

CANADA / JUDGMENT

Van Aman v. Mugo

2025 ONCA 886

COURT

Court of Appeal for Ontario

DECIDED

22 December 2025

Source: norma.lexum.com · Research copy typeset by Esheria. Not court-issued or certified.

Van Aman v. Mugo Collection Decisions of the Court of Appeal Date 2025-12-22 Neutral citation 2025 ONCA 886 Docket numbers COA-25-CV-0299 Judges Simmons, Janet M.; Miller, Bradley; Wilson, Darla A. Subject Civil Decision Content COURT OF APPEAL FOR ONTARIO CITATION: Van Aman v. Mugo, 2025 ONCA 886 DATE: 20251222 DOCKET: COA-25-CV-0299 Simmons, Miller and Wilson JJ.A. BETWEEN Ryan Albert Van Aman Applicant (Respondent) and Agnes Ngendo Mugo Respondent (Appellant) Michael Tweyman, for the appellant Rachel Reid, for the respondent Heard: December 8, 2025 On appeal from the judgment of Justice John Krawchenko of the Superior Court of Justice, dated January 21, 2025. REASONS FOR DECISION

- [1] The appellant mother appeals from an order dated January 21, 2025 stipulating that she have specified virtual and professionally supervised in-person parenting time with her two children and dismissing her change motion relating to child support[1].

Background

- [2] The appellant and the respondent have two children, a daughter born in 2012 and a son born in 2015. The parties separated in September 2018. Following the separation, the respondent commenced a family law application alleging that the appellant had taken the children to Kenya without his consent. A temporary order was made on April 11, 2019 requiring that the children be returned to Kingston where they were to reside primarily with the appellant on terms that neither party remove them from Ontario without the consent of the other party or a court order.
- [3] The appellant subsequently returned to Kenya with the children in November 2020 without the respondent's consent. Upon her return to Ontario with the children in August 2021, she was arrested and charged with child abduction contrary to a court order. The children were placed with the respondent.

- [4] While the appellant was in Kenya, an uncontested trial of the respondent's family law claim was held in March 2021 and various final orders were made on March 16 and 24, 2021. Among other things, the trial judge ordered that the appellant immediately return the children to Ontario to the care of the respondent and ordered that the appellant pay child support based on an imputed income of \$109,817.00. No order was made concerning parenting time with the children for the appellant.
- [5] A subsequent motion by the appellant to set aside the March 2021 orders was dismissed. However, various temporary order orders were made from time to time permitting the appellant to have virtual, and eventually, professionally supervised, in-person parenting time with the children.
- [6] In October 2024, the appellant was convicted of two counts of child abduction in contravention of a court order. On October 18, 2024, she was sentenced to a one-year conditional sentence commencing on October 21, 2024 plus two years' probation.
- [7] The appellant commenced the change motion giving rise to the order under appeal in June 2023. Discussion
- i. Parenting Time
- [8] We reject the appellant's submissions that the motion judge erred in relation to the order specifying professionally supervised parenting time.
- [9] The motion judge adverted to s. 16 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), and identified what he considered were the most relevant factors concerning the best interests of the children. These included the need for stability, plans for child care, ability and willingness to meet the needs of the children, family violence and its impact on the children, and orders made in criminal proceedings relevant to the safety and security of the children. He was not required to do a seriatim review of all of the factors identified in s. 16. Specifically, the motion judge referred to the abduction of the children by the appellant as constituting "a part of [a] pattern of coercive and controlling behaviour that caused the [respondent] to fear for the safety of the children, and directly exposed the children to that same conduct." He also referred to the appellant's "lack of a cogent, realistic and workable plan for an expansion of her parenting-time". Based on our review of the record, the motion judge made no error in identifying the factors that are most relevant on the facts of this case.
- [10] The motion judge was clearly aware of the positive reports relating to the appellant's supervised parenting time with the children and her relationship with them. However, he maintained the status of quo of virtual and professionally supervised in-person parenting time because of the appellant's past conduct in abducting the children to Kenya in the face of a court order prohibiting their removal from Ontario. Further the absence of "a cogent, realistic and workable plan" for an expansion of the appellant's parenting time was in the motion judge's view "fatal" to the appellant's request for unsupervised time with the

children. Apart from a post office box, the appellant had not provided an address. She did not provide information concerning suitable non-professional third-party supervisors and/or particulars concerning where, and under what circumstances, she would visit with and/or house the children if permitted to have non professionally supervised and/or unsupervised in-person parenting time as part of a graduated plan for relaxing the parenting time arrangements. Given the appellant's flagrant violation of a court order, the circumstances surrounding her departure to Kenya, and the absence of a concrete plan for relaxing parenting time that would demonstrate her willingness to comply with a court order for unsupervised in-person parenting time and ability to properly care for the children, we are not satisfied that the motion judge erred in continuing the status quo of supervised in-person parenting time.

- [11] We recognize that the appellant expressed concerns about the cost to her of the in-the-community in-person parenting time supervision. At the same time, this provision of the order can be modified by agreement of the parties in writing.
- [12] Finally, given the appellant's history, including the number of motions brought in this matter, and her failure to provide relevant information in relation to this motion, it was not unreasonable for the motion judge to impose what is now a less-than two-year time limit on the appellant's ability to bring a change motion relating to parenting time. ii. Child support
- [13] We also reject the appellant's submissions concerning child support. The motion judge declined to change the order for child support made in March 2021 for several reasons. He correctly noted that the appellant bore the evidentiary onus. He also noted that she claimed in her affidavit that she continued to be employed until the date of the decision in her criminal case and that her claims of reduced income did not align with this evidence. The appellant did not provide proof that her nursing licence was ever suspended. Nor was there any proof of loss of employment because of the criminal charges or unsuccessful job applications or reliable evidence of actual earnings or potential earnings. We see no error in these findings.
- [14] The appellant submitted that the motion judge erred in treating the March 2021 order as premised on imputed income rather than declared income because there was affidavit evidence from the respondent concerning the appellant's pre-departure-for-Kenya declared income and because the March 2021 trial judge made a finding, premised on that evidence, that the appellant's income was \$109,817.00.
- [15] We reject this argument. The March 2021 trial judge stated clearly at paragraph 13.3 of her order, under the heading "OTHER MATTERS", that the "income of the [appellant] is hereby imputed at \$109,817.00." Moreover, we conclude the fact that the appellant's income was imputed income rather than declared income was necessarily the case because the appellant resigned from her nursing position before departing for Kenya.

- [16] Counsel for the appellant also made a new argument during oral submissions on the appeal that had never previously been raised. He pointed out that the trial judge stipulated in her final order for child support of March 24, 2021, that the order “may be reviewed upon return of the children”. Counsel therefore submitted that the motion judge erred in approaching the child support issue as a change motion rather than as a motion for a review: *S.H. v. D.K.*, 2022 ONSC 1203 (Div. Ct.).
- [17] Leaving aside the question whether we should entertain this issue raised for the first time not only on appeal but during oral argument of the appeal, we do not give effect to the argument. The motion judge relied on the appellant’s affidavit evidence that she had “held [her] past employment up until the Criminal Court decision.” As noted above, he found that her reduced reported income did not align with her affidavit evidence and that there was an absence of evidence to explain the reduction in her income – no proof of loss of employment or of unsuccessful job applications or evidence of actual earnings or potential earnings. We acknowledge that a change motion requires that the moving party demonstrate a material change of circumstances. But whether as part of a change motion or a review motion, the onus is on the moving party to file evidence to establish their income or support negative inferences about imputed income. The appellant failed to do either.

Disposition

- [18] Based on the foregoing reasons, we dismiss the appeal subject to one minor variation of the motion judge’s order. In the event the appellant brings a change motion in relation to child support prior to completing her probation order, we would leave it to the discretion of the presiding judge whether to entertain a request for a change of her parenting time depending on whether such request is premised on proper material or such other considerations as the presiding judge may deem appropriate. The terms of paragraph 10 of the motion judge’s January 21, 2025 order are varied to add this proviso.
- [19] Costs of the appeal are to the respondent on a partial indemnity scale fixed in the amount of \$5000 inclusive of disbursements and HST. “Janet Simmons J.A.” “B.W. Miller J.A.” “D.A. Wilson J.A.”
- [1] The order also dismissed the appellant’s request to vary the respondent’s sole decision-making authority in relation to the children. The appellant did not appeal that aspect of the order.

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://norma.lexum.com/coa/coa/en/item/23814/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/van-aman-v-mugo-2025>

Prepared on 26 October 2026 · Esheria