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BC Court of Appeal Recognizes the Myth of False Allegations of Intimate Partner Violence

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Case Commented On: *KMN v SZM*, 2024 BCCA 70 (CanLII), overturning 2023 BCSC 940 (CanLII)

We have both written previously on myths and stereotypes about intimate partner violence (IPV), one of the most common of which is that women make false or exaggerated claims of violence to gain an advantage in family law disputes (see here and here). In *KMN v SZM*, 2024 BCCA 70 (CanLII), the British Columbia Court of Appeal (BCCA) recognized the existence of this myth and the need for courts to avoid making assumptions that perpetuate it, holding that it is erroneous to do so unless there is an evidentiary basis for a finding of false allegations. This judgment came just a week before the Supreme Court of Canada released a decision on rape myths and stereotypes, in which it reiterated its recognition of the myth of "false allegations of sexual assault based on ulterior motives" (*R v Kruk*, 2024 SCC 7 (CanLII) at paras 35-37). The Supreme Court has not yet acknowledged the myth of false allegations of IPV in the family law context, however.

This post will describe the underlying parenting dispute between KMN (the mother) and SZM (the father) and the trial court and BCCA's reasons for decision, followed by our commentary on the significance of the latter decision. In addition to its holding on the myth of false allegations, the BCCA underlined the importance of courts making findings of fact when family violence is raised in parenting disputes, and of considering the impact of children's direct and indirect exposure to family violence.

Facts and Interim Orders

The parties had been married for about five years, with one child together. Both parties were in their thirties, and their child was two years old at the time of separation (2020), five years old at the time of trial. The father was a corrections officer, although he was not working at the time of trial. The mother received disability benefits following a brain injury caused by two car accidents (2009 and 2012). She was the child's primary caregiver before the separation.

The mother alleged that the father was physically and verbally abusive, raising two incidents of IPV that occurred in March and September of 2020. The mother stated that in the first incident, the father "became angry, called her demeaning names, threw objects at her, and headbutted her while the child was at her feet" (BCCA at para 10). On the second occasion, which led to their separation, the father became angry while the mother was feeding the child (then two years old) and told her to leave with the child. While she was packing, there was "further aggression" by the father, including throwing objects at her (e.g. a water bottle), kicking a table across the room,

pretending to punch a wall, and headbutting the mother twice while the child was nearby (at paras 13, 19). After the second incident, the mother and child left the parties' home in Chilliwack, British Columbia to stay with her parents on Vancouver Island, in Nanaimo. After the second incident, the father sent text messages to a third party and admitted that "he had "snapped", "grabbed [the mother's] head", and "ended up giving her a head butt", which he said he knew was wrong (at para 13). The father was criminally charged in relation to both incidents in December 2020. Conditions of his release included a no contact order, and eventually further provisions for drop-offs and pick-ups to be facilitated through a third party were made (see 2023 BCSC at para 13).

A number of interim parenting orders were made between December 2020 and October 2021. The first two orders were by consent; the first granted the father one overnight stay with the child per week, and the second, two overnights per week. A third interim order was made in March 2021 after a contested application by the father to have the child returned to Chilliwack (*SZM v KMN*, 2021 BCSC 365 (CanLII), (which was decided before *Barendregt v Grebliunas*, 2022 SCC 22 (CanLII), more on the significance of this case below)). In response to the father's application, the mother sought to have the child remain with her in Nanaimo, arguing that the father had a "history of family violence and unresolved anger issues" (at para 4). The primary issue for the Court was whether it was in the best interests of the child to remain in Nanaimo until long-term parenting arrangements were decided. The father argued that it was in the best interests of the child to have both parents actively involved in her life, and claimed the headbutting was accidental (at para 42). In reference to the September 2020 incident, Master Bruce Elwood found that there had been a "serious and troubling incident of family violence" on the father's part, "both in terms of the emotional and physical safety of the mother, but also in [the child's] best interests" (at para 43). Nevertheless, the court ordered the mother to return to the BC lower mainland to live closer to the father, finding that while "temporary relocation was justified to ensure the safety of mother and child", the current situation would "result in a relationship between [the child] and her father that is largely defined by ferry rides and car travel, which is not in her best interests" (at para 66). The mother was awarded interim primary residential care of the child, with the father having parenting time every weekend (with exchanges of the child to be facilitated by a third party).

