

FILED Citation: ⚙️

OCT 10 2018

**PROVINCIAL COURT
OF BRITISH COLUMBIA
SURREY**

Date:
File No:
Registry:

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C-82316
Surrey

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
Civil Division

BETWEEN:

BEARE,

and

CLAIMANTS

AND:

DOMM

DEFENDANT

**REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE M. JETTÉ**

Counsel for the Claimants:
Counsel for the Defendant:
Place of Hearing:
Dates of Hearing:
Date of Judgment:

**P.G. Kent-Snowsell
V. Williams
Surrey, B.C.
September 24 and 25, 2018
October 10, 2018**

Introduction

[1] The claimant Beare brings an action against Domm on her own behalf, and as *guardian ad litem* for her two infant children. In her claim she alleges that Ms. Domm is liable in tort for assault and intentional infliction of emotional distress. She seeks an order for general, special, aggravated and punitive damages.

[2] Ms. Domm has counterclaimed for emotional distress and intentional infliction of mental suffering, and also seeks general, aggravated, special and punitive damages.

Synopsis

[3] Ms. Beare is a 39-year-old grade 1 teacher. Her husband Beare is a firefighter. They have two children; is currently 9 years old, and is 6. The children were 6 and 2 respectively in 2015. They have been living at the same address in Surrey for the past 9 years.

[4] Ms. Domm is 25 years old today, and was 22 years old in 2015. She works at a hair studio in Langley and lives with her parents; their house is a block or so away from the Beare family home.

[5] The main claim arises from an encounter between Ms. Beare and Ms. Domm at the Langley Sportsplex Complex on 11 April 2015. On that date Ms. Beare alleges that Ms. Domm intentionally swerved her vehicle in the direction of herself and her children as they were walking in the parking lot near the Sportsplex. Ms. Beare alleges that as she and her children were waiting in their vehicle for Mr. Beare to come out of the gym

at the Sportsplex, Ms. Domm walked up and made a series of comments which were characterized by Ms. Beare as threatening and intimidating.

[6] The events of the date are clearly rooted in a longstanding dispute between Ms. Beare and her husband Beare on the one hand, and Ms. Domm on the other, which dates back to October of 2013.

[7] The 2013 event involves a traffic dispute, and ended with Ms. Domm claiming that she was struck and spat upon by Ms. Beare. In evidence before me, Ms. Beare denied these allegations, but admitted that she did walk up to Ms. Domm's driver side window and confront her about her driving. The 2013 encounter was clearly the initial trigger for a long simmering conflict between the parties which bubbled over into renewed confrontation on the 11th of April 2015.

Overview of the Evidence

[8] I will deal with the two main events in chronological order, as the first and its aftermath to a great extent informs the second. Attitudes and expectations on both sides have hardened over time, with the result that each side now readily assumes the worst of the other; this state of affairs has made assessing credibility and finding facts more challenging.

a. 13 October 2013

[9] All of the witnesses agree that there was an incident that took place on this date at an intersection in Surrey which ended with a roadside confrontation. They disagree

with respect to what exactly happened. This appears to have been the first time that these parties had ever come into contact with one another.

[10] Ms. Domm testified that she came up to a car that was stopped at an intersection but was not proceeding when the traffic had cleared. When the vehicle did not move, she honked her horn and drove forward to the left of that vehicle; she "gave them the finger" as she passed by, then turned left and drove away.

[11] Ms. Domm testified that this same vehicle followed until she stopped at a stop sign. She testified that Mr. Beare got out of his vehicle, came up to her window, which was not rolled down, and said, "you're lucky you're a bitch or I would fucking kill you." She said that Mr. Beare returned to his vehicle, and Ms. Beare got out and approached her driver side window, which she now rolled down. She testified that Ms. Beare was yelling and screaming and calling her "any name she could think of", including fucking slut, white trash, "everything in the book." Ms. Domm testified that Ms. Beare then hit her on the left side of her face, which damaged her glasses, and spit on her.

