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V.L.W. v. E.J.W.

2025 BCSC 1682

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Supreme Court of British Columbia

DECIDED

14 August 2025

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2025 BCSC 1682 V.L.W. v. E.J.W.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

V.L.W. v. E.J.W.,

2025 BCSC 1682

Date: 20250814

Docket: E64218

Registry: Kamloops

Between:

V.L.W.

Claimant

And

E.J.W. [Corporate Entities Omitted]

Respondent

Before: The Honourable Justice D. K. Hori

Oral Reasons for Judgment

Counsel for the Claimant:

A. Kothawala, A/S

(Agent for S. Walter)

Counsel for the Respondents

J. Marquette

Place and Date of Hearing:

Kamloops, B.C.

July 31, 2025

Place and Date of Judgment:

Kamloops, B.C.

August 14, 2025

Introduction

- [1] The parties in this family law case began living together in July or October 2012. They lived in Alberta from the date of their cohabitation until July 2024, when they moved to a property that they had purchased in [location omitted], British Columbia.
- [2] The parties were married on August 27, 2019. They separated on April 25, 2025.
- [3] The parties have two children together. The youngest of the parties' two children is L., who is eight years old, and the oldest child is I., who is 11 years of age.
- [4] In addition to L. and I., the claimant has four children from another relationship. At the time of the parties' separation, the two youngest of those four children, A., who is 14 years old, and D., who is 16 years old, lived with the parties in their family home.
- [5] On the separation date of April 25, 2025, the respondent applied for and obtained a protection order against the claimant without notice to the claimant that he was doing so. The protection order restrained the claimant from:
- a) having any contact or communication, directly or indirectly, with the respondent, except by telephone or text message;
 - b) having any contact or communication, directly or indirectly, with D., A., I., or L. or
 - c) going to any place where the respondent, D., A., I., or L. live, work, attend school, or worship or happen to be.
- [6] After obtaining the protection order, the respondent removed D., A., I., and L. from the family home. On April 29, 2025, the respondent took A., I., and L. to Alberta and enrolled them in school there. He left D. in the care of the claimant's mother in [location omitted], British Columbia.
- [7] The claimant applies in this application for orders:
- a) terminating the protection order issued by the Provincial Court on April 25, 2025;
 - b) requiring the respondent to return A., I., and L. to [location omitted], B.C. within one week;

- c) restraining the parties from removing D., A., I., or L. from [location omitted] without the written consent of the other party or a court order;
 - d) granting the claimant primary residence for D., A., I., and L.; and
 - e) granting the respondent liberal and generous parenting time and contact with D., A., I., and L. on the dates and times agreed upon by the parties.
- [8] The claimant's notice of application includes claims for other relief, including procedural orders, conduct orders and property preservation orders. However, the parties have agreed on the terms of those orders and they will deal with them in a separate consent order.

Other Background Facts

- [9] From the time the parties started living together until July 2024, they and their children lived in Alberta. In 2020, the claimant and the respondent purchased a property in [location omitted], British Columbia. In July 2024, the claimant moved into the [location omitted] property with D., A., I., and L., and one of the other children from the claimant's previous relationship.
- [10] The respondent deposes that he and the claimant concluded that they could not afford the cost of renting an accommodation in Alberta to house the family. Therefore, they decided to spend the summer at the [location omitted] property on a trial basis. However, after the summer, the move to [location omitted] appears to have become a permanent move because the children enrolled in school in [location omitted] and [location omitted], which are in the [location omitted] area. D. and A. attended a secondary school in [location omitted]. I. and L. attended an elementary school in [location omitted].
- [11] In September 2024, the claimant and the respondent started a business operation in the [location omitted] area. The business operated under the name of [company name omitted]. The parties operated the business through a company in which both parties are shareholders. However, the claimant was the shareholder who ran the day-to-day operations of the business, while the respondent maintained his work in Alberta.
- [12] When the claimant and the children moved to [location omitted], the respondent remained, for the most part, in Alberta because he worked there. The respondent would travel to [location omitted] to be with the claimant and the children when his work schedule would allow it.
- [13] Based on these facts, I find that as of the date on which the parties separated, the children's place of residence was [location omitted], British Columbia.

