IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *M.B.H.U. v. K.V.,*
2022 BCSC 1169

Date: 20220711
Docket: E211408
Registry: Vancouver

Between:

M.B.H.U.

Claimant

And

K.V.

Respondent

Before: The Honourable Madam Justice Forth

Reasons for Judgment

Counsel for the Claimant via videoconference:	L. Cruickshank
Counsel for the Respondent via videoconference:	D. MacNeill
Place and Date of Hearing:	New Westminster, B.C. March 22, 2022
Place and Date of Judgment:	Vancouver, B.C. July 11, 2022

Table of Contents

Introduction

[1] The claimant father applies to increase his parenting time with his young son. He also seeks to have final decision-making authority on health issues relating to the child.

[2] The child is now 16 months old and lives with the respondent mother in Burnaby, British Columbia. I will refer to the child as “the son” or “the child” throughout.

[3] The respondent mother applies for child support, retroactive and current; the sharing of s. 7 expenses; the appointment of a parenting coordinator; and the preparation of a s. 211 report. She opposes any change to the parenting time until a s. 211 report has been obtained. She also seeks to vacate the order of Master Muir that prohibits her relatives being present during parenting exchanges.

[4] The father agrees to pay child support going forward, and agrees to the preparation of a s. 211 report but seeks that the mother initially pay the cost of it. He disagrees with the appointment of a parenting coordinator and the payment of any retroactive child support on the primary basis of financial hardship.

[5] At the conclusion of the hearing on March 22, 2022, I ordered that child support be paid by the claimant father to the respondent mother commencing on April 1, 2022 in the amount of $1,354.00. The parties agreed that this was the *Guidelines* amount that the claimant should pay, with the child not being in a shared parenting arrangement (Federal Child Support Guidelines, SOR/97-175 [*Guidelines*]).

[6] I have decided to anonymize the parties’ names since there is some medical information respecting the child and also significant allegations made by the parties respecting the use of illegal drugs.

[7] There was an outstanding matter that needed to be addressed. The claimant had taken a drug test on March 11, 2022 but the results had not yet been received.

The claimant's counsel agreed to immediately forward to the Court and to the respondent's counsel the drug test results.

[8] I received the drug test results on April 5, 2022 via an email to Scheduling sent by counsel acting for the claimant. Frank S. Soper performed the drug test. It was a hair analysis of 1.5 inches of hair. The collection date was March 11, 2022. The hair analysis is analyzed for signs of drug use during the 90 days preceding the collection date. The test result for MDMA was "Non-Detected" but the test result for ketamine was "Detected".

Background Facts

Background of the Parties

[9] The claimant was born in 1982. He works as the CEO of a technology company. He is 40 years old.

[10] The respondent was born in Russia and moved to British Columbia in February 2020. She is self-employed as a public relations consultant in partnership with her twin sister. At the time of the hearing, the respondent was 26 years old.

[11] The parties met in October 2018. They began living together in February 2020. They were married on September 27, 2020, and separated on April 11, 2021.

[12] In February 2021, the son was born.

[13] In June 2020, the parties went on a road trip and during the road trip the parties found out that the respondent was pregnant.

[14] In January 2021, the respondent's twin sister came to Canada on a visitor's visa and the respondent's mother, Margarita, followed in February 2021. I will use the mother's first name so as to preserve the anonymity of the parties.

[15] After the birth of the son, Margarita moved into the family home.

[16] There were disputes between Margarita and the claimant. It appears that the parties agree that the disputes became the focal point of discord in the family home. Ultimately, the claimant asked Margarita to leave the home. She did on April 9, 2021. The parties finally separated on April 11, 2021, when the respondent left the family home.

[17] The respondent claims that the claimant suffered from bouts of depression during the relationship, and expressed suicidal ideation. The claimant denies this.

[18] The parties both claim that the other uses recreational drugs. The claimant says that the respondent used drugs twice while she was pregnant during a July 2020 camping trip. In support, he has filed affidavits from two individuals who attended the camping trip and say that the respondent used MDMA, also known as ecstasy.

[19] The respondent denies using any drugs while pregnant and relies on a drug test that she says supports that her hair analysis was negative for drugs from June 2020 to June 2021. She denies the statements contained in the various third-party affidavits.

[20] The respondent claims that the claimant regularly used drugs throughout their relationship. In particular, she alleges that his use of ketamine increased during the winter of 2020 and 2021, to the point that he was using ketamine four to five times per week. She claims she has seen the claimant drive while under the influence of ketamine and while caring for the son. She further asserts that he smokes cannabis daily.

[21] The claimant does not deny that he has used drugs in the past. He says he is now drug free. There were drug tests performed in September 2021 and March 2022. In both drug tests, ketamine was detected. The claimant says that these were likely a false-positive due to his use of quetiapine, a sleeping aid, which he takes.

The Court Proceedings

[22] On June 2, 2021, the claimant filed the notice of family claim seeking, among other relief, primary care of the child, final decision-making in the event the parties cannot agree, and orders that the respondent's mother not attend parenting exchanges. The respondent filed a response on June 30, 2021 and a counterclaim on July 5, 2021 seeking that she have final decision-making authority for the child and that the child primarily reside with her. The claimant filed a response to counterclaim on July 23, 2021.

[23] The claimant had some supervised parenting time in April, May, and June 2021 with the son.

[24] On June 30, 2021, the parties entered into a consent order pronounced by Master Muir (the "Muir Order"). The following orders are relevant to the applications before me:

> …
>
> 4. BY CONSENT: On an interim without prejudice basis, commencing Friday, June 25, 2021, the Claimant shall have unsupervised parenting time with [the son] as follows:
>
> a) on Mondays, Wednesdays, and Fridays from 3:30 p.m. to 6:00 p.m., and alternating weekends on either Saturday or Sunday from 12:30 p.m. to 3 p.m.;
>
> b) the Claimant shall be free to have his parenting time where he wishes. The parties shall alternate days in terms of who is responsible for pick ups and drop offs. I.e. on one day, the Claimant shall do both pick-up and drop-off, and the next parenting day, the Respondent shall do both pick-up and drop-off. In the event of an emergency involving [the son] during the Claimant's parenting time, the Claimant shall contact the Respondent to advise her of same;
>
> c) The Respondent shall ensure that [the son] has been appropriately fed prior to the commencement of the Claimant's parenting time with [the son]; and
>
> d) The parties shall review these parenting arrangements by no later than August 6, 2021, and either party shall be at liberty to bring on an application in respect to same
>
> ("Claimant's Parenting Time").
>
> 5. BY CONSENT: On an interim without prejudice basis, the Respondent's mother, …, and the Respondent's sister ..., shall not be present during the

> Claimant's parenting time, or during parenting time exchanges between the parties, whether in person, or virtually. For greater clarity, the Respondent shall not have either [the mother] or [the sister] present for the parenting time exchanges, whether in person, virtually, or by telephone.
>
> …
>
> 10. BY CONSENT: On an interim without prejudice basis, neither party shall possess, consume, or be under the influence of, any controlled substances within the meaning of section 2 of the *Controlled Drugs and Substances Act*, except as prescribed by a licensed physician, during their respective parenting time with [the son] and for 24 hours before having parenting time. For greater clarity, this term of the order does not apply to alcohol and cannabis, however, neither party shall be intoxicated as a result of alcohol consumption or impaired in their ability to parent as a result of cannabis use during their parenting time.

[25] On July 8, 2021, the claimant had the child with him at his home and in his care. He claims that the respondent took an Uber to his home and repeatedly rang the doorbell, waking up the child. The respondent called the police who attended. The police allowed the child to remain in the claimant's care.

[26] On July 14, 2021, there was an incident that is alleged to have taken place during the exchange of the child, which resulted in the police being called by the respondent. As a result of the incident, the claimant has been charged with uttering threats to the respondent. The claimant is currently under a release order that limits the communication between the parties solely to arranging or completing their parenting time.

[27] On August 3, 2021, the claimant sought to have primary parenting time of the child and for the child to reside primarily with him. The respondent was to have supervised parenting time with the child.

[28] On September 10, 2021, the parties entered into a second consent order pronounced by Master (now Justice) Elwood (the "Elwood Order"). This order provides:

> 1. BY CONSENT: Pursuant to sections 45 and 47 of the *Family Law Act*, the Order of Master Muir pronounced on 30/JUN/2021 (the "Muir Order") is hereby varied to provide as follows:

a. BY CONSENT: Commencing on September 1, 2021, the Claimant shall have parenting time with [the child] as follows, on a rotating two-week schedule:

i. Week 1, commencing Wednesday, September 1, 2021 and continuing every other week thereafter: Monday, Wednesday, and Friday, from 4:00 p.m. to 8:00 p.m.; and

ii. Week 2, commencing Sunday September 5, 2021 and continuing every other week thereafter: Monday, Wednesday, and Friday from 4:00 p.m. to 8:00 p.m., and Sunday from 12:00 p.m. to 4:00 p.m.

b. BY CONSENT: On Mondays and Fridays, the Respondent shall be responsible for pick-ups and drop-offs of [the child] to the residence of the Claimant, where a third party shall meet the Respondent outside the Claimant's residence for so long as the undertakings in the Claimant's criminal proceedings are in place.

c. BY CONSENT: On Wednesdays and Sundays, the Claimant shall be responsible for pick-ups and drop-offs of [the child] to the Respondent's residence, facilitated by a third party for so long as the undertakings in the Claimant's criminal proceedings are in place.

d. BY CONSENT: The parties shall conduct a parenting time review six (6) months from the date of the herein Order, namely on or before February 27, 2022 (the "Parenting Time Review").

