

CANADA / JUDGMENT

V.G. v. K.S.

2025 BCSC 2025

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 2025 V.G. v. K.S.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

V.G. v. K.S.,

2025 BCSC 2025

Date: 20251016

Docket: E114947

Registry: Kelowna

Between:

V.G.

Claimant

And

K.S.

Respondent

Before: The Honourable Justice Hardwick

Reasons for Judgment

Counsel for the Claimant:

J.C. Chandler

Appearing on her own behalf:

K.S.

Place and Date of Hearing:

Kelowna, B.C.

October 9, 2025

Place and Date of Judgment:

Kelowna, B.C.

October 16, 2025

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Introduction

- [1] Madam Justice Wilkinson presided over an eight-day trial in this family law action (the "Action") in late winter of 2024. Her reasons for judgment outlining the basis for her final orders were released on May 8, 2024, and are indexed at 2024 BCSC 776 (the "Trial Reasons"). The final order was entered on October 24, 2024 (the "Final Order").
- [2] The trial related almost exclusively to issues regarding the single child of the relationship, L., born in March of 2014. L. is currently 11 years-of-age.
- [3] The claimant is L's biological mother, and the respondent is L's biological father. L. has no biological siblings.

- [4] The parties separated when L. was just 9 months old and there have been various court orders made prior to the trial of the Action, many of those (but certainly not all) pertain to L.
- [5] In addition to the Action, there was a Provincial Court proceeding which involved, inter alia, a default hearing in which the Director of Maintenance Enforcement (as they were then known) sought the incarceration of the respondent for both non-payment of support and non-compliance with his financial disclosure obligations, and a criminal proceeding wherein the respondent was convicted and subject to probationary terms which, inter alia, restricted his ability to have contact or communication with the claimant. That probationary period was only quite recently completed by the respondent on May 28, 2025.

Credibility Findings at Trial

- [6] Credibility was a significant issue at trial and neither party was spared from some judicial rebuke. Justice Wilkinson was particularly pointed in her findings regarding the respondent's conduct, stating as follows:
- [20] There is a significant amount of conflicting testimony between the parties, as well as internally within their testimony. Their past conduct with regard to compliance with court orders has been problematic, the respondent's overwhelmingly more so.
- [21] The respondent's conduct at trial exemplified his apparent compulsive need to lie, even when faced with incontrovertible evidence to the contrary.
- [7] I refer to the foregoing not to explain that while I do not entirely reject the respondent's submissions that acknowledge that he was "not acting responsibly" previously and that the penalties imposed upon him were "extreme but deserved", but to appropriately highlight that this Court must review the respondent's affidavit evidence filed in support of the current application (evidence not tested by any cross-examination) with appropriate scrutiny.

Final Orders Regarding Parenting Time

- [8] While the respondent was successful in maintaining his status as a guardian of L. at trial and has certain defined parental responsibilities under s. 41 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], his parenting time with L. was significantly restricted by Justice Wilkinson, given her finding that, "given [his] lengthy history of non-compliance, admitted recreational cocaine usage, and recent choice to drive a vehicle with L. while uninsured, along with his willingness to be untruthful in court proceedings, a lengthy period of supervised parenting is required": see para. 73 of the Trial Reasons.
- [9] On that basis, Justice Wilkinson concluded that the claimant should have all parenting time with L. except as provided for in the Final Order and on the very specific terms set forth therein. Those terms are as follows:

- a) The respondent is entitled to parenting time with L. on Sundays from 12:00 pm to 6:30 pm on a rotating four-week cycle, wherein the respondent has parenting time on three consecutive Sundays and no parenting time on the fourth Sunday subject only to automatic modification for Mother's Day and Father's Day;
 - b) The respondent's parenting time, including all parenting exchanges, is to be supervised by a third-party supervisor from Crowning Life Consultants ("Crowning Life"), or another person agreed upon between the parties, until the respondent has successfully exercised nine consecutive months of his parenting time, in accordance with the terms of the Final Order;
 - c) The respondent is responsible for the cost of the third-party supervisor;
 - d) The respondent must provide at least seven days' advance written notice to the claimant in the event he is unable to exercise his parenting time;
 - e) The respondent is prohibited from operating a vehicle with L. unless he has a valid driver's licence and insurance;
 - f) The respondent is prohibited from consuming alcohol or any controlled substances within the meaning of s. 2 of the Controlled Drugs and Substances Act, S.C. 1996, c. 19, during contact or parenting time and for 24 hours before having any contact or parenting time, except as prescribed by a licensed physician;
 - g) Both parties are to solely communicate through the "Our Family Wizard" application ("OFW"), and the respondent must bear the costs of both parties' OFW subscriptions - including the cost of permitting a third party to access and use the OFW application on the claimant's behalf.
- [10] The Final Order further expressly provides the respondent with the right to bring on an application to have this Court review his "parenting time and responsibilities" upon meeting the following requirements:
- a) Successfully completing the "Building Healthy Families Nurturing Fathers Program";
 - b) Successfully completing the "Respectful Relationships Program";
 - c) Complying with all court orders made in the proceeding and complying with all child support orders and criminal court orders for at least nine consecutive months immediately prior to the application;
 - d) Providing at least three consecutive three-month, 15-panel hair follicle tests to demonstrate nine clear months of sobriety from alcohol and narcotics, including cocaine, immediately prior to the application; and
 - e) Successfully exercising his parenting time in accordance with the terms of this order for at least nine consecutive months immediately prior to the application.

The Respondent's Application to Vary the Final Order

- [11] The respondent filed his notice of application to, inter alia, vary the Final Order on August 7, 2025 (the "Variation Application").
- [12] Although the respondent was represented by counsel at trial, he is currently self-represented. The respondent also advised the Court that his access to duty counsel has been hampered significantly by conflicts of interest resulting from the claimant's prior use of this service and the limited number of service providers in the region.
- [13] In the circumstances, I am going to give the respondent the benefit of outlining the orders that I understand he is seeking from his affidavit material and oral submissions as opposed to taking a very technical approach of dismissing portions of the relief sought simply because certain of the orders, as they are set out in Part 1 of the Variation Application, are not necessarily framed in a way that could be enforceable even if granted. I do not consider the claimant prejudiced by this approach as it was apparent to me that her counsel similarly understood what the respondent was seeking and was not taken by surprise.
- [14] With that context, what the respondent is effectively seeking is:
- a) An order dispensing with the requirement that his parenting time be supervised;
 - b) A modest increase in his parenting time to include some extended weekend parenting and shared school holiday time;
 - c) Appointment of a parenting coordinator;
 - d) Permission to supply L. with a "kid friendly" cellular device at his expense for the purposes of communicating with L. while in the care of the claimant;
 - e) Reimbursement in the sum of \$1,330.89 for supervised parenting time fees the respondent paid for visits that he asserts the claimant failed to attend or unilaterally changed;
 - f) Reimbursement of section 7 special and extraordinary expenses which the respondent is required to pay pursuant to the Final Order where the invoices have been "completely blacked out"; and
 - g) An order changing L.'s legal surname back to a hyphenated name including the respondent and claimant's name versus using only the claimant's surname.
- [15] The claimant is opposed to all the relief sought.

Supervised Parenting Pursuant to the Final Order

- [16] Since the Final Order, the respondent has had some 42 supervised parenting time visits with L. Each visit costs approximately \$433.00 including tax (but excluding any costs of activities engaged in which require the respondent to pay for the supervisor to attend along with himself and L.).

- [17] The respondent has incurred the additional cost of having the parenting supervisor prepare written reports for some of these visits, together with a general overview report.
- [18] I am satisfied that the written reports tendered by the respondent from Crowning Life provide an accurate representative sample of the respondent's supervised parenting time and are not ones carefully "cherry picked" for evidentiary purposes by the respondent.
- [19] Specifically, having read all the reports in their entirety, I am satisfied that since the Final Order was made, the respondent has not been a difficult parent to supervise and that it is clearly in L.'s best interests that the respondent continue to have parenting time. Specifically, the reports in evidence before me detail that the supervisor(s) observed:
- a) Very positive attachment and interactions between the respondent and L.;
 - b) A healthy balance of child focused activities with an appropriate amount of down-time;
 - c) Conscientious attendance to feeding L. during visits, including homecooked meals where possible and planning future family meals in advance based upon L.'s preferences;
 - d) Consistent positive interactions between L. and the respondent's partner and the respondent's immediate family, including L.'s grandmother, L.'s grandmother's long-term partner, his great-grandmother (whom I was advised is approaching 100 years of age), and the respondent's dog, whom he has had since before L. was born; and
 - e) No suggestion of any concern regarding alcohol or substance use.
- [20] In the summary report authored by Marina Hart of Crowning Life dated February 10, 2025, she concluded as follows:

Overall, [the respondent's] visits have gone very smoothly. His apartment is always clean and tidy. The visits are always filled with activities, family time and cuddle time. No concerns during [the respondent's] visits have been observed. I noticed [the respondent] to take care of [L.'s] emotional needs and physical needs.

- [21] In addition to the significant cost associated with complying with the Final Order, I also accept that the respondent has encountered difficulties on occasion with Crowning Life being unable to facilitate his supervised parenting time due to staffing availability and the timing of his visits provided for in the Final Order.
- [22] What, in my view, the respondent appears to have failed to fully appreciate before I engaged with him during oral submissions is that Crowning Life is not the only organization/entity/person who is permitted to supervise his parenting time. Paragraph 6 of the Final Order expressly states that the respondent's parenting time "will be supervised by a third-party supervisor from Crowning Life Consultants, or another person agreed upon between the parties" (emphasis added).

- [23] The respondent has tendered no evidence that he has proposed an alternative supervisor; let alone that he has proposed a supervisor that the claimant has refused (either unreasonably or reasonably).
- [24] Based upon the findings of fact set out in the Trial Reasons, Justice Wilkinson concluded that the respondent's mother and his romantic partner were unsuitable to act as a supervisor, notwithstanding their positive relationships with L., because of the strength of their allegiance to the respondent: see para. 73 of Trial Reasons. There has been no material change of circumstances in that regard.
- [25] However, this Court takes judicial notice of the fact that there are at least some other options for professional parenting supervisors in the Okanagan region and further recognizes that the length of time that the respondent has had supervised parenting time without any material incident would suggest that a non-professional (but obviously neutral and unbiased) third party could fulfill this role. However, the obligation to put forward an alternative(s) to the claimant lies solely on the respondent. The respondent cannot place any blame on the claimant in this regard.

Acknowledgement of Failure to Comply with the Final Order

- [26] As set out above in my summary of the terms of the Final Order, Justice Wilkinson imposed very specific obligations on the respondent to trigger his right to vary the current parenting time provisions for L. in the said order.
- [27] The respondent has, by his own admission, not yet fulfilled all those obligations. Specifically, while providing evidence confirming his successful completion of both courses mandated, the respondent is, as I will detail, in arrears of his support obligations and has not completed the three follicle tests required pursuant to the Final Order.
- [28] On the latter point, I shall note that I was assigned the respondent's application from backup position on the assize list after a long chambers' matter I was presiding over completed somewhat earlier than anticipated. I reviewed the application record binder as fulsomely as time permitted, with particular focus on the supervised parenting time reports, the Final Order and the Trial Reasons. I did not, however, observe the date stamp on the one follicle test that was attached to the respondent's supporting affidavit. Instead, I initially misread the respondent's affidavit as confirming that he had completed one of the three follicle tests required by the Final Order.
- [29] The body of his affidavit does, in fact, clearly state it was a "prior drug test that I did to prove sobriety". Thus, the respondent's affidavit is not inaccurate. It is simply a bit vague and I, as acknowledged, am the one who misread it. However, when I put my errant proposition to the respondent to confirm, he did not correct me. Rather, it was the claimant's counsel who had to rise and bring my attention to the date stamp which confirmed that this follicle test took place in February 2023, approximately one year before the trial even commenced and more than 2.5 years before the hearing before me. The respondent promptly conceded that

was correct, but there was an initial lack of candour by the respondent in very simply clarifying my initial honest misunderstanding of his affidavit evidence on this very material point.

Application to Vary Parenting Time

- [30] As I discussed during submissions with the respondent, parenting orders under the FLA must always be made in the best interests of the child and accordingly remain variable, where appropriate, if there has been a material change in circumstances: see *Gordon v. Goertz*, [1996] 2 S.C.R. 27 at para. 49.
- [31] As stated in *Goertz* with respect to the threshold for a material change in circumstances, "[c]hange 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 [t]he question is whether the previous order might have been different had the circumstances now existing prevailed earlier": see para. 12.
- [32] It further merits obvious mention that s. 37(1) of the FLA requires this Court, in making any order respecting parenting arrangements and parenting responsibilities, to consider the best interests of the child only. In determining what is in a child's best interest, s. 37(2) makes it mandatory for the court to consider amongst other factors, the child's views, unless it would be inappropriate to consider them. In this case, neither Justice Wilkinson nor I have the benefit of third-party evidence of L.'s views; perhaps because L.'s diagnosed global developmental delay due to a gene duplication situates his cognitive capacity at somewhat below his chronological age.
- [33] My reason for articulating the foregoing is to confirm that this Court continues to have the jurisdiction to vary the terms of the Final Order regarding the respondent's parenting time with L. if there had been a material change in circumstances notwithstanding the respondent's failure to comply with the conditions imposed by Justice Wilkinson to trigger his right of review.
- [34] Nothing that has occurred, however, reaches that threshold. Crowning Life has been occasionally unable to accommodate the respondent's supervised parenting time but has clearly not refused to generally assist and, as noted, the respondent has not availed himself of the provision in the Final Order that allows him to propose an alternative to Crowning Life.
- [35] Further, the respondent's claimed financial inability to afford the follicle testing required under the Final Order is not a material change. While I appreciate that engaging the services of Crowning Life for his ongoing parenting time has been expensive, that was within the knowledge and contemplation of Justice Wilkinson when she made the Final Order.

- [36] Moreover, while the court would otherwise place minimal weight on the claimant's reliance on certain select social media posts involving the respondent which confirm he does engage in activities which require access to financial resources during his non-parenting time, as he is entitled to do, the reality is that the respondent has completed zero of the three required follicle tests since the Final Order. Specifically, not once over the last 17 months has the respondent prioritized paying the \$750 he deposes the follicle testing costs over other discretionary expenses. I also query whether the cost of this testing is as expensive as the respondent deposes to, as his affidavit contains no supporting documentation in this regard.
- [37] Further, the respondent is also not in compliance with his court ordered support obligations.
- [38] Specifically, while the most recent British Columbia Family Maintenance Agency ("BCFMA") record tendered by the claimant dated September 29, 2025, confirms that the respondent is in arrears of \$14,139.21, \$10,080.74 of that amount constitutes historical arrears and \$1,077.29 constitutes interest on arrears, both of which the respondent is permitted to pay off on a monthly payment plan and which, it appears from a review of the exhibit, the respondent is generally adhering to.
- [39] There is, however, \$2,191.18 in arrears of "ongoing support", with the last payment received from BCFMA being on September 1, 2025.
- [40] In this regard, the law appropriately treats parenting time/contact and support independently. Non-payment of support is generally not a basis for denial of parenting time. To the contrary, denying parenting time for purely financial reasons would be prima facie a wrongful denial of parenting time under the FLA: see ss. 61 and 62.
- [41] In this case, however, Justice Wilkinson concluded that, given the respondent's prior conduct, his right to seek a review of his parenting time was tied to his compliance with his support obligations. The Final Order thus does not preclude the respondent from having parenting time with L. even whilst in arrears, but it does preclude him from applying to this Court for an order that his parenting time be unsupervised and/or increased. That is a very important distinction.
- [42] As articulated, another condition that must be satisfied is the communication between the parties through OFW (at the respondent's sole expense) and the exchange of financial disclosure, also directed to be done through OFW.
- [43] The evidentiary record on this point is unsatisfactory.
- [44] One interpretation of the evidence is that the respondent did not pay for the OFW subscription until December 2024 (some approximately seven months after the Final Order). Another interpretation of the evidence is that when the respondent paid for the renewal of an otherwise existing subscription - as were included in the recorded messages sent in October and November 2024 which the respondent presumably could not have sent and have access to if he were not a valid subscriber - the respondent had not, at that time, paid

for the claimant's reciprocal subscription or was unaware it had expired. I simply cannot determine what really occurred on the evidence before me.

