

SUPREME COURT OF YUKON

Citation: *KLG v CAG*
2026 YKSC 95

Date: 20261021
S.C. No. 25-D5724
Registry: Whitehorse

BETWEEN:

K.L.G.

PLAINTIFF

AND

C.A.G.

DEFENDANT

Before Chief Justice S.M. Duncan

Counsel for the Plaintiff

André Roothman

Appearing on his own behalf

C.A.G.

REASONS FOR DECISION

Overview

[1] This is an application by the defendant father for changes to the Order of June 19, 2026, to provide him with equal parenting time with the child of the relationship, X, age four and shared decision-making responsibility for the child as agreed in the separation agreement. He relies on evidence provided in his affidavit dated June 26, 2026, or orally, showing no illicit drug use, addiction recovery, ongoing receipt of counselling including substance use counselling, psychiatric treatment, and stable employment to support a material change in circumstances. The Order of June 19, 2026, provided him with two supervised visits with the child per month on weekends from Friday after 2:00 p.m. to Saturdays at 4:00 p.m. and day to day decision-making by the plaintiff mother.

[2] The plaintiff mother objects to this application. She continues to have concerns about the father's mental stability and suspects ongoing drug use. The father's response to an incident in August where the paternal grandmother forgot to retrieve X. from daycare reinforced her concerns. She acknowledges the work he is doing with the counsellors and physician but says she wants to see more time pass with consistent regulated behaviour before considering a change to the current parenting arrangement, in order to ensure their son's best interests are upheld.

[3] For the following reasons, the current Court Order will remain in place. A material change in circumstances that provides a compelling reason to change the order is required. The father has made some encouraging and commendable progress in becoming healthier, but his interactions with the mother in issues related to parenting and problem-solving still demonstrate volatility, hostility, and difficulties with emotional regulation, and consequent challenges in behaving rationally to ensure the child's best interests. This ongoing behaviour means there has been no material change in circumstances sufficient to change the current Order.

[4] I note that almost two months have passed since the court hearing in this matter. Supervised parenting time is intended to be a temporary solution to address a difficult circumstance. A check-in will be held at the end of November 2026, or as soon as possible thereafter to review all of the circumstances and determine if any changes to parenting time should be made.

[5] The mother will continue to share information with the father and his extended family about the child and will continue to consult the father about all major decisions affecting the child's life.

Procedural History

[6] It is useful clarification to review briefly the history of this application. The mother originally brought an application without notice on June 9, 2026, for primary residence of the child and supervised parenting time with the father of five hours twice a month. This was prompted by her recent learning of the father's drug use several months earlier, contrary to his assertions of sobriety, as well as his admission that he left the infant child alone in a vehicle with the engine running briefly one night while he went to a friend's home to buy drugs. These revelations in and of themselves troubled the mother, and the father's lack of disclosure about these incidents eroded her trust. She was concerned for their child's safety, prompting her to bring the application without notice.

[7] The order requested by the mother was granted on the application without notice on June 9, 2026, with a provision that the father could bring an application to vary or set the Order aside on seven days' notice. The father brought an application to vary, as a self-represented litigant. On June 19, 2026, the Order was varied to provide him with additional parenting time from Fridays at 2:00 p.m. to Sundays at 4:00 p.m., twice monthly, as well as clarification of approved supervisors. Further details of the parenting time visits were set out, and the matter was adjourned to July 7, 2026.

[8] On July 7, the father attended court with counsel. With the exception of an order related to social media posts, the matter was adjourned generally, as counsel expected they could achieve a negotiated solution.

[9] In early August, the father was again self-represented. He brought this application to set aside or vary the current parenting time arrangements in favour of a return to the two-week alternating parenting and residential time as agreed in the

separation agreement. Alternatively, he suggested parenting time in the best interests of X. as determined by the Court. He also requested that he continue to receive information about X. from providers of child care, education, and medical services or any others contributing to the care of X. Finally, he requested the mother comply with parenting and communication provisions in the separation agreement and any court orders and costs.

[10] The mother has disputed only the parenting time arrangement and costs aspects of his application. She has agreed with the requests to share information about X. from his external caregivers and service providers and to comply with the communication provisions of the separation agreement.

Legal Principles

[11] Section 17(5) of the *Divorce Act*, RSC, 1985, c 3 (2nd Supp) (the *Act*) requires that the court be satisfied that there has been a change in the circumstances of the child since the last order, before varying a parenting order. Section 2 of the *Act* defines a parenting order as an order made under subsection 16.1(1) of the *Act*. The court's jurisdiction to make interim parenting orders is found in subsection 16.1(2), however. As noted by the Court in the case of *Chyher v Al Jaboury*, 2021 ONSC 4358 (*Chyher*), it is not entirely clear if the material change test applies to the variation of an interim order, such as the one granted in this case (at para. 20). The Court in *Chyher* reviewed the two different approaches taken by courts to the variation of interim orders. In one approach, courts have not required a strict material change test be met before varying an interim parenting order; instead, the inquiry is what is in the best interests of the child (*Calabrese v Calabrese*, 2016 ONSC 3077). Even when applying this approach,

however, many courts have recognized it is not in the best interests of the child to make interim changes before all of the evidence can be assessed at a trial and as a result changes to interim orders will be rare. The second approach requires a material change in circumstance that results in a compelling reason to vary the previous interim order in a way that serves the best interests of the child (*Radojevic v Radojevic*, 2020 ONSC 5868; *Miranda v Miranda*, 2013 ONSC 4704 (*Miranda*)). As stated by Justice Mitrow in *Miranda*:

[26] A party wishing to disturb an interim status quo or vary an interim order faces a strong onus to produce cogent and compelling evidence to show that the physical, mental and moral welfare of a child would be in danger in maintaining the status quo: *McCarthy v Scheibler*, 1999 CarswellOnt 3419 (Ont. S.C.J.) at para. 14. Variation of interim custody and access orders will usually only succeed if a child is at risk, or for some other compelling reasons. There is a presumption in favour of the status quo absent compelling reason to change the status quo: *Gusikoski v Gusikoski*, 2001 CarswellSask 323 (Sask. Q.B.) at para 10. In *Green v Cairns*, 2004 CarswellOnt 2322 (Ont. S.C.J.) at para. 14, Wood J. referred to the well-founded reluctance by courts to vary interim orders on an interim basis and stated that an interim order should only be varied on an interim basis where the evidence establishes "clearly and unequivocally" that the present arrangement is not in a child's best interests. In *Greve v Brighton*, 2011 ONSC 4996 (CanLII), 2011 CarswellOnt 8814 (Ont. S.C.J.), Ricchetti J., after reviewing various authorities, states at para. 24 that on a motion for an interim order to vary an existing interim order, the court should only do so where the moving party has demonstrated a change in circumstances as a result of which there are compelling reasons to vary the interim order to meet the child's best interests.

[12] I adopt the second approach here. The father is required to bring evidence of a material change of circumstances that shows X.'s best interests are not being met by the current parenting arrangements.

Analysis

[13] The father argues he has achieved mental health, stability and emotional regulation and this material change will ensure their son's safety and well-being during his parenting time. He argues it is not in the child's best interests to see his father and his father's family on such a limited basis, depriving him of the ongoing love and support of family members, and changing his established routine.

[14] The father's evidence to support his asserted change is through an affidavit dated June 26, 2026, filed in the absence of any application, but now submitted and accepted as evidence in this application, in response to a discussion that occurred at the court hearing on June 19, 2026. The mother had stated then that she wanted evidence of the father's substance use recovery, and of the steps he was taking for treatment for his mental health and the results.

[15] The father's evidence includes laboratory results of a drug screening test taken on June 24, 2026, showing negative results for all drugs except for amphetamines, attributable to his Attention-deficit/hyperactivity disorder (ADHD) medication. He included a letter from his ADHD coach confirming 17 counselling sessions between June 2025 and June 2026, focussing on addressing substance use, as well as ADHD-related skills, emotional regulation and wellness homework. In April 2026, the father disclosed to the coach his use of cocaine on four occasions since October 2025, including on April 3, 2026, leading the coach to recommend that he pursue additional substance use support and resources through Mental Wellness and Substance Use Services (MWSUS). The father stated at the hearing he had started counselling with MWSUS – at that time he had attended two individual sessions and one group session.

He provided no letter from MWSUS to confirm this. He included a letter from his treating psychiatrist, Dr. Elwell, dated June 25, 2026, showing approximately monthly sessions since October 2025. The letter stated the sessions were to address the father's diagnoses of ADHD and significant childhood trauma, and concluded the father was close to meeting the criteria for Post Traumatic Stress Disorder subsequent to that trauma. He also submitted a letter from Dr. Carlos Nuñez, an occupational psychiatrist who conducted an independent medical assessment on November 27, 2025, to determine his fitness for work as a heavy equipment operator at a mine site. Dr. Nuñez's December 5, 2025, report concluded he had situational depression and anxiety secondary to a complicated marital separation; more specifically, an adjustment disorder with mixed anxiety and depressed mood, in remission, and ADHD, by history. Although it is not clear from the evidence on this application, it appears the effects of the marital separation were affecting his behaviour and performance in the workplace, leading to this assessment. Dr. Nuñez found his mental health prognosis was moderate to good, contingent on his adherence with the recommendations to continue seeing his family doctor, psychiatrist and counsellor regularly, focusing on modalities such as cognitive behavioural therapy for depression and anxiety, as well as to continue his ADHD treatment. He was considered at that time fit for return to full duties at work, on a graduated basis. Notably, and in contrast to Dr. Elwell's report, Dr. Nuñez wrote that the father reported his household was reasonably stable while he was growing up, he denied any exposure to traumatic abuse or violence, and his basic emotional and physical needs had been met.

