

CANADA / JUDGMENT

T.S.S. v. A.S.

2024 BCSC 301

COURT

Supreme Court of British Columbia

DECIDED

23 February 2024

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

2024 BCSC 301 T.S.S. v. A.S.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

T.S.S. v. A.S.,

2024 BCSC 301

Date: 20240223

Docket: E57142

Registry: New Westminster

Between:

T.S.S.

Claimant

And

A.S.

Respondent

And

S.S.S., K.K.S. and M.S.S.

Respondents by Counterclaim

In Chambers

Before: The Honourable Mr. Justice Gomery

Reasons for Judgment

Counsel for the Claimant:

J.M. Stein

Counsel for the Respondent:

A. Ngom

Place and Date of Hearing:

Port Coquitlam, B.C.

January 12, 2024

Place and Date of Judgment:

New Westminster, B.C.

February 23, 2024

Table of Contents

Introduction.. 3

Background.. 4

Issues.. 5

Analysis.. 6

1. Should the allocation of parenting time established by the 2020 order of Master Caldwell be varied?. 6

Legal framework. 6

The threshold of a material change of circumstance. 8

Considerations mandated by s. 216(4) of the FLA.. 9

The orders sought by the father 9

Considerations mandated by s. 37 of the FLA.. 10

Assessment 13

Conclusion. 15

2. How should K's passport be held?. 16

3. In the event of disagreement following consultation, who should have final authority to consent to medical care on K's behalf?. 17

The issue. 17

Legal framework. 18

Analysis. 20

4. In the event of disagreement following consultation, who should have final authority in respect of other parenting decisions?. 20
5. What directions will facilitate the resolution of the parenting issues in K's best interests? 21

Disposition.. 21

Introduction

- [1] T.S.S. and A.S. are the parents of K, who is six years old. They were married in 2015 and separated in 2018, 13 months after K was born. T.S.S. is the father, and A.S. is the mother. The mother has had primary care of K since the separation, and the father has consistently sought a greater role in K's life. He commenced this proceeding in March 2019. Unfortunately, there has not yet been a trial. The delay is not because trial dates could not be obtained from the court. The parenting arrangement has been addressed by two consent orders and has evolved with changing circumstances.
- [2] The father applies for an increase in his parenting time with K. The mother opposes; she denies that the circumstances justify an amendment of the existing parenting arrangement by an interim order, prior to trial.
- [3] The mother cross-applies for an order allocating the parents' responsibilities as guardians. Portions of the order sought by the mother went by consent at the hearing. What remains are disputes concerning custody of K's passport, consent to medical care generally, and whether one parent should have final decision-making authority following consultation in respect of other matters.
- [4] It is important to state at the outset that both parents are dedicated, loving, and competent parents who want what is best for K. It appears to me that their disagreements mostly arise from different parenting styles, difficulties in communication, and the differences in perspective that often arise over years following the breakdown of a relatively short-lived marital relationship.
- [5] This is an interim application, heard on affidavit materials and written submissions over the course of a single day. I am limited in my ability to make findings of fact. My understanding of the circumstances bearing on an assessment of K's best interests is constrained, by comparison to the fact-finding exercise that would take place at a trial. An interim order is temporary in nature. In my view, it is important that the parties obtain the catharsis and resolution of a trial of the parenting issues without unnecessary further delay. I return to this point later in these reasons.