- [45] What is clear, however, is that all messages sent by the respondent to the claimant prior to filing of the Variation Application are all marked as "First Viewed: Never".
- [46] The respondent was obviously aware of this as he elected to print copies of his OFW communications and append them to his affidavit. What is missing from the respondent's affidavit is any correspondence to the claimant's counsel inquiring as to why the claimant was not checking into OFW and reading his messages.
- [47] Finally, as a corollary to the foregoing, there is an obligation under the Final Order to exchange the annual financial disclosure required pursuant to the Federal Child Support Guidelines [Guidelines] between the parties through OFW. Given the unsatisfactory evidence regarding the timing of payment for OFW, I am not satisfied that this has occurred, but similarly I am not satisfied that disclosure was intentionally withheld by the respondent contrary to the Final Order.
- [48] However, I consider it merits mention that while the Final Order appropriately places an equal burden on both parties to exchange financial disclosure, the practical reality is that the respondent is the primary payor of support given that L. resides effectively exclusively with the claimant. The claimant's Guideline income is relevant for the purposes of allocating the proportionate sharing of s. 7 special and extraordinary expenses and, more importantly, it is only the respondent's right to apply for a review of his parenting time that is expressly tied to compliance with the Final Order.
- [49] Once the respondent was clearly aware that the claimant had not read the message sent through OFW with his financial disclosure and thereafter received the claimant's affidavit #15 reiterating same, the respondent could have rectified any suggestion of non-compliance by simply emailing or otherwise delivering the required financial disclosure to the claimant's counsel. The evidentiary record confirms that the respondent, since ceasing to be represented, is entirely capable of communicating with the claimant's counsel and member(s) of the claimant's counsel's staff. The failure to do so thus underscores my conclusion that the respondent, whilst a loving father, does not entirely appreciate the significance of court orders. Simply stated, they are not mere recommendations: see *C.M.L. v. A.J.*, 2025 BCSC 37 at para. 53.
- [50] In the result, the respondent's application to vary his parenting time - both to remove the requirement for supervision and to increase such time - is dismissed.

Compensation for Missed Parenting Time

- [51] The respondent seeks to recover from the claimant the sum of \$1,330.89 for costs the respondent incurred for three missed or changed supervised parenting time visits.

[52] The circumstances of these visits are briefly described as follows:

- a) June 7, 2024 - the claimant changed the respondent's parenting time on this date from 12:00 pm to 6:30 pm to 12:00 pm to 4:30 pm, thus reducing the respondent's parenting time by 2 hours. Crowning Life described the claimant as being "unreasonable" in making the unilateral change on that occasion. I do recognize that this was quite shortly after the Final Order was pronounced and, as noted, the visit occurred but was somewhat abbreviated;
- b) January 12, 2025 - the claimant contacted the supervisor at approximately 8:30 am to advise that L. was sick and that she was cancelling the respondent's parenting time. In a subsequent call with the parenting supervisor at 10:00 am (the supervisor having texted her at 9:06 to request a phone call), the claimant advised that L. was "restless, [had] a cough, low levels of energy and [didn't] feel like doing anything". The supervisor suggested a shortened visit, but the claimant declined; and
- c) June 8, 2025 - the claimant brought L. for his parenting time with the respondent. Upon arriving, the claimant attracted the attention of the supervisor to inform her that L. was sick. The supervisor observed L. to have vomit all over his clothes, appeared unwell and was sitting quietly in a hunched position. The supervisor advised the claimant that she needed to contact her supervisor at Crowning Life to determine how to proceed. Within approximately three minutes of this exchange, while the supervisor was actively speaking with her supervisor, the claimant departed with L. The supervisor's reports indicate similar events had occurred before and the claimant was aware of Crowning Life's policy to wait for instructions.

[53] In all three instances, the claimant made unilateral changes to the respondent's parenting time. The claimant does not actually deny this in her responding affidavit.

[54] However, the claimant provides evidence that on three occasions, namely December 31, 2024, March 14, 2025 and September 12, 2025, the respondent's parenting time was cancelled by Crowning Life as a result of non-payment or finances. On those occasions, whatever plans the claimant had made for her Sunday had to be modified by virtue of needing to care for L. The claimant has not asserted she incurred any additional costs associated with these days, but the claimant nonetheless had to take on the parenting responsibilities on those days which should have fallen to the respondent.

[55] In the circumstances, I am going to order that the claimant reimburse the respondent the sum of \$433.63 for the January 12, 2025 missed visit. On this occasion, L. was not demonstrably unwell. He was, based on the evidence and to use my own vernacular, somewhat "under the weather".

