications that support the respondent's position in this case:
- a) In a text message exchange on January 26, 2015, the respondent is asking when he can see the children and one of the claimant's responding messages is: "Listen, I want \$1200 a week, this is until debts are paid off, once debts are paid off we can negotiate [when the respondent can see the children]".
 - b) On April 8, 2015, the respondent sends an email to the claimant indicating he wants to discuss visitation arrangements and co-parenting. In response the claimant sent a long and angry email which includes the following statements:

There is no co-parenting; you're getting third-party visitation, and I will never, ever consent to that third party being any member of your family. Ever. Your parents will die, literally, before they ever see these kids again. Fuck them. I will fight them for the next two years if I have to before I get bullied by a cripple and an alcoholic. If they were any kind of decent people, and if you were any kind of decent father, I would get what is fair for that condo. But I am not dealing with decent people or decent father, I am dealing with you and your pathetic parents; you're not a man and you wouldn't know the first thing about being one. My boys will not be like you. My boys will not be like you. [Their youngest son] is already more of a man than you. His little pinky has more athletic ability than you will ever have; just one more thing I had to tell [their daughter] what you did to her. Try taking the TV from the children, really? And you love them? Ha! You don't love them, you have never loved anything or anyone in your entire life except yourself and your booze.

- c) In an email exchange on May 29, 2015, the respondent makes a comment about exercising his parenting time as a response to the claimant suggesting the children have other activities during that time so they are not available. This is in the context that the claimant had refused the respondent access to the children until he was successful in getting a court order on May 20, 2015. The claimant's response to the respondent's comment included the following:

I wholeheartedly disagree with your opinion that my children should have contact with your family. They evicted their own grandchildren, my children do not need to be exposed to people with such poor morals. Please keep your opinions out of any further correspondence, in accordance with the current court order.

Furthermore I will not discuss any future drop off times or locations at this time. Your ignorance of understanding what children's schedules are like and how fluid they are, due to things at birthday parties, games, events etc. is just further proof of your inability to parent responsibly.

I have informed [their daughter] that you will not let her go to Playland with her friends, despite the fact [she] and her friends have been talking about it for weeks now. I told her it was because you're sick and need help.

- d) The respondent submitted that there were numerous instances of the claimant not complying with a court order allowing him parenting time, and that on almost every single exchange the claimant was at least 15 to 20 minutes late, but she would not agree to extend the end of his parenting time by the same amount. An email from the claimant on July 13, 2015 provides some insight into the claimant's attitude and behaviour:

Furthermore the exchanges are becoming more and more difficult due to the children's reluctance to want to see you. [Their daughter] is extremely upset that you did not let her go to Saskatchewan, and I'm sure she behaved as such on Sunday. She's too scared of you to talk to you. It is hard to get [their daughter] to the exchanges every week, she does not want to go. She has a lot of resentment towards you and your family, rightfully so.

[93] And, on July 26, 2015 the claimant sent the following email:

The kids are sick and I am convinced you are behind it ... or your family It's hard to narrow down which degenerate it is when there are so many.

- [94] The parties have an email exchange on August 15, 2015 about the respondent's parenting time. The claimant said their daughter was sick. The respondent indicates in a polite email that if the claimant feels their daughter is too sick to visit, she should not be sent for his parenting time. In response to that, the claimant sends an email which says:

First of all, I do not give a fuck what you think should happen tomorrow like, at all. Secondly. Stop emailing me.

- [95] This email and others similar to it, supports the respondent's position that the claimant's attitude was that she alone could decide how and when he saw the children, notwithstanding the litigation. It is notable that the email was sent nine days before the trial started.

C. The Parties' Communication and Cooperation

- [96] I find it highly unlikely that the claimant would be able to co-parent with the respondent at any point in the near future. This conclusion is based on the parties' testimony. In addition, the text and email messages entered into evidence provide overwhelming proof that the claimant is almost always incapable of communicating in a respectful or even neutral manner about the children.
- [97] A particularly stark example of the claimant's unreasonable behaviour happened in June 2015. At that point in time the respondent only had supervised parenting time on Saturdays and Sundays. On one Friday, the respondent sent an email asking to confirm the pickup location for Saturday morning at 8:00 a.m., and reminding the claimant that he would need their daughter's T-ball equipment and jersey for a game the next day. Later that evening, the respondent sends an email asking about the time of their daughter's T-ball game and confirming that he still needed to receive her equipment and uniform. In response, the claimant sends an email that says, among other things, the following:

You being at exchanges is becoming more and more problematic. First, waiting until I had put the children into their car seats of your parents' vehicle, and then threatening me by driving your vehicle up to me as I was walking behind their car, even though you were previously 4 to 5 car lengths back at the last exchange. A witness has sent her statement to my lawyer about this. And then today, berating me and yelling at me as I was walking away with the children.