Background

- [6] The father is 39 years old and employed as an engineering technologist. The mother is 43 years old and employed as a financial analyst.
- [7] During the marriage the family lived in a two-bedroom suite in a house owned by the father's parents. The parents sometimes assisted with childcare. The mother left with K in October 2018. The father continues to reside in the suite.
- [8] The mother now lives in Surrey with K. Her residence is a short walk from the school K now attends in grade 1, and her work is nearby. The mother's parents assist with childcare as necessary.
- [9] The father's residence is in Vancouver. He is mostly able to work from home and his schedule is flexible. The driving time between the residences ranges from approximately 24 to approximately 40 minutes, depending on traffic.
- [10] The father commenced this action by filing a notice of family claim on March 6, 2019. There are issues as to parenting, child and spousal support, and the division of property. The mother claims an interest in the house the parties occupied during the marriage and has joined the father's parents as respondents by counterclaim. The parents' involvement has contributed to the delay in scheduling the trial.
- [11] At a judicial case conference before Master Cameron on July 3, 2019, the parents consented to an interim parenting order that provided that K would reside primarily with the mother, and the father would have parenting time every second weekend, from Friday afternoon to Sunday afternoon, and on Tuesday afternoons on the off-weekends.
- [12] On February 20, 2020, the parties consented to a much more detailed interim parenting order before Master Caldwell (as he then was). In broad terms, the parenting arrangement was much the same except that: (1) this order extended the father's weekends with K to Monday morning; (2) the father obtained parenting time with K every Tuesday or Thursday afternoon, rather than on alternating Tuesdays, and for a longer period; and (3) the order made special provision for parenting time on long weekends and for vacations, holidays and special days such as mother's day, father's day, and the parents' and grandparents' birthdays. The order afforded the father three vacation periods with K during June, July and August of no more than four days and three nights each. It expressly provided that the father's vacation time was not to abut his regular parenting time.
- [13] The parents have informally adjusted the parenting arrangements from the provisions in the 2020 order in two ways. In early 2023, the father began to return K to the mother's care on his weekends on Sunday evenings rather than Monday mornings. Since K began grade one, the father's time with K on Tuesdays has reduced.

Issues

[14] The issues are as follows:

1. Should the allocation of parenting time established by the 2020 order of Master Caldwell be varied?
2. How should K's passport be held?
3. In the event of disagreement following consultation, who should have final authority to consent to medical care on K's behalf?
4. In the event of disagreement following consultation, who should have final authority in respect of other parenting decisions?
5. What directions will facilitate the resolution of the parenting issues in K's best interests?

Analysis

1. Should the allocation of parenting time established by the 2020 order of Master Caldwell be varied?

[15] The father submits that circumstances have changed in the four years since the consent order made by Master Caldwell in February 2020, citing Family Law Act, S.B.C. 2011, c. 25 [FLA], s. 216(3)(a). He contends that it is in K's best interests that he have more parenting time with his father; FLA, s. 37.

[16] The mother opposes on several grounds. She maintains that the application is governed by the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), rather than the FLA, and that variation of an interim order under the Divorce Act is only justified by compelling circumstances, citing *Janmohamed v. Janmohamed*, 2014 BCSC 107 at para. 45. She submits that the case for a variation is not compelling. She says that such changes as have occurred were contemplated when Master Caldwell's order was made and would not justify a variation. Alternatively, if some modification is warranted, it should conserve the essential elements of the status quo established by the order and be limited to such changes as are necessary in light of the change in circumstances, citing *Klann v. Klann*, 2018 BCCA 48 at para. 65. Overall, the mother maintains that the present allocation of parenting time is in K's best interests, pending trial.

[17] In short, the parties dispute both the legal framework governing the father's application and the application of that framework in this case.

Legal framework

[18] I agree with the father that his application to vary Master Caldwell's order is governed by the FLA because the language of the order indicates that was made under the FLA rather than the Divorce Act.