2. BY CONSENT: The parties shall each take a drug test by September 15, 2021, testing for a period of three (3) months for the following substances:

a. 3,4-Methylenedioxymethamphetamine ("MDMA"); and

b. Ketamine.

3. BY CONSENT: The parties shall each take a further drug test as specified herein at paragraph two (2), at least two weeks prior to the Parenting Time Review.

4. BY CONSENT: The Respondent shall pay the cost of the drug tests under paragraphs two (2) and three (3) herein in the first instance. If one or both of the Claimant's drug tests come back positive, the Claimant shall reimburse the Respondent for the cost of the test or tests which came back positive.

5. BY CONSENT: The terms of the Muir Order, save as provided herein under paragraph one (1), shall continue to govern.

[29] Due to the claimant's allegation that the respondent had used drugs while pregnant, the respondent took a drug test on June 24, 2021. She asserts that this drug tests supports that she had not taken drugs for one year prior.

[30] The parties took the drug test in accordance with the Elwood Order. The respondent's test, taken on September 13, 2021, was negative for all drugs tested. The claimant's drug test, taken on September 20, 2021, was positive for ketamine.

[31] As noted, the respondent took a further drug test on February 18, 2022 and it was also negative for all drugs tested. The claimant took a further drug test on March 11, 2022 and it was again positive for ketamine.

[32] On March 9, 2022, the claimant filed his application for a variation of the parenting time with the child. He sought equal parenting time, or in the alternative, increased parenting time. He further sought that the parties have joint decision-making authority, and on any disagreement that he have the final-decision making authority, with the respondent having leave to apply for a review of his decisions pursuant to s. 49 of the *Family Law Act*, S.B.C. 2011, c. 25 [*FLA*].

[33] On March 10, 2022, the respondent filed her application for child support, parenting arrangements, the appointment of a parenting coordinator, and for a s. 211 report.

[34] There is no trial date set.

[35] Both parties argue that they are the more credible individual and reliance should be placed on their affidavit evidence over that of the other.

[36] There are times when decisions as to the credibility of the parties on a chamber's application are necessary but I am not persuaded that I need to make such credibility findings on the issues that must be decided in this case.

[37] Much of the material in this case contains a "he said" versus "she said" narrative. From my perspective, this shows just how dysfunctional these parties are becoming as parents. I would urge them to stop and reconsider their behaviour as it will negatively impact the son, and deplete their financial resources. Both parties should reflect on whether they want the son to grow up knowing that his mother and father would not work together to come up with constructive solutions and could not

agree on issues relating to his well-being. These parties have many years of co-parenting ahead of them and they should learn how to work cooperatively to put the best interests of the son above their own animosities.

Issues

[38] The application materials and submissions raise the following issues:

1. Should there be a change in the current parenting arrangement?
2. Who should have final decision-making authority for health-related decisions respecting the child?
3. Who should pay for the s. 211 report?
4. Should there be an order made for retroactive child support?
5. How should the s. 7 expenses be shared?
6. Should a parenting coordinator be appointed?

Current Parenting Time of the Claimant

[39] As a result of the Elwood Order, the claimant in week one sees the child Mondays, Wednesdays, and Fridays from 4:00 p.m. to 8:00 p.m., and in week two the claimant sees the child on the same days as week one, as well as on Sundays from 12:00 p.m. to 4:00 p.m.

Proposed Parenting Time by the Claimant

[40] The claimant proposes a gradual increase in time, with one of the following two options being put in place in respect to the parenting time, with liberty to re-apply upon the receipt of the s. 211 report. The options are:

a. each week from Friday at 8:00 a.m. to Sunday at 8:00 p.m., and Tuesday at 3:00 p.m. to Wednesday at 8:00 a.m.; or

b. each week from Thursday at 3:00 p.m. to Sunday at 8:00 p.m., and Tuesday at 3:00 p.m. to 8:00 p.m.

Proposed Parenting Time by the Respondent

[41] The respondent argues that the Court should not change the current parenting regime until the s. 211 report has been received. She does suggest that there be a variation to the pick-up and drop-off times for the alternating Sunday visits, specifically that they be varied to 4:00 p.m. and 8:00 p.m. respectively.

Issue 1: Should There be a Change in the Current Parenting Arrangement?

Legal Principles

Best Interests of the Child Test

[42] The best interests of the child are paramount over all other considerations when making an order for parenting arrangements and parenting time.