[12] Ms. Domm says she reported this incident to police and spoke to a Constable Miller, who took a photograph of the damaged glasses. At trial she produced a photograph of the glasses which he says depicts the damage which resulted from the blow delivered by Ms. Beare; this photo was not taken by Constable Miller. The contents of the police report are not before me.

[13] and Beare also gave evidence about this encounter with Ms. Domm. Both testified that while stopped at an intersection a vehicle came up behind them, moved over to their left and then entered the intersection at roughly the same

time they did, with both vehicles simultaneously attempting to execute a left turn. The Beares say that this forced their vehicle off the paved portion of the road and onto the gravel shoulder, causing them to narrowly miss a collision with a parked car. They had their two young children in the car with them when this happened.

[14] Mr. Beare followed Ms. Domm's vehicle. Mr. Beare got up and went up to the driver's side of that vehicle after it had come to a stop at an intersection. Mr. Beare testified that he was only concerned to determine whether the driver was intoxicated or perhaps having a medical emergency. He says that he looked in on Ms. Domm, determined that there was no issue, and walked away without either of them exchanging a word.

[15] Mr. Beare testified that after returning to his vehicle Ms. Beare said, "you're not going to say anything to her?" Ms. Beare then got out of the car and approached Ms. Domm's driver side. Mr. Beare said that returning to the car was "not my choice", but that he walked with his wife and heard her say to Ms. Domm, "you just about ran us off the road into a parked car, I have a toddler and infant with me." Mr. Beare testified that Ms. Domm replied, "I don't care, what are you going to do about it for four foot nothing fresh off the boat Asian." He suggested to Ms. Beare that they leave, and they returned to their car. He clearly appeared puzzled when asked if Ms. Beare had struck Ms. Domm in the face breaking her glasses. He said that Ms. Domm was not wearing glasses, and that Ms. Beare did not strike her, spit on her, or use vulgar language.

[16] Ms. Beare agreed that she went up to the vehicle and told Ms. Domm that what she did was unnecessary, and that there were two young children in the car, and that

she had almost caused a serious accident. She "did not think" that she was yelling, and denied that she swore, or that she called Ms. Domm names. She did say that Ms. Domm said to her, "what are you gonna do, fresh off the boat, four foot..." She denied striking Ms. Domm or spitting on her.

[17] The Beares recalled that they were contacted by police in the aftermath of the incident and provided their side of the story.

b. Events Leading up to 11 April 2015

[18] I will not spend a great deal of time on this other than to note that accusations have been hurled back and forth between the parties since the October 2013 incident. Ms. Beare alleges that Ms. Domm frequently drives her powerful Mustang sports car at high speeds and in an unsafe manner in her neighbourhood which causes her to fear for the safety of her children and her dog, and that on one occasion her dog was almost struck by Ms. Domm. She alleges that on more than one occasion Ms. Domm has "given her the finger."

[19] Ms. Domm alleges that Ms. Beare, in particular, has conducted an orchestrated campaign of harassment which has included following her to the residence where she lived for a short time with her boyfriend (which is in the same neighbourhood), and speaking to her landlord at that residence in an effort to have her evicted. She has acknowledged giving Ms. Beare "the finger" on more than once occasion, but denies nearly hitting the Beare family dog.

c. 11 April 2015

[20] This is the conflict outside the Langley Sportsplex. The parties agree that there was a conflict, but they do not agree about much else.

[21] Ms. Beare testified that as they were leaving the gym her husband discovered that he had left his water bottle behind. He went back for the bottle, and she continued on into the parking lot with their two young children to get the car. Ms. Beare testified that the lot was busy at that time. As she was crossing a traveled area in the lot she saw a vehicle approaching which she did not recognize. She could not make out the face of the driver because the sun was reflecting off the windshield. She testified that as she and her children stepped out from between parked cars into the lane of travel, the vehicle swerved towards them, causing her to pull her boys away; she feared that she or her boys would be struck. She said that the vehicle stopped and she could now see that Ms. Domm was the driver; Ms. Domm gave her the middle finger, stuck out her tongue to the point that she could see a piercing (Ms. Domm testified that she has never had a tongue piercing), said, "fuck you" and accelerated away.

[22] Ms. Domm gave a somewhat different account of the same event. She testified that she was driving in the parking lot at the Sportsplex looking to park her car before going in for a session at the same Langley Sportsplex gym. As she was driving in the lot she saw a child she did not recognize running into the street. She said she slowed down almost to a full stop. She then saw a woman she recognized as Ms. Beare yelling and running towards her from across the street. She testified that she could not recall specifically what Ms. Beare said, and that she kept her window rolled up. She then

gave Ms. Beare her middle finger before driving to the end of the lot to find a place to park.

[23] Ms. Domm testified that she parked her car some distance away from the building entrance and waited for close to 10 minutes before getting out because she wanted to avoid any further confrontation with Ms. Beare. Eventually she did get out of her vehicle and walked along the sidewalk in front of the building toward the entrance.

[24] Ms. Beare testified that after her problem with Ms. Domm in the parking lot, she put the children in her car and drove to the entrance to pick up her husband. Much was made of the fact that this was a no-parking zone, but I find there was nothing unreasonable about a temporary stop to pick someone up, and nothing turns on this in any event.

[25] Ms. Beare says she noticed Ms. Domm get out of her vehicle and approach the area where she was parked. She got out of her vehicle and confronted Ms. Domm, saying "you just about hit me and my kids." She testified that Ms. Domm's response was "good, next time I will hit them." By this time, Mr. Beare had arrived and she looked at him, then back at Ms. Domm, and asked "what did you say?" She testified that Ms. Domm then repeated the same comment. Ms. Beare testified that she said something to Ms. Domm about how that kind of comment would affect new parents. Ms. Domm replied, "next time I will hit your kids and your fucking dog" before walking into the building.

[26] Ms. Domm testified that as she got closer to the front entrance of the building she saw that a black truck was parked there. As she got closer, the passenger door

opened, Ms. Beare got out and started to yell at her and walk in her direction. Ms. Beare was asked to demonstrate the tone and volume she used when first speaking with Ms. Domm; based on that demonstration there can be doubt that she was yelling and would have appeared angry. Ms. Domm agrees that Ms. Beare said, "you almost hit my kids", and described her tone as "very loud, very aggressive, very in my face." She said that she denied this accusation, and that the two of them "exchanged a lot of vulgar vocabulary" which she then particularized in some detail. In addition to the "vulgar vocabulary", Ms. Domm says that Ms. Beare called her "white trash", and that she told Ms. Beare "to go back where she came from." Ms. Domm testified that after or during this exchange she said, "if your kids and your dog keep going on the street, they could get hit." She denied saying that next time she would hit the kids and the dog. Ms. Domm also recalled Ms. Beare saying something about her not understanding because she did not have kids, to which she replied that she had been pregnant before and had miscarried. Ms. Domm says that Ms. Beare's response was, "good, you would be a horrible mother." Ms. Domm said the encounter ended when she told Ms. Beare that she was trash for talking like that in front of her children and for spitting on someone, which I took to be a reference to the October 2013 incident. In cross-examination, Ms. Beare denied any conversation at all about Ms. Domm's previous pregnancy, or that she said Ms. Domm would be a horrible mother.

[27] Ms. Domm also testified that during this confrontation with Ms. Beare, Mr. Beare arrived and also began to yell at her. She says that at one point he came close enough to touch her as he puffed out his chest in what she viewed as an effort to intimidate, and that he shook his fists at her and said, "you are so fucked, all recording, you are so

fucked." She replied, "what are you gonna do, hit me? You are a grown man." She then left and walked into the gym.

[28] Mr. Beare testified that he came down to the front entrance after receiving a frantic call from his wife, and that she pulled their vehicle over to the curb at the front entrance just as he came out. Ms. Beare got out of the car, and said to Ms. Domm, "you just about hit our kids in the parking lot." Mr. Beare said that Ms. Domm's reply was "good, next time I will." Ms. Beare then asked Ms. Domm to repeat herself, and once again she said, "next time I will hit them." Ms. Beare said that they were new parents and this was a terrible thing to say, and brought up earlier complaints about her driving aggressively and almost hitting their dog, to which Ms. Domm replied, "next time I will hit your kids and your fucking dog." Mr. Beare also recalled that Ms. Domm directed racial slurs at Ms. Beare, and said, "go back where you came from." Mr. Beare testified that he told Ms. Beare that it was time to go; they then got into their motor vehicle, drove up to Ms. Domm's vehicle to get her plate number for a report to police, and left.

[29] In cross-examination, Mr. Beare did not agree that his wife was yelling at Ms. Domm, but did say that both her voice and Ms. Domm's were elevated. He also said that he was standing between Ms. Beare and Ms. Domm. He denied getting physically close to Ms. Domm, as well as the comments attributed to him by Ms. Domm in her evidence. When asked about Ms. Domm mentioning her own miscarriage he testified that this was the first he had heard of that.

Analysis

[30] The claimant, on her own behalf and as guardian ad litem for the two children, bears the onus of proving her claim on a balance of probabilities. Conversely, Ms. Domm bears the onus of proving her counterclaim on a balance of probabilities. "Evidence must be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test.": *F. H. v. McDougall*, 2008 SCC 53 at para. 46.

[31] Assessing the credibility of the witnesses in this case is a central issue. In carrying out this difficult task, I am guided by comments made by Dillon J. in *Bradshaw v. Stenner*, 2010 BCSC 1398 at paragraphs 185-187. At paragraph 187, the court quoted with approval this test for assessing credibility in a civil claim taken from *Overseas Investments (1986) Ltd. V. Cornwall Developments Ltd. (1933)*, 12 Alta. L.R. (3d) 298 (Alta. Q.B.):

Finally, the court should determine which version of events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions."

a. The Main Claim

[32] The claimants allege that Ms. Domm's actions in April of 2015 constitute the tort of assault, and that damages are recoverable for emotional injuries caused by her actions on that date. The elements of the tort of assault have been set out by Ratushny J. of the Ontario Superior Court of Justice in *Warman v. Grosvenor*, (2008), 92 O.R. (3d) 663:

[58] Assault is the intentional creation of the apprehension of imminent harmful or offensive contact. The tort of assault furnishes protection for the interest in freedom from fear of being physically interfered with. Damages are recoverable by someone who is made apprehensive of immediate physical contact, even though that conduct never actually occurs: Allen M. Linden and Bruce Feldthusen, *Canadian Tort Law*, 8th ed. (Markham Ont: LexisNexis, 2006), at p. 46.

[59] Conduct that intentionally arouses apprehension of an imminent battery (physical contact) constitutes an assault. *Frightening or threatening someone, however, does not constitute an assault unless the event feared is imminent.* *Canadian Tort Law*, supra, p. 47

(emphasis added).

[33] I am satisfied that Ms. Beare did see a vehicle operated by Ms. Domm in the Sportsplex parking lot make a maneuver which she interpreted as dangerous to herself and to her children. I do not accept that she permitted one or more of her young children to walk ahead of her in that lot.

[34] It is critically important that Ms. Beare was not at first able to make out that Ms. Domm was the driver because of sun hitting the windshield, and because Ms. Domm was not driving a vehicle that she was familiar with. That same glare would most likely have affected, as well, Ms. Domm's ability to identify pedestrians walking in that lot.