[56] While I do not know exact distance between the parties' residences, given the circumstances, it appears from the supervision reports that they live in reasonably close proximity to each other within the community. It would not have been contrary to L.'s best interests, in my view, to travel to and from the respondent's residence for his parenting time

in this situation. Moreover, the respondent appears from the reports to be very capable of understanding the need for a lowkey day of watching movies on the couch and, perhaps, enjoying some chicken noodle soup or having a nap at his father's house. Further, if L.'s health did materially deteriorate during the visit, the claimant knew that the supervisor was present and should have had the confidence to expect that they would intervene to terminate the visit early in such circumstances.

- [57] I am declining to order reimbursement of the June 8, 2025, visit based on extenuating circumstances. The claimant could have, I find, clearly been more flexible. L. needed, at minimum, a change of clothes and a shower. Given that they had already arrived at the respondent's residence, there were options available beyond simply cancelling the visit entirely. Some of which would have been preferable to driving L. back to the claimant's residence in soiled clothes. The claimant also, I accept, had been advised of Crowning Life's policy to wait for the supervisor to address these types of situations and it was very hasty to depart after approximately three minutes or less. However, I cannot conclude that the denial of parenting time was wrongful under the FLA in these extenuating circumstances and unfortunately, by virtue of the respondent's parenting time needing to be supervised because of his prior conduct, the respondent bears the cost of that missed visit.
- [58] The \$443.63 owing from the claimant to the respondent for the January 12, 2025 parenting time visit shall not be offset against the child support owing by the respondent as that is intended for the benefit of L. Rather, that amount shall be offset against the costs owing by the respondent to the claimant pursuant to the Order of Justice Wilkinson made October 10, 2024 (the quantum of which I understand has not yet been assessed yet).

Special and Extraordinary Expenses

- [59] The Final Order expressly addresses special and extraordinary expenses for L. payable pursuant to s. 7 of the Guidelines. These include health related expenses. In this regard, L. has certain medical issues which result in more significant health expenses than might otherwise be typical - the greater percentage of which the respondent is responsible for given the disparity in the parties' respective Guideline incomes.
- [60] Included in the application record materials are receipts submitted by the claimant to BCFMA for L.'s s. 7 expenses which are notably redacted.
- [61] Given the circumstances, the claimant is entirely within her right to redact any information from s. 7 invoices which would provide the respondent with her and L.'s residential address, telephone number or other important identifying contact information relevant to either of them. It does appear, and I stress appear, given the poor quality of the exhibits provided, that the claimant has also redacted the name of the treatment/service provider and/or the address of the treatment/service provider. That level of redaction is not appropriate as the Final Order expressly permits the respondent, in the allocation of parenting responsibilities, to request and receive information from third parties regarding L. Even if the respondent

were not financially contributing to these expenses, he is still entitled to information and he is also entitled to that information for the purposes of confirming that the invoices submitted appropriately fall within the scope of the Final Order.

- [62] Accordingly, while I am dismissing the relief sought by the respondent to be relieved of his obligation to contribute to L.'s special and extraordinary expenses in accordance with the Final Order given there is sufficient detail in the receipts tendered to confirm they relate to L., the claimant is hereby directed to limit her redactions to all invoices submitted for proportionate sharing with the respondent pursuant to s. 7 of the Guidelines and in accordance with the Final Order to any residential address, phone number or other identifying personal contact information pertaining to her or L.
- [63] If the claimant fails to comply with that direction going forward, the respondent is at liberty to bring the issue of appropriate proportionate sharing of s. 7 expenses based upon receipts that are submitted after the date of these reasons for judgment.

Parenting Coordinator

- [64] The respondent's submissions regarding a parenting coordinator were somewhat curious in that the respondent did not seem to necessarily fully appreciate what role a parenting coordinator would fulfil in the circumstances, or the costs associated with a parenting coordinator.
- [65] However, and much more importantly, this issue has already been adjudicated upon. Specifically, paragraph 15 of the Final Order provides as follows:

Upon the respondent's successful completing of the above requirements and a review of - or alternatively, an agreement of the parties in writing to vary - the respondent's parenting time, the respondent will pay for a parenting coordinator - namely Angela Price-Stephens or such other parenting coordinator as the parties agree to in advance and in writing, to assist the parties in resolving any future parenting issues, including parenting time, for as long as the parenting coordinator recommends.