[43] With respect to the best interests of the child, s. 37 of the *FLA* provides:

> **37** (1) In making an agreement or order under this Part respecting guardianship, parenting arrangements or contact with a child, the parties and the court must consider the best interests of the child only.
>
> (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
>
> (a) the child's health and emotional well-being;
>
> (b) the child's views, unless it would be inappropriate to consider them;
>
> (c) the nature and strength of the relationships between the child and significant persons in the child's life;
>
> (d) the history of the child's care;
>
> (e) the child's need for stability, given the child's age and stage of development;
>
> (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
>
> (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;

> (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
>
> (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
>
> (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.
>
> (3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.
>
> (4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.

[44] The recent amendments to the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.) [*DA*] also require the Court, when determining the best interests of the child, to prioritize the safety, security, and well-being of the child above all other considerations: s. 16(2). Section 16(3) sets out the factors to be considered:

> **(3)** In determining the best interests of the child, the court shall consider all factors related to the circumstances of the child, including
>
> **(a)** the child's needs, given the child's age and stage of development, such as the child's need for stability;
>
> **(b)** the nature and strength of the child's relationship with each spouse, each of the child's siblings and grandparents and any other person who plays an important role in the child's life;
>
> **(c)** each spouse's willingness to support the development and maintenance of the child's relationship with the other spouse;
>
> **(d)** the history of care of the child;
>
> **(e)** the child's views and preferences, giving due weight to the child's age and maturity, unless they cannot be ascertained;
>
> **(f)** the child's cultural, linguistic, religious and spiritual upbringing and heritage, including Indigenous upbringing and heritage;
>
> **(g)** any plans for the child's care;
>
> **(h)** the ability and willingness of each person in respect of whom the order would apply to care for and meet the needs of the child;
>
> **(i)** the ability and willingness of each person in respect of whom the order would apply to communicate and cooperate, in particular with one another, on matters affecting the child;
>
> **(j)** any family violence and its impact on, among other things,

> **(i)** the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child, and
>
> **(ii)** the appropriateness of making an order that would require persons in respect of whom the order would apply to cooperate on issues affecting the child; and
>
> **(k)** any civil or criminal proceeding, order, condition, or measure that is relevant to the safety, security and well-being of the child.

[45] Section 37(2) of the *FLA* and s. 16(3) of the *DA* mandate that in determining the best interests of the child, the court must consider certain specific factors. There is a great deal of overlap between the *FLA* and the *DA*, and I have broken them into the following factors listed below. I have not included factors relating to the child's cultural heritage since this is not relevant, nor are the child's views since he is too young.

[46] The parties made submissions under the factors in the *FLA*. I have considered all their submissions under both Acts and organized them under the headings below. For clarity, I will make this order under the *FLA*, but I am satisfied that the outcome would be the same under the *DA.*

The Child's Health, Emotional Well-being, and Needs, Including the Need for Stability

[47] The child is a healthy now 16-month-old. It is not entirely clear to me but the child may suffer from Von Willebrand disease, a condition that the mother, maternal grandmother, and great grandmother all have. During the claimant's submissions, I was advised that this disease can result in the child bruising more easily. Since he is so young he requires constant care and attention from caregivers. I find that there is no evidence of either party neglecting the child's health and emotional well-being.

[48] The respondent raised issues in the past with some aspects of the care provided by the father in respect to what the father was feeding the child. The claimant argues that he only fed the child foods that the family doctor recommends.

[49] The claimant raised an issue that the respondent initially refused to get the child vaccinated. It does appear that there was some delay in the child receiving his

initial vaccinations but he has now received them. The child received his first set (two-month) immunizations on November 17, 2021 when he was nine months old. The child did receive the second (four-month) set of immunizations on January 19, 2022. The respondent agrees that the child should receive regular vaccinations.

[50] The respondent claims that the claimant lives in a two-bedroom apartment and plans to convert a storage room into a bedroom for the child. The claimant advises that he lives in a four-bedroom townhouse and that the child would have his own bedroom. I accept that the claimant was not planning on converting a storage room into the child's bedroom.

[51] The respondent raises a valid point that the child continues to breastfeed during the night. She breastfeeds him at midnight, around 5:00 am, and between 7:00 am and 8:00 am. The child is transitioning to solid foods and she anticipates weaning him over in the next few months.

[52] I am convinced that both parents will provide for this child's health, emotional well-being, and needs.

[53] I do want to caution the respondent that she must stop calling the police to report that the son has been abducted or is being abused by his father, when he is not. It is detrimental to the child to have uniformed police officers show up while he is in the care of his father.

