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T.N.A.K. v. I.A.K.

2025 BCSC 625

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Supreme Court of British Columbia

DECIDED

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

T.N.A.K. v. I.A.K.,

2025 BCSC 625

Date: 20250314

Docket: E68736

Registry: New Westminster

Between:

T.N.A.K.

Claimant

And:

I.A.K.

Respondent

Before: Associate Judge Krentz

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

N. Chauhan

Counsel for the Respondent:

S. Das

Place and Dates of Hearing:

New Westminster, B.C.

December 31, 2024

March 13, 2025

Place and Date of Judgment:

New Westminster, B.C.

March 14, 2025

- [1] THE COURT: This is an application by the respondent father seeking an order on an interim basis that the parenting responsibility with respect to daycare enrollment and other educational issues be allocated to him and that the child of the relationship be forthwith enrolled in any of three facilities that have been selected by him.
- [2] The claimant mother opposes the application and submits that the child shall remain in his current daycare located near her residence. The claimant further submits that by order of Associate Judge Robertson, she is entitled to have the child enrolled in his current daycare.

Background

- [3] As background to this matter, I will refer to the Reasons for Judgment of Associate Judge Robertson cited as 2023 BCSC 2549. Starting at para. 2, she states:

There are two cross-applications before the court today. The claimant brings an application for a protection order with a police enforcement clause, and the respondent brings an application for joint parenting, a Christmas parenting schedule, and an order regarding the daycare that the parties' child is to be enrolled in.

- [4] The parties are unmarried spouses who began cohabitation in August 2021 and separated on September 14, 2023. They have one child, K., and he will be three years old in June. When she provided her reasons for judgment, the child was 18 months old. Associate Judge Robertson continues as follows:
- [3] Given the child's young age, the claimant has just recently returned to work after taking maternity leave, meaning that she has been the primary caregiver for the child since his birth while the respondent continued to work. There are disagreements between the parties as to the amount of involvement the respondent has had in respect of the child's care since that time.

- [4] In anticipation of her return to work, the parties researched daycares and decided to enroll the child in Smilestones Junior Kindergarten and Daycare ("Smilestones") in Surrey. However, after the separation and the claimant's relocation to her parents' residence in Port Coquitlam, she enrolled the child in a new daycare in Coquitlam.
- [5] The claimant alleges that the relationship between the parties has been acrimonious since she learned she was pregnant, with what is described as an increasing level of animosity directed toward her by the respondent, culminating in physical abuse. In addition to allegations of insults, derogatory statements, and demands of the claimant vacating "his house" with profanities laced therein, particulars of the allegations of incidents of physical violation include a fight at Christmas 2022 culminating in the respondent throwing a mug at the wall, a May 2023 incident where the respondent punched a hole in a closet door, and the event that led to the separation, that being an altercation that started on September 13, 2024 and continued the next day on September 14, 2023 (the "September Incident").
- [6] The specifics given by the claimant in respect of the September Incident are significant and include allegations that the respondent grabbed the claimant by the throat and repeatedly pushed her to the ground while the respondent held the child. After going to work, the police attended at the respondent's workplace and took him into custody. He spent the night in jail. He was released on an undertaking on the usual conditions that one would expect with such incidents. Eventually, after approximately seven weeks, the respondent was able to return to the former family home in South Surrey as the claimant had, by that time, left the residence.
- [5] She continues at paras. 8 and 15:
- [8] The allegations of family violence are denied almost entirely by the respondent. He does, however, admit that he has used derogatory terms and profanity against the claimant when frustrated.
- [15] Suffice it to say some of the explanations of the respondent seem more likely than that of the claimant, and some of the claimant's seemed more likely than the respondent.
- [6] The application for an order that K. attend Smilestones located in South Surrey was dismissed. One the daycares that the respondent now proposes is their North Surrey location.
- [7] The application that is currently before me was filed on November 13, 2024. On December 19, the parties attended a mediation and agreed upon a final order that was entered on February 3, 2025. It was signed as a desk order by a judge of this Court. It sets out that the parties will be joint guardians of K. and at para. 3 it states:

Subject to the outcome of the Application [that is before me,] the parties must consult one another about any major decisions concerning [K.] and make best efforts to come to an agreement regarding those major decisions using the decision-making protocol set out below.

[8] The Order goes on to say:

Neither party will have final say on major decisions regarding [K.]. Subject to the outcome and the Application [that is currently before me] ... if parties are unable to come to an agreement on a major decision, the parties will mediate with a Family Justice Counsellor or agreed-upon Mediator, as set out in the decision-making protocol set out herein to determine the dispute.

