

# Issue No. 36

## Parenting Time, Decision Making Authority, and Harmful Stereotypes in Family Court Proceedings : 2024 MBKB 100

### Introduction

This divorce proceeding deals with the issues of parenting time, decision-making authority, protective relief, child support and special expenses. It also deals with the myths and stereotypes surrounding systemic prejudice towards men as fathers in the legal system. In coming to his decision, the Judge explores the history of family violence, including domestic abuse, financial abuse and controlling behaviors by the Respondent. The Petitioner was represented by counsel, and the Respondent was self-represented throughout proceedings.

The issues of child support and special expenses will not be covered in this bulletin.



### Background

The parties were married in June 2010 and separated in January 2021. They have two children together, who were ages 8 and 12 at the time of the trial.<sup>1</sup>

Shortly after separation, the Respondent (father), was charged criminally for uttering threats x2 and assault with a weapon x2. This led to terms of an undertaking that he does not communicate with the complainant, Petitioner (mother). The charges were stayed in May 2021, following which the Petitioner obtained an *ex parte* Protection Order against the Respondent pursuant to *The Domestic Violence and Stalking Act*.<sup>2</sup> There was an incident of the Respondent

breaching the Protection Order on September 9, 2021. The charge was subsequently stayed.<sup>3</sup>

The Petitioner commenced the family proceedings in August 2021. In December 2021, the Respondent also obtained an *ex parte* Protection Order against the Petitioner.<sup>4</sup>

The parties appeared before Justice Dueck on March 16, 2022, and a consent Interim Order was reached. The Interim Order included terms that the Protection Orders be set aside and replaced by a two-year Prevention Order under *The Family Law Act*. The trial judge, Justice Thomson, notes in his disposition that this is common practice in these types of cases, and

<sup>1</sup> *Hoes v Hoes*, 2024 MBKB 100, at para 2.

<sup>2</sup> *Ibid* at paras 9-10.

<sup>3</sup> *Ibid* at para 11.

<sup>4</sup> *Ibid* at para 12.

“superficially attractive”; however, in this case it did not achieve the goal of reducing spousal conflict and served the children very poorly.<sup>5</sup>

Following the Interim Order, the Respondent continued his tirade of abuse towards the Petitioner, in breach of the terms of the Order. This included verbal abuse; disparaging the Petitioner in front of the children; entangling the children in the conflict; using profanities; threatening the Petitioner, her family, and her legal counsel; and attempting to isolate the Petitioner from her supports.<sup>6</sup> For example, texts threatening that the police recommended he serve her with an involuntary mental health assessment, calling her a “self-righteous piece of shit from the trailer park”, and stating “you’re insane. Everyone noticed it.”<sup>7</sup>

Despite the continuous abusive and abhorrent behaviour of the Respondent, the Petitioner continued to maintain the shared parenting arrangements up until this point, even accommodating the Respondent in the summer months in an attempt to put the best interests of the children at the forefront. The trial Judge noted the mother’s best efforts to maintain the children’s relationships with their father in his decision.<sup>8</sup>

Despite the Interim Order in place, the situation continued to escalate. Particularly, after learning the daughter caught croup, the Respondent developed an obsession with the assumption that the family home, where the Petitioner was living with the children, contained mould.<sup>9</sup> This led to the Respondent withholding the children from the Petitioner. An emergent hearing was set for November 25, 2022. The Respondent’s reaction to the scheduling of this hearing was

informing the Petitioner that he was going to tear her, her counsel, and the parenting assessor a new asshole.<sup>10</sup>

At the emergent hearing, Justice Mirwaldt pronounced a further Interim Order, imposing supervision on the Respondent’s parenting time (to be supervised by his mother) and restrictions on communication with the Petitioner (to be non-abusive and limited to one message per day).<sup>11</sup> The Respondent did not respect the Order and continued to harass and verbally abuse the Petitioner.<sup>12</sup>

A triage conference was held with Justice Mirwaldt on January 23, 2023, and a prioritized hearing set for February 24, 2023. In Justice Mirwaldt’s disposition she highlights her findings that the father had engaged in an overwhelming amount of abusive and threatening texts, constituting family violence under the *Divorce Act*; that he failed to protect the children from conflict arising from the proceedings, in violation of s. 7.2 of the *Divorce Act*; repeatedly demeaned the mother and her female legal counsel in a misogynistic manner, causing the children fear and anxiety due to their entanglement in the proceedings; and that he repeatedly violated Court Orders, including failing to curb his behaviours during his supervised parenting time with the paternal grandmother.<sup>13</sup>

On March 2, 2023, Justice Mirwaldt pronounced a further Interim Order that the Respondent’s parenting time be supervised by a parenting coach, coordinator, or professional supervisor; that the Petitioner have final-decision making authority for the children, without consulting the Respondent; that the Respondent complete

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<sup>5</sup> *Ibid* at para 14.

<sup>6</sup> *Ibid* at paras 15-20.

<sup>7</sup> *Ibid* at para 20.

<sup>8</sup> *Ibid* at para 17.

<sup>9</sup> *Ibid* at paras 19 and 22-24.

<sup>10</sup> *Ibid* at para 24.

<sup>11</sup> *Ibid* at para 25.

<sup>12</sup> *Ibid* at para 26.

<sup>13</sup> *Ibid* at para 27.

family violence and anger management counseling; and severing the Respondent's ability to directly communicate with the Petitioner.<sup>14</sup> A further Order was pronounced on March 22, 2023, prohibiting the Respondent

from posting disparaging remarks about the petitioner, her counsel, or the court proceedings, after he posted a rant on social media with the caption "*just to let y'all know, men don't win in court. They never do and they never will.*"<sup>15</sup>

## Issues

- 1) How should parenting time and decision-making authority be allocated?
- 2) Is continued supervised parenting time warranted in these circumstances?
- 3) Is continued protective relief in favour of the Petitioner necessary?

