

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *R.D.M. v. X.M.M.*,
2017 BCSC 1674

Date: 20170831
Docket: 09-2626
Registry: Victoria

Between:

R.D.M.

Claimant

And

X.M.M.

Respondent

Before: The Honourable Mr. Justice Steeves

Oral Reasons for Judgment

Counsel for the Claimant:

John D. Nelson

Counsel for the Respondent:

Grant N. Smith

Place and Date of Hearing:

Victoria, B.C.
August 30, 2017

Place and Date of Judgment:

Victoria, B.C.
August 31, 2017

[1] **THE COURT:** In an application filed August 2, 2017, the claimant father seeks interim changes to parenting time of four children pending a trial.

[2] The current parenting time arrangement is that the children are primarily with the respondent mother. She lives in Victoria. Pursuant to a court order in 2009, the claimant father, who lives in Kamloops, has regular but unstructured parenting time. The eldest child has been with the father in Kamloops since March 2016.

[3] The claimant says that as a result of allegations of family violence and sexual misconduct with the children by the current husband of the respondent, the children should live with the father in Kamloops. This would be on an interim basis pending final determination at an expedited trial.

[4] The respondent mother opposes the application. She says the allegations are dated, inconsistent, and unreliable. As well, she says the police investigated the allegations, no charges were filed, and a Ministry file has been closed.

[5] Of relevant procedural background is that Justice Cole, on August 14, 2017, heard another application and issued a number of orders with respect to disclosure of documents.

[6] I have anonymized the names of the parties and their children in order to protect the privacy of the children.

BACKGROUND

[7] The parties were married in 1990 and divorced in 2010. There are four children: G., age 17; A., age 15; T., age 13; and P., age 11.

[8] In an order dated October 9, 2009, filed November 16, 2009, Justice Savage made a number of orders under the then *Family Relations Act* with respect to the children. It is not stated expressly, but the logic of giving the claimant father specific periods of parenting time is that the children were to reside primarily with the respondent mother.

[9] The 2009 order governed the parenting time of the parties for some time, with specific times being agreed upon. G. has lived with the claimant father since March 2016, which was not contemplated by the 2009 order.

[10] The respondent mother currently has a husband named R.H. The allegations of the claimant father relate to the conduct of R.H. with the children. There are also allegations of squalid living conditions in the house of the respondent mother and R.H.

[11] The claimant father has a current wife named R.D.

[12] Justice Cole, on August 14th, ordered a “hear the child” report to be conducted by Trudy Brown, Q.C. Ms. Brown interviewed each child twice, once in person and then by telephone, and prepared a report dated August 23, 2017. Counsel advise that she was directed to specifically ask each child about whether there had been any sexual misconduct.

HEAR THE CHILD REPORT

[13] I summarize Ms. Brown’s hear the child report of August 23, 2017 as follows. I emphasize that these are allegations, many of them are disputed and they have not been tested in court.

Interview with G.

[14] With respect to G., she said to Ms. Brown that she and her mother did not get along very well and they have butted heads on ideas and have different personalities. G. also disagreed with her mother when she married her stepfather R.H. She does not like R.H., as he was the man her mother cheated on her father with.

[15] G. said that in March 2016, she told her mother that R.H. made her uncomfortable and he touched her inappropriately. When she started to live with her father, she started getting A’s, B’s, and C’s. She stopped skipping school and

her father helped her with her homework. She told Ms. Brown that R.H. told her she was too stupid and she would end up as a stripper or a whore.

[16] G. described being diagnosed with anxiety, and she has agreed with her father that she would go to a counsellor. R.D., the wife of the father, helped her with resources.

[17] When G. went to live with the father, she had almost 30 cavities in her mouth because her mother did not take her to a dentist. G. described her mother taking the family regularly to the food bank, even though they could afford food.

[18] G. described her siblings. She is currently working full-time at McDonald's. She has six piercings that her mother would not let her do. She apparently has an agreement with her father that they will get matching tattoos. G. is taking medication for depression and social anxiety.

[19] I reproduce here two paragraphs from Ms. Brown's notes of her interview with G.:

In January 2017 while watching a documentary on tv - "[G.] tells me she was obsessed by documentaries on tv" - she was watching a documentary about a woman whose husband was abusive to her children. It was then that she realized in her mind that [R.H.] had been abusive to her so she went and called social services and the police. She told them that her stepfather had been abusive verbally, physically (he slapped her across the face in 2015) and consequently she was self-harming, cutting. On one occasion after an argument with her mom, [R.H.] came in to her where she was in bed, shaking the bed and saying she had no reason to be depressed or for cutting herself because her life wasn't so bad. He grabbed her by the ankle and pulled her head first off the bed. He then punched the dresser right by her face. [G.] tells me she ended up spending that night in hospital because her mom thought she was suicidal. She also told me that her mother had previously watched [R.H.] slap her across the face and had done nothing. [R.H.] would often grab the back of all of the kids' necks and would leave bruises but not so bad as to be seen and he would drive his thumbnail into her cuticle. He often spanked the children over his knee with their pants down. [G.] explained to me that she stopped reacting to those behaviours so he stopped doing them to her although he did continue to verbally abuse her. He would tell her she was not smart enough to be a mortician, which at that point she wanted to be. He said she would end up as a cheap hooker or whore and consequently, [G.] said she had no self-esteem when she lived there.

She also told me that [R.H.] would invite her into his room and one time she told him she couldn't come in because she needed to change because she had peed her pants. She said that when they hugged he would grab her butt and [R.H.] and her mother often walked around the house naked, sometimes with a robe on. She said [R.H.] would come into her room when she was changing on occasion and he would invite her into his room in the morning while he had a "hard on". If she went into his room and he closed the door he would offer to give her a massage and tried to get her to get her clothes off saying you need to have a shower. She said he would grind his penis against her back and would pull her closer when she said she had to leave. [G.] said all of this happened while she was living at the house and she never told anyone about it. She did not tell her father until just recently.

[20] By way of a summary, G. recounts seeing a documentary on a woman who was abusive to her children. G. told Ms. Brown that she realized that R.H. had been abusive to her. She described being slapped in the face in 2015. She was self-harming, cutting herself. According to G., R.H. grabbed her by the ankle, pulled her head off the bed, and once he punched the dresser right by her face. Her mother thought she was suicidal.

[21] G. described violence between the mother and R.H. He would spank the children over his knee with their pants down. G. described R.H. inviting her into his room one time and she told him she would not come in, because she needed to change because she had peed her pants. She said that when they hugged, he would grab her butt, and R.H. and her mother often walked around the house naked, sometimes with a robe on. She said R.H. would come into her room when she was changing on occasion and would invite her into his room in the morning while he had an erection.

[22] Ms. Brown records that G. is healthier living with her father. She was borderline anorexic living with her mother. She now eats well and she will not return to her mother's home.

Interview with A.

[23] The next child is A., age 15. She described to Ms. Brown that her older sister G. had never had a good relationship with her mother or R.H., and she even took a lacrosse stick to R.H. while a social worker was in the house. A. says she has never

had a good relationship with G. either, and that goes back as far as she can remember. She describes G. as being abusive to her when they were little.

[24] A. is going into Grade 11, although she is taking four Grade 10 classes that she failed. She constantly had a stomach ache which was so bad that she could not stand up, and it was some time before they found out it was anxiety manifesting itself as physical pain.

[25] A. described to Ms. Brown that she catastrophizes events, which means that she is always assuming the worst possible things are happening. She is taking melatonin as medication.

[26] Ms. Brown asked A. if she was anxious about her father's application and A. replied that she was not really anxious, she was mainly worrying about her best friend.

[27] A. described that her relationship with her father was really strained. He had bought her a new phone and had sent it to her, because her old phone was lost, and she apparently did not say thank you right away. There was a trip to Disneyland where things were said. At one point, according to A., her dad messaged her to say that he was hurt that she did not come on a trip with him. She said that Dad had a long history of guilt tripping and she did not want to put up with that while she was trying to get over the hurt that she felt over the Disneyland trip and the phone.

[28] A.'s relationship with R.D. [current wife of the father] is very good but she also has a really good, close relationship with her mother in Victoria. She can talk to her about anything and she has a pretty good relationship with R.H., who has even been able to calm her down on a few occasions.

[29] A. described the house being messy and that issue being investigated by the Ministry. Apparently the house is clean now.

[30] A. was asked if there had ever been any sexual touching or abuse. She said the only time that she had ever seen R.H. touch anyone was when he tried to stop

them from hurting him or doing something wrong. A. described G. as angry, violent, and she had told her father about that.

[31] A. was very clear, she does not want to move. She does not make friends easily because of her anxiety. She loves the volunteer work she is doing. She loves her home in Langford, and she would have separation anxiety from her mother.

[32] Ms. Brown recorded A. as a young woman who made it very clear that she does not want to move, that she does not believe she has been sexually abused, and that she is prepared to see her father if there are some grounds rules about what he will talk about.

Interview with T.

[33] Turning to T., age 13. She described to Ms. Brown that the house is pretty loud, a lot of noise. The children get into a lot of fights. T. described the relationship with her mother as average, an average mother-daughter relationship. They do not really spend a lot of time together. She likes to read, listen to music, and sing.

[34] T. said her mother does not follow through on discipline. It is R.H. that is the disciplinarian in the family and he does follow through. T. said that R.H. has never touched her inappropriately. T. was asked whether her mother and R.H. walked around naked in the house, and T. said only if they have just woken up and they think no one else is awake.

[35] T. has auto-immune conditions, costochondritis. She has juvenile rheumatoid arthritis and vitiligo. She also has asthma and she uses an inhalator.

[36] T. told Ms. Brown that she would love to go live with her dad, she just feels like it is the right thing to do.

[37] She described multiple breakdowns in Victoria, and R.H. and her mother both yelling at her. She also described her mother's relationship with R.H. T. told Ms. Brown she thought that if she were to die, no one would miss her and, as a consequence, she would prefer to live in Kamloops.

Interview with P.

[38] The fourth child is P., age 11. He has apparently been diagnosed with symptoms on the autistic spectrum. He recounted incidents involving nerf guns and who was prepared to buy him the guns and who was not.

[39] With respect to where he would live, he did not wish to make a decision about that.

[40] For unexplained reasons, there is no reference in Ms. Brown's notes about whether P. was asked about any sexual misconduct.

Other evidence

[41] There is no evidence from R.H. but there is more than one affidavit from the mother. As the mother points out, the police started an investigation of R.H., but charges were not laid.

[42] According to copies of emails, the Ministry file is close to being closed about the allegations made against R.H., and as can be seen from Ms. Brown's report, the children have different views about what is going on and what has gone on. R.H. left the house while the investigations were going on. He has returned.

ANALYSIS

[43] Returning to the application of the claimant father, he seeks an interim order under s. 216 of the *Family Law Act*. I do not take it as particularly controversial that interim orders may be particularly appropriate and even necessary when the best interests of the child are at issue.

[44] The evidence in this case is as recorded by Ms. Brown and contained in affidavits. Ms. Brown's role was to record what the children told her, rather than make any conclusions as to the veracity or reliability of that information.

[45] Looking at the evidence gathered by Ms. Brown as a whole, I accept the point of the respondent mother that some of it reflects the tension and conflicts of having

four teenagers. For example, A. says she does not like G. There are health and other issues of the children which add further complications. G. has anxiety and P. apparently is on the autism spectrum. They have different views, such as A. not wanting to live with her father and G. deciding on her own that she would live there. G. and A. are of an age when some weight has to be given to their views. Two of the children deny there was any sexual misconduct, G. says there was, and Ms. Brown does not record any information from the fourth child on this issue.

[46] The respondent mother also points to delay in the allegations being made. On the evidence of the father, he knew about the allegations from G. in July 2017, perhaps March 2016, but he did not do anything until summer 2017. This is noteworthy, but I accept the father's evidence that he was waiting for G. to work through what had to be done.

[47] It is also true that R.H. was not charged by the police and the Ministry's file is apparently in the process of being closed. However, the protection of children under the *Family Law Act*, as is contemplated by the father's application here, requires a different approach than the criminal law or the application of Ministry policies.

[48] I consider it significant that there is no evidence from R.H. as to the statements made by the children. Many of these are serious, and yet there is no affidavit from him saying anything about them. I am urged to excuse this because of the rush nature of these proceedings, and I acknowledge that fact. Nonetheless, in my view, some evidence from R.H., even a brief denial or brief explanation, is required in these circumstances. From this, I conclude that the evidence of the children takes on more significance.

[49] It is important to note that the allegations against R.H. and the respondent mother cannot be proven at this stage. Nonetheless, there is sufficient information available to reach interim decisions about the children. For example, G. is recorded as describing sexual misconduct by R.H. There are also troubling references in the statements of the children about suicide and incidents of violence in the family.

[50] It will be for a trial judge to determine conclusively the veracity and consistencies of the information recorded by Ms. Brown. At this interim stage, I adopt the following from a previous judgment (*L.C.T. v. R.K.*, 2015 BCSC 303):

[24] Where the safety of the children is potentially at risk . . . the court on an interim application should err on the side of caution . . . The proper venue for addressing the veracity of allegations . . . is the trial, not an interim application . . .

[51] Overall, I conclude that this is an appropriate case for an interim order under the *Family Law Act* regarding parenting time.

[52] As described above, the children are of different ages. They clearly have strong views already about how their lives should be lived and who they should live with. G. and A., in particular, are of an age where some weight should be given to their wishes, and there is the current situation on the ground, which is to say G. has already made a decision to live with her father. All of these issues need to be weighed, again in the context of an interim application.

[53] With the above in mind, paragraphs 2, 3, 4, and 5 of the 2009 order of Justice Savage are suspended and the following substituted on an interim basis:

- 1) G. will remain primarily living with the claimant father in Kamloops. Parenting time with the mother will be by agreement with G.
- 2) A. will be asked whether she wants to live with her father in Kamloops on a possibly interim basis or with her mother in Victoria. Ms. Brown will raise this issue with A. privately and report back to counsel in a very short letter what A.'s decision is. Neither parent will communicate to A. about her choice until Ms. Brown has reported what that choice is. I acknowledge this is giving some sanction to a splitting up of the family; that is, A. possibly living in Victoria and G. living in Kamloops. It seems to me, though, that this family has its difficulties and indeed G. has already started the process of breaking with her siblings. Parenting time with A.

with the parent she is not living with will be by agreement between A. and that parent.

- 3) T. and P. will live primarily with the claimant father in Kamloops. The respondent mother will have one weekend per month of parenting time, Friday after school to Sunday at 5:00 p.m. She may include long weekends and the additional day. The claimant father will pay any travel expenses for this parenting time. Expenses can be for the children or for the respondent mother at her election. As a matter of prudence and caution and an inability to project how quickly things will resolve, I also make an order with respect to Christmas 2017. The respondent mother will have four clear days with T. and P., including either Christmas Eve day or Christmas Day.
- 4) While the children are living primarily with the claimant father, they will be provided with health counselling and extracurricular activities to a level at least equivalent to the level they now receive from the mother. I include French immersion for A. in this. The claimant father will advise the respondent mother of this support and provide regular reports to her at least one time per month.

[54] As a further comment on these orders, the intention is that they would be in place before school starts in September 2017. Given the short time available, there may be serious practical problems in putting that into effect. I do not make that order, but I do say that the orders should be in place as soon as practicable and without delay.

[55] Turning to another issue, as counsel know, I am concerned about the evidence in this case as that evidence might be presented to the trial judge. As described above, Ms. Brown's role was not to test the information which she received from the children, but simply to record it. This is, of course, no criticism of Ms. Brown whatsoever. However, in my view, some testing of that evidence is necessary.

[56] The usual way of determining these issues is through a report under s. 211 of the *Family Law Act*. While appreciating the cost and time it takes for those reports, I nonetheless order that a s. 211 report be prepared. Both parties have experienced counsel. They know how to do that. If the name of a s. 211 person cannot be agreed upon, I will decide the name of the person.

[57] The claimant father seeks an expedited trial date with respect to the allegations here. That is obviously necessary. The estimate is that this will take three days. I have expressed my scepticism about that, but I leave that to the good judgment of counsel with respect to the length of the trial.

[58] I do not think that a trial can commence without having the s. 211 report and that obviously complicates any expeditious setting of dates. For the reasons I have given above, I do not see any way around that. In order to have the necessary evidence before the trial judge, I believe a s. 211 report is necessary. I again leave it to the expertise and good judgment of counsel about when a trial date should be set.

[59] Finally, neither party will have costs against the other and just to save them a bit of money, Madam Clerk, I am ordering a transcript of this. So counsel, I think the way that works, it comes to me, I do any minor editing, and then it shows up on the court file. I do not know, but I think counsel are advised of that.

[60] Is there anything else?

[61] MR. NELSON: My Lord, if I may, two questions of clarification. The first question is when the respondent mother exercises her parenting time, will [R.H.] be permitted to attend to that parenting time or do you have an order on that?

[62] THE COURT: Mr. Smith, anything to say about that?