By April 2021, the criminal no contact order had been amended to provide an exception for pick-ups and drop-offs (see 2023 BCSC 940 at paras 13, 33), once again allowing contact. The mother began recording parenting exchanges and in May 2021, the father broke her cell phone during an exchange and was subject to further criminal charges as a result. This led to a decrease in his parenting time back to one overnight per week. A subsequent revision to the order was made in August 2021 to accommodate the father's work schedule, and further restricted communication between the parents to email. A parenting report was ordered by consent in September 2021 under s 211 of the *Family Law Act*, SBC 2011, c 25 (BC FLA).

The father also withheld the child on two occasions. In October 2021, the father failed to return the child to the mother in accordance with the court-ordered regime and she secured a court order for the child's return. On a separate occasion between March and April 2021, the father did not return the child for what amounted to 22 days (see BCCA at paras 24-28).

Then in October 2021, the child disclosed that the father had hit her on the head, and a peace bond was sworn against the father, which led to a November 2021 order for supervised parenting time for two hours twice per week. The peace bond was stayed by the Crown after the Ministry of

Children and Family Development (MCFD) investigated the matter and concluded there were no child protection concerns (BCCA at paras 29-31).

One year later, in October 2022, an eight-day trial for resolution of the parenting issues took place. The 2020 criminal charges had not been resolved by that time (nor by the time of the appeal) and in fact the father had been charged with a number of other offences related to the mother, including uttering threats, criminal harassment, mischief, and failing to comply with his interim release order (10 charges in total). By the time of trial, there had also been seventeen family court orders, and after the trial there were three further applications heard in chambers.

Trial Decision

In *SZM v KMN*, 2023 BCSC 940 (CanLII), the father (claimant) had counsel and the mother (respondent) was self-represented. The primary issues were parenting time, decision making, and payment of expenses under the BC FLA. The father sought shared parenting, and joint decision-making with the final authority in the event of a disagreement. The mother agreed to shared parenting but sought for parenting time to be supervised for the father. Justice Kenneth Ball found in favour of unsupervised shared parenting time (on a gradual basis), with equal time reached in three months. This included unsupervised overnight access to start immediately.

In reaching his decision, Justice Ball found that neither of the parents were strong witnesses, but the father was more credible (at para 30). His findings in this regard are worth repeating, and we will return to them in our commentary below:

> [30] …The respondent made a number of reports which suggested the claimant had abused or assault the child, which reports caused the arrest of the claimant, but none of these reports are reflected in any medical or hospital documents. On one occasion, the respondent, alleged seeing bruising on the child, but did not attend at a doctor or hospital to ask for assistance or care for the child, but instead called the police to report the incident. As a result no alleged injury was recorded in any reliable manner but rather one of a number of arrests of the claimant occurred. The respondent was not reliable when she told the Court that she did not appreciate that the claimant would be arrested when she made this sort of report to the police, and the ability to report alleged misdeeds by the claimant to the police became a weapon used frequently by the respondent against the claimant.

Justice Ball also noted that, on one occasion, the mother "did not allow the claimant a parenting visit" on the child's birthday, despite a court order to the contrary, without explanation as to why (at para 32). He only noted that the mother "disregarded a court order with apparent impunity" (at para 32). In reference to the mother's video recordings, he found that they were not useful evidence except to note that the child was "curiously" crying during some parenting exchanges, and that the mother "dramatized" a couple of events because of her forgetfulness (she left her keys in the stroller; she forgot a stuffed animal) (at paras 33-36).

Justice Ball also took issue with several other things the mother did, including: co-sleeping with the child to the exclusion of the father (at para 42), telling the court the father had been fired "allegedly based on a criminal allegation" (at para 58), recommending the father seek counselling

when she herself had not (at para 60), and reporting bruises on the child to the police but not taking the child to a hospital (at paras 23, 61). He noted that there was no parenting time for the father between October 17 and December 15, 2021 (at para 47). And with respect to the no contact orders which were breached by the father, Justice Ball took issue with the mother "deliberately approaching" the father on three occasions, and he used this to suggest the mother did not fear the father (at para 57).

The s 211 parenting report by Dr. Elterman was also entered into evidence during the trial. According to the decision, the report revealed concerns about both parents but found the best interests of the child would be met by having a positive relationship with them both (at para 52).

The father's brother also gave evidence. After living with the couple for one year, he had not seen any physical violence and was not told about any violence by the mother, with whom he claimed he had a positive relationship (at para 65).

Pursuant to section 37 of the BC FLA, the court must consider only the best interests of the child when making an order for parenting time and responsibilities, and in doing so, must consider the presence and effect of any family violence. Justice Ball found equal parenting time was in the best interests of the child and there was "no valid reason" the father should not have longer periods of parenting time (at para 72). He found there was "no danger to the child", and only because the child had not been spending overnights with the father the return to shared parenting would need to be gradual (at para 72). He also found with respect to the MCFD report that "there had been coaching of the child to report events which did not happen" (at para 44).

Under the trial judge's order, parenting time exchanges were to take place in an RCMP detachment exchange area parking lot, with the assistance of third parties (at para 76). Holidays were also to be shared equally. In addition, a parenting coordinator was to be retained, and the fees were to be shared equally unless the parenting coordinator ordered otherwise (at paras 73-75). The mother was unsuccessful in costs and ordered to pay for the parenting exchange supervisors and expert report in proportion to her income (at paras 81-82).

The financial implications of this decision on the mother are also important. In addition to being ordered to pay for the expenses above, her claims in relation to support were denied. The father had been paying child and spousal support. The mother sought to introduce evidence that the father's financial disclosure was inaccurate and sought retroactive child support and varied ongoing child and spousal support. However, the court found that she failed to properly claim them, provide evidence, and follow the rule in *Browne v Dunn*, 6 R 67, 1893 CanLII 65 (UKHL), which requires a party to question the opposing party on substantial matters in dispute before calling evidence to challenge their position. As a result, the mother's financial claims and evidence were not allowed (at paras 22 and 56). Similarly, she sought compensation for personal possessions but did not properly claim it and so she was also denied this remedy (at para 54). Justice Ball told the parties during trial to exchange financial disclosure annually for the purpose of calculating child support – leaving it up to them to coordinate, calculate, and enforce the support (at para 56).

Following the trial, the mother appealed and sought a stay of the trial judgement until the matter was heard by the Court of Appeal, citing concerns about the child's welfare (see here). The notice of appeal was filed in June 2023 and the matter was to be heard the following January. In the

meantime, the mother did not retain and pay for a parenting coordinator, and she did not respond to an offer of financial support from the father to do so (at paras 5-13). Justice Ball declined to stay his judgement. He reiterated that "family violence is a not a significant aspect of this case", rather the issue was the "parenting time that each parent will come to enjoy with the child" (at para 24).

BCCA Decision

The primary issue on appeal was whether the trial judge had failed to analyze the best interests of the child in accordance with the BC FLA, and in doing so made a reversible error in ordering equal and unsupervised parenting time for the father. The mother also took issue with the father's characterization of her conduct as "weaponizing", arguing that it reflected myths and stereotypical reasoning (at para 48), and she sought a new trial. The father disagreed, arguing that the trial judge had taken a "holistic approach" to the evidence, properly finding that there was no family violence, and the child was unharmed (at 79-81). At the appeal, the father was represented by the same counsel who represented him at trial, and the mother was represented by lawyers from the Rise Women's Legal Centre. The BCCA's unanimous decision was written by Justice Joyce DeWitt-Van Oosten (Justices Gail Dickson and Karen Horsman concurring).