## Analysis of the Issues

### Parenting Time

At trial, Justice Thomson stated that there had been no appreciable change in the Respondent's behaviour over time, with the further evidence heard only cementing the accuracy of Justice Mirwaldt's findings.<sup>16</sup> In his judgment, Justice Thomson highlights how the Respondent failed to improve his behaviour over the course of the proceedings, nor were his outbursts confined to the Petitioner. Messages and voicemails were sent to various family members, her counsel, and the Family Resolution Services (FRS) Assessor assigned to the case.<sup>17</sup>

The Judge takes particular note of an overarching theme in the Respondent's actions, arising in other family cases of this nature, which is the insinuation of a systemic prejudice towards men. The Judge highlights portions of the Respondent's materials which assert that the Petitioner, in concert with her counsel and family members, employed a strategy of alleging abuse to deprive him of his property, home, and children.<sup>18</sup>

The Judge rebuked this notion, and in doing so, highlights a recent British Columbia Court of Appeal decision, *K.M.N. v. S.Z.M.*, 2024 BCCA 70, as well as the Supreme Court of Canada Decision, *Barendregt v. Grebliunas*, 2022 SCC 22. *K.M.N.*, which addresses the possible reliance on these myths and stereotypes, linking to disadvantaging beliefs, attitudes, and narratives. The case references the article "*The Myth of False Allegation of Intimate Partner Violence*" by Professor Koshan. Myths in family law include beliefs that "*a credible woman would disclose violence early; a credible woman would report the assault to the police; a credible woman would leave the relationship; violence against a woman by a man does not have an impact on the children and has nothing to do with his parenting ability; there is now family violence symmetry— women are just as "guilty" as men; and abuse will likely stop once the relationship ends so there is no risk of future harm.*"<sup>19</sup>

<sup>14</sup> *Ibid* at para 28.

<sup>15</sup> *Ibid* at para 30.

<sup>16</sup> *Ibid* at para 28.

<sup>17</sup> *Ibid* at paras 31-33.

<sup>18</sup> *Ibid* at para 42.

<sup>19</sup> *Ibid* at para 43.

These beliefs and stereotypes are concerning in the realm of family law as it increases the risk of unfounded or generalized assumptions that may affect a Judge’s reasoning process.<sup>20</sup> A courts’ paramount task in assessing the best interests of the children must be an “*individualized and discretionary*” inquiry.<sup>21</sup>

Justice Thomson also takes note of the trial judges’ erroneous propositions in *K.M.N.* Firstly, the idea that equal parenting time is presumptively in a child’s best interests, as well as the suggestion that abuse or family violence has no impact on the perpetrator’s parenting. In *Barendregt*, the court recognized that a child may experience harm through indirect exposure to domestic conflict.<sup>22</sup>

In his disposition, Justice Thomson found that while the Petitioner continued to put the best

interests of the children first, the Respondent continued to lack self-insight or adjust his behavior at all, including no reckoning in his wreckage of his family situation.<sup>23</sup> Justice Thomson did not accept that this behavior was “*blowing off steam*” as asserted by the Respondent, but a calculated and purposeful attempt to intimidate the Petitioner, to cause emotional harm by destroying her sense of self-worth, and to cause her financial harm and to isolate her from her legal counsel and other supports.<sup>24</sup> The Judge ordered that the Petitioner continue to have majority parenting time with the children.

Final decision-making authority on all matters was also awarded to the Petitioner.

## Supervision

The FRS Assessor’s report found that the father continued to make negative remarks about the Petitioner around the children, leading to feelings of sadness and fear. This contributed to her recommendation that the Respondent’s time with the children continue to be supervised, at least until he completes an anger management course, a parental capacity assessment, a psychological assessment, and attends counseling.<sup>25</sup>

Noting the lack of any adjustment on the Respondent’s part, the Judge found continued supervision by a professional to be necessary.<sup>26</sup> However, the Judge noted that the FRS report highlighted numerous remedial steps he could take to improve his circumstances and relationship with his children. None of these steps had been taken to date.<sup>27</sup>

## Protective Relief

The Judge granted the continued protective relief sought by the Petitioner.<sup>28</sup>

<sup>20</sup> *Ibid* at para 43.

<sup>21</sup> *Ibid* at para 9; quoting *Barendregt* at paras 9, 97.

<sup>22</sup> *Ibid* at para 7.

<sup>23</sup> *Ibid* at paras 47-48.

<sup>24</sup> *Ibid* at para 21.

<sup>25</sup> *Ibid* at para 35.

<sup>26</sup> *Ibid* at para 51.

<sup>27</sup> *Ibid* at para 52.

<sup>28</sup> *Ibid* at para 55.

## Takeaways

The commentary in this case raises awareness of the concern for stereotypes in family proceedings used by perpetrators as a tactic to minimize the credibility of victims of family violence. The Judge’s analysis serves as a caution to other decision-makers to carefully analyze and assess evidence on a case-by-case basis.

This case also demonstrates numerous avenues available to a victim to obtain court ordered relief, such as emergent motions and prioritized

hearings. Although these avenues failed to be fully effective, and the perpetrator continued his abusive behavior, they were instrumental in providing a clear history for the trial Judge to ground his disposition upon. As these court orders formed part of the court record, the subsequent breaches demonstrated the Respondent’s inability to comply with the court, warranting a Final Order favourable to the Petitioner.

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