- [19] The statutory foundation of an order is determined by objective indicators found in the pleadings, the wording of the order, and the circumstances in which it was made; *Khangura v. Rogalski*, 2017 BCSC 1753 at para. 26. In the absence of objective indicators, an order for collateral relief in a proceeding in which a divorce is sought will be considered as founded in the Divorce Act; *Yu v. Jordan*, 2012 BCCA 367 at para. 1. In this case, the pleadings and circumstances are ambiguous, but the wording of the order is not. The order speaks of "parenting time" throughout. In 2020, when the order was made, the FLA provided for the allocation of "parenting time" (ss. 42 and 45(1)(b)) and the Divorce Act did not. The Divorce Act contemplated orders for "custody" and "access" (s. 16(1)). The Divorce Act has since been amended. Since March 1, 2021, it has authorized "parenting orders" and "contact orders". The difference in statutory language and approach is no longer striking. But a 2020 order that allocates parenting time is plainly an order made under the FLA and not the Divorce Act.
- [20] Section 216(3)(a) of the FLA provides that a court may change an interim order if a change of circumstances has occurred since the order was made. The change must be material; *B.K. v. J.B.*, 2015 BCSC 1481 at paras. 19 and 34. Where there has been a material change of circumstances, s. 216(4) directs the court to consider:
- a) the change in circumstances;
 - b) the length of time since the interim order was made;
 - c) whether the interim order was made for the purpose of having a temporary arrangement in place on a 'without prejudice' basis, that is, with the intention that the arrangement would not adversely affect the position of either party and would not necessarily reflect the final arrangement between the parties;
 - d) whether a trial has been scheduled; and
 - e) any potential adverse effect on a party or a child of a party.
- [21] In *B.K.* at paras. 30-33, Justice Holmes (as she then was) observed that consideration of the child's best interests permeates analysis under s. 216. It is to be presumed that the order sought to be varied was made in accordance with the child's best interests, to the extent practicable. It is essential to the materiality of a change in circumstances that it relates to the child's best interests. Potential adverse effects on the child or the parent engage consideration of the child's best interests.
- [22] Moreover, s. 37(1) of the FLA requires that in making any order respecting parenting arrangements, the court must consider only the best interests of the child. Section 37(2) directs that all of the child's needs and circumstances must be considered, and provides a list of particular considerations. An order is not the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety and security; s. 37(3).

The threshold of a material change of circumstance

- [23] I find that there have been material changes of circumstance bearing on the allocation of parenting time since the order was made. They include the following.
- [24] In February 2020, K was two years old. The 2020 order specifically provided for drop-offs on Monday mornings at a named drop-in daycare. Now K is six years old and in grade one. The 2020 order provided for parenting time with the father commencing at 1:30 p.m. on Tuesday afternoons. Now K is in school at 1:30 p.m. on Tuesday afternoons. With the passage of time, the parents have adjusted the pick-up and drop off arrangements, so that the 2020 order no longer reflects their practices. It does not address opportunities for parenting resulting from school breaks that are a part of K's life as a school child.
- [25] More fundamentally, K's activities, needs and interests have changed since he was two. He is no longer an infant. The mother has enrolled him in ice hockey, swimming, basketball, and piano lessons and activities. He socializes with friends who come over to the mother's house to play with him. His activities and relationship with his parents have undoubtedly evolved.
- [26] Having found that there have been material changes of circumstance bearing on the allocation of parenting time, I turn to consideration of the further matters listed in s. 216(4).

Considerations mandated by s. 216(4) of the FLA

- [27] When the 2020 order was made, a trial was scheduled to take place in June 2021. The order allocated parenting time at Christmas and New Years in even-numbered and odd-numbered years. I infer that the parties contemplated the possibility that this part of the parenting arrangement established by the order might endure for several years. In fact, the trial was adjourned, rescheduled to a date in 2022, and adjourned again. It has not been rescheduled once more due to disagreements as to whether parenting and support issues should be tried with the property issues in which the father's parents are involved. The exceptional delay that has resulted would not have been contemplated in 2020.
- [28] There is nothing in the record to indicate that the 2020 order was made on a without prejudice basis. It has contributed to establishing a status quo that must be taken into account.
- [29] I must also address the potential adverse effects of varying or refusing to vary the 2020 order and K's best interests generally. That requires consideration of the details of the orders sought by the father.

The orders sought by the father

- [30] The orders sought by the father would increase his overall parenting time as follows:

- a) He would pick up K from school on Tuesdays at 2:30 p.m. (rather than at 3:30 pm according to the parties' present practice), keep him overnight, and drop him off at school on Wednesday mornings;
- b) He would pick up K from school on alternating Fridays at 2:30 p.m. rather than from the mother's residence at 3:30 pm. as provided in the 2020 order;
- c) On the father's weekends with K, he would continue the practice of returning K to his mother's house on Sundays at 6:30 pm rather than dropping him off on Monday mornings as contemplated in the 2020 order;
- d) He would have a long weekend with K when one of his weekends with K fell adjacent to a statutory holiday or non-instructional day;
- e) There would be equal shared parenting of K during the winter and spring school breaks; and
- f) Parenting time would be shared during the school summer breaks on an alternating 3-4 schedule.

