

CANADA / JUDGMENT

T.N.P. v. D.E.P.

2025 BCSC 1231

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1231 T.N.P. v. D.E.P.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

T.N.P. v. D.E.P.,

2025 BCSC 1231

Date: 20250702

Docket: 30205

Registry: Cranbrook

Between:

T.N.P.

Claimant

And

D.E.P.

Respondent

Before: Associate Judge Robertson

Reasons for Judgment

Counsel for the Claimant:

R. S. Miles

The Respondent, appearing in person:

D.E.P.

Place and Date of Hearing:

Cranbrook, B.C.

June 16 and 19, 2025

Place and Date of Judgment:

Cranbrook, B.C.

July 2, 2025

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- [1] In what has been described by other presiders as high conflict family proceedings, the respondent brings this application to vary an order of Justice Crossin made October 29, 2024 (the "October 2024 Order") to provide for equal parenting and a re-adjustment of child support payable by him arising from that.
- [2] Although equal parenting was in place prior to the October 2024 Order, the claimant opposes equal parenting being reinstated on the basis that no material change has been established to justify a variation from that order. Further, she argues that the equal parenting was not then, and is not now, in the best interests of the children.

Background

- [3] By way of background, the parties began to live in a marriage like relationship in or around February 2013 and were married on June 25, 2016. They have three children, an older child who will be turning 8 in August of this year, and 5-year-old twins born in June 2020 (collectively, the "Children").
- [4] The parties separated around the time of the birth of the twins, but remained living together following their birth with the respondent vacating the former family home in November 2020. They were divorced on December 3, 2021.

- [5] There is some dispute as to the level of involvement by the respondent in parenting, given that his employment in the tour industry on Vancouver Island required him to travel until his employer closed their operations as a result of the COVID-19 pandemic, and given that he left the former family home when the twins were newborns and still quite dependent upon their mother as they were breastfeeding.
- [6] The respondent returned to school after losing his employment, ultimately completing a teaching certificate through the University of British Columbia which provided him with various temporary teaching positions and enabled him to be more involved with the Children.
- [7] After each of the parties brought cross applications in respect of formal parenting, with the respondent seeking equal parenting, the parties entered into a settlement agreement dated November 16, 2021 whereby they agreed to equal shared parenting on a week on, week off schedule. They also agreed that no child support or spousal support would be payable by either party.
- [8] That agreement was amended in July 2022, the claimant says because the respondent's employment was uncertain, to continue the week on, week off, schedule (changing the exchange day), confirming no child support but with that to be reviewed after August 15, 2023, and for the agreement to "remain in place until September 4, 2023, or until such date as mutually agreed upon by the parties in writing."
- [9] Although the claimant disputes that the arrangement was ideal, and states that she planned to bring an application to vary it after that September 4, 2023 date, it stayed in place until the respondent moved to Alberta when he accepted a position with McEwan University in September 2023 such that the claimant's application became unnecessary.
- [10] Notwithstanding his work in Alberta, the respondent's evidence is that he continued to travel to Kimberley to exercise as much parenting time as he could and was prepared to exercise the same week on, week off schedule. There is a dispute between the parties as to the amount of parenting time he was able to undertake during this time, and reasons why it was not being exercised on an equal basis.
- [11] After his move, the respondent brought an application to relocate the children to Alberta in November 2023. That application was dismissed on December 20, 2023, it being more appropriately determined at trial. Primary parenting was also granted to the claimant. In the reasons for judgment (the "Relocation Reasons"), the following statements were made which are germane to this application:
- [81] The practical effect of this order and the respondent's move to St. Albert is that the claimant now has interim primary parenting of the children. If the respondent decides to move back to the Kimberley area pending trial as a result of my decision, a return to the former alternating week shared parenting regime can be considered.