[63] MR. SMITH: Well, that was one of my questions. We seem to be getting for sort of a weekend, I would assume that would be in Victoria. It would -- you know, I don't know, I had thought about the [R.H.] issue, but I don't think that's — I guess that's your decision. Obviously my client would prefer that [R.H.] be allowed

to be there. He does have a relationship with these kids. I don't know that we want to totally fracture them.

[64] THE COURT: Well, I am not going to -- [R.H.] is not excluded from the parenting time with the mother. I think --

[65] MR. SMITH: So -- so this -- all of -- my question was, if I am to understand it mechanically, [the father] will bring the children to Victoria and -- or the two children to Victoria or I guess three, depending on what A. decides. If A. decides to go live with Dad, then she would be included in the access group, too.

[66] THE COURT: Yes, and whether the father brings them or not, it is his cost.

[67] MR. SMITH: He's got to get -- he's got to -- he's got to accomplish it somehow.

[68] THE COURT: Yes.

[69] MR. SMITH: Okay, and get them back home to Kamloops.

[70] THE COURT: Yes.

[71] MR. SMITH: That -- yes, okay. That's what I was wondering, if that -- so the access will occur down here and he has got to get them here. Okay, and then the only other question I had, maybe I'm just saying it, but how do we pay for the 211 report?

[72] THE COURT: It will be jointly -- possibly jointly shared.

[73] MR. SMITH: Okay.

[74] THE COURT: Mr. Nelson, did you have a second question?

[75] MR. NELSON: Thank you, My Lord. Mr. -- Mr. Smith raises a couple of points which -- well, he posed them to you, My Lord. You actually didn't responsively answer him so I would just like, for the record, state that the respondent mother's

parenting time will occur in Victoria. I'm wondering -- is that correct, that that's your intention?

[76] THE COURT: Well, I think I said that the travel expenses paid by the claimant could apply to her. My intention was to leave open, at her election, she could travel to Kamloops.

[77] MR. NELSON: Sorry, My Lord, I just want to make sure I get this right.

[78] THE COURT: Yes, yes, good.

[79] MR. SMITH: Essentially, she chooses where the parenting time will occur. She chooses Victoria which is, I suspect, the logical choice for her and yes, if she's in the interior for some reason, then she can have parenting time wherever she is in the interior or presumably in Kamloops. I mean, she can't elect Hawaii and make him pay for that, I wouldn't think, but you know, within reason there, correct.

[80] MR. NELSON: My Lord, working on the assumption that she elects the parenting time in Victoria, I ask that the term of the order be that the exchange point be in Tsawwassen rather than Swartz Bay, so that the father can come down, drop them off, and then she can take them back on the ferry, rather than causing him to have the expense all the way through with his car?

[81] THE COURT: It is a fair point. I thought of making --

[82] MR. SMITH: Can I make a comment on that, My Lord?

[83] THE COURT: Sure.

[84] MR. SMITH: What happens with a lot of the island kids, one parent drops off at Tsawwassen and then in the other direction, the pickup at Swartz Bay. So each parent does one walk-on. That's sort of usually -- it's more common with parents -- one parent in Vancouver, one parent in Victoria, but one end of the trip is Tsawwassen, the other end is Swartz Bay. That way the car doesn't have to come

on, which saves 60 to 70 dollars each way and only the parents and the kids do a walk-on.

[85] THE COURT: Yes. All right, let us do that.

[86] MR. NELSON: Thank you, My Lord, we'll make that a term of the order then and also a term of the order --

[87] THE COURT: Just -- just, Mr. Nelson --

[88] THE CLERK: Sorry, the -- the parenting, we're going to add [indiscernible] I believe you said -- if I could just have the terms.

[89] THE COURT: Yes, we can go over this later, Madam Clerk.

[90] MR. SMITH: I had one more question, My Lord.

[91] THE COURT: Just -- I just wanted to finish the thought I had.

[92] MR. SMITH: Okay.

[93] THE COURT: I thought of making the exchanges much more detailed but I deliberately made it broad and general. Frankly, I was looking at some documents, and I saw at one time they were getting along quite well in terms of managing things, including conflicts between the children. So it may be naïve, but I thought that they could work this out and for me to set out in extraordinary detail what the exchange -- how the exchange would operate, I reached the conclusion that that might cause more problems than it would solve.

[94] Mr. Smith?