Protection Order

- [14] The main issue in this application is whether the court should set aside the protection order.

- [15] As indicated earlier, the Provincial Court issued the protection order on April 25, 2025, pursuant to a without notice application. Where an application to set aside or vary a without notice protection order comes before a judge who did not hear the original application, the second judge should hear the application as an application de novo: *Waruk v. Waruk* (1996), CarswellBC 2463, at para. 22, citing *Gulf Islands Navigation Limited v. Seafarers' International Union of North America (Canadian District)* (1959), 28 W.W.R. 51, and *K.H.D. v. O.O.M.*, 2021 BCSC 1808 at para.42. Therefore, I will hear this application as a hearing de novo for a protection order against the claimant.
- [16] The court's authority to make a protection order arises from s. 183(2) of the Family Law Act, S.B.C. 2011, c. 25 [FLA] which provides:
- (2) A court may make an order against a family member for the protection of another family member if the court determines that
 - (a) family violence is likely to occur, and
 - (b) the other family member is an at-risk family member.
- [17] The issue in this case is whether family violence is likely to occur through the actions of the claimant. The protection order sought is for the protection of D., A., I., L., and the respondent, all of whom are family members who are at risk of family violence should it occur.
- [18] The FLA defines "family violence" in s. 1 as follows:
- "family violence" includes, with or without an intent to harm a family member,
- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
 - (b) sexual abuse of a family member,
 - (c) attempts to physically or sexually abuse a family member,
 - (d) psychological or emotional abuse of a family member, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
 - (iii) stalking or following of the family member, and
 - (iv) intentional damage to property, and
 - (e) in the case of a child, direct or indirect exposure to family violence;

[19] The question in an application for a protection order is whether family violence is "likely to occur." While the assessment of the risk of family violence is future oriented, it is informed by past conduct and present circumstances: *S.M. v. R.M.*, 2015 BCSC 1344. In order to address this question, s. 184 of the FLA directs the court to consider, at least, the following factors:

- a) any history of family violence by the family member against whom the order is sought;
- b) whether the family violence is repetitive or escalating;
- c) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour;
- d) the current status of the relationship between the family members;
- e) any circumstance of the family member against whom the order is sought that may increase the risk of family violence;
- f) the at-risk family member's perception of risks; and
- g) any circumstance that may increase the vulnerability of the at-risk family members.

[20] Where the at-risk family member is a child, s. 185 of the FLA provides that the court must consider the following in addition to the factors set out in s. 184:

- a) whether the child may be exposed to family violence if a protection order is not made, and
- b) whether a protection order should also be made respecting the child if a protection order is made respecting the child's parent or guardian.

[21] Justice Schultes explained the purpose of these provisions in the FLA in *Morgadinho v. Morgadinho*, 2014 BCSC 192 at para. 59:

[59] The purpose of these provisions is obvious -- to recognize the danger to vulnerable family members that can arise in these often-volatile relationships and to ensure that courts have the means of ensuring the safety of those who are at risk.

[22] However, the imposition of a protection order is a serious matter with potentially serious consequences in that a breach of a protection order is a criminal offence for which the breaching party can be arrested, prosecuted, and penalized by the criminal justice system. Therefore, care must be taken to ensure that the foundation for making a protection order is sound.

[23] In this case, the respondent relies on two allegations of family violence as the basis for a protection order. The first allegation is that the claimant attempted to commit suicide on April 18, 2025. The second allegation is that the claimant struck the respondent on April 24, 2025. The respondent submits that these two incidents of family violence and the surrounding circumstances establish that family violence is likely to occur.