- [98] The respondent's responding email simply reiterates a request for information and the equipment. The claimant's reply says:

I do not feel safe attending the exchanges with you present. You have demonstrated multiple times that you do not adhere to the protection order. I am choosing to diplomatically address this problem rather than threaten with legal action. Until I have confirmation that you will not be at the exchanges, I will not discuss this further. My life is in jeopardy.

- [99] The respondent introduced into evidence two video clips that recorded the specific exchanges the above emails are about. Those video clips make it clear that the claimant's version of what happened is an exaggeration. The respondent was required to move his vehicle up closer to his father's vehicle where the children were being put for the exchange; a parking official asked him to do so (that conversation is recorded on the video). The respondent pulls up behind his father's vehicle and stops at a safe distance. The claimant is busy on the driver's side putting a child into a car seat. She walks calmly around the back of the vehicle at which time she looks at the claimant and extends both of her middle fingers with a smile. In relation to the next day, the video shows the respondent asking for

information about the T-ball game and equipment. He is not yelling or berating the claimant. The claimant responds that the respondent needs to speak to her lawyer.

[100] In addition, the claimant frequently made offensive and disrespectful comments about the respondent, his family and his partner. In the email above at paragraph 92(b), the claimant refers to the Grandparents as "a cripple and an alcoholic". The respondent's mother has MS. The claimant alleges the respondent's father is the alcoholic.

[101] The respondent's current partner was an approved supervisor for the respondent's parenting time, and she works as an adult care aide. She sent a text message to the claimant on the morning of an exchange of the children that said: "we are at the starbucks. Just wondering where you are. Hope everything is alright". In response, the claimant texts:

Look, you're clearly an idiot. So I will put this as simply as they did at MTI or Sprott Shaw or wherever one goes to learn how to change adult diapers. I'm pretty sure you can take Mark's punches, they're pretty pathetic, but don't ever text me again. Ever.

[102] Further, the claimant attached to that text a sexually explicit video and photos of the respondent. The claimant wrote that the respondent is "playing her", an attempt to suggest the claimant and respondent were still intimate which was false. Among other things, this communication supports the respondent's testimony that the claimant had a controlling personality and was prone to jealousy.

[103] In contrast, there was not a single email or text message from the respondent that was anything but polite and neutral. I commend him for showing such remarkable restraint. That is precisely the type of behaviour a parent who puts his children's interest above his own emotions exemplifies.

[104] The evidence also shows that the claimant failed to inform the respondent about the children's physical condition. At one point the boys had a bad rash. The claimant failed to mention this to the respondent. When he enquired by email, she answered that the doctor suggested it was merely a "teething" rash. The rash was clearly something more serious. The boys also had noticeable injuries on their faces: scabs, scratches and a bump after being with the claimant. The claimant said that the older boy hurt himself by falling face-first onto the ground from the truck, and the younger one, still learning to walk, fell onto the sidewalk face-first. Even if there is an innocuous explanation for all these conditions, the claimant's failure to notify the respondent shows an inability to effectively co-parent.

D. The History of the Children's Care and Stability

[105] The claimant testified she was akin to a single mother because of the respondent's lack of involvement with the children. Even her mother's testimony contradicted that statement. Her mother confirmed that the respondent came and spent two months in Regina at the time of her granddaughter's birth. The respondent and the Grandparents testified that the respondent attended the birth of all the children and assisted the claimant with recovery by

looking after the other children and assisting the claimant; all the children were delivered by caesarean section so the claimant would have been somewhat limited in her physical mobility.