- [85] The parties are directed to make best efforts to negotiate a mutually agreeable interim parenting schedule and reasonable travel arrangements for the children. If they are not able to agree, the respondent is at liberty to apply, on better evidence.
- [12] The respondent remained in Alberta, continuing the work that he deposes provided better remuneration for the benefit of the Children, finishing a one-year contract with McEwan University in September 2024.
- [13] Despite living primarily in Alberta, on October 18, 2024, the respondent filed an application to resume the equal shared parenting, with the application being heard on October 28, 2024 and oral reasons given on October 29, 2024. The relevant terms of the October 2024 Order are as follows:
1. The Respondent shall be entitled to parenting time with [the Children] as follows:
 - (e) Commencing November 15, 2024,
 - (i) Every second weekend from 4:00 pm Friday to 9:00 am Monday;
 - (ii) Every Wednesday from 4:00 pm to 7:00 pm.
 3. On or before November 15, 2024, the respondent shall provide to Mr. Miles, counsel for the claimant, the address and description of the accommodations where the respondent will be staying in Kimberley while parenting the Children.
 4. The Claimant shall be at liberty to apply to vary this order if she has concerns over the suitability of the Respondent's accommodations for the Children.
 6. The issue of variation of child support shall be adjourned generally.
- [14] Although ordered, the reasons for judgment were unfortunately not available by the time of this application. However, neither party disputed that in making this decision, the court placed some emphasis on where the respondent was living, including that he did not have secure housing in Kimberley to exercise his parenting as he was using Air BNB or hotel accommodations, with the claimant's evidence supporting that the lack of a stable home for parenting was affecting the Children.
- [15] The respondent's evidence is that he has established his own consulting company, because it allows him to work remotely, he has re-located such that Kimberley is now his primary residence, albeit with some in person time in Alberta throughout the month being required (2 to 7 days). The time needed to be physically in Alberta will, he submits, not interfere with equal parenting, particularly on a week on/week off schedule as was previously in place. He relies upon the move of his primary residency as a material change sufficient to support a variation, with it being in the best interests of the Children that they have equal parenting with both parents.

- [16] The claimant argues that this application is an attempt by the respondent to relitigate the October 2024 Order. In this respect, the claimant argues that the concept of being able to live in the two locations simultaneously, i.e. in Kimberley when parenting and Alberta when not, was argued by the respondent as being suitable when the October 2024 Order was made, and that it was not accepted by the court. Specifically, the respondent's evidence before the court at that time was that his consulting company allowed him to "work remotely, and as such I am currently spending every other week in Kimberley, which allows me to engage in shared parenting of the Children on the former week on, week off, regimen pending trial".
- [17] The claimant argues that this described move is one that ought to raise significant suspicion with the court as to its veracity, and that it is really the same as what he said before, that he could live in two locations. The only change, the claimant argues, is that the respondent has, as required under the terms of the October 2024 Order, provided proof of stable accommodations in Kimberley, namely a lease for a basement suite. However, that is not proof that he lives in Kimberley full time, or that he does not still live in Alberta.
- [18] The claimant argues that any purported move is just an example of the respondent taking the comments previously made by the court when he was not granted equal parenting as a type of "to do" list or intention to re-argue the application afresh by merely addressing the issues of stable housing in Kimberley, such that this is not a material change, but rather a splitting of the respondent's case.
- [19] The claimant believes that the true intention of the respondent is to remain living, for an intents and purposes, in both locations.
- [20] In response to that argument, which was raised in the claimant's application response materials, the respondent deposed as follows:
3. In response to [the claimant's] claims that I have not moved back to Kimberley, BC because I still own a residence in St. Albert, AB. I currently reside in both St. Albert, AB., and in Kimberley, BC, with my primary residence in Kimberley, BC.
 - a. I deny that I have not moved back to Kimberley, British Columbia.
 - b. It is common to own a secondary residence in another location outside the municipality of one's primary residence.
 - i. I have attached the rental agreement with my tenants at my St. Albert residence [redacted], which should leave no doubt that I will reside primarily at my Kimberley address of [redacted]
 - ii. The [redacted] AB residence has positive equity, positive rental income, and provides a security blanket for the Children and I just in case anything changes with the current living and employment situation of the Children's mother [redacted]

In my opinion, selling the [redacted] house in order "to prove" I live in Kimberley, BC should not be a necessary step; nor would be in the best long-term interest of the Children.

- [21] In this affidavit he also exhibited a copy of the lease of his Alberta home in response to the claimant's argument. Notably, that lease was executed May 2, 2025, with a commencement date of July 7, 2025, which the claimant argues is untrustworthy and only obtained in response to the claimant pointing out the issue, or lack of "proof" of a move. Further, in response to a question from the court, the respondent readily acknowledged that the tenant was a friend or acquaintance, and not a true arm's length tenant.
- [22] The claimant argued that given both leases are "month to month" they could be terminated at any time, such that they are not evidence of any meaningful intention to fully relocate to Kimberley to the degree necessary to establish a material change, and that the issue as to shared parenting is one that should be determined at trial.
- [23] The claimant argues that that respondent's motivation in fabricating this purported move and seek equal parenting is financially driven, namely that he wishes to meet the 40% parenting threshold so that any child support payable will be on a set-off basis.
- [24] Of course, the converse of there being a financial benefit to the respondent if child support is payable on a set off basis, is a financial detriment to the claimant. That is to say, a suspicion of a financial motivation for a child support set off as the basis for a parenting schedule will generally cut both ways, both of which undermine the purpose of child support, namely to ensure that children are financially secure to an equal degree in both homes. I trust neither party is allowing such financial considerations to overshadow the best interests of the Children.
- [25] As to the status of the litigation, no trial date has been set. No party has sought, or brought an application, for a s. 211 report. Neither party suggested at this application that a s. 211 report is necessary to determine the best interest of the Children in terms of equal parenting.