Risk of Suicide

- [24] The claimant admits that on April 18, 2025, she had suicidal ideation. She explains that she was upset, stressed, and tired because:
- a) a couple of days earlier, the respondent had confronted her about having had an extramarital affair, to which she admitted;
 - b) on April 18, 2025, the respondent had come to [company name omitted] and the parties had a fight about the claimant's affair in front of A., during which the respondent called the claimant derogatory names; and
 - c) she was managing [company name omitted], caring for the children, and managing the household with little or no help from the respondent.
- [25] The claimant deposes that as a result of these stressors, she had suicidal thoughts and hung a noose in the shed, but did not use it. Instead, she consumed 18 morphine pills. However, within ten minutes of consuming the pills, the claimant says she realized that she had made a wrong decision and that she needed to be there for the children. Upon coming to this realization, the claimant immediately called a friend for assistance and was taken to hospital by ambulance.
- [26] The respondent learned about the suicide attempt from a friend of the claimant. He then attended at [company name omitted] with A.. When he arrived, he watched while the first responders revived the claimant and transported her to the hospital. The respondent and A. met the ambulance at the hospital, where the claimant advised the respondent about the noose in the shed.
- [27] The claimant remained in hospital until the next day, April 19, 2025. The physicians in charge of her care released her on April 19 after a psychiatric consultation. The records of the hospital suggest that the claimant was admitted for psychiatric care pursuant to the Mental Health Act on the certification of a physician. After the psychiatric consultation, the psychiatrist "decertified" the claimant and discharged her from care.
- [28] During the psychiatric consultation, the psychiatrist discussed with the claimant concerns related to her recent concussion and the importance of allowing her brain to heal. They also discussed counselling and medications. In keeping with those discussions, the claimant is in counselling and is taking medications.
- [29] The respondent submits that the one suicide attempt is sufficient to establish that family violence is likely to occur because there is no definitive opinion from a medical practitioner that another suicide attempt will not occur. In support of this position, the respondent relies on an incident that occurred on April 19, 2025. The respondent alleges that on that occasion, after a family dinner, the claimant left the family home, without notifying anyone she was doing so, and did not return for three hours. The respondent suggests that this is unusual behaviour that may indicate a continued psychiatric condition.

- [30] The claimant explains that on April 19, the respondent was taunting her about the suicide attempt. She claims that she left the home to distance herself from the respondent and to gain some relaxation. She went for a walk to the beach near the residence and returned home approximately 90 minutes later.
- [31] The respondent also relies on information he received from a neighbour that the claimant had left the children alone in the house, without explanation and without notification to anyone, to sit on the beach alone. The claimant's evidence is that the beach is a five-minute walk from the house. She claims to have informed the children that she was going to sit on the beach and told them to call her any time if they needed anything.
- [32] The first question is whether suicide falls within the definition of family violence under the FLA. In my view, suicide is not the physical or sexual abuse of another family member, nor is it an attempt to physically or sexually abuse another family member.
- [33] A threat to commit suicide may fall within the definition of family violence if the threat of suicide is used as a form of psychological or emotional control or coercion: *M.D.F. v. D.O.T.C.*, 2020 BCSC 522 at para. 59. However, I cannot conclude that the risk of a person actually committing suicide falls within the definition of family violence unless it is tied to a threat to do so to gain some benefit in a family context.
- [34] Even if the risk of suicide is family violence as defined in the FLA, I must decide whether the claimant's one attempt to commit suicide and her behaviour following that attempt is sufficient to establish that family violence is "likely to occur." In my view, it does not.
- [35] The claimant has no history of suicidal ideation. She is taking counselling and is on medication. Her behaviour after the suicide attempt in seeking to be alone is explained by her as a way of removing herself from the presence of the respondent and reducing stress. It is not reasonable to infer that this behaviour indicates unresolved psychiatric issues that will likely lead to suicide.
- [36] Further, the consulting psychiatrist at the hospital is satisfied that the claimant's risk of suicide was sufficiently resolved to justify the claimant being decertified and released from care.
- [37] Therefore, I find that the risk of suicide does not provide a sound basis for a protection order in this case.

Physical Violence

- [38] The respondent alleges that on April 24, 2025, the claimant physically attacked him when he brought up the events that had occurred in the preceding few days and ideas on how to settle their separation. The respondent alleges that the claimant struck him several times in this incident.