Relationships between the Child and Significant Persons in his Life; Nature and Strength of his Relationships

[54] The two most significant people in this child's life should be his parents. I accept that his maternal grandmother has been very involved in his care from a young age. She also plays a significant role in his life since she is living with the respondent.

[55] The evidence supports that there is some concern respecting the respondent's mother and her relationship with the claimant when they lived in the

same home, as well as her involvement in filming the claimant during his parenting exchanges with the child.

[56] In *Young v. Young*, [1993] 4 S.C.R. 3, 108 D.L.R. (4th) 193, the Supreme Court of Canada stated that maximum contact with each parent is preferred as long as it is in the best interests of the child. Maximum contact gives the child the opportunity to know both parents and benefit from a relationship with each: *A.P. v. S.T.,* 2019 BCSC 1780 at para. 51.

[57] Maximum contact between this child and his father requires that the father be given the opportunity to spend time with his son in-person on a regular basis. Four-hour visits are not sufficient to establish that bond as the child grows older.

[58] I accept that the child has a close relationship with his mother. She has been in his life since birth and has been his primary caregiver. She continues to breastfeed him at night and in the early morning hours.

Supporting the Child's Relationship with the Other Spouse

[59] A positive relationship between both parents provides stability for the child. The claimant asserts that the respondent has wrongfully limited his parenting time with the child so as to impede his ability to parent. The respondent disputes this and claims that she has only ever acted in the best interests of the child. I accept that in the past, the claimant's parenting time with his son had been restricted but the parties entered into consent orders setting out the parenting time.

[60] It is very damaging to a child when parents actively battle against one another, particularly as the child matures and has a better grasp of the conflict that exists. I am confident that both parents understand the importance of working together and being positive role models for the son.

History of Childcare and Plans for the Child's Care

[61] Since the separation in April 2021, the mother and the maternal grandmother have been most involved in caring for the child. I accept that they have been the

primary caregivers of the child since birth. During this period, the father continuously made efforts to maintain a relationship with his son and to care for him. The son is still very young and continues to breastfeed at night.

[62] I accept that it is not appropriate to suddenly change the care regime to a shared-parenting regime. That change should be gradual and account for the mother's need to breastfeed at night.

Ability and Willingness of Guardians to Care for and Meet the Needs of the Child, Exercise Parenting Responsibilities, and Cooperate

[63] Both parents appear capable of exercising their parental obligations. I accept that neither parent has any physical, psychological, or other limitations that would raise a concern for the child's health, safety, well-being, and development. I have no concerns with either parent's ability to carry out their parenting responsibilities.

[64] These parents have had difficulty cooperating with each other in the past. However, I am convinced that this will improve once a schedule is put in place. To their credit, they were able to negotiate two consent orders to address various issues. They also both have the assistance of capable counsel to guide them.

[65] Once the criminal matter has been resolved, that should open the door for more communication between the parties.

[66] I do direct that both parties take the Parenting After Separation course offered by the Justice Education Society since they both have to improve their communication skills in order to spare the son from the ongoing disputes that will adversely impact his well-being. The claimant says he has completed the Parenting After Separation course. He is to provide proof of his completion of this course to the respondent. If he has completed the course he does not need to take it a second time.

Impact of Family Violence, Including Criminal Charges

[67] Section 37(2)(g) of the *FLA* specifically requires the court to consider family violence when considering the best interests of the child. An assessment of family violence is set out in s. 38:

> **Assessing family violence**
>
> **38** For the purposes of section 37 (2) (g) and (h) *[best interests of child]*, a court must consider all of the following:
>
> (a) the nature and seriousness of the family violence;
>
> (b) how recently the family violence occurred;
>
> (c) the frequency of the family violence;
>
> (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
>
> (e) whether the family violence was directed toward the child;
>
> (f) whether the child was exposed to family violence that was not directed toward the child;
>
> (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
>
> (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
>
> (i) any other relevant matter.

[68] Section 16(4) of the *DA* outlines the factors relating to family violence and states:

> (4) In considering the impact of any family violence under paragraph (3)(j), the court shall take the following into account:
>
> (a) the nature, seriousness and frequency of the family violence and when it occurred;
>
> (b) whether there is a pattern of coercive and controlling behaviour in relation to a family member;
>
> (c) whether the family violence is directed toward the child or whether the child is directly or indirectly exposed to the family violence;
>
> (d) the physical, emotional and psychological harm or risk of harm to the child;
>
> (e) any compromise to the safety of the child or other family member;
>
> (f) whether the family violence causes the child or other family member to fear for their own safety or for that of another person;

> (g) any steps taken by the person engaging in the family violence to prevent further family violence from occurring and improve their ability to care for and meet the needs of the child; and
>
> (h) any other relevant factor.