- [66] The respondent's application for appointment of a parenting coordinator is thus dismissed on the basis that it is premature given the respondent has not completed the requirements of triggering a review of his parenting time for the reasons indicated above.
- [67] This dismissal does not preclude the respondent, if such a review is triggered, from applying to the court for the appointment of a parenting coordinator on more specific terms which are acceptable to the parenting coordinator, including as to the specified duration of their appointment.

Provision of a Phone to L.

- [68] Considering his prior conduct and the Criminal Proceedings, the respondent's request to provide a cellular device to L. is untenable. Through such a device the respondent would be very able to track the location of the claimant and L. Although I acknowledge I have before me evidence that the respondent was not charged with any breaches of his probation, I am satisfied that the reasons for which that probationary term was imposed recognize the need for the claimant to feel safe and secure without interference from the respondent.
- [69] The above said, L. is now 11 years-of-age. L., I would expect, has access to a computer at least from time to time and likely has a school email address. The Final Order does not preclude the respondent from communicating with L. via email, provided nothing therein constitutes indirect communication with the claimant. This would be potentially a very effective means of maintaining positive, healthy communication between the respondent and L. while L. remains primarily resident with the claimant.

L.'s Surname

- [70] The claimant's response to the Variation Application regarding the issue of L.'s surname is very vague.
- [71] The fact that L. may be commonly known by a single surname versus a hyphenated surname does not answer the respondent's assertion that L.'s name has been legally changed.
- [72] Specifically, what is importantly missing from the claimant's affidavit is a copy of L.'s birth certificate and, if applicable, any documents filed to obtain a legal change of name pursuant to s. 4 of the Name Act, R.S.B.C. 1996, c. 328 [Name Act].
- [73] Whilst I am not granting the relief sought in this regard by the respondent, I am exercising my inherent jurisdiction to order that, within 30 days, the claimant provide to the respondent a copy of L.'s birth certificate and, to the extent they exist, any documents filed to obtain a legal change of name pursuant to the Name Act.
- [74] With the benefit of that documentation, the respondent can decide how to proceed, if at all, regarding this issue.

Costs

- [75] Costs are awardable at the discretion of the hearing judge pursuant to Rule 16-7 of the Supreme Court Family Rules. The general principle is that costs are awarded to the successful party, but the hearing judge has the discretion to depart from the prima facie rule that the successful litigant should be awarded costs.
- [76] The standard of "success" required for the award of the costs of an action under R. 16-1(7) is "substantial success". The Court of Appeal in *Harras v. Lhotka*, 2016 BCCA 246, described the substantial success standard as follows:

[48] "Success" for the purposes of costs means substantial success. The "substantial success" standard was described by Bouck J. in *Fotheringham v. Fotheringham*, 2001 BCSC 1321 at para. 45, endorsed by this Court in *Marquez v. Zapiola*, 2014 BCCA 35 at para. 16:

Success in the event has been interpreted as "substantial success": see *Fotheringham v. Fotheringham*, 2001 BCSC 1321, 13 C.P.C. (5th) 302, leave to appeal ref'd 2002 BCCA 454. In *Fotheringham*, Mr. Justice Bouck described this standard as follows:

[45] Gold now seems to say that substantial success in an action should be decided by the trial judge looking at the various matters in dispute and weighing their relative importance. The words "substantial success" are not defined. For want of a better measure, since success, a passing grade, is around 50% or better, substantial success is about 75% or better. That does not mean a court must descend into a meticulous mathematical examination of the matters in dispute and assign a percentage to each matter. Rather, it is meant to serve as a rough and ready guide when [looking] at all the disputed matters globally.

[77] See also my discussion of this issue in *J.L.M. v. G.G.M.*, 2024 BCSC 1643 at paras. 40-48.

[78] Whilst I have made a few orders to the benefit of the respondent, the claimant was substantially successful in opposing the primary relief sought in the Variation Application regarding the respondent's parenting time with L. and most importantly, the requirement that it continue to be supervised in accordance with the Final Order. The claimant is thus entitled to her costs of the Variation Application.

[79] In terms of the scale of costs, while there has been an order for special costs of the trial made previously by Madam Justice Wilkinson which I referred to above, I am not satisfied that such an order is appropriate for the Variation Application. Rather, I conclude that ordinary costs are appropriate and that it is to the benefit of both parties that I summarily fix those costs at \$1,350.00 inclusive of disbursements to avoid the potential cost of a further appearance before the registrar. Those costs are payable forthwith.

"Hardwick J."

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