- [39] The claimant denies striking the respondent. However, she admits to pushing him. The claimant alleges that she was angry at the respondent because he had disclosed a very personal matter to her parents without her permission. The respondent is alleged to have disclosed to the claimant's parents that she had been sexually assaulted by her uncle. The parties argued over this disclosure, during which the claimant pushed the respondent.
- [40] Whether the incident involved the claimant striking the respondent or pushing him, they both are acts of family violence under the FLA. However, for the purposes of deciding whether a protection order is warranted, the question is whether the incident establishes that family violence is "likely to occur" in the future. In my view, it does not.
- [41] The single incident of physical violence was an isolated incident. Even if I accept that the incident occurred as related by the respondent, when he brought up the events surrounding the suicide attempt and the separation, it is not unreasonable to infer that the discussion was less than amicable. Therefore, the incident is likely to have occurred at a time when the parties were under stress.

Conclusion on the Protection Order

- [42] When considering the factors enumerated in s. 184 of the FLA, I find that:
- a) The suicide attempt is not an act of family violence as defined by the FLA;
 - b) There is no history of physical or psychological abuse by the claimant against the respondent;
 - c) The family violence alleged are single and different incidents that are not repetitive or escalating;
 - d) There is no evidence of psychological or emotional abuse or a pattern of coercive and controlling behaviour by the claimant;
 - e) The parties are now separated, so the contact between them will be minimal, but the claimant will have contact with D., A., I., and L.;
 - f) There are no circumstances that increase the risk of family violence by the claimant or the vulnerability of the other family members; and
 - g) It is fair to infer that the respondent perceives a risk to his safety and security, and the safety and security of D., A., I., and L., but such perception, in my view, is not justified.
- [43] Accordingly, I am unable to conclude that family violence is likely to occur. Therefore, a protection order is not justified. As a result, the protection order issued by the Provincial Court on April 25, 2025 is set aside.

Return of the Children

- [44] On the date of the parties' separation, the respondent obtained a without notice protection order prohibiting the claimant from having any contact or communication with the children. Relying on the protection order, the respondent removed the children from the claimant, left D. in [location omitted] with the claimant's mother, and took A., I., and L. out of the jurisdiction of British Columbia to Alberta. He justifies his actions in taking A., I., and L. to Alberta by claiming that he had to return to work in Alberta and he could not leave the children with the claimant due to the protection order.
- [45] He did not leave the three children in [location omitted] with their grandmother as he did with D. Instead, he took them to Alberta and enrolled them in school there.
- [46] The respondent's actions, in effect, thwarted the relocation provisions of the FLA and the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.). He unilaterally relocated the three children to Alberta without the claimant's consent or a court order authorizing their relocation. The respondent now contends that it is in the best interests of the three children, who are in Alberta, to remain there.
- [47] The court will not allow the use of the protection order provisions of the FLA in this way. To do so would be to open the door to abuses of the family law process in order to avoid the relocation provisions of the legislation. In my view, the respondent obtained a protection order in this case on questionable grounds. He then used that protection order to reset the status quo, and he now seeks to compel the claimant to establish that the return of the children to her care is in their best interests.
- [48] Justice Kent considered this issue in *Roman-Manarovici v. Manarovici*, 2022 BCSC 1159. In that case, the parties and their children were resident in Alberta. After the parties separated, the mother moved to Vancouver and unilaterally took the children with her against the father's wishes. The mother then commenced a family law claim in Vancouver, in which the father filed a jurisdictional response challenging the court's jurisdiction. The father also brought an application for an order returning the children to Alberta.
- [49] Justice Kent ordered the return of the children to Alberta and, in doing so, he made the following comments:
- [10] The mother's submissions on this application were largely focused on attempting to convince the Court that it was in the best interests of the children to remain in British Columbia. Emphasis was repeatedly placed on the requirement, now expressly mandated in both the recently amended Divorce Act as well as the FLA, that the Court "must take into consideration only the best interests of the children". In some respects, the mother is effectively asking the Court to retroactively rule on the merits of a relocation application that was never made before her unilateral departure from Alberta with the children.

[11] But there is another fundamental principle that must also be considered: the unilateral removal to another province by one parent of children formerly co-parented by both parents in a different province amounts to child abduction. Absent consent by both parents, both the FLA and the newly amended Divorce Act now require formal notice and a court hearing before any such relocation is permitted. Except perhaps in extraordinary circumstances, such as urgently removing the children to safety from ongoing family violence or the like, the Court is rightly reluctant to endorse unilateral self-help relocation remedies such as the one which has occurred in this case.