[16] The mother raised several concerns with the evidence submitted, in support of her position that there has been no material change in circumstances since the June 9, 2026, Order.

[17] Noting the contradictions in the letters of Dr. Elwell and Dr. Nuñez about the existence of trauma or not in the father's childhood, the mother suggested the father was not being forthright with his treating psychiatrist. She further noted the absence of a verification letter from MWSUS of his counselling appointments.

[18] Additionally, she expressed concern about a recent incident where the paternal grandmother forgot to retrieve X. from daycare as agreed, so the father could take him to a family wedding the following day, despite a text confirmation of the arrangement with the mother the previous day. The child was upset as a result of the incident and consequently the mother withdrew her consent to have him attend his uncle's wedding. The mother's concerns stemmed not only from the negative effect of the incident on X., but also from the father's blaming of the daycare for not having the correct phone number for the grandmother, and his blaming of the mother for not contacting the grandmother to ensure she was safe, instead of accepting the grandmother's responsibility for the incident, and of acknowledging its significant impact on the child. The father's insistence that the mother was unfairly withholding the child from him that weekend showed a lack of understanding of the seriousness of the incident and its effect, in the mother's view.

[19] I commend the father for following Dr. Nuñez's advice and continuing to seek professional assistance through a psychiatrist and counsellor and use of ADHD medication. Despite availing himself of this assistance, he has continued to behave in

ways that affect the mother's trust in him and his ability to care for X. in his best interests. Failing to disclose his relapses and risk-taking behaviour while the child was in his care formed the initial impetus for the June 9, 2026, Order sought by the mother. A significant concern of the mother, reinforced by the recommendation from the father's ADHD counsellor after this disclosure, was his need to receive substance use counselling. While I accept that the father has made efforts to obtain such counselling, his failure to produce a letter from MWSUS makes it impossible to assess his progress.

[20] The contradiction between the two psychiatrist letters about the existence of childhood trauma and the father's statement at the hearing that he had emotional trauma but not physical trauma while growing up raises questions about the father's reliability and veracity as a historian. While I accept the possibility that the treating psychiatrist erred in his letter, the prominent focus on the effects of his childhood trauma and resulting treatment is troubling. It raises questions about the type of ongoing treatment the father is receiving and its appropriateness, and of the reliability of the information from the treating psychiatrist.

[21] The father's handling of the daycare incident as evidenced in the text exchanges with the mother demonstrated his minimizing of the effect of the incident on the child. This incident caused the mother to fear for the child's safety while in the care of the father or his family. While it was understandable that the father was disappointed that the child could not attend the family wedding, his text messages reveal an emphasis on persuading the mother to change her mind about his parenting time rather than inquiring about the child's well-being. His persistent, long texts asking multiple times for access to the child, making accusations of withholding the child, and criticizing the mother's

lawyer's advice, along with his aggressive and persistent multiple requests of the mother to answer the question of why she did not call the grandmother to find out why she did not come to the daycare, all demonstrated an absence of appreciation of the impact of the incident on X. and a failure to consider what was in his best interests at the time.

[22] Despite the mother's many requests of the father, he refused to provide her with his proposed schedule for parenting time with the child for August and September, so she could plan events and activities for the child in a way that would not interfere with those visits. As a result, a family trip planned out of the territory for the child conflicted with the father's proposed parenting time weekend, creating conflict that might have been avoided if the father had disclosed his schedule earlier. While the father blamed his former lawyer's advice for his refusal to provide his schedule, this did not seem logical or rational, and in any event, he is now self-represented. This again demonstrated a failure to act in the child's best interests.

Conclusion

[23] The cumulative effects since June 2026 of the father's aggressively persistent and accusatory texts, the ongoing uncertainty of his substance use recovery, and his failure to put the child's interests first evidenced by his minimizing of the daycare incident and attempts to blame others, as well as his failure to share his proposed schedule with the mother to ensure proper planning, support an absence of material change in circumstances.

[24] The disputed paragraphs 2, 3, 4, and 7 of the father's application are dismissed.

[25] I will order that the mother shall continue to share information about the child to the father and the father's extended family, and that she shall consult with the father about any major decisions affecting the child. The parents will also comply with the communication provisions set out in the settlement agreement.

[26] A check-in shall occur at the end of November or early in December to assess the circumstances. Each party may provide one affidavit limited to five pages to update the Court on what has transpired since the last court hearing. Counsel and the father can arrange the time with the Trial Coordinator.

[27] No costs will be awarded to the mother for her success on the disputed aspects of this application. However, the father is cautioned that any unfounded criticisms or pejorative remarks about the mother's lawyer or his legal advice, and any future applications that are found to be without merit may subject him to an obligation to pay the mother's costs.

DUNCAN C.J.