The BCCA commenced its reasons by noting that assessing the best interests of a child is a heavy responsibility, one that is individualized and discretionary (at para 2). As a result, appellate courts give deference to trial judges. The standard of review on appeal for parenting orders is that of "material error, a serious misapprehension of the evidence, or an error in law" (at para 3). The Court concluded that there were material errors in the trial decision, including Justice Ball's failure to properly consider and make findings of fact about family violence and its impact on the child. They allowed the mother's appeal and reinstated supervised parenting time for the father pending a new trial (at para 5).

The BCCA noted several errors in the trial judge's description of the parties' positions and the facts. While the trial judge said that the mother wanted limited, supervised parenting "in perpetuity" (2023 BCSC 940 at para 59), the BCCA found that the record indicated otherwise. The mother had told the judge that "she was not asking to take the father's 'parenting time away indefinitely'"; instead, her goal was to protect the child from exposure to violence, and she was seeking a "significant improvement in the father's conduct" (BCCA at para 42). The BCCA also corrected the trial judge's comment that the mother had not sought medical attention for the child after observing the bruising – the record showed that she took the child to the hospital the next day (at para 44). As for the mother not allowing parenting time on the child's birthday, contrary to a court order, the BCCA noted that the trial judge failed to mention that the father withheld the child from the mother twice, once for 22 days (at para 45). And while Justice Ball suggested that the mother had weaponized reporting of the father to the police and MCFD, he neglected to note that the father had also reported the mother to the MCFD (at para 47). Lastly, the BCCA indicated that Justice Ball misrepresented Dr. Elterman's recommendation in the s 211 report by suggesting the report indicated "the needs of the child are best fulfilled by a positive relationship with both parents" (at para 49) and using that to order a graduated unsupervised parenting schedule; however, Dr. Elterman "did not recommend unsupervised parenting time for the father" (at para 53). Instead, the recommendation was for both parties to engage in counselling followed by a s 211 update, which had not been obtained by the time of trial (at paras 53-54).

The BCCA held that Justice Ball had failed to analyze the best interests of the child in accordance with the BC FLA and had failed to properly consider the evidence of family violence (at para 61) including the child's indirect exposure to IPV. Family violence is a mandated consideration relevant to the best interests of the child under s 37(2) of the BC FLA. Section 38(f) requires courts to consider the child's indirect exposure to family violence as relevant to their safety, security, and well-being, as well as the responsible parent's ability to care for the child and meet their needs (see also BC FLA ss 37(2)(g) & (h)). The Court held that analysis of these sections in light of the evidence is "a necessary pre-requisite to properly assessing the best interests of the child and fundamental to a fully-informed resolution of the contested parenting issues" (at para 83). The trial judge should have considered the evidence of family violence and its impact on the child who was directly and indirectly exposed to it.

However, Justice Ball had failed to properly consider the evidence. He only referred to the September 2020 incident of violence that led to criminal charges, only by way of the father's evidence, without making any findings of fact, and omitted mention of the mother's other testimony about family violence (at paras 87-89). The trial judge also failed to note evidence of a contemporaneous text message by the mother that corroborated that she had been assaulted by the father in March 2020 (at para 88), and he effectively blamed the mother for the post-separation incident where the father broke her cell phone, also without exploring the evidence or making findings of fact (at para 89). Justice Ball also cited the evidence that the father's brother did not observe family violence, which the BCCA implicitly suggested was not very weighty (at para 97). In essence, the BCCA found that Justice Ball had failed to make findings or meaningfully analyze the mother's evidence, including her testimony, regarding the father's physically aggressive and demeaning conduct towards her during the marriage and after separation, and he ignored the presence of the child during that conduct (at para 97).

The BCCA also questioned the trial judge's interpretation of the s 211 and MCFD reports. Justice Ball found the reports indicated the mother's allegations concerning the father's treatment of the child were "unlikely", and that she had coached the child (at para 90, citing 2023 BCSC 940 at para 44). To the contrary, the BCCA noted that the s 211 report only found that the father was unlikely to have "intentionally" hit the child, while also remarking on the father's tendency to move suddenly and excitedly (at para 92). The trial judge should also have assessed the evidence independently of this report, with consideration of the mother's testimony and the corroborating evidence that she had taken the child to the hospital (at para 93). Furthermore, Justice Ball was incorrect in stating that the MCFD had found that the mother coached the child – this was merely raised as one possibility by a worker who had not actually met with the child (at para 94). He also failed to refer to a psychological assessment prepared for the criminal matters, which found that if the mother's allegations were substantiated, the father was at "potentially moderate risk of re-offending" (at para 106).

The culmination of these errors meant that the best interests of the child were not properly assessed. The BCCA found that Justice Ball's conclusion about the best interests of the child "was reached without advertent or demonstrated consideration of the mother's evidence about violence or controlling behaviour directed by the father towards her, either pre- or post-separation, and the possible indirect impact of that behaviour on the child" (at para 99, emphasis in original). They noted that because family violence was central to the mother's concerns about the father's parenting ability and the impact of his conduct on the child, the trial judge should have closely

attended to these issues (at para 106). Instead, he only considered the absence of evidence of direct violence by the father towards the child (at para 107). Overall, his approach to family violence amounted to "an error in principle that irreparably tainted his assessment of the best interests of the child and ultimately, his resolution of the case" (at para 108). These errors were sufficient to order a new trial.

However, the BCCA went on to consider the mother's submissions on myths and stereotypes, which it defined as "assumptions or expectations that are false or faulty and are linked to disadvantaging beliefs, attitudes, and narratives" (at para 110, quoting this article by one of us). It found that the father's examination for discovery and testimony at trial were "replete with [the] accusation" that the mother had fabricated allegations of family violence to gain an advantage in the litigation (at para 112). In addition, the father's lawyer, in closing submissions, accused the mother of weaponizing court orders and reporting mechanisms, analogously exaggerating her disability to falsely obtain benefits, and placing the child in trauma counselling to "provide cover" for her false allegations (at para 113). Moreover, the trial judge seemed to reflect the myth when questioning the mother. The BCCA quoted from an exchange between the trial judge and mother in the trial transcript, where Justice Ball accused her of intending to have the father arrested. When the mother responded that she was following the Crown's advice in telling the police about a possible breach of the no-contact order, Justice Ball implied she was being unreasonable and unfair (at paras 118-119).

The BCCA cited the work of researchers calling on courts to recognize the myth of false allegations and other IPV myths (at paras 120-121), and while noting that the matter was not fully argued at trial or on appeal, they stated that:

> the law is clear that trial judges must assiduously guard against the potential for myths and stereotypes or unfounded or generalized assumptions about human behaviour—in whatever form—to affect their reasoning process. Doing so takes on heightened importance in the context of alleged family violence. (at para 122)

Relying on the Ontario Court of Appeal decision in *Ahluwalia v Ahluwalia*, 2023 ONCA 476 (CanLII), which we blogged on here, the BCCA noted the pervasiveness of family violence and its many forms, yet also noted that family violence claims are "notoriously difficult to prove" (at paras 122-123, quoting *Barendregt v Grebliunas*, 2022 SCC 22 (CanLII) at para 144). The Court held that, taken together, these cases confirm that "an inability to prove family violence on a balance of probabilities does not mean that it must not have occurred or, importantly, that it was falsely alleged for the specific purpose of furthering a litigation objective" (at para 123).