[95] MR. SMITH: Yes, well, I think -- I think the exchange at the ferry terminal is fair if the kids are to drive down. If he wants to put the kids on a plane and fly them both ways, then obviously that would be -- Kamloops to Victoria would make sense. So I mean, I think -- I think the parties probably can sort those situations out with what you've said. My question, you've split the cost of the 211 report, which I

understand. What happens if my client is not capable of paying that? Where do I go from there?

[96] THE COURT: Well, I guess she will have to make --

[97] MR. SMITH: I don't want her in contempt for not -- if she's not -- she makes -- the report would probably take an annual -- her annual income to pay for --

[98] THE COURT: Yes, that is what you said.

[99] MR. SMITH: -- her share.

[100] THE COURT: I have -- I guess if she says she cannot afford it, then we will have to have a look at that. That -- I mean, that would require --

[101] MR. SMITH: Disclosure.

[102] THE COURT: Absolutely.

[103] MR. SMITH: Yes, okay.

[104] THE COURT: So --

[105] MR. SMITH: If she can't afford it, I can bring that back to your attention, is essentially what you are saying.

[106] THE COURT: Yes, and Madam Clerk --

[107] MR. SMITH: Okay.

[108] THE COURT: -- you should record that Justice Steeves retains -- remains seized of any implementation issues.

[109] MR. SMITH: Okay, thank you, that clarifies my question, thank you, My Lord.

[110] MR. NELSON: My Lord, I have a couple of technical things I just want to be very clear on. First of all, for the record, the 211 will be jointly shared with leave for [the mother] to come back if -- if affordability is an issue?

[111] THE COURT: If you want to put it that formally, yes.

[112] MR. NELSON: But I'm just summarizing.

[113] THE COURT: Yes.

[114] THE CLERK: Should that be in the order then? Do you want that in the order?

[115] MR. NELSON: I'm not asking for it to be in the order. I'm just summarizing, that's what I heard.

[116] THE COURT: Yes.

[117] MR. NELSON: Then the one order, My Lord, that you didn't make and I think that you just assumed that it was happening, but I actually need, My Lord, the order to reflect that you have ordered -- pardon me, did you order a trial? A trial has been ordered?

[118] THE COURT: I did not say that expressly, but do you --

[119] MR. SMITH: I -- my -- I recall that it was an expedited trial.

[120] THE COURT: Yes, well, sure, yes, take your order.

[121] MR. NELSON: But that is part of the order, a trial has been ordered.

[122] THE COURT: Yes, yes. Yes, yes, yes, yes.

[123] MR. NELSON: We would like the trial to be set by counsel.

[124] THE COURT: Yes.

[125] MR. NELSON: Because I am starting to share your scepticism, My Lord, that three days just won't cut it.

[126] THE COURT: Yes.

[127] MR. NELSON: Then, My Lord, being that it will be put on the trial list, may I just clarify that the regular tools of trial will then be implemented with lists of documents, examination for discovery, and a trial management conference?

[128] THE COURT: The only reason I am hesitating, I normally would say yes, but here it adds time, it adds money, and there has been -- I cannot imagine any big surprises coming along.

[129] MR. NELSON: No, My Lord, I just want to be clear what steps --

[130] THE COURT: Right.

[131] MR. NELSON: -- we are or aren't doing as part of the trial process.

[132] THE COURT: Quite, quite. So let me ask counsel, do you want to go through a full discovery process?

[133] MR. SMITH: Not particularly.

[134] MR. NELSON: I'd rather see, My Lord, the money spent on the 211.

[135] THE COURT: All right.

[136] MR. SMITH: Yes.

[137] THE COURT: So I frankly do not know how to do it, but I assume I have got authority somewhere to waive the discovery process.

[138] MR. NELSON: I'm going to make an assumption that if you make that order, neither counsel are going to challenge it.

[139] THE COURT: All right.

[140] MR. SMITH: That probably is fair.

[141] THE COURT: Okay. So Madam Clerk, the discovery process for the upcoming trial is dispensed with by consent.

[142] So Mr. Nelson, let us --

[143] MR. NELSON: With one exception, My Lord, it would, I think, be very prudent that an F8 be filed by both parties within the usual timeframe.

[144] THE COURT: Yes. So a Form 8, each party will file a current Form 8, I do not know, 21 days before commencement of trial.

[145] MR. NELSON: Thank you, My Lord.

[146] THE COURT: All right. So Mr. Nelson, while we are being technical, let us turn to your application and this is what Madam Clerk really wants to know. So Madam Clerk, I am looking at the application filed August 2, 2017, do you have that?