[31] The father also seeks an order pertaining to ice hockey which is not a parenting time order. The order sought would prevent K from being enrolled in or participating in ice hockey lessons until 2026. The father does not approve of ice hockey for a six or seven-year old, and the mother does. He worries that K may suffer injury. She says that K aspires to play hockey one day in the N.H.L. During the hearing, I advised counsel for the father that I would not make this order because ice hockey lessons are a common activity for children in Canada, and I am of the view that each parent should be free to arrange ordinary childhood activities for their child during their parenting time. Conversely, at least at this stage, neither parent should be entitled to insist on scheduling activities for the child during the other parent's parenting time.

Considerations mandated by s. 37 of the FLA

- [32] There is nothing in the record to indicate that K's health and emotional well-being (s. 37(2)(a)) are at stake, one way or the other, as a result of this application.
- [33] There is no evidence of K's views in relation to the order sought (s. 37(2)(b)). At six years of age, he is probably not in a position to express a considered opinion. There are no allegations of family violence (s. 37(2)(g) and (h)) or relevant civil or criminal proceedings (s. 37(2)(j)) in this case.
- [34] The history of the child's care (s. 37(2)(d)) has seen the mother as the primary parent and the father as engaged, but only to a limited degree as contemplated by the orders in place since 2019.

[35] The nature and strength of K's relationships with significant persons in his life (s. 37(2)(c)) are a significant consideration in this case. K is undoubtedly well attached with and parented by his mother. His relationship with his father is well established but constrained by limits on their time and activities together.

[36] The present parenting arrangement limits K's opportunity to know and be parented by his father. The father does not pick up or drop off K at school. He has very limited time with K during the week and they do not spend weeknights together. They have Friday and Saturday nights and the weekend days together every second week. This is suboptimal for reasons summarized by Joan B. Kelly in "Developing Beneficial Parenting Plan Models for Children Following Separation and Divorce", (2005) 19 J Am Matrimonial 237. Ms. Kelly states at 247:

Research assessing the extent of access and father involvement on children's adjustment following divorce gives ample evidence that when children of different ages have involved fathers, they are more likely to achieve better social and behavioural outcomes. School aged children with close relationships with their fathers, who had frequent contacts and actively involved fathers, had more positive adjustment and better academic performance than did those with less involved fathers. Active involvement included: help with homework and projects, appropriate expectations for their children, the use of authoritative discipline, and monitoring of adolescents' activities. To enable this amount and type of focused activity and parenting to occur, it seems apparent that children's contacts with their adequate and interested fathers should occur during some part of each school week, as well as on alternate weekends, resulting in, more time with their children than has been possible with the alternating weekend schedule.

[37] The 2020 order also markedly limits K's ability to go on holiday trips with his father. The father's vacation time with K during the summer is limited to three overnights at a time and may not be combined with other parenting time. This does not afford father and son the time to travel any distance together. In contrast, in her fourth affidavit, the mother states:

66. I have a lot of family in the United States and I plan to regularly travel there with [K]. I have family in New Jersey and Arizona. I also have friends in California that I plan on visiting.

[38] K's need for stability, given his age and stage of development (s. 37(2)(e)) is a consideration emphasized by the mother, particularly in the context of the father's request for overnight parenting during the week. While I agree that routine and structure are important, especially for a six-year old, I do not think that the additional time sought by the father, of itself, is likely to destabilize K's life. He knows his father, is comfortable in his presence, and is used to visiting overnight. The mother emphasizes the disruption to K's sleeping pattern and morning routine if he must be driven to his school in Surrey from his father's apartment in Vancouver on weekday mornings. I return to this point below.