[9] With respect to the decision-making protocol, para. 23 says:

A mediation shall then occur with the chosen mediator in an attempt to reach a consensual agreement regarding the major decision in dispute, and if there is no agreement, they are at liberty to go to the Court for relief.

[10] As an associate judge, with some exceptions, I do not have jurisdiction to make final orders unless by consent. Accordingly, if I make any order sought by the respondent, it has to be on an interim basis and subject to further agreement or court order.

[11] As to when either party can seek to vary any order I make, it is not for me to decide today, but it may require a change of circumstances. In any event, it is not an interim order pending trial as there is no trial anticipated given there was a final order.

[12] The final order incorporates the parenting-time schedule that was ordered by Associate Judge Robertson, which is a modified 2-5-5 arrangement. As it is equal parenting time, the parties will be taking the child to and from daycare the same amount of time.

[13] Accordingly, the respondent suggests daycares that are more equidistant to their respective residences. The child was in Jasmine Daycare when the matter was heard by Associate Judge Robertson but was moved to Tiny Sprouts Daycare in Port Coquitlam by the claimant without the consent of the respondent. The explanation provided by the claimant is set out in her Affidavit #3. She deposes:

10. when I made the decision to place [K.] in Tiny Sprouts daycare, I believed that, since there was no declaration of joint guardianship, I could make this decision. I did not make this decision maliciously but because there was a deadline wherein [K.] would age-out of daycare, and the decision had to be made with haste.

11. This is especially true in light of the Order of Associate [Judge] Robertson dismissing the Respondent's application to choose the daycare and ordering that I could choose [K.]'s daycare instead.

[14] It should be noted that Associate Judge Robertson did not order that the claimant may select a daycare. Rather, she simply maintained status quo by leaving the child at Jasmine Daycare. After dismissing the respondent's application, she found that for the time being as the child has settled in that daycare, it would provide some stability as he transitioned into the new parenting-time schedule.

- [15] I do not find that the decision of the claimant to change daycare had to be made with haste, as the child could have remained at Jasmine Daycare until June 2025, which is his third birthday, when he would age out.
- [16] However, the claimant further deposes:
13. [K.] attended Daycare from October 2023 until September 2024 wherein he aged-out of the Daycare pursuant to a letter received from [Ms.] Shan, the manager of the Daycare.
14. Once I received this letter from Ms. Shan, I began to look for new daycares for [K.]. It was difficult for me to find daycares with open spots for [K.] and eventually I found Tiny Sprouts, which had only one spot available. As I was worried I would not find another open daycare spot for weeks, I took this spot for [K.].
16. I wrote to the Respondent on August 23, 2024, about Tiny Sprouts and told him that [K.] would be with children his own age and development, with playmates from his soccer and former daycare.
17. I liked that Tiny Sprouts was open from 7:00 a.m. to 6:00 p.m. and, as I work in downtown Vancouver from 8:00 a.m. to 4:30 p.m. this lined up well with my schedule.
- [17] In contrast, the respondent alleges the following with respect to discussions about daycares. He submits that the parties both agreed that the child would attend daycare at an academy which would offer academic learning opportunities. After much discussion and research, they came across Smilestones and it was agreed it was the best fit for K. because it is an academy that focuses on learning and development for children in comparison to typical daycares.
- [18] He says at that time, in 2023, although Smilestones had a long waitlist for entry, he was able to secure a spot. On September 28, the parties received confirmation of his acceptance into that daycare and K. was to start daycare there in November 2023. However, on September 25, the claimant unilaterally emailed Smilestones to inform them she has suddenly moved with the child. Subsequently without consultation and discussion with the respondent, the claimant chose and enrolled K. in Jasmine Daycare.
- [19] He further submits that after the hearing before Associate Judge Robertson, K. continued his attendance at Jasmine and the respondent cooperated with the same. He took him to the daycare each day of his parenting time without incident. However, the car rides were sometimes difficult for K. as he would be very tired from having to wake up at approximately 5:45 a.m. so that he could take him to the daycare in Coquitlam from his residence in South Surrey.