[35] Ms. Domm has testified that she did not know that she was dealing with Ms. Beare and her children until Ms. Beare approached her vehicle and started yelling at her. Ms. Beare said that she did not recognize Ms. Domm until the vehicle stopped.

[36] I accept that there was an initial confrontation at this point which included Ms. Beare yelling at Ms. Domm, and Ms. Domm once again giving Ms. Beare the "middle finger" before driving away.

[37] What I do not accept is that Ms. Domm intentionally and deliberately swerved toward children walking in that parking lot. At the same time, I can accept that Ms. Beare believed that this is what happened. Certainly, her later confrontation with Ms. Domm at the front entrance to the Sportsplex supports, in part, her view that Ms. Domm had endangered herself and her children, although that confrontation can also be explained, in part, by Ms. Domm's use of the middle finger.

[38] To find otherwise, I would need to conclude that Ms. Domm either recognized the Beare child, and intentionally swerved in that direction, or that this is something she is prepared to do no matter the identity of the child. Neither explanation makes sense, whatever tensions may have developed by this time between Ms. Domm and the Beares. In the result, I find that this evidence fails to establish the tort of assault on a balance of probabilities.

[39] The next part of the confrontation occurred at the entrance to the Langley Sportsplex when Ms. Beare had parked nearby to await Mr. Beare's return from the gym. I do not find that Ms. Beare was doing anything other than that. In particular, I do not find that she was there to provoke or stake out a further confrontation with Ms. Domm.

[40] I have carefully considered the evidence of the Beares and Ms. Domm regarding this altercation. I have also taken into account the cross-examination of both Ms. Beare and Mr. Beare, which established that they were interviewed together by police and by their own lawyer, and had read each other's police statements. While I accept that this creates a risk that their respective versions of this event may have been influenced to

some degree by the recall of the other, I do not find that their evidence has been tainted to such an extent that I should reject their testimony.

[41] I accept that the discussion between Ms. Beare and Ms. Domm was unpleasant, and that both women were angry and upset. I find that Ms. Domm was offended by the accusation that she had nearly run over a child, and that, in response, she did say that next time she would hit them. When the previous dog incident was added to the complaint, I accept that Ms. Domm said that in addition to hitting the kids, she would also hit the dog. I am reinforced in this by the evidence of Mr. Beare, who I find was the only person involved in this discussion who managed to remain relatively calm. I do not accept that Mr. Beare came close enough to physically touch Ms. Domm with his chest, or that he made a comment about the event being recorded.

[42] Ms. Beare testified that Ms. Domm's statement that "next time she would hit the kids and the dog" caused her heart to begin racing and got her adrenaline running, and that since this encounter, she feared for her own safety and that of her children. She interpreted these comments as a threat to her children, in particular. She commented on the smirk on Ms. Domm's face; she said that she felt intimidated. It is objectively foreseeable that comments such as these made to the mother of two young children would have such an impact, at least.

[43] Given that Ms. Domm was still a resident of the same neighbourhood where the Beares lived with their children, I find that this evidence is sufficient to establish on a balance of probabilities that Ms. Domm's comments amounted to "conduct that intentionally arouses apprehension of an imminent battery." I find that in these

circumstances the test extends to Ms. Beare, even though the physical threat was not made to her personally. In the result, I find that the tort of assault has been made out with respect to Ms. Beare and her two children.

b. The Counter-Claim

[44] The counterclaim is based on an allegation of harassing and threatening behavior which commenced with the October 2013 driving incident. The pleadings also allege that Ms. Beare assaulted Ms. Domm on that first occasion, that the Beares have made multiple false police complaints, and have made false statements about her to others.

[45] I agree with counsel for the Beares that the claims are not well particularized in the pleadings. There is, for example, no specific claim for assault and battery based on the October 2013 allegations. I have not heard evidence of specific dates for incidents which constitute the course of harassment and threatening behavior which has been alleged in the counterclaim.