- [39] The father's ability to exercise his responsibilities (s. 37(2)(f)) if parenting time is increased is not a factor in this case, because there is no doubt that he is a competent parent. It is not a bad thing that he favours different activities with K than the mother, because children benefit from experiencing different models of competent parenting.
- [40] Whether the order sought would increase the cooperation required of the parents on issues affecting K (s. 37(2)(i)) is a significant consideration, because the parents have experienced difficulties in communicating. As already noted, the parents have differing communication styles. Happily, it seems that the tone has for the most part remained respectful. Some of the difficulty has flowed from the father's apparent unwillingness to engage substantively with long written communications from the mother. Some of the difficulty is situational, arising from a frightening episode of vomiting that led to K's short-term hospitalization in May 2020. The parents have taken different lessons from that episode. It has led the father to distrust K's pediatrician and doubt subsequent medical advice received from or through her. I return to this point in addressing the mother's application for final authority in respect of disagreements over parenting decisions below.

Assessment

- [41] In my view, it is in K's best interests that he be parented by his father more often, to the extent that greater paternal parenting can be achieved without undue adverse effects. The object is to secure a better balance of the competing considerations for the period that remains prior to a trial which may yet be delayed for a year or more.
- [42] The father's request for additional parenting time may be broken down into four categories.
- [43] The first category involves the father's proposal that K be parented by him overnight on Tuesdays from the end of one school day until the beginning of the next. At present, the father picks up K from the mother's house at 3:30 pm on Tuesdays and must return him by 6:30 pm. If the father wishes the visit to take place at his residence, much of the visit is taken up by the commute.
- [44] An arrangement contemplated by the 2020 order that the father's weekend parenting would end on Monday mornings foundered. The mother says that the Monday morning commute from Vancouver made K irritable and slightly lethargic, and getting up early for the commute disrupted his sleep schedule. The father accepted that Monday morning drop offs were not working, and began to drop K off at the mother's house on Sunday evenings instead. The mother submits that:

The parties have already seen the impact of the commutes on [K], and the difference in how he thrives when he is allowed routine to set up his mornings for success. There is no need to experiment Wednesday mornings with [K], especially in the middle of the school year, when the parties have already tried something similar, without success.

- [45] A 24 to 40 minute drive is certainly longer than the seven minute walk to school when K spends the night at his mother's house, but viewed from the perspective of many families in the Lower Mainland of British Columbia, it is not an extraordinary commute. The particular feature of the arrangement that foundered was that the father dropped K off, not at school, but at the mother's house. The mother packed K's lunch, often changed his clothes, and fed him a full breakfast before taking him to school. These activities took up time, and the mother complains that the father was often late in dropping K off, leading to a rushed morning routine that was very disruptive for K.
- [46] I infer that overnights on Tuesdays at the father's residence should be feasible for K without undue difficulty so long as the father drops K at school and takes on responsibility for all of the morning parenting, including ensuring that K is fed breakfast, has a lunch packed, and is appropriately bathed and clothed for the day. It would benefit K to see that these tasks and this role belong as much to fathers as to mothers.
- [47] The mother does not oppose the father's correlative proposal that the parenting order be varied to confirm the practice now established of returning K to his mother's house at 6:30 pm on the Sunday at the end of his weekends with his father.
- [48] The second category of the father's request for additional parenting time involves long weekends where a statutory holiday or school holiday falls on the Friday or Monday adjacent to one of K's weekends with his father. In my view, it is in K's best interests that he have this additional paternal parenting time. None of the considerations I have reviewed pushes against it.
- [49] The third category of the father's request for additional parenting time involves winter and spring breaks during the school year. The father proposes that they be equally divided. In my view, consideration of K's best interests favours this request. K is old enough that he should have enough holiday time with his father that they can travel together if the father wishes. K is old enough that it will not destabilize him or threaten his relationship with his mother to spend up to eight or nine overnights at a time away from her.
- [50] The fourth and final category of the father's request for additional parenting time involves the school summer vacation. The father proposes full shared parenting in this period on an alternating 3-4 schedule, with exchanges on Sunday and Wednesday evenings. Alternatively, he proposes that K spend two weeks of non-consecutive parenting time with him in 2024 and there be shared parenting starting in 2025.
- [51] Full shared parenting for two months of the year would be a big change from status quo that has prevailed since the parties separated in late 2018. It would not flow naturally from the material changes of circumstance I have described, and I do not think the change sought by the father should be put into effect on this contested application for an interim order amending an earlier interim order.
- [52] The 2020 order states:

4. The Claimant and the Respondent shall have three (3) uninterrupted, non-consecutive vacation times each June, July, August. The vacation times shall be for four-day, three-night periods with the Child each year with notice of such vacation time being provided to the other party at least thirty (30) days in advance notice, unless otherwise agreed in writing. Vacation time shall not be booked by a parent which interferes with the other parent's special holidays or regular weekend time. The Claimant's vacation time will not be scheduled to abut his regular parenting time.

[53] In my view, two changes are required. The first is that the reference to the month of June should be struck, because K will be in school for almost the entire month of June. The second is that the final sentence, preventing K's vacation time with his father from abutting regular parenting time with the father, should be struck, because there is no good reason for the vacation time to be so circumscribed.

Conclusion

[54] For these reasons, I conclude that the father's application should be allowed and the 2020 order varied to provide that:

- a) K will have parenting time with the father every Tuesday after school with pick up from school at 2:30 pm to Wednesday morning drop off at school unless the Wednesday is a non-instructional day, in which case K will be dropped off at the mother's residence at 8:30 a.m.;
 - b) On the alternating weekends K has with the father, the father will drop K off at the mother's house on the Sunday at 6:30 p.m.;
 - c) If the Monday or the Friday adjacent to one of the alternating weekends K has with his father is a non-instructional day, the father's weekend parenting time will be extended accordingly as provided in the father's notice of application;
 - d) Parenting time during winter and spring school breaks will be divided as provided in the father's notice of application;
 - e) Paragraph 4 of the 2020 order will be amended as set out in paragraph [53] above.
2. How should K's passport be held?

[55] The parents agree that K should have a passport and that they should cooperate in applying for it. They disagree as to who should hold the passport, when it is not in use during a trip taken outside Canada. I gather that each is afraid that, if the other holds the passport, they may be reluctant to give it up on request. Passport brinksmanship is sometimes observed in family litigation.

[56] K is much too young to have custody of the passport, as suggested by the father. The mother is the primary parent and it makes sense that she take care of it, when it is not in use. I do not doubt that she will respect an obligation imposed by court order to provide it to the father when he needs it for travel with K.

[57] Accordingly, I order that:

- a) The father will sign a passport application for K and provide the signed application to the mother within two weeks;
- b) Upon issuance, the mother will have custody of K's passport when it is not needed for travel;
- c) Upon reasonable notice by the father that he requires the passport for travel with K, the mother will provide it to the father; and
- d) Upon completion of his travel with K, the father will return the passport to the mother.

[58] At the hearing, the parties agreed to an order that they are at liberty to travel to the United States with K during their parenting time upon providing to the other parent at least seven days' notice with an itinerary setting out the details including dates and accommodations, and that both parties will provide each other with annual blanket travel authorizations for such travel.

3. In the event of disagreement following consultation, who should have final authority to consent to medical care on K's behalf?

[59] At the hearing, I ordered by consent that both parents are guardians of K pursuant to s. 39(1) of the FLA, will share equally all parental responsibilities enumerated in s. 41 of the FLA, and are obliged to consult each other on significant decisions. What remains is a dispute as to what should happen if the parents are unable to agree following consultation. The particular focus of disagreement to date has been decisions concerning medical care and it is best to tackle that subject directly before addressing other parenting decisions.