[147] THE CLERK: Well, I just have the court list, it deals with all of [indiscernible/banging noise] there's a list of documents on this.

[148] THE COURT: All right. Well, then just take this down. Regarding the application filed August 2, 2017, orders sought, 1, 2, and 3 have been decided by Justice Cole on August 14th. Your number 4, Mr. Green [sic], is that --

[149] MR. NELSON: For the record, My Lord, Nelson.

[150] THE COURT: I am sorry, sir. My apologies.

[151] MR. NELSON: Thank you, My Lord.

[152] THE COURT: Your number 4 is that the children be interviewed by a master or a judge of the Supreme Court. I am going to adjourn that generally or I can dismiss it, but that was a choice.

[153] MR. NELSON: My Lord, just so I'm clear, Order 4, because I don't have my application record on me, I apologize, I should have brought it. Order 4, what, is that being dismissed?

[154] THE COURT: This is in the alternative, that the collective children be interviewed by a master or judge of the Supreme Court in chambers and --

[155] MR. NELSON: Yes, My Lord.

[156] THE COURT: -- Madam Clerk needs to know what is happening with that, and I am suggesting it is adjourned generally or dismissed.

[157] MR. SMITH: And I would suggest it might be better left to the trial judge, I don't know if that works.

[158] THE COURT: Yes.

[159] MR. NELSON: That would be fine, My Lord.

[160] THE COURT: All right, so Madam Clerk, under orders sought, number 4 is referred to the trial judge.

[161] Number 5 has been determined by Justice Cole on August 14th.

[162] Number 6 is allowed.

[163] Number 7, Mr. Nelson, is that the 60-day notice period of intention to relocate that --

[164] MR. NELSON: Yes, My Lord, I think technically you would need --

[165] THE COURT: That is under the *FLA*.

[166] MR. NELSON: -- to order that that is waived, the notice period is waived in order for you to make the orders to have P. and T.

[167] THE COURT: Yes, do you, off the top of your head, know the section that is.

[168] MR. NELSON: Yes, My Lord, I do. It is going to be s. 67(3). If you want to just confirm that, My Lord?

[169] THE COURT: Yes, yes.

[170] MR. NELSON: Am I close?

[171] THE COURT: 67 is resolving issues arising from relocation, there are two subsections.

[172] MR. NELSON: It will say notice, My Lord.

[173] THE COURT: Yes. Oh, here we are.

[174] MR. NELSON: (2)(b) -- 67(2)(b), is that correct?

[175] THE COURT: 66, I think. Yes, so Madam Clerk, notice of relocation pursuant to s. 66(1) of the *Family Law Act* is waived. That is number 7 on the orders sought.

[176] Order number 8, this is that the children be enrolled in school in Kamloops, that is allowed in part, be enrolled on or before September 1, 2017, that is allowed in part, number 8. Number 9, that it goes on the trial list on a -- it says pre-emptory basis, do you mean expedited basis? I know --

[177] MR. NELSON: No, My Lord, obviously it should be expedited, but by pre-emptory --

[178] THE COURT: I know what that means.

[179] MR. NELSON: -- I'd like the word in there because I'd like it to trump any other trials, that once it is set down, once we have the 211 and once we know it's going ahead, I do not want to be bumped off the list due to -- for any reason.

[180] THE COURT: I am not sure that does it, but I will give to you. It is a much overused expression.

[181] So number 9 on the orders sought, this matter will be placed on the trial list for the days determined by counsel on an expedited and pre-emptory basis.

[182] Number 10 is allowed, still under the orders sought.

[183] Number 11, neither party is entitled to their costs.

[184] All right, anything else from you, Mr. Smith?

[185] MR. SMITH: No, I've got everything I wished to ask the Court questions about.

[186] THE COURT: All right. Mr. Nelson?

[187] MR. NELSON: My Lord, for the record, that -- since we've gone through all the business, that the second application has been decided by Mr. Justice Cole, for the record.

[188] THE COURT: Yes, I think I said that at the beginning of my reasons.

[189] MR. NELSON: Oh, my apologies.

[190] THE COURT: Yes.

[191] MR. NELSON: Thank you, My Lord.

[192] THE COURT: Yes, all right. All right, good luck with that. It is a complicated case.

[193] MR. SMITH: Thanks, My Lord.

[194] MR. NELSON: Thank you, My Lord.

“The Honourable Mr. Justice Steeves”