[]

[13] In the course of his submissions, counsel for the mother argued that the question of "wrongful" removal/retention is not determined with reference to parental "rights" but rather with reference only to the best interests of the children. I do not agree. And neither does our Court of Appeal:

[68] It is not the case that a parent's only rights to custody of, and/or access to, their children are defined by court order. At common law, and under [the now Family Law Act] the mother and father of a child who are living together are the joint guardians of the child with joint rights and obligations in relation to the child. If one parent unilaterally removes the child from the jurisdiction without the knowledge or consent of the other parent, this amounts to a wrongful taking of the child and a breach of the other parent's rights as joint custodial parent. The fact that there was no order in place may be relevant to the father's ability to enforce his rights, but the absence of an order does not mean that those rights are non-existent. This was the view of Madam Justice Levine in *Hewstan v. Hewstan*, 2001 BCSC 368, where she stated, at para. 35:

There can be no doubt that one parent having joint guardianship rights over the person of a child cannot remove a child from the jurisdiction without the consent or over the objections of the other.

Shortridge-Tsuchiya v Tsuchiya, 2010 BCCA 61 [emphasis added]

[50] In *Shortridge-Tsuchiya v. Tsuchiya*, cited by Justice Kent in the passage that I just quoted, the Court of Appeal also held that a wrongful removal of children from one jurisdiction to another will, in most cases, be contrary to the children's best interests. The Court found this to be so because such a move almost invariably interferes with meaningful contact between the children and one of their lawful parents or guardians: para. 38.

[51] Based on this analysis, all four children will be returned to the former family home on or before August 22, 2025.

- [52] The claimant has agreed that when the children are returned to their former family home, the parties will share parenting time on a two-week-on and two-week-off basis. When the respondent has parenting time, he will move into the family home with the children and the claimant will leave. When the claimant has parenting time with the children, she will move into the family home and the respondent will leave.
- [53] The claimant has also agreed that for the first four weeks of the claimant's parenting time, either her mother or her father will be present with the children during the parenting time.

Summary of Orders

[54] Based on the foregoing analysis, I make the following orders:

- a) The protection order issued by the Provincial Court on April 25, 2025 is set aside;
- b) The children, D., A., I., and L. will be returned to the family home in [location omitted] on or before August 22, 2025;
- c) By consent, the parties will share parenting time with the children on a two-week-on and two-week-off schedule;
- d) By consent, when the respondent has parenting time, he will move into the family home with the children and the claimant will leave. When the claimant has parenting time with the children, she will move into the family home and the respondent will leave; and
- e) By consent, the claimant's mother or father will be present during the claimant's parenting time for the first four weeks of the claimant's parenting time.

[55] I am not prepared to make an order that neither party will remove the children from [location omitted] without the consent of the other party or a court order. In my view, such an order is unreasonably restrictive.

Costs

[56] Unless the parties have further submissions they wish to make on costs, in my view, the claimant has been successful in this application. Therefore, she should have her costs of the application in any event of the cause, but I am prepared to hear the parties if they have further submissions they wish to make on costs. So, first of all, any questions or clarifications required on my orders?

[57] CNSL J. MARQUETTE: I do just have one, Mr. Justice. I don't believe the respondent was consenting to the nesting arrangement, just that they were consenting to the two-week-on, two-week-off basis. It was the claimant that forwarded the nesting arrangement, just for clarity of the record.

[58] THE COURT: I stand to be corrected then. Mr. Kothawala?

[59] CNSL A. KOTHAWALA: Yes, Justice. That was not by consent.