- [106] The respondent did admit that the claimant did the bulk of the child care but that was because he earned income for the family while the claimant stayed at home to look after the children. When the parties decided the respondent should move to Northern Alberta to earn a higher wage, the respondent acknowledged this placed a heavier burden on the claimant with regard to child-rearing but it was a joint decision.
- [107] This kind of division of labour is a common, rational decision made by many families. In my view, it has no bearing on the issue of what parenting arrangements are appropriate for the future. I also reject the claimant's submission that the respondent is "incapable" of looking after the children simply because he had not yet cared for all three of them overnight on his own.
- [108] Since leaving the apartment because of the flood damage, the claimant has chosen to live in a series of temporary accommodations. She claims this was due to financial difficulties, but it is not clear to me that this is true. In a text message exchange with the respondent's sister, the claimant offered parenting time to the respondent, and said the children could be picked up at the Waterfront Hotel, a hotel in Downtown Vancouver. This was not a financially prudent choice.
- [109] She then moved into two different friend's houses, before deciding that during the trial, she wanted to live with her children in a women's shelter. A shelter is meant to provide temporary accommodation to women in urgent need of assistance. The claimant testified that she thought the children were doing "great" living with her at the shelter. The claimant wanted to live there during the trial because she wanted to be surrounded by sympathetic and supportive women. This is a clear illustration of her sacrificing what is best for the three children in order to satisfy her emotional needs. I agree with respondent's counsel's submission that the claimant's choice to live with her children in a place populated by women recovering from traumatic experiences displays poor judgment about the appropriate needs and circumstances of young children.
- [110] I find that the claimant has made minimal effort to find stable housing for herself and the children. She has been under a court order since May 2015 to produce a copy of an application she claimed she made to BC Housing. She failed to do so. I do not believe she has ever made that application. The parties' daughter was due to start school very soon after the trial ended and the claimant's lack of initiative on finding more suitable housing indicates she does not understand the importance of creating a stable environment for young children.

- [111] The respondent lives with his partner. They both work, but the respondent's partner has willingly re-arranged her schedule on a few occasions in order to facilitate the respondent's parenting time. The respondent is close to his parents and they are keen to remain involved with their grandchildren.
- [112] More importantly, the respondent has made important changes to improve his health and his living situation. He testified that since March 2015 he has only had one drink of alcohol which was at a Greek restaurant with his family. He willingly submitted to random drug and alcohol tests and passed all of them. He has found a well-paying job in Vancouver in order to spend more time with his children. I am satisfied that the respondent no longer abuses alcohol and that his state of mind is happier and healthier since leaving the relationship.
- [113] In my view, there is no question that the respondent can provide a more stable environment for the children than the claimant now and for the immediate future.

E. The Important People in the Children's Lives

- [114] I find that the respondent's parents are loving, caring and responsible adults who are important to the children. They have been, and need to continue to be, involved in the children's lives. This is unlikely to happen if the children reside primarily with the claimant. The claimant admitted she does not want her children "exposed" to the Grandparents. Even if the claimant's belief that the Grandparents "kicked" her out of the apartment had any rational basis (which it does not), that would still not constitute a valid reason to isolate them from their grandchildren.
- [115] The claimant also testified that she had never seen the respondent's father "without a drink in his hand"; she labelled him a classic alcoholic. That was firmly denied by the Grandparents, the respondent and the respondent's current partner. I reject that characterization. I also reject the claimant's submissions that the Grandparents are in any way unsuitable to spend as much time as they possibly can with the children.
- [116] By way of contrast, the respondent agreed it was important that the children enjoy time with their maternal grandparents and he said he had never had any difficulties with the claimant's parents, commenting that they are "nice people".

VI: CONCLUSIONS

- [117] This case is a disturbing example of one party inventing, exaggerating and embellishing incidents for the purpose of gaining advantage in a law suit. I find the claimant's accusations about the respondent's alcohol and mental health issues were intentionally exaggerated. I have found that the claimant has made false allegations about the respondent's violent behaviour, including fabricating two stories about the respondent hitting their daughter.

- [118] I have the impression that it is not rare for a parent to make false accusations of physical abuse, or exaggerate mild incidents into violent ones, and that these are then recounted in an affidavit put before the court to support a protection order that prevents the other parent from seeing or communicating with their children. If those accusations are false, such behaviour is reprehensible.
- [119] For all the above reasons, I conclude that the children's best interests will not be served if they remain in the primary care of the claimant. Given my findings that the claimant has not demonstrated an ability to put her children's emotional well-being and living situation above her own emotional needs, I find the claimant is currently incapable of co-parenting with the respondent. That conclusion also has implications for whether the claimant ought to exercise parental responsibilities listed in s. 41 of the Family Law Act because I am not persuaded the claimant would be able to cooperate or effectively consult about decisions affecting the children, apart from looking after their daily needs. I am also satisfied that it is more likely than not that the claimant will continue to inappropriately implicate her young children in the marital dispute and for that reason, I am satisfied that it is in the children's best interest that the claimant's parenting time be supervised.
- [120] Section 39 of the Family Law Act confirms that parents are children's guardians, but I find it is in the children's best interests in this case to allocate the parenting responsibilities as permitted by s. 40. The respondent shall have the sole ability to exercise the parental responsibilities listed in s. 41 (a), (b), (c), (g), (h), (k) and (l). The claimant will have responsibility to exercise day-to-day supervision of the children but only during her parenting time pursuant to s. 42(2). The respondent must consult the claimant with respect to exercising those responsibilities listed in 41(d), (e), (f), (i) and (j), provided that if the parties cannot agree, the respondent shall have the final say.
- [121] I recognize these orders represent a significant change from the interim orders that have been in place and will affect the parties' current living situation. Before granting the final orders, I invited counsel to briefly consult in order to see if the parties could agree on how to effect the change. They did so and it was agreed that the claimant would find a reliable third party to accompany the children to the designated exchange spot. This would avoid the parties being in proximity. The exchange was to take place at 7:00 p.m.