Analysis

- [26] To vary the October 2024 Order parenting schedule, I must first determine if there has been a material change. Even if I find that it is a material change, that will not result in an automatic reversion to equal parenting. Rather, I must then find that the parenting schedule sought is in the best interests of the Children.

Material Change

- [27] As a preliminary comment, I will address an argument made by the claimant that the statement made by the court in the Relocation Reasons that the equal parenting could be reconsidered if the respondent moved back to Kimberley prior to trial, I agree that the comment was obiter. The effect of that comment is not to change the character of this

application in terms of it being a variation. The claimant argued that the respondent was relying on that statement as grounds for "automatic" equal parenting. While the respondent referenced those comments, he did not do so in the context of suggesting that the onus was upon him to establish a material change was lessened in any way. In the legal basis of his application, the respondent set out relevant case authority in respect of what constitutes a material change. The claimant set out no legal or statutory authority as to a variation of an order on the basis of a material change in her application.

- [28] Given that the claimant was unclear, I confirm I am proceeding on the basis that there has not been any change to the onus on the respondent to establish a material change by virtue of the Relocation Reasons.
- [29] Instead, the application is governed by s. 216(3) and (4) of the Family Law Act, S.B.C. 2011, c. 25 ("FLA"), which provide when an interim order can be varied, and the circumstances to be taken into account in determining if it should:
- (3) On application by a party, a court may change, suspend or terminate an interim order made under subsection (1) if satisfied that at least one of the following circumstances exists:
- (a) a change in circumstances has occurred since the interim order was made;
 - (b) evidence of a substantial nature that was not available at the time the interim order was made has become available.
- (4) In making an order under subsection (3), the court must take into account all of the following:
- (a) the change in circumstances or the evidence, or both, referred to in subsection (3);
 - (b) the length of time that has passed since the interim order was made;
 - (c) whether the interim order was made for the purpose of having a temporary arrangement in place, with the intention that the arrangement
 - (i) would not adversely affect the position of either party during negotiations, during family dispute resolution or at trial, and
 - (ii) would not necessarily reflect the final arrangement between the parties;
 - (d) whether a trial has been scheduled;
 - (e) any potential adverse effect, on a party or a child of a party, of either making or declining to make an order under subsection (3).
- [30] The court in *Gordon v. Goertz*, 1996 CanLII 191 (SCC) described a material change as follows:

- [12] What suffices to establish a material change in the circumstances of the child? Change alone is not enough; the change must have altered the child's needs or the ability of the parents to meet those needs in a fundamental way: *Watson v. Watson* [1991 CanLII 839 (BC SC)]. The question is whether the previous order might have been different had the circumstances now existing prevailed earlier: *MacCallum v. Maccallum* (1976), 30 R.F.L. 32 (P.E.I.S.C.).
- [31] To be material, a change must be one that if known at the time would have resulted in different terms to the existing order: *L.M.P. v. L.S.*, 2011 SCC 64.
- [32] Given the reliance on the respondent's living arrangements, including the instability of his home in Kimberley, which the parties agree was a factor behind the terms of the October 2024 Order, I find that if the respondent had been primarily living in Kimberley, with a static residence, the results would have resulting in different terms.
- [33] As to the other circumstances referenced in s. 216(4), the application was brought promptly, if not concurrently with, the respondent's change in primary residence. Without the reasons for judgment for the October 2024 Order being before me, I cannot definitively determine that the order was meant to remain in place until trial, but note that with there being no trial date set then, or now, it was likely that the court considered the order to be an interim one based upon the parties living circumstances at that time given that a trial would likely still be years away.
- [34] I am satisfied that the respondent's change in primary residency from Alberta to Kimberley constitutes a material change. I am also satisfied that the fact that he may spend time in Alberta, likely when he is not exercising parenting, does not alter that finding.