- [20] The respondent deposes that on August 14, 2024, he contacted the claimant in an attempt to work together to determine the next steps for K. with respect to his educational endeavours. On August 15, he brought to the claimant's attention his desire to enroll K. in a daycare that would not only be conducive to his educational and fundamental growth but also eliminate what he referred to as a "dreaded long car ride." He proposed a couple of options, which included leaving room for a discussion in an attempt to have a mutually desired outcome.
- [21] He informed the respondent he had applied for a space in Smilestones and did so at a location that would be considered almost the halfway point for both of them and that he was waitlisted for September 2024 but had a guaranteed spot for January 2025. He says the claimant then contacted him on or about August 23 to advise him she had once again unilaterally enrolled K. in a daycare, this time it was Tiny Sprouts Daycare.
- [22] The respondent submits he also learned from communications with staff at Tiny Sprouts that the claimant had made her initial inquiry with Tiny Sprouts on July 29, 2024 and that she submitted the daycare enrollment forms on August 19 and had made payment to the daycare by September 1.
- [23] Another daycare proposed by the respondent is Willowbrae. He says it has a variety of benefits for K. and that he would be amenable to enrolling K. there, although his first choice would be Smilestones. He says with respect to Willowbrae, it has two locations and he would prefer the one in Langley as the commute distance would be more evenly distributed between their residences, such that neither of them would be required to drive with K. sometimes in excess of one hour. He also notes that Willowbrae has a location in Surrey, referred to as the Guildford branch. In terms of operations, they maintain working hours from 7:00 a.m. to 5:30 p.m.
- [24] The respondent says on August 28, 2024, the claimant wrote to Willowbrae and declined the space for K. that would be for September 1, 2024. He says presently due to the claimant's action in enrolling K. in Tiny Sprouts, he now has further distance to drive, even more than he had with respect to Jasmine Daycare.
- [25] The respondent says he prefers Smilestones or Willowbrae as they have a focus on academics, whereas Tiny Sprouts is a daycare only. The respondent submits that the claimant has not been forthright with the court. Examples include as indicated earlier, the claimant stating she had to move K. out of Jasmine with haste and that Associate Judge Robertson allocated the decision of choosing daycares with the claimant.
- [26] The respondent further notes that the claimant currently says she has to go to downtown Vancouver to work each day, whereas her previous affidavits indicated (as referred to by Associate Judge Robertson in her decision) that she also works from home, although she still uses daycare when working from home.

- [27] The respondent submits that another possible inconsistency in the claimant's evidence is that she says she starts work at 8:00 a.m., when her previous affidavits indicate it may actually be 8:30 a.m. In any event, in assessing this application I have to keep in mind that whether she starts at 8:00 or 8:30 a.m., or whether she works downtown two, three or five days each week, there are times that the claimant must be downtown early in the morning to start her work day. One of the daycares proposed by the respondent is in Langley and it would be difficult after dropping off K. for her to get to downtown Vancouver on time.
- [28] The respondent submits that the commute distance would be more evenly distributed as they both can get to the daycares he proposes from their residences in less than 30 minutes. Assuming that is true, after he drops off K. at a daycare in Langley, he would be at work in less than 30 minutes. Whereas the claimant is looking at a long drive in rush hour, which is avoided with the Port Coquitlam daycare that is located near to her residence.

The Law

- [29] I will now refer to the applicable jurisprudence with respect to this application. In *KFE v. JR*, 2021 BCSC 1586, Justice Crerar heard applications under s. 49 with respect to attendance at a kindergarten. In his decision at para. 2, he notes:
- [2] Each party brings a mirror cross application under s 49 of the Family Law Act, SBC 2011, c 25, "for directions respecting an issue affecting the child". The practical effect of the application is to decide whether their five-year-old son will attend kindergarten, starting in three weeks, at Lord Byng Elementary School in Steveston, in South Richmond, near where the mother resides and works, or École Cedardale in West Vancouver, near where the father resides and works. More specifically, under recent authorities such as *MBDC v. YGDC*, 2021 BCSC 1504, at paras 51, 59; and *NRG v. GRG*, 2017 BCCA 407, at para 41, the Court must allocate to one parent the parental responsibility of deciding which school the son will attend.
- [30] Under the heading above para. 30, he refers to allocation of parenting responsibility with respect to the choice of school and noted the following:
- [30] Each party hypothesised that last week's decision in *MBDC* could be read as a marked change in the approach to applications as to where a child will attend school, reframing the issue before the Court from, "which school is in the best interests of the child" to, "to which parent should be allocated the responsibility of deciding which school the child will attend?" The answer to either question, in any case, is determined by asking "what is in the best interests of the child?"
- [31] Upon further research and submissions, the parties appeared to be in general agreement that *MBDC* is consistent with *NRG* and *LDR v. JCL*, 2021 BCSC 296, at paras 70-71. Specifically, a court should avoid, as much as is possible, determining the minute details of a child's life. Generally, a court should allocate parental responsibility for making decisions generally, or with respect to a given subject matter, rather than determining whether a given

child be enrolled in ballet or hockey, or go to School A or School B. That said, if it is in the best interests of the child to provide a more specific direction, such as directing that a child attend a specific school, the court may and should do so.