[69] The respondent says that there is a history of violence and high conflict in this matter. She claims that during the relationship, the claimant would yell insults at her. She claims that this behaviour continued after the relationship ended and culminated on July 14, 2021, when the claimant went to pick up the child and the respondent said she was going to join them. The claimant told her that he had changed his mind and she could not join them. The respondent became upset. The claimant's allegation is that the respondent told him that if he did not return the child on time she said: "you don't wanna know what I'm gonna do". The claimant sought clarification and the respondent said: "you will find out". During this exchange the respondent's mother was present.

[70] The respondent alleges that during this exchange the claimant threatened her and said: "I'm going to destroy you bitch". As a result, she contacted the police. The police arrived and placed the claimant under arrest for uttering threats. As noted, the current release order limits the communication between the parties. The criminal trial is currently scheduled for September 2022.

[71] I am not prepared to find on the evidence before me that the father poses any risk to the son. After the July 14, 2021 incident, the respondent entered into the Elwood Order increasing the parenting time the claimant had with the child. In October 2021 the respondent advised BC Children's Hospital that she did not have any concerns or suspicions that the claimant would harm the child. The respondent concedes that when the claimant is sober and calm he is a good parent to the son. She is concerned with how the claimant behaved during their relationship and she is concerned with his drug use.

[72] I am only concerned with whether or not there is any evidence that the father would be a danger of any kind to the son. I have found that he is not.

Analysis

[73] I have concluded, on the evidence before me, that it is in this child's best interests to gradually move towards a shared-parenting regime with both of his parents. I am, however, concerned with the claimant's second positive drug test for ketamine. The claimant has failed to provide any expert opinion that these positive test results relate to his use of a sleeping aid as opposed to his continuing use of ketamine. I am further concerned about what impact the claimant's use of ketamine and a sleeping aid may have on his ability to care for his young son during overnight visits.

[74] As such, I am not prepared to order that the claimant have overnight parenting time with the son. Before overnight parenting time happens, the claimant needs to address why he has had two positive ketamine drug results in light of his sworn evidence that he is no longer using any drugs. He states as follows:

- in his affidavit #4 sworn on March 9, 2022 at para. 12: "However, I have not consumed ketamine"; and

- in his affidavit #5 sworn March 15, 2022 at para. 16: "I have been forthright with the Court regarding my drug use. Upon our separation, I have since stopped all drug use."; at para. 21: "…Since our separation, I have ceased all forms of drug use."; and at para. 26: "I was quite shocked by the false positive as I have not consumed any drugs since separation".

[75] The claimant submits that "Quetiapine is a common cause for false positives in tests detecting ketamine". In support, the claimant relies on a screen shot from "Ridgefield Recovery, a drug and alcohol detoxification and rehabilitation centre". The first paragraph of the screen shot reads:

> False positives for ketamine are very uncommon, but there have been isolated cases of false-positive urine tests for ketamine after the person being tested took the prescription antipsychotic drug quetiapine (brand name Seroquel).

[76] I place no reliance on a screen shot from a drug recovery centre discussing the false-positives for ketamine in urine tests. If the claimant wishes to establish that the positive ketamine tests he has received on two hair analysis tests is due to his taking quetiapine, he needs to have the proper expert evidence to support such an assertion.

[77] In addition, the son has yet to be weaned from breastfeeding at night. The respondent noted that she was in the process of doing just that. As commented on in *S.V. v. S.S.*, 2015 BCSC 1665, it is in the best interests of the child to continue to breastfeed for a minimum of one year and thereafter in accordance with the pediatric nutrition advice subsequently received: see para. 42. The child is over one year and it is obvious that one does not expect him to be weaned off abruptly. It should be a gradual process, which is what the respondent has suggested. At this stage, there was no evidence before me of any medical advice regarding when this child should be weaned off of breast milk.

[78] I am prepared to increase the periods of time that the claimant has with the son. In my view, it is appropriate that they have more time together. The first appropriate step would be to order that the claimant's time with the son should increase from four-hour visits to six-hour visits on Mondays, Wednesdays, and Fridays. On every second Sunday, the claimant should have the son for a day from 10:00 a.m. to 8:00 p.m. This allows for a ten-hour visit. This ten-hour visit should assist towards transitioning to overnight visits. The parties are free to arrange for a different pick-up and drop-off time but must do so by agreement and in writing. These changes should commence on Monday, July 18, 2022.

[79] I am not prepared to vary the Muir Order to allow for the respondent's mother and sister to be present during parenting exchanges. I accept the evidence of the claimant that having the respondent's relatives present has increased and not reduced the animosity during the parenting exchanges. These exchanges should be done without filming by the respondent's mother, sister, or the parties. As the child gets older he is going to become aware of how his parents are behaving. The

parenting exchanges need to be done in a calm and respectful manner, thereby placing less stress on the child.