Appropriate Parenting Schedule

- [35] Having found that there has been a material change, before any variation in parenting is ordered, the court must be satisfied that the variation, or revised schedule, is one that is in the best interest of the Children. As noted in s. 37 of the FLA, the circumstances for that determination include the following:
- a) the child's health and emotional well-being;
 - b) the child's views, unless it would be inappropriate to consider them;
 - c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - d) the history of the child's care;
 - e) the child's need for stability, given the child's age and stage of development;
 - f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise the person's responsibilities;

- g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - h) whether the actions of a person responsible for family violence indicate that the person may be impaired in the person's ability to care for the child and meet the child's needs;
 - i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
 - j) any civil or criminal proceeding relevant to the child's safety, security or well-being.
- [36] An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being: s. 37(3) of the FLA.
- [37] The claimant argues that even if there is a material change as result of the respondent's residency, it is not in the best interests that the respondent have equal parenting. She argues that since the equal parenting ended in late 2023, the Children have been more settled and adjusted and that they have "flourished" since. The claimant's counsel urged me to "read all the claimant's affidavits" to get the full context of the issues that the claimant alleges were arising with the Children, as there was insufficient court time to take me to me to all relevant provisions in the affidavits, particularly the issues that were arising when equal parenting was being exercised.
- [38] I confirm that I have read each of the affidavits as contained in the hearing record, including those before the court at the time of the previous October 2024 hearing. Much of that evidence is dated such that I am hesitate to put too much weight on it. Given the ages of the Children, their needs will have changed significantly in the past two years, the most significant change being that the twins will be starting school this September.
- [39] What I do take from that evidence is that there is a history of the respondent not respectfully exercising co-parenting or communicating well with the claimant, which caused significant frustration for the claimant. While the level of cooperation needed by the parties is a factor for consideration as provided for in s. 37(4), a person's conduct is only to be considered on the issue of parenting if it substantially affects one of the factors for consideration. For the most part, the issues raised regarding the respondent's conduct do not fall into that category.
- [40] Concerns that may affect the s. 37 considerations, however, do include the following:
- a) Removing the older child from School (raised in February 2023, but supported in November 2023 with a letter from a teacher noting absences have been higher since the respondent has had primary parenting);
 - b) A suspicion (raised in February 2023) that the respondent was "brainwashing" the older child and talking poorly about the claimant to the Children; and

- c) Requiring that the Children not bring anything to his house from the claimant's house and, telling them that they have to bathe as soon as they arise to "wash off mom's germs" (raised in February 2023), conduct which the claimant argues shows his controlling nature, "OCD" tendencies, and inappropriate negative speech about the claimant.
- [41] The respondent denies these allegations and takes issue with the overall tenor of the claimant's submissions which he submits are meant to paint him in a bad light as a husband, as a person, and as a father. Nonetheless, he acknowledges that he may have previously communicated inappropriately when he let his emotions get away from him. He deposes that he has "put considerable effort now and always to continue to improve on this for the Children's best overall interest". He also deposes that the children do well with him when he is parenting, that they have "gained confidence and been extremely happy and comfortable with the additional parenting time".
- [42] The respondent relies upon what is described as the maximum contact principle, derived from s. 16(6) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp):
- (6) In allocating parenting time, the court shall give effect to the principle that a child should have as much time with each spouse as is consistent with the best interests of the child.
- [43] The claimant does acknowledge in her most recent affidavit of March 12, 2025 that the Children "have fun" with their dad when they spend weekends with him, but that she "stands by" the position taken by her previously, that shared parenting had a negative effect on them.
- [44] The respondent submits that the ultimate indicator that he is a good parent is the fact that the claimant has had no issue with him having long periods of parenting, including when the claimant took vacations to Cuba and Mexico, and during agreed upon summer or holiday parenting blocks.
- [45] For the most part, the claimant is unable to point to any recent issue that has arisen with the respondent's parenting but instead emphasizes that since the respondent moved in September 2023, and since he has not been exercising equal parenting, that the Children are more stable and regulated.
- [46] It is not unusual for one parent to focus on the period of adjustment that children inevitably experience in their transitions from one parent to the other, with the other focussing on only the positive aspects of their own parenting block.
- [47] That there is a required adjustment period is not, however, a bar to equal parenting.
- [48] Similarly, the maximum contact principle is not absolute, and yields to the best interests of the Children. The Supreme Court of Canada has cautioned against the use of the maximum contact principle as a presumption. Each case must involve a child-centric inquiry which is better referred to as the "parenting time factor": *Barendregt v. Grebliunas*, 2022 SCC 22, at paras. 133 to 135.