- [32] Under either formulation, my task today is to determine, as best as I can, the best interests of the child. For practical purposes today, the distinction between the two methodologies is somewhat semantic. Here, one cannot decide the latter in the abstract, without contemplation of the proposed schools. Post-NRG cases, such as *Degen v Degen*, 2020 BCSC 1076, and *Goldsmith v Holden*, 2020 BCSC 1163, delve deeply into the appropriateness of the competing proposed schools in reaching their decisions. As I advised the parties in the course of submissions, I will undertake both analyses, which are largely overlapping in any case.
- [31] Justice Crerar then refers to s. 37(2) that requires the court to consider all of the child's needs and circumstances, including but not limited to certain factors set out therein. I have considered all of those factors.
- [32] He then goes on to say:
- [37] Whether analyzed as an allocation of parenting responsibility for the school decision, or as an inquiry as to which educational proposal is in the best interests of the children, I reach the same conclusion.
- [38] Given this history, and given these important formative years, and given the inherent approaching stress and complication of starting kindergarten and elementary school, it is in the son's best interests, and it is the duty of this Court, to avoid further instability, even if this entails the deprivation of an excellent but less conventional educational opportunity in Cedardale.
- [33] In the case before him, under the current parenting regime, the child spent four weekdays with the mother and with the father only one weekday. For that reason, along with other reasons, he allocated the choice of school to the mother.
- [34] If I am being asked to allocate the educational responsibility, the consideration in s. 37(2)(f) may favour the respondent, as the evidence suggests that the claimant has previously made unilateral decisions affecting the child without consulting him or seeking his agreement. This certainly brings into question which guardian has the ability to exercise the responsibility. Perhaps it is the respondent who previously sought an agreement from the claimant in selecting the daycare, only for the claimant to go behind his back and sabotage his efforts.
- [35] However, this matter could be resolved without having to allocate the parenting responsibility. The parties have entered into a final order that the parties equally share the parenting responsibilities and neither has final decision-making authority and has a mechanism built in to resolve parenting disputes.

[36] In *L.D.R. v. J.C.L.*, 2021 BCSC 296, Justice Norell stated the following at para. 70 of her reasons:

There is a dispute between the parties as to which preschool A should attend. Pursuant to s. 45(1)(a) of the FLA, on an application by a guardian, a court may make an order respecting the allocation of parental responsibilities. Pursuant to s. 49 of the FLA, a child's guardian may apply to court for directions respecting an issue affecting a child, and the court may make an order giving the directions it considers appropriate. Decisions regarding matters that are within parental responsibilities, which includes education, should at first instance be those of the guardians, not the court: *N.R.G. v. G.R.G.*, 2017 BCCA 407, at para. 40.

[37] While she was prepared to decide the issue, Justice Norell was only prepared to so on an interim basis and she made a specific direction that the parties shall then engage in dispute resolution as set out in their separation agreement.

[38] In *C.E.S. v. C.N.R.S.*, 2023 BCSC 2167, Justice Schultes stated the following:

[32] In general, the allocation of parenting responsibilities under the FLA should be of the entire responsibility under a particular subsection, leaving the parent to whom the responsibility has been allocated (or both parents, if it is to be jointly exercised) to work out specific details, either themselves or with the assistance of a parenting coordinator. Despite this general rule however, there will be occasions where a court is called upon to resolve a dispute about a particular matter within the parenting responsibilities: *N.R.G. v. G.R.G.*, 2017 BCCA 407, at para. 40, and *Reda v. Birch*, 2022 BCCA 60, at para. 36.

[33] Counsel have followed this guidance by framing the application as being for the entire responsibility for decisions about J's education, rather than the specific choice of a school.

[39] In that case before Justice Schultes, the parties had entered into a final order that included equal parenting time and sharing of the parenting responsibilities. The issue they could not agree upon was whether the children should attend a secular or non-secular school. Ultimately, he did allocate the responsibility with respect to education to one of the parents on an interim basis. However, I note that may have been because in the application before him, both parties sought an allocation as opposed to a selection of a particular school.