The issue

[60] As already noted, an episode in May 2020 has coloured the parents' communications and perceptions of medical advice received. K became ill: he was pale, listless, and had little appetite. The parents jointly spoke with K's pediatrician, Dr. Y. The father suggested a blood test. Dr. Y initially demurred and then agreed. Two days later, before the blood test was taken, K began throwing up and was taken by ambulance to the Royal Columbian Hospital in New Westminster. There, a blood test was done which revealed that K's blood iron level was very low. K was sent home that evening, but the next day, he was admitted to the hospital. After a few days, he was transferred to B.C. Children's Hospital, where he received two blood transfusions. His blood iron recovered to a normal level, his symptoms abated, and he was discharged without further incident.

- [61] The lasting consequence was that the father became sceptical of Dr. Y and, to some degree, of medical advice generally. He understands that K became so ill that he might have died, believes that Dr. Y should have diagnosed the illness earlier, and says bluntly that he does not trust Dr. Y. In December 2022, he wanted a further blood test and, when Dr. Y did not agree, he obtained a requisition from another doctor and had the test performed without consulting with the mother. The father is critical of the mother; he says that she just "goes along with whatever is recommended" by Dr. Y and K's family doctor, Dr. R. He would like to see K cared for by other doctors. In 2023, he would not agree to flu and Covid vaccinations for K that were recommended by Dr. Y and the B.C. Centre for Disease Control. He explains that he is not an anti-vaxx person, but is not persuaded that these vaccinations were necessary.
- [62] At the conclusion of the hearing, I ordered that the mother would be permitted to consent to the vaccinations.
- [63] It seems that K is now in good health though he has had trouble with fluid in his ears. He has seen a specialist and there is a possibility that the doctor will recommend surgery to remove K's adenoids. At present, K does not require the surgery. The father says that, until it is confirmed that K absolutely needs surgery, he will not consent to it. The concern is that, if it comes to the point of a recommendation for surgery, the need for a decision may be pressing, and the parents' ability to reach consensus is in doubt.

Legal framework

- [64] The starting point under the FLA is that parents who are guardians are each entitled to exercise all parental responsibilities with respect to the child in consultation with each other, unless consultation would be unreasonable or inappropriate in the circumstances; s. 40(2). No particular allocation of parental responsibilities is presumed to be in the best interests of the child; s. 40(4). However, parental responsibilities may be allocated by court order; s. 45(1)(a).
- [65] One parent may be accorded the authority to make final parental decisions where that is what the best interests of the child require. Such an order involves the exercise of a broad, factually-grounded discretion. It is often an appropriate order in cases involving a long history of conflict, animosity or delayed responsiveness as to necessary decisions; *C.D. v. B.C.*, 2013 BCSC 915 at para. 45. In *Aujla v. Gill*, 2021 BCSC 1671 at paras. 114-115, Shergill J. found that such an order was justified where the parties were "simply unable to cooperate" with one another on matters related to their children's health and education.

- [66] Orders granting one parent final decision-making authority are not limited to cases of minimal communication or cooperation; *B.A. v. L.S.*, 2017 BCSC 1796 at paras. 206-210. The "Joyce model order" both obliges discussion and consultation and grants final decision-making authority; *J.E.H. v. P.L.H.*, 2013 BCSC 752 at para. 58; *Ball v. Ball*, 2016 BCSC 2264 at para. 20. It presupposes that the parties are capable of fruitful consultation. The Joyce model order includes the following terms:
2. Each guardian will have the obligation to advise the other guardian of any matters of a significant nature affecting the children;
 3. Each guardian will have the obligation to discuss with the other guardian any significant decisions that have to be made concerning the children, including significant decisions about the health (except emergency decisions), education, religious instruction and general welfare;
 4. The guardians will have the obligation to discuss significant decisions with each other and the obligation to try to reach agreement on those decisions;
 5. In the event that the guardians cannot reach agreement on a significant decision despite their best efforts, the guardian with the majority of parenting time with the child will be entitled to make those decisions and the other guardian will have the right to apply for directions on any decision the guardian considers contrary to the best interests of the children, under s. 49 of the Family Law Act;

