

Court of Queen's Bench of Alberta

Citation: TLM v JTM, 2022 ABQB

Date:
Docket: FL03 64469
Registry: Edmonton

Between:

TLM

Applicant

- and -

JTM

Respondent

Memorandum of Decision
of the
Honourable Madam Justice A. Loparco

The names of the parties and the Child have been anonymized to protect the privacy interests of the Child and the family.

I. Introduction

- [1] This decision raises the challenging issue of parents who disagree about their child being vaccinated against COVID-19.
- [2] TLM (“the Mother”) and JTM (“the Father”) are former adult interdependent partners. They have one Child of the relationship who is 9 years old (“Child”) and has complex medical issues. In addition to having asthma, for which he has had multiple visits to the hospital, the Child

was diagnosed with B-Cell Acute Lymphoblastic Leukemia in 2019. He is undergoing a 3 1/2-year chemotherapy protocol. He was declared to be in remission and released from hospital in August, 2019. In order to prevent a relapse, treatment is expected to continue until September 2022. The Child must attend the cancer clinic every 12 weeks to receive outpatient treatments and takes a daily oral chemotherapy pill.

- [3] On April 6, 2021, I heard an application to remove the Father's decision-making powers due to his reluctance to follow the Child's protocol. I ordered the Father to comply with the Child's medical treatment and I permitted the Mother to Face Time the Child daily to ensure he takes his oral medication ("April Order").
- [4] Since my April Order, the Child's family doctor and oncologist strongly recommended the Child be vaccinated against COVID-19 to reduce his risk of infection. The Father refused to consent. The Father also failed to take the Child to his last chemotherapy treatment.
- [5] The Mother filed an emergency application before me, which I heard on January 14, 2022, seeking an order granting her sole decision-making authority with respect to the Child's medical needs and an order directing the Father to take the Child to all medical appointments scheduled during his parenting time.
- [6] I issued an abbreviated oral decision. I reserved the right to add to my reasons and produce a written decision. These are my complete reasons for the decision to grant the Mother her application.

II. Issues and Brief Answers

- [7] The issues before me for determination are as follows:

1. Should the parties' joint decision-making status be varied such that the Mother becomes the sole decision maker in relation to all medical needs?

The Mother is granted sole decision-making authority in relation to the Child's medical needs

2. Is it in the Child's best interests to be vaccinated against COVID-19?

The Child is severely immunocompromised. I find it is in the best interest of the Child to be vaccinated.

3. Should the Father should be ordered to take the Child to all medical appointments scheduled on his parenting time?

I order that the Father take the Child to all appointments scheduled on his parenting time or to reschedule any missed appointment as soon as possible. This does not alter my April Order allowing the other parent to take the Child to appointments if the parent who is exercising their parenting time is unable to do so. The Father must notify the Mother as soon as he knows he is unavailable.

III. History

- [8] Since the Child was diagnosed with leukemia, the parents have cooperated in his treatment until about February 2021. The Mother deposed that the Father advised her that he felt cancer was fake and just a way for the government and pharmaceutical companies to make money.

The Mother also deposed that he no longer wanted to administer the oral medication to the Child and instead, preferred to consult a Naturopath for alternative treatments.

- [9] On April 6, 2021, I heard the Mother's first application seeking sole decision-making authority over the Child's medical needs. The Father was represented by counsel at that time. Because of the Father's assurance that he would comply with the recommended treatment plan, I ordered: the continuation of a week on/week off shared parenting arrangement and joint decision making for the Child; that the Father adhere to all leukemia treatment protocols; that the Mother have Face Time access with the Child any time the Child is required to take medication; that if one parent could not take the Child to an appointment, the other parent would do so.
- [10] In addition to ongoing problems raised with the Father's compliance with my April Order, both the Child's family physician and his oncologist have strongly recommended that the Child be vaccinated against COVID-19. The Respondent Father is opposed.
- [11] On December 31, 2021, the Respondent Father sent the Mother an email about her intention to have the Child vaccinated, stating "You're harming my property ...".
- [12] The Father exposed the Child to his views about the vaccine. The Child is now fearful and does not want to be vaccinated.
- [13] On December 29, 2021, the Mother deposed that she received a call from the oncology outpatient clinic advising that the Father had refused to take the Child to his scheduled appointment that same day because he did not believe the Child needed to be seen. The Mother had to take the Child in on a later date. She is concerned that the Father is once again interfering with the Child's medical treatment, contrary to my April Order.

a. The Father's responding affidavit

- [14] The Father is now self-represented. His affidavit stated that: the vaccine is experimental; that it has not undergone rigorous human testing to ensure vaccine safety; that it has a high risk of myocarditis; that its ingredients are toxic; that it is gene-altering therapy; and, that it contravenes the Nuremberg Code.
- [15] The Father's comments, as well as the information relied upon by the Father in his argument against vaccination for COVID-19, are in the materials. These articles are unscientific, based on opinions and speculation by non-experts in the field, and can be summed up as misleading and conspiratorial in nature.
- [16] However, the Father stated that the articles demonstrate that the vaccine increases the risk of disease and side-effects, and weakens immunity toward future SARS related illness. He further believes that the Child's safety is at risk because of his history of lung infections, and the fact he is on immunosuppressants. As such, the Father asks that the decision be delayed until human trials are complete in 2023.
- [17] The Father deposed that he believes COVID-19 to be fake and asked for proof that it has been "isolated and purified". The Respondent Father advised that he "will not under any circumstances enroll [Child] in a deadly experiment or support the fallout". He further indicated his belief in proven effective homemade treatments such as hydroxychloroquine and that he shared this view with the Child.

[18] The Father stated in his response that he does not believe cancer is fake but that he does have concerns about the treatment protocol recommended by the oncologist. He wishes to supplement the treatments with naturopathic treatments, which the oncologist has refused. He now seeks a second opinion but has not filed an application for such an order nor provided any names of doctors who would be willing to provide a second opinion.

[19] The Father further stated he missed the appointment on December 29, 2021, because he was dealing with his own health issues. He insisted he will comply with all future medical appointments.

[20] The Father believes that the vaccine is ineffective because the chemotherapy has wiped out the Child's immune system. He also cites several articles in support of his argument that minors are at nearly zero risk of contracting or transmitting this respiratory illness and are, instead, buffers which help others build their immune system. He believes the government is pushing the "experimental treatment with the tragic outcome of a high incidence of injury and death". He stated that Health Canada has not shown in trials that COVID-19 treatments prevent infection or transmission.

[21] