

SUPREME COURT OF YUKON

Citation: *PZ v SM*,
2026 YKSC 74

Date: 20260807
S.C. No. 25-B0066
Registry: Whitehorse

BETWEEN

P.Z.

PLAINTIFF

AND

S.M.

DEFENDANT

Before Justice K. Wenckebach

Appearing on his own behalf

P.Z.

Counsel for the Defendant

Shayne Fairman

This decision was delivered in the form of Oral Reasons on August 7, 2026. The Reasons have since been edited for publication without changing the substance.

REASONS FOR DECISION

[1] WENCKEBACH J. (Oral): This is an application concerning the care and residential schedule for A.B., born [redacted]. His parents are the plaintiff P.Z. and the defendant S.M. P.Z. and S.M. were in a common-law relationship between 2014 to 2023. They separated when A.B. was two years old.

[2] After they separated, A.B. spent significant amounts of time with both parents, although the extent of time he spent with P.Z. is disputed. It appears that no issues

arose about A.B.'s care until the spring of 2025. At that point, A.B. began to experience distress during transitions, resisting going with P.Z. Eventually, P.Z.'s parenting time with A.B. ended completely.

[3] In December 2025, P.Z. commenced these legal proceedings and sought to regain his parenting time with A.B. In this application, P.Z. seeks joint decision-making. He also seeks that he immediately begin to have overnight parenting time with A.B. and that A.B. spend equal time with both parents.

[4] S.M. agrees that the parties should have interim interim joint decision-making with the possibility of court review. She does not agree that A.B. should live in a shared residential schedule.

[5] At the beginning of these proceedings, I ordered that P.Z. have supervised parenting time with A.B. with third parties doing the transfers from S.M. to P.Z. on an interim interim basis. P.Z.'s parenting time went well. P.Z. states there were no problems with transitions. S.M. states A.B. did still express resistance to being with his father.

[6] Later, with S.M.'s consent, I removed the supervision requirement. I also increased P.Z.'s parenting time, though not to the extent sought by P.Z. P.Z.'s parenting time continued to go up.

[7] At the hearing of this application, P.Z. raised a preliminary issue about evidence S.M. filed. S.M. filed an affidavit on May 4, 2026, two days before the hearing. P.Z. objected to its admission because the timelines did not permit him to respond. S.M.'s counsel submitted that the evidence should be admitted because it was just an update

on what S.M. had observed of A.B. after she filed her affidavit material. I reserved my decision about admitting S.M.'s affidavit.

[8] Following the hearing, it was revealed that P.Z. is in a romantic relationship with a woman, M.G., and was expecting a child. The baby, [redacted], has since been born. S.M. sought a Case Management Conference ("CMC"), stating she wished to file more evidence. At the CMC, counsel for S.M. stated that P.Z. and M.G.'s relationship was not new. After S.M. and P.Z. separated, P.Z. began to date M.G. P.Z. had, however, given S.M. to understand that he and M.G. had broken up. S.M.'s lawyer submitted that S.M. wanted to provide evidence that P.Z. and M.G.'s relationship was conflictual and had a negative impact on A.B.

[9] S.M. also wanted to provide evidence about P.Z.'s parenting time with A.B. since the hearing. P.Z. left the country because M.G., who was in France at the time, was having medical issues. S.M. wanted to file evidence about what she states were difficulties in arranging P.Z.'s parenting time while this was happening.

[10] P.Z. opposed the admission of further evidence. He stated he had never told S.M. he and M.G. had separated. He also submitted the evidence of the relationship was irrelevant. Furthermore, he submitted that he had parenting time as much as possible with A.B. while at the same time dealing with M.G.'s medical emergency. I permitted the filing of affidavit evidence on these issues.

[11] In my reasons then, I will address the preliminary issue of whether S.M.'s affidavit filed May 4, 2026, should be admitted. I will then address decision-making for A.B., followed by parenting time.

[12] So, first is whether S.M.'s affidavit filed May 4, 2026, should be admitted.

[13] I will not put any weight on the affidavit. While updated information can sometimes be useful in an application, in this case the prejudice in admitting the evidence outweighs its probative value. If the evidence were to be accepted, I would also have to give P.Z. an opportunity to respond to it. This would cause delays. The evidence, moreover, is similar in kind to the evidence S.M. previously filed. It does not greatly assist in resolving the issues.

[14] Because of the delay and because the evidence is not highly relevant, I conclude it should not be admitted. This reasoning does not change, even though I permitted additional evidence to be filed. The evidence I permitted to be filed was truly new information. It could assist in my assessment of the issues in litigation, while the May 4, 2026, affidavit would not. Thus, I have not taken S.M.'s affidavit filed May 4, 2026, into account in making my decision.

[15] Turning to decision-making, given the parents' partial agreement on decision-making, I can dispose of this issue summarily. I will order that the parents have joint decision-making on an interim, interim basis. Although the parents have been separated for a few years, they are only newly addressing decision-making. It is therefore prudent to order joint decision-making only on an interim, interim basis.

[16] The real issue to be addressed here is that of A.B.'s residential schedule.

[17] Before I get into my analysis, I do want to note that I can see how much P.Z. and S.M. love A.B. They both are acting in what they believe to be in his best interests. My decision today does not detract from that.

[18] The parties agree on some of the basic facts that led to the original dispute. They agree that A.B. did begin to resist going to P.Z. during transitions when he was

supposed to have parenting time with him. They also largely agree that it was because of A.B.'s resistance that P.Z.'s parenting time stopped. They disagree, however, about whether P.Z.'s parenting time should have stopped, why A.B. showed these behaviours, and, linked to that, if and how those behaviours should guide how much parenting time P.Z. has with A.B.

[19] The parties also agree on some of the facts about P.Z.'s relationship with M.G. as it stood 18 months ago. Specifically, they both agree that there were problems in the relationship. They disagree about the extent of the problems between P.Z. and M.G., the impact the problems had on A.B., and the importance this factor should have on decisions about A.B.'s residency now.

[20] I will therefore address the parents' submissions on what caused A.B. to resist having access with P.Z. at the transitions. I will then address S.M.'s submissions, including her arguments that P.Z.'s problems with communication and difficulty exercising parenting time should limit his parenting time.

[21] With regard to A.B.'s resistance to spending time with P.Z., P.Z. states that S.M.'s behaviour caused A.B. to resist going with him during transitions. He states that S.M. permitted A.B. to choose whether to go with P.Z. The decision was not parent-led. As a result, P.Z. states A.B. was put in a loyalty conflict, implicitly required to choose between parents. He submits once transitions were conducted in a structured manner, A.B.'s distress stopped. P.Z. also states that A.B. does not experience distress when A.B. is with him. He also argues his parenting time should therefore increase immediately to an equally shared residential schedule.

[22] I am not, at this point, prepared to conclude that A.B. reacted negatively during transitions because of S.M.'s actions. The parents' evidence and submissions are divergent. Both parents highlight what the other did, in their opinion, that caused or exacerbated an already difficult situation. Where the truth lies is difficult to tell. Each parent's experience may be coloured by their beliefs and expectations. I cannot, on the evidence before me, conclude that S.M.'s behaviour had a negative impact on A.B.

[23] Additionally, I would not be able to reach the conclusion P.Z. seeks without expert evidence. Parents are frequently best placed to understand their child's behaviours; however, complex situations such as this require more than a parent's own conclusions. P.Z.'s theory about why A.B. resisted going with him during transitions remains simply a theory.

[24] For her part, S.M.'s counsel states that, while it is unclear why A.B. reacted the way he did, it is not because S.M. created the reaction by her behaviour. He also submits A.B.'s distress signals he is dealing with deeper issues.

[25] S.M. also provides evidence that A.B. witnessed domestic violence between P.Z. and S.M. In her affidavit, S.M. states that P.Z. was abusive to her during and after their relationship. She also suggests that P.Z. gets inappropriately angry at A.B., though counsel's oral submissions did not focus on that aspect of her evidence. Counsel submits that the Court should limit P.Z.'s parenting time because of the domestic violence and A.B.'s strong resistance to attending parenting time with P.Z.

[26] Domestic violence is a factor to be taken into account when determining issues about children. Exposure to domestic violence is harmful to children. It may also have an impact on the abuser's ability to care for and meet their child's needs. Here,

however, the evidence is insufficient for me to conclude that S.M. was abused by P.Z. S.M. states P.Z. abused her. P.Z. responds that he did not.

[27] S.M.'s current partner also provides an affidavit describing incidents where he states P.Z. acted aggressively. There is evidence that P.Z. behaved poorly after the parents separated. It is not enough, however, to conclude there was domestic violence. My decision would thus turn on an assessment of the witness' credibility, which is very difficult to do on contested affidavit evidence.

[28] S.M. also provides evidence about what A.B. says. She states that A.B. makes various statements about not wanting to see his father, that his father gets angry with him, and that his father says negative things to him about S.M. Her partner provided an affidavit that A.B. once talked to him about P.Z. hitting S.M. The evidence about A.B.'s statements is hearsay. A.B. is four years old. Some of what A.B. says he witnessed occurred approximately two years ago, and he may be saying many things for reasons other than that he believes them. I place no weight on such evidence. Why A.B. resisted going with P.Z. at transitions is therefore still unresolved.

[29] S.M. states A.B. still expresses reluctance going to P.Z. However, once he is with third parties, he does not express hesitation going to P.Z. The very strong resistance may have been a transient issue. It may, on the other hand, have been caused by something more complex. At this point, I cannot draw conclusions about why A.B. reacted to P.Z. as he did.

[30] Turning to S.M.'s other concerns, the issues around P.Z.'s time away from the Yukon are not significant enough to affect my decision about A.B.'s residential schedule. The amount of time P.Z. spent away from the Yukon is disputed. Moreover,

there is no evidence that a flexible schedule permitting either parent to travel would be too unwieldy or would not be in A.B.'s best interests.

[31] Similarly, the cited problems in the parties' communications also do not affect my decision on A.B.'s residential schedule. S.M.'s counsel argues that P.Z.'s poor communications make scheduling his parenting time with A.B. difficult. S.M. filed as an example the OurFamilyWizard communications between the parties in May while P.Z. was in Europe in support of the submission. It is true that P.Z. did not always respond promptly to messages about his parenting time with A.B. while he was in Europe. However, this must be viewed in context. P.Z. had flown to Europe for what he described at the time as a family emergency. Later, he revealed that M.G. was having medical issues related to her pregnancy. Common sense would suggest that P.Z. was preoccupied with the emergency he was dealing with and not be able to respond to messages promptly.

[32] Additionally, given travel was arranged at the last minute, it is logical that he would have difficulty making plans for parenting time with A.B. It is notable that in the midst of these issues, P.Z. flew home to have parenting time with A.B. and then flew back to Europe.

[33] In my opinion, the messages do not point to difficulties created solely by P.Z. Rather, they are instructive in two ways. First, it seems to me that the parents are doing their best to figure things out in difficult situations. Second, there may be some dynamics between the parties that affect how they approach issues that arise. It appears, based on what I have reviewed, that P.Z. holds back from providing fuller information, possibly for fear he will be criticized for it. This, in turn, makes it difficult for

S.M. to make plans for A.B. For her part, S.M., possibly because P.Z. does not provide a lot of information, becomes overly focused on the details. This then gets interpreted by P.Z. as criticism and the cycle feeds upon itself. These dynamics, moreover, have likely become exacerbated by the litigation.

[34] In this case, S.M. would have benefited from knowing early on what the family emergency was and from having more information about P.Z.'s possible plans and any difficulties he was experiencing or might experience exercising parenting time. P.Z. would have benefited by being offered more flexibility. Circumstances like these will arise. Open communication will be necessary and A.B. will not always be able to have consistency. These issues can be sorted through, though it may not be easy. It is not a basis upon which to limit P.Z.'s parenting time with A.B.

[35] Finally, I turn to the impact P.Z.'s relationship with M.G. has on A.B. The evidence S.M. provided on this issue includes text messages from about a year and a half ago that she and P.Z. sent to each other when they were on better terms and evidence about two conversations she had with M.G. S.M. recorded these conversations and filed the recordings. I had requested that one of the recordings be filed. I did not request that the second be filed and will not rely on the recording in my decision. Recordings are sparingly admitted into evidence in family matters because it encourages the parties to continue recording each other, which, in turn, helps to exacerbate distrust.

[36] In the text messages, P.Z. describes the difficulties he and M.G. were having in their relationship. The parties also discussed whether his and M.G.'s conflicts were having an impact on A.B.

[37] The recorded conversation arose because, according to S.M., she met with M.G. because A.B. had told her about an incident between P.Z. and M.G. which seemed to have a negative impact on A.B. M.G. told S.M. something to the effect that, during the argument with P.Z., she had told him not to scream because he is very loud when he talks. She then said that she wanted to leave but P.Z. would not let her. She stated at another point to S.M. that P.Z. is controlling. M.G. told S.M. as well that she understood the argument was bad for A.B. M.G. also said that when she came back, A.B. asked her a few times if she and P.Z. were good now. Evidence about the second conversation is not relevant to the issues here.

[38] M.G. also provided affidavits about the conversation. M.G., whose mother tongue is French, explains that her English was not very good when she met S.M. She states that she did not understand the nuances of the words “scream” and “fight”. She also clarifies that P.Z. did not physically restrain her or prevent her from leaving, and she was ultimately able to leave P.Z.’s home. M.G. furthermore puts into context her statement that P.Z. is controlling. Finally, M.G. states that A.B. did not wake up or cry, nor was he in distress during the argument, nor did he show signs of distress the next day. M.G. states that P.Z. is not abusive to her. Both M.G. and P.Z. testified that their relationship had difficulties, but they were through them. They state they have a strong relationship.

[39] I conclude, however, that P.Z.’s and M.G.’s relationship difficulties did have a negative impact on A.B. I accept that M.G. may have misspoken in using the words “scream” and “fight”. I also accept that M.G. ultimately was able to leave the house the night of the argument. However, based on the evidence before me, it is more probable

than not that P.Z. blocked M.G. from leaving the house when she first wanted to leave. This is concerning. Moreover, even though M.G. and P.Z. state that A.B. did not wake up during the fight, I conclude he did. He spoke to S.M. about the fight and I cannot see how he would have been aware of it if he had not woken up.

[40] P.Z.'s argument is that because he and M.G. have worked through their problems, what happened a year and a half ago should not have an impact on the time he spends with A.B. now. The incident, however, at the very least, borders on domestic violence. It is not a simple problem in a relationship. It is therefore something to be taken seriously, even though time has passed. Additionally, I am not convinced that P.Z. and M.G. have recognized the extent of the issues in the relationship or the impact it had on A.B. I am therefore not prepared at this point to order that A.B. have overnight access with P.Z.

[41] Until school starts, my Order is that P.Z.'s parenting time will largely stay the same, except that on Wednesday and Sunday it will be increased to 9:00 a.m. to 5:00 p.m.

[42] Once school starts, he will have access every second weekend, the full day on Saturday, the full day on Sunday, and video calls on Tuesdays and Thursdays. On alternating weeks, he will have parenting time Tuesdays and Thursdays after school until half an hour before bedtime and video calls on Saturday and Sunday. I would like to monitor how things go and set a review date.

[43] In his application, P.Z. seeks that the time A.B. spends with each party also be determined with regards to holidays. Because I want to gauge how the change to the

residential schedule is impacting A.B., however, I think we will defer that until I make more final orders, so these questions will be deferred.

WENCKEBACH J.