- [60] THE COURT: That was by consent?
- [61] CNSL A. KOTHAWALA: No, that was not.
- [62] THE COURT: It was not? Well, I am corrected then. In that circumstance then, I need to correct my reasons. I misunderstood that. I thought those were all by consent, but that is not the case, I understand. The consent order will be the order that the parties will share parenting time on a two-week-on, two-week-off basis. The other terms about the nesting, that is, one party moving into the house and the other moving out, will still be orders, but they will not be by consent. Thank you, Ms. Marquette. Any issue on costs? Any submissions on costs?
- [63] CNSL J. MARQUETTE: We would submit just that costs be reserved for the overall matter as the contentions and precarious division of family property is still an issue.
- [64] CNSL A. KOTHAWALA: [Indiscernible] submission looking at the conduct of the respondent, the costs be ordered forthwith, unless Justice wants to know what for [indiscernible] we are looking at.
- [65] THE COURT: No. This is a distinct and separate issue in terms of the protection order as well as the return of the children to the family home. In my view, it is not tied to the other issues that are still outstanding in this family law case. Therefore, the claimant, being successful in the application, should have her costs in any event of the cause. My preliminary order stands that the cost of this application will be to the claimant in any event of the cause. Anything else?
- [66] CNSL A. KOTHAWALA: This is one more thing -- or few more things, actually, that can be -- today is Isabella's birthday.
- [67] THE COURT: I am sorry?
- [68] CNSL A. KOTHAWALA: I's birthday. One of the child in the proceedings. It's her birthday today.
- [69] THE COURT: I do not -- I cannot -- I am sorry.
- [70] CNSL A. KOTHAWALA: Sorry. So, one of the child, I., it's her birthday today.
- [71] THE COURT: Who?
- [72] CNSL J. MARQUETTE: I believe it's I's birthday today, Mr. Justice.
- [73] THE COURT: I's birthday?
- [74] CNSL A. KOTHAWALA: Yes. So, if she -- because she's not being able to get in touch with her. If today at a particular point of time she can have a phone call and if that can be consented to?

- [75] THE COURT: Well, if it is by consent. That is not an issue that was before me. I am not going to make a ruling on that without hearing further argument. You will have to discuss that with your friend. If that can be arranged by consent, then so be it. If not, I am not prepared to make --
- [76] CNSL A. KOTHAWALA: I understand.
- [77] THE COURT: -- an order on that without hearing full argument.
- [78] CNSL A. KOTHAWALA: Yes. If the matter can be stood down for five minutes, maybe I can discuss it with her.
- [79] THE COURT: What -- discuss the telephone call?
- [80] CNSL A. KOTHAWALA: Yes.
- [81] THE COURT: Why do you need my assistance for that?
- [82] CNSL A. KOTHAWALA: If you had an order -- yes. [indiscernible].
- [83] THE COURT: If she agrees -- if the respondent agrees, it will happen.
- [84] CNSL A. KOTHAWALA: Then we don't need an order?
- [85] THE COURT: If the respondent does not agree, then there is not much I can do unless you file material, and that is just not going to happen today.
- [86] CNSL A. KOTHAWALA: No. Yes. Yes. Okay. I -- that's all I have. [indiscernible].
- [87] THE CLERK: Please, Justice, I need to confirm with you if this was a final order.
- [88] THE COURT: Yes.
- [89] THE CLERK: Thank you, Justice.
- [90] THE COURT: It is a final order with respect to setting aside the protection order. The return of the children to the family home and the parenting arrangements is not a final order.
- [91] THE CLERK: [Indiscernible]?
- [92] THE COURT: No. It is an interim order. I will make an order that the arrangements with respect to parenting can be reviewed and varied without establishing a material change in circumstance. The reason I say that is that I am trying to return the parties to the status quo before the children were taken to Alberta. Had that been the case then, either party could have made an application on an interim basis for interim parenting time, in whatever terms they felt was appropriate. If either party decides that they would like to have a different arrangement, then they can apply as though it was an application afresh, right? You do not need to establish a change in circumstance. It will be a be a first application for parenting arrangements. Is that helpful?
- [93] CNSL A. KOTHAWALA: Yes.

[94] THE COURT: So, it is an interim order. It can be varied without proof of change of circumstance.

[95] CNSL J. MARQUETTE: Thank you, Justice. I have no further submissions, Mr. Justice.

[96] CNSL A. KOTHAWALA: Same, Justice.

[97] THE COURT: Thank you.

"D.K. Hori J."

HORI J.

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Prepared on 26 October 2026 · Esheria