VII: SUMMARY

- [122] For the reasons discussed in this decision, I grant the following orders:
- a) The respondent shall have sole guardianship of the children of the marriage;
 - b) The respondent shall have sole responsibility to exercise the following parenting responsibilities:
 - i. making day-to-day decisions affecting the children and having day-to-day care, control and supervision of the children;

- ii. making decisions respecting where and with whom the children will live, and with whom they will associate;
 - iii. applying for a passport, license, permit, benefit, privilege or other thing for the children; and
 - iv. giving, refusing or withdrawing consent for the children, if consent is required.
- c) The respondent must consult with the claimant and make best efforts to come to an agreement with her with respect to the decisions about the children's education and their participation in extracurricular activities, including the nature, extent and location of those activities, but if an agreement cannot be reached the respondent shall make the final decision.
 - d) Both parties are entitled to receive any notice that a parent or guardian is entitled or required by law to receive, but only the respondent is entitled to respond to any such notice.
 - e) Both parties are entitled to request and receive from third parties health, education or other information respecting the children.
 - f) The claimant is restrained from directly contacting the children's school or daycare except for the limited purpose of requesting a report card or status report, or requesting information about picking up the children and then in either case, her communication must be consented to by the respondent in writing.
 - g) The claimant shall not remove the children from the lower mainland without a court order, or the agreement of the respondent evidenced in a notarized or sworn statement.
 - h) With regard to the claimant's parenting time, the following shall be in place until December 15, 2015, or another date as agreed to in writing by the parties:
 - i. the claimant shall have supervised parenting time with the two younger children on Mondays and Tuesdays for 8 hours, and on Mondays and Tuesday, and parenting time with their eldest child beginning after her school is finished and ending at the same time as the parenting time with the other two children ends. If there is no school on the Monday or Tuesday, the claimant shall have supervised parenting time with all three children for 8 hours;
- ii. The parties shall exchange the children at the Starbucks located at 105-4461 Lougheed Highway, Burnaby, BC, unless otherwise agreed to in writing by the respondent;
 - iii. If the claimant is without reasonable excuse more than 10 minutes late returning the children to the respondent, then at respondent's option, the claimant will forfeit either that or the next one occasion (but not both) of her parenting time, and the respondent keeping the children during that time of forfeit does not amount to a breach of this court order;

iv. The claimant's parenting time can be changed to a different day in any week if agreed to in writing by the respondent but in no case shall the total hours per week of the claimant's parenting time exceed 16 hours, and all parenting time must be supervised.

- i) The claimant is restrained from directly or indirectly communicating with or contacting the respondent other than by email and then only for the purpose of confirming the date, time and location of the exchange of children for the parenting schedule.
- j) The claimant is restrained pursuant to s. 183 of the Family Law Act of attending within one city block of the residence or place of employment of the respondent and the respondent's partner (the addresses of those locations will be specified in the formal order).
- k) The claimant is restrained from contacting the Grandparents in any manner whatsoever, whether directly or indirectly.
- l) The claimant is restrained from attending within one city block of the residence of the Grandparents (the address will be specified in the formal order).
- m) Any peace officer or RCMP may enter and search any place if he or she has reasonable or probable grounds for believing that the claimant is or is about to disobey a Court order regarding the return of the children to the respondent's care.
- n) The parties shall schedule a court appearance before me to take place before December 15, 2015 in order to make submissions on the appropriate parenting schedule over the Christmas holiday, but if the parties come to an agreement, counsel can inform the Registry and an appearance will not be necessary.
- o) If the parties consent, a parenting coordinator will be appointed to assist the parties with the parenting schedule and that cost shall be shared between the parties.

"Sharma J."

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