- [49] Having regard to the s. 37 factors, I am satisfied on the evidence before the court that it is in the best interests of the Children that they have equal parenting with each of their parents, provided that that parenting can be undertaken in two stable environments that allow the Children to feel that each of the parties' residences is their home (given the evidence of the Children's comments of not knowing where their dad was living). Given that respondent's evidence as to his accommodations in Kimberley, this has been satisfied.
- [50] However, such equal parenting ought to be on an interim basis, and subject to review once a sufficient period of time has passed to ascertain whether the Children have been able to adapt well to the two homes.
- [51] I am also concerned with the school attendance issues that arose with the older child, although acknowledge that some of those could also have been the result of the lingering affects of the COVID-19 pandemic and remote learning tendencies (although I was not taken to any specific evidence as to why there were absences), however that can be addressed by a conduct order to require school attendance absent illness or consent of the claimant.

Child Support

- [52] The evidence before the court as to the parties' income was not argued due to lack of time. Very little was included in the claimant's response material on the issue, with no legal analysis or argument other than taking issue with any complaints as to the claimant's lack of financial disclosure, given the respondent's own lack of financial disclosure.
- [53] From my review of the evidence, as noted, the separation agreement, and its amendment, provided that no child support would be payable.
- [54] Based upon my review of the affidavits contained in the hearing record, the respondent did start paying child support in the fall of 2023, presumably when he relocated to Alberta and given the review contemplated by the amendment to the agreement.
- [55] A consent order was made March 5, 2024, by which the respondent was to pay child support in the amount of \$1,552 per month commencing December 10, 2023, with such support to be adjusted July 1, 2024 and each year thereafter with the parties to exchange tax returns and notices of assessment by May 31, 2024. The claimant has deposed that not all payments have been made since, and not always for the correct amount.
- [56] It is appropriate that the child support be reviewed based on the order made today on a set off basis. The respondent has indicated that his 2024 notice of assessment earnings were \$91,000, and the claimants 2023 notice of assessment earnings were \$53,000 (no 2024 notice of assessment was disclosed). On those incomes, the set off child support would be \$742 per month.

- [57] However, there was some indication that the claimant was not able to work full time, or was taking a leave of absence, the full particulars of which were not particularized in terms of how that was affecting her income. In her affidavit material, the claimant deposed that she had yet to file her 2024 income tax return and that her income was not relevant given she had primary parenting.
- [58] Without full financial disclosure as was contemplated in the March 5, 2024 order, an order cannot be made at this time. However, to ensure the issue can be brought forward in a timely way, the parties should exchange their full 2023 and 2024 income information forthwith. If the claimant does not provide that information in a timely manner, then the respondent ought to be able to seek the variation based on her 2023 income.

Conclusion and Orders

[59] I order as follows:

- a) On an interim basis, the respondent shall have shared parenting time of the Children on a week on/week off basis, with the transitions occurring on either Sunday at 10:00 a.m. or Monday at 9:00 a.m., as the parties may agree, commencing either July 6 or 7, 2025 in that respect. If the parties are unable to agree as to the transition day, it will be Sunday, commencing July 6, 2025.
 - b) The parenting schedule may be reviewed after December 31, 2025, without any material change in circumstances.
 - c) While exercising his parenting, the respondent is to ensure that the Children attend all scheduled school events, except in the case of illness or with the consent of the claimant.
 - d) The respondent's application to vary child support is adjourned, with the parties are to exchange their 2023 and 2024 income tax returns and notices of assessment. In the event the claimant has not provided her 2023 and 2024 income tax returns and notices of assessment by August 1, 2025, and provided the respondent has provided his, the respondent is at liberty to reset his application based on the income information available to him. I am not seized of that application.
- [60] The parties did not make submissions as to costs. However, given the respondent's success on this application, absent some other factor to which I am unaware, he would be entitled to his costs of the application in any event of the cause. Those would not be payable forthwith, given the indication by the claimant that there are costs orders in her favour which have yet to be paid. If, however, the claimant has submissions to the contrary, they may submit written submissions to be filed and directed to me through scheduling, within 14 days of these Reasons, with the respondent to provide any reply submissions 7 days thereafter. Otherwise, the order as to costs will go as stated.

"Associate Judge Robertson"

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