The BCCA found that the father's theory of the case was "in perfect alignment" with the myth of false allegations (at para 124). This theory had found its way into the trial judge's reasons and "appears to have been accepted, at least in part, even though the judge made no apparent factual findings that would prove the theory on a balance of probabilities" (at para 114). To the extent that the ONCA in *Ahluwalia* suggested that claims of IPV may be made for strategic reasons (at para 120), the BCCA responded that:

> Whether that has happened in a given case requires that the judge assess the credibility and reliability of the assertion as part of a thorough fact-finding process. To approach

> allegations of family violence on the assumption (explicit or implied) that these allegations are routinely made for tactical reasons, is impermissible and will give rise to reversible error. (at para 126)

In addition to its findings on the difficulty of proving IPV, the *Barendregt* decision also noted the importance of considering children's direct and indirect exposure to family violence as relevant to their best interests (at para 143). The BCCA properly pointed out Justice Ball's failure to do so.

In ordering a new trial, the BCCA cautioned the next trial judge to "carefully assess the merits" of any continued adherence by the father to the theory of false allegations, in order to "ensure that the best interests of the child are determined without reference to, or reliance upon, misconceptions about post-separation disclosure of intimate partner violence" (at para 127).

Commentary

The BCCA decision in *KMN* is significant for its recognition of the myth and stereotype that women will routinely make false allegations of abuse to achieve an advantage in family law. This is the first time a Canadian appellate court has so explicitly recognized this myth, which is an important landmark in the development of family laws' responsiveness to family violence.

The BCCA's reasoning on myths and stereotypes is also consistent with the Supreme Court of Canada's approach to that topic. In *Kruk*, the Court reviewed two sexual assault decisions where the BCCA had adopted a new "rule against ungrounded common-sense assumptions", under which any such assumptions made by trial judges would be seen as errors of law leading to correctness review on appeal (at para 1). One of the rationales for this new rule was that reliance on myths and stereotypes to discredit sexual assault complainants has been recognized as an error of law (at para 41). However, Justice Sheilah Martin, writing for the majority of the Supreme Court, held that this rationale created a false equivalency between assumptions that may disfavour the accused and the historical assumptions grounded in the intersecting inequalities experienced by sexual assault complainants. In rejecting the proposed new rule, Justice Martin also stated that "just because the evidence happens to align with a myth or stereotype does not necessarily mean that any inferences that can be drawn from that evidence will be prejudicial" (at para 65). The point is that where potentially discriminatory myths and stereotypes are at play, judicial decisions must be based on evidence and not assumptions. While her reasons were centred in sexual assault law, Justice Martin indicated that the same approach would apply to other areas of law where myths and stereotypes are at play (at para 54).

This reasoning aligns with that of the BCCA in *KMN*. Although the Court of Appeal's proposed new rule against ungrounded common-sense assumptions was rejected in *Kruk*, in *KMN* its approach to reviewing the trial decision was based on rooting out errors based on discriminatory myths and stereotypes related to survivors of IPV. In family disputes, although establishing the truth of violence is not the issue that requires direct determination by the court (unlike sexual assault cases), the need for trial judges to thoroughly examine the evidence and make findings in relation to both the violence and its impact on a child is an important extension of the ideas from *Kruk*, even though *KMN* preceded it. The process of determining the best interests of the child is necessarily fact-specific and discretionary, requiring that determinations are not informed by discriminatory inferences and assumptions. The BCCA decision is also consistent with the

approach called for by legal scholars and organizations well beyond the two of us – see e.g. here for an article by Donna Martinson and Margaret Jackson (cited by the BCCA at para 121), and here for the factum of West Coast LEAF and Rise Women's Legal Centre in *Barendregt.*

It is also significant that the BCCA noted how the trial judge's reliance on myths and stereotypes flowed from the father's testimony and his lawyer's submissions that the mother had lied about abuse to gain an advantage (at paras 112-113). When they are not grounded in evidence, these types of arguments invoke and lead to errors of law, and as such may be contrary to lawyers' ethical obligations, as one of us has previously argued. *KMN* indicates that the claim of fabrication for a strategic advantage cannot be based on, nor used by, lawyers to trigger stereotypical reasoning. Distracting the court by implying a vengeful motivation has the effect of suggesting moral blameworthiness and a need for punishment, which is improper and irrelevant to determining the best interests of a child. This type of argument also relies on gendered stereotypes analogous to those called out in *Kruk*.