[80] As the parties have agreed and is appropriate, I will order that a s. 211 report be undertaken. The issue of overnight visits can be dealt with as part of the s. 211 report recommendations.

Issue 2: Who Should have Final Decision-Making Authority for Health-Related Decisions Respecting the Child?

[81] The Muir Order provides that:

> 1) BY CONSENT: On an interim without prejudice basis, except as otherwise set out herein, the parties shall have joint decision-making in respect of the parental responsibilities listed in section 41 of the Family Law Act in respect of [the child]…In the event they are unable to agree on matters of [the child's] health, the parties shall follow the medical advice of [the child's] family doctor, Dr. Malcolm Rondeau, or any specialists involved in his care. If there is a dispute as to the medical advice provided, the parties shall request the same in writing from Dr. Rondeau or any specialists involved in [the child's] care.

[82] The claimant argues that the respondent has not made responsible choices regarding the child's health and has made unilateral decisions in respect of his health, including delaying his vaccinations.

[83] I am not persuaded that there should be any variation to the Muir Order respecting the joint decision-making in place. These parents need to learn how to communicate properly. As the child grows older more decisions, such as education and recreational activities, will need to be made. I see no basis for ordering, at this time, that one party should have the ultimate authority respecting the child's health decisions.

Issue 3: Who Should Pay for the Section 211 Report?

[84] The parties have agreed that a s. 211 report should be obtained. In my view the author of the report should be canvassing issues relating to parenting time, contact, parental responsibilities, and whether a parenting coordinator should be appointed.

[85] The claimant submits that the respondent should initially pay for the s. 211 report since he is suffering financial hardship. He claims that due to his mounting legal costs and child support obligations, he cannot afford to assist in paying for the s. 211 report.

[86] The claimant is facing two sets of legal expenses - this family law proceeding and the criminal matter. The legal expenses relating to the criminal matter will either end this summer, as the claimant advised that he believes a resolution will be achieved this summer, or in September 2022 when the matter proceeds to trial.

[87] The plaintiff's child support obligations have been fixed at $1,354 per month as of April 1, 2022.

[88] The claimant's financial statement sworn on March 15, 2022 sets out an annual income of $149,800.08. He is paid approximately $12,500 a month. His monthly housing expenses for a four-bedroom townhouse are just over $6,000 a month. The respondent asserts that the claimant has a roommate living with him but there is no indication of any rental income in the claimant's financial statement. He owns a piece of property in Manitoba worth approximately $200,000. He has unsecured debts totalling $45,550, of which $36,250 are personal loans from friends and family.

[89] I am not persuaded, based on this financial picture, that the claimant is under such financial stress that he cannot afford to pay for one-half of the s. 211 report. As noted below, I have provided relief to the claimant in postponing the payment of the retroactive child support.

Issue 4: Should There be an Order Made for Retroactive Child Support?

[90] The claimant submits that due to the financial disputes between the parties, the issue of retroactive child support ought to be adjourned to a later day. The respondent seeks an order that the amount of retroactive child support be paid from the date of effective notice, being April 30, 2021, in the amount of $1,354 per month for a total of 11 months, being the sum of $14,894.

[91] The obligation of the claimant to pay child support from the date of separation until the date he was ordered to pay child support on April 1, 2022 is not disputed. In my view, there was no delay in applying for child support and it made sense to have that issue heard at the same time as the scheduled review of the parenting time. I accept that the claimant should have been paying child support in the amount of $1,354 per month during the period the child lived primarily with the respondent.

[92] However, I am not persuaded that the claimant should have to pay the retroactive support immediately. He is under some financial stress due to the ongoing legal expenses that he has for both the family law and criminal proceedings. In addition, he is now paying the $1,354 monthly child support and will have to pay his share of the s. 211 report. He claims that there were some family assets that the respondent depleted. The merits of that claim are yet to be determined.

[93] In all of the circumstances, I am satisfied that an award of retroactive child support should be made. The respondent is entitled to an award of retroactive child support in the amount of $14,894. However, due to the claimant's current financial situation he is not required to pay this sum until further agreement of the parties or order of the court.

Issue 5: How Should the Section 7 Expenses be Shared?

[94] The claimant's income for 2021 is $149,800.

[95] The evidence of the respondent's income is as follows:

- in her financial statement sworn March 9, 2022 she includes confirmation statements from deel. for December 2021 showing a monthly income of $8,479.91 CAD, which results in an annual income of $101,759;

- she states in her financial statement that her salary in 2021 was approximately $46,500 USD because she only worked half the year;

- the respondent says that she has requested her tax returns for 2019 and 2020 from Russia but has not received them;
- in her counterclaim she states her gross income was $85,000 USD in 2020; and
- she claims her current gross annual income is $46,500 USD.