Analysis

- [67] The parents have different perspectives on questions of medical care, a matter which has been the subject of disagreement and sometimes requires very prompt decision-making. While the father's distrust of Dr. Y is sincere, I do not think it is objectively justified. I am not persuaded that K should not be cared for by Dr. Y and Dr. R.
- [68] The order already made requires consultation. In the absence of agreement following consultation, I think it is in K's best interests that one parent be able to decide. That parent should be the mother, who has confidence in K's current care providers, and who is less inclined to scepticism of mainstream medical advice. The mother has a good record of informing and consulting with the father. In contrast, he took unilateral action without consultation to obtain a blood test in December 2022. There was no urgency to justify his taking this step.
- [69] I conclude that, following consultation, in the event of disagreement, the mother should be authorized to consent to medical care for K that has been recommended by a physician.
4. In the event of disagreement following consultation, who should have final authority in respect of other parenting decisions?

- [70] I am not satisfied that it is appropriate to grant the mother final authority in respect of parenting decisions generally. This case does not feature a long history of conflict, animosity or delayed responsiveness as to necessary decisions generally. It is not a case in which the parties are simply unable to cooperate. While the Joyce model order may be made outside of such circumstances, it is not a default position. An order that privileges one parent as decision-maker over the other should be justified by something in the family's circumstances or the history of the parents' dealings. Apart from decisions involving the consent to medical care, as already discussed, in this case such justification is absent.
5. What directions will facilitate the resolution of the parenting issues in K's best interests?
- [71] In my view, it is very much in K's best interests that a trial of the parenting issues be scheduled. While it may be that the parents will ultimately be able to resolve them by agreement, scheduling a trial can only help by providing certainty as to when and how the parenting issues will be resolved in the absence of agreement.
- [72] As already noted, rescheduling the trial has been complicated by a disagreement as to how long the trial will take, founded in a dispute as to whether the parenting issues should be tried together with property issues in which the father's parents are involved. While a severance of the issues would facilitate an earlier trial of the parenting issues, the mother will not agree to a severance. On the question of a severance, the parties may wish to consider *British Columbia (Director of Civil Forfeiture) v. Conrad*, 2024 BCCA 10 at paras. 54-101. While it is decided under the Supreme Court Civil Rules rather than the Supreme Court Family Rules, the analysis may not be at all different.
- [73] The scheduling of a trial engages the interests of the father's parents, who are not parties to this application. However, it is open to me to direct the scheduling of a case planning conference at which the scheduling of a trial may be addressed. I raised this possibility with the parties at the hearing, and neither objected.

Disposition

- [74] For these reasons, I order as follows:
- a) The 2020 order of Master Caldwell is varied as set out in paragraphs [53] and [54] above. For readability and subsequent reference, counsel may prepare an order for entry that entirely repeals and replaces the 2020 order, consistently with these reasons;
 - b) The father will sign a passport application for K and provide the signed application to the mother within two weeks;
 - c) Upon issuance, the mother will have custody of K's passport when it is not needed for travel;
 - d) Upon reasonable notice by the father that he requires the passport for travel with K, the mother will provide it to the father; and

- e) Upon completion of his travel with K, the father will return the passport to the mother;
- f) The parents are at liberty to travel to the United States with K during their parenting time upon providing to the other parent at least seven days' notice with an itinerary setting out the details including dates and accommodations;
- g) Both parents will provide each other with annual blanket travel authorizations for travel contemplated by this order;
- h) Following consultation as provided in the court's order made on January 12, 2024, in the event of disagreement, the mother may consent to medical care for K that has been recommended by a physician;
- i) The father will provide these reasons for judgment to the respondents by counterclaim;
- j) Pursuant to Supreme Court Family Rule 7.1-1(2), I direct that a case planning conference will take place and the father will request the conference as provided in subrule (1) within 14 days of this order. These reasons are to be brought to the attention of the judge presiding at the case planning conference.

[75] Success has been divided and there will be no order as to costs.

"Gomery J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/24/03/2024BCSC0301.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/t-s-s-v-a-s-2024>

Prepared on 26 October 2026 · Esheria