Returning to the trial judgment, we wish to highlight a few particularly problematic examples of the trial judge's perpetuation of myth and stereotypes because of the effect this reasoning can have on survivors' access to justice. For instance, Justice Ball described one of the headbutting incidents as the parties' foreheads coming into contact, downplaying the abuse (2023 BCSC 940 at para 7) and emphasizing that no physical injury followed. He also questioned the bruising the mother saw on the child, noting the lack of medical reports (at para 30), again, suggesting fabrication. Although the BCCA found this to be an incorrect review of the evidence, it is important to note the way this perpetuation of myths and stereotypes contributes to survivors' reluctance and inabilities to access the justice system. Other courts have recognized the barriers that survivors may face in reporting violence to the authorities or even seeking medical attention, finding that negative assumptions about survivors' credibility and claims should not be drawn on that basis (see e.g. *Ahluwalia v Ahluwalia*, 2022 ONSC 1303 (CanLII) at paras 92-94). This is particularly the case for survivors experiencing intersecting and systemic inequalities. Yet Justice Ball assumed the mother's reports to the police were false or otherwise being used as a "weapon" (2023 BCSC 940 at para 30), even when she had been following the advice of the Crown (BCCA at para 119). This inconsistency of expectations shows the Catch-22 faced by survivors in legal proceedings.

There is also a myth that shared parenting should be the norm in family law regardless of any IPV, which is reflected in the trial decision. Family law legislation does not impose a shared parenting presumption nor assume that shared parenting is the goal. Indeed, the BC FLA makes it explicit that no such assumption should be made (at s 40(4)). All decisions are to be made in the best interests of the child. While this was not addressed at any length by the BCCA, in applying the best interests of the child test, Justice Ball appeared to assume that shared parenting was the goal. This can be seen in the final order and the underlying reasoning – an implicit goal was the equal unsupervised involvement of both parents. However, the issue is not, as Justice Ball put it, what parenting time the parents will "enjoy" – the focus should be on the child's best interests rather than the parent's interests.

Another myth is that shared parenting is possible despite IPV if parenting is facilitated by a parenting coordinator. Regulation of parenting coordination varies across the country, but ordering parenting coordination is akin to ordering the parties into private mediation-arbitration for every contested parenting issue. Neither party is given final decision-making. As with mediation,

parenting coordination can be problematic for some victims of IPV because the process is vulnerable to ongoing systems abuse (i.e. use of the legal system to perpetuate abuse – see e.g. here at s 7.4). It can also be expensive, may impose costs consequences, and can limit other process options. It is unsurprising that the mother in this case was reluctant to engage a parenting coordinator. However, Justice Ball had the jurisdiction to make such an order pursuant to the BC FLA, ss 14-19, and the BCCA contemplated the continued involvement of a parenting coordinator in the interim until the new trial occurs (BCCA at paras 130-131).

Overall, the trial judge's negative perceptions of the mother and her actions come across clearly in his written judgement, but even more so in the excerpts from the trial transcript that are quoted by the BCCA. Justice Ball's lack of full attention to all the evidence is also only revealed when reading the BCCA decision. The case thus exemplifies the limitations faced by survivors who are self-represented in family law matters, and it affirms the importance of vigorous legal representation for survivors by counsel who understand IPV, and of rigorous appellate review by courts who understand IPV. In this case, the mother had the advantage of pro bono representation by Rise, an organization with deep expertise in IPV. Unfortunately, however, many survivors of family violence cannot financially or emotionally afford prolonged litigation to correct the types of errors made at trial in this case – (we note that the new trial in *KMN v SZM* is not expected to be heard until late 2025 or 2026). Going forward, we hope that the BCCA's reasons are taken seriously by family lawyers and trial judges in disputes across the country.

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