[46] Counsel for the Beares also submits that any claims premised on the October 2013 incident are statute barred. I accept that the limitation period for those claims is two years: *Limitation Act*, RSBC chapter 266, section 3(2)(a). The counterclaim here was filed on May the 2nd, 2017, well outside that limitation period.

[47] I find that any claim premised on the October 2013 event is statute barred. With respect to the balance of the claim, I find that the evidence falls well short of establishing that the Beares engaged in harassing and threatening behavior as pleaded.

Even if I am wrong about that, I am not satisfied that the evidence places any of this conduct within the two-year limitation period, so any claim based on those allegations would also be statute barred.

[48] Although this is not essential to my decision on the viability of the counterclaim, I find that the evidence does not establish that Ms. Beare struck and spat upon Ms. Domm during their encounter at the side of the road. I do find that Ms. Beare was very angry about Ms. Domm's driving, and that she clearly communicated her displeasure to Ms. Domm. I find that both Ms. Domm and Ms. Beare exchanged insults during that brief encounter. I accept Mr. Beare's evidence that he did not say anything to Ms. Domm when he approached her vehicle, as it was this fact which caused Ms. Beare to get out of her vehicle in order to tell Ms. Domm what she thought of her driving. I also find that Ms. Beare is someone who, despite her diminutive stature, is not afraid to make her views known when she feels that she or her children have been threatened in any way. This attitude was clearly demonstrated again at the Langley Sportsplex in April of 2015.

Damages

[49] Counsel submits that in addition to general damages for emotional injuries caused by Ms. Domm's conduct, the circumstances here justify an award which includes a component for aggravated damages; these are also compensatory, and may be awarded "where the defendant's conduct has been insulting, high-handed, spiteful, malicious or oppressive, and where it has increased the plaintiff's mental distress.": *Mainland Sawmills Ltd. v. USW Union Local*, 2007 BCSC 1433 at paragraph 229.

[50] Counsel also submits that the test for awarding punitive damages has been met here. Punitive damages are available in exceptional cases for "malicious, oppressive and high-handed" misconduct by a defendant that "offends the court's sense of decency": *Hill v Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at paragraph 196, cited in *Mainland Sawmills, supra*, at para. 307. The objective of punitive damages is to punish the defendant rather than compensate the plaintiff: *Mainland Sawmills, supra*, at para. 307.

[51] Counsel for the Beares submits that the court should make a combined award of general and aggravated damages in the amount of \$7,000, and punitive damages of \$3,000 for Ms. Beare. He further submits that damages under the same headings should be awarded to each of the children of \$3,000 (general and aggravated) and \$1,000 (punitive). The total quantum of damages adds up to \$18,000.

[52] Ms. Beare testified that she has suffered from sleeplessness and anxiety since the April 2015 incident, a period of some three and a half years. She says that she does not feel safe in her home when her husband works nights as a firefighter, and that she remains fearful of Ms. Domm to this date. Indeed, through submissions made by her counsel and during her testimony, she said that she was afraid to have Ms. Domm sitting beside her lawyer during the proceedings because of her proximity to the witness box. This fear was not borne out by Ms. Beare's performance in the witness box, during which she was assertive, confident and not afraid to seek out eye contact with Ms. Domm at critical points in her evidence.

[53] Ms. Beare testified that after the April 2015 matter was reported to police, Ms. Domm stopped driving by her house and her symptoms improved, although this was not developed further in her evidence. She also said however that her anxiety had not gone away, that it was the same as it was in April 2015, and that her sleep is still affected when her husband is not there.

[54] Ms. Beare testified that she experienced anxiety and sleeplessness before April 2015 which was related to the murder of her sister by an intimate family member in 1997. When asked if she had ever spoken to a doctor, she said that a doctor had recommended that she take melatonin and that she has done that. She has not been taking any medications or receiving other treatments for her anxiety. I have nothing else before me regarding her medical history and treatment.

[55] Mr. Beare recalls only that his wife had difficulty sleeping for "awhile" after the April 2015 confrontation, and that she was "upset for quite a while." He said things improved when Ms. Domm was subject to a no contact order, which I find to be a reference to an order that would have been in place when Ms. Domm was facing criminal charges for this matter. He corroborated Ms. Beare's evidence that she had some trouble sleeping when he was working nightshifts, and that she would send text message to that effect.

[56] Counsel for Ms. Beare submits that Ms. Domm's claim for damages should be rejected because she has not presented proof in the form of doctor's records or prescriptions to establish that she was treated for a condition which arose from her encounters with the Beares. It seems to me that the same can be said about Ms. Beare

given the nature of her claim that she has suffered with these problems since April of 2015. On the evidence before me, it appears that Ms. Beare spoke to her doctor on one occasion and followed a suggestion that she take melatonin for her sleeping problem. She has not apparently been prescribed medication for her anxiety problem, nor has she pursued counselling or other treatment options. I have no evidence before me that her condition has affected her ability to work or carry out her duties as a parent. While I do accept that Ms. Beare has suffered from these conditions to some extent and for a period of time, it is very difficult to quantify the extent of her loss in the absence of other evidence which might offer further support for her claim to have suffered from these difficulties for over three and a half years; I have in mind, in particular, expert evidence from a medical practitioner or psychologist. The fact that Ms. Beare has done little to pursue these treatment options suggests either that her condition is not so serious that she requires much help, or that she has failed to take reasonable steps to mitigate her loss. I have concluded that the evidence does not support the damage award suggested by counsel.

[57] I find that Ms. Beare is entitled to a combined award of general and aggravated damages in the amount of \$4,000 based upon the nature of the comments made by Ms. Domm, Ms. Beare's reasonable fear for the safety of her children and the family dog, and for the anxiety and sleeplessness she experienced for a period of time following this encounter. I do not find that this is an appropriate case for the awarding of punitive damages.

[58] Both Ms. Beare and Mr. Beare testified that the children did not seem to have been impacted at all by the confrontation in April 2015. Ms. Beare said that she did not

think that the children understood what was going on, but that her older son wanted freedom to ride his bike away from the house which she does not permit as a result of their history with Ms. Domm. When Mr. Beare was asked if the kids had reacted to the event at all, he responded "no, I don't think they fully understood what was happening."

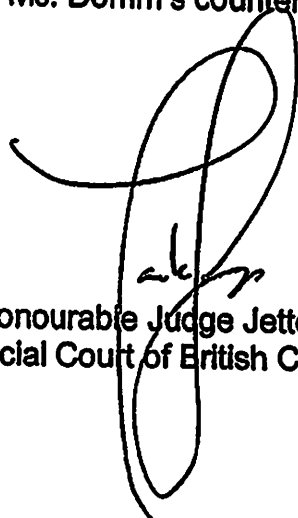
[59] Damages for the tort of assault are recoverable only by someone who is made apprehensive of immediate physical contact, even though that conduct never actually occurs": *Warman v. Grosvenor, supra*. There is no evidence before me that either of the children were "made apprehensive of immediate physical contact" by Ms. Domm; rather, there is positive evidence that this incident had no impact on the children at all. There is no evidence that the children heard what Ms. Domm said about running them over the next time, or even that either of their parents reported Ms. Domm's comments to them. In the result, there will be no award for general or aggravated damages for the two children. Once again, I find that this is not an appropriate case for the awarding of punitive damages.

Order

[60] Ms. Beare's claim is allowed; Ms. Domm is ordered to pay combined general and aggravated damages in the amount of \$4,000.

[61] The claims of the children brought on their behalf by their *guardian ad litem* are dismissed.

[62] Ms. Domm's counterclaim is dismissed.

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long vertical stroke.

The Honourable Judge Jetté
Provincial Court of British Columbia