[40] In *L.D.R.*, the parties could not agree upon a preschool even though they had a mechanism within their separation agreement to resolve such disputes. I am inclined to resolve this matter in a similar manner as Justice Norell. That is, to make an interim direction under s. 49 of the Family Law Act, S.B.C. 2011, c. 25 [FLA].

[41] However, I must first decide on an issue raised by the claimant. She submits that the respondent's application should be dismissed as he has failed to provide evidence of a change of circumstances since the order was made by Associate Judge Robertson.

- [42] While the claimant relies upon the Williamson case as an authority in support of her position, I believe the submission is actually pursuant to s. 216 of the FLA. As Associate Judge Robertson's order was an interim order, any order made by me would be considered a variation of an interim order, if another daycare is selected. Most authorities cited under s. 216 relate to interim applications pending trial. However, as I indicated earlier, there is no trial set or anticipated.
- [43] In any event, I do not see this application as a variation of Associate Judge Robertson's order, as she did not allocate the parenting responsibility. Instead, she maintained the status quo and at that time it was Jasmine Daycare. She did not order that the claimant may select daycares. If she had, then perhaps s. 216 would apply. Furthermore, the claimant herself has changed the status quo by later moving the child to the Tiny Sprouts Daycare, even though, as I have indicated, that parenting responsibility was never allocated to her.
- [44] At the hearing before Associate Judge Robertson, the respondent was seeking an order that K. be enrolled at the Smilestones location in South Surrey, near to his residence. That is not what he is seeking at this time. I do not find it necessary for the respondent to establish a change in circumstances and, if I am wrong on that point, Jasmine Daycare was unilaterally changed by the claimant and that in itself would constitute a change of circumstances.
- [45] Based on the various authorities I have reviewed above, I find that I have the jurisdiction to select at this time the daycare that the child will attend and such order will stand as an interim order. However, given the final order that was made that provides the parties have equal parenting responsibilities, I am not prepared to, nor do I conclude it is necessary, to allocate interim parenting responsibilities to one parent over the other.
- [46] Accordingly, I am dismissing para. 1 of the respondent's notice of application. Pursuant to para. 2, the respondent proposes three daycares that I have referred to above. Although the parties may have in 2023 discussed and possibly agreed that Smilestones would be the daycare for K., I have to exclude that daycare from selection given that its hours of operation are not conducive to the work schedules of either party. That leaves open the possibility of selecting Willowbrae over Tiny Sprouts as the daycare for K. to attend.
- [47] In assessing which daycare is in the best interests of K., I have concluded and order that if a space is available for K., effective May 5, 2025 he shall attend the Willowbrae Academy Daycare located on 104th Avenue in Surrey that the parties have referred to as the "Guildford daycare."
- [48] I have selected this facility for the following reasons. Based on the material before me, I note that most of the daycares selected by the parties open at 7:00 a.m. However, the Smilestones Daycare located on 160 Street in Surrey does not open until 7:30 a.m. Therefore, I have to eliminate Smilestones as the earlier opening times must be preferred.

- [49] What I find to be the deciding factor is this. It is in the interests of K. that the travel time for him should be reduced. It is currently a long drive in the morning rush hour for the respondent to take him to a daycare in Port Coquitlam from his residence in South Surrey. Although I recognize it will be inconvenient for the claimant to have to travel in rush hour to go downtown or back to Port Coquitlam after dropping off K., that is not a drive K. has to make. When the claimant takes him to daycare in the morning, she is driving him from Port Coquitlam to Guildford, which is considered against rush hour.
- [50] I have purposely delayed the change of the daycare so that whatever adjustments may be needed to prepare for the daycare can be made by the parents. As this is an interim order, either party can apply for a final order on this issue but such application to a judge should not be any sooner than September 1, 2025, so that a judge will have some evidence as to how K. is doing at his new daycare.
- [51] That is my decision. Are there submissions on costs?
- (SUBMISSIONS ON COSTS)
- [52] THE COURT: As the Rules provide, costs normally follow the event. The respondent father has been largely successful in his application. Accordingly, he is entitled to costs of this application. However, I will not summarily assess them. They will have to be assessed by the Registrar. Upon assessment, they will be payable forthwith.
- [53] So costs to the respondent payable after assessment. Thank you, counsel.
- "Krentz A.J."

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