[96] Since the child was born in February 2021 it makes sense that the respondent only worked half a year in 2021. I accept that in 2021, due to the time she took off after the birth of the child, her gross income was $46,500 USD, or approximately $58,000 CAD. In her financial statement she claims she is currently being paid $4,000 USD a month. This would equate to an annual income of $48,000 USD.

[97] I will use her 2021 income at this time for calculating her proportionate share of s. 7 expenses.

[98] On an interim basis, the proportionate share of s. 7 expenses should be the claimant paying 72 percent and the respondent paying 28 percent. I anticipate that the percentage will change in the future considering that in 2022 the respondent is earning more money, and at some point in time she intends to increase her hours to full-time.

Issue 6: Should a Parenting Coordinator be Appointed?

[99] The respondent seeks the appointment of a parenting coordinator for a minimum of 12 months to assist the parties by building consensus between them, including, but not limited to:

i. developing and instituting guidelines for the implementation of parenting;

ii. developing and instituting guidelines for communication between the parties;

iii. identifying, creating, and implementing strategies for resolving conflicts between the parties; and

iv. providing information respecting resources available to the parties for the improvement of their communication and parenting skills.

[100] The respondent submits that having a parenting coordinator will reduce the costs of going through counsel and reduce the tension between the parties.

[101] The claimant submits that the appointment of a parenting coordinator will be counterproductive and will merely increase the parties' legal costs. His view is that a parenting coordinator is premature at this time.

[102] I am not convinced that a parenting coordinator is needed at this time. The main issue of contention has been parenting time for the claimant. This has been resolved by these Reasons and any further changes will await the recommendations in the s. 211 report or further agreement of the parties. One of the issues the s. 211 author should address is whether these parties should have a parenting coordinator appointed.

[103] I am hopeful that these parties will see the benefit of cooperating as parents, and start building in methods of achieving consensus as the son matures and decisions need to be made regarding his recreational activities and education. It may be that a parenting coordinator could be of assistance in the future and as such, liberty is granted for either party to apply for one after the receipt of the s. 211 report.

Conclusion

[104] I make the following orders:

1. The order of Justice Elwood dated September 10, 2021 at paragraph 1 a. is varied as follows:

a. Commencing on July 18, 2022, on Mondays, Wednesdays, and Fridays from 2:00 p.m. to 8:00 p.m. and alternating weekends on Sunday from 10:00 a.m. to 8:00 p.m.

2. The parenting time is on an interim basis and is subject to variation as follows:

    a) the parties agree to a different schedule;

    b) once the s. 211 report is complete, the parties may agree to implement its recommendations if it includes a change in the schedule, or either party may apply to the Court to change the schedule based on the s. 211 report; or

    c) an order at trial.

3. The claimant is a resident of British Columbia and is found to have a gross income in 2021 of $149,800.

4. The respondent is a resident of British Columbia and is found to have a gross income in 2021 of $58,000.

5. The claimant shall pay to the respondent the sum of $1,354 per month for the support of the child, commencing on April 1, 2022 and continuing on the first day of each month thereafter, for as long as the child is eligible for support under the *Family Law Act* or until further agreement of the parties or court order.

6. The claimant owes the respondent the amount of $14,894 for retroactive child support for the period from May 1, 2021 to May 30, 2022. The claimant is not required to pay the retroactive child support until further agreement of the parties or court order.

7. The claimant shall pay to the respondent his proportional share for the child's special or extraordinary expenses, being s. 7 expenses. The claimant's

proportional share is 72 percent and the respondent's proportional share is 28 percent.

8. The party incurring a special or extraordinary expense shall provide the other party with a receipt for reimbursement.

9. The parties shall take the Parenting After Separation course within three months of these Reasons, unless they have already done so, and shall provide the other party with written confirmation that they have taken the course.

10. A report shall be prepared by a mutually agreed upon qualified person pursuant to s. 211 of the *Family Law Act* to address issues relating to the needs of the child, the ability and willingness of the parties to satisfy those needs, parenting time, contact, and parental responsibilities, including any recommendation respecting a parenting coordinator.

11. The cost of the s. 211 report shall initially be borne equally between the parties.

12. The respondent's application to appoint a parenting coordinator is dismissed with liberty to either party to apply after the receipt of the s. 211 report.

[105] In my view there was divided success. The parties should try to avoid coming to court to resolve their issues and instead focus on how they can work together as parents to raise the son in a manner that is not harmful to his well-being. I order that the parties bear their own costs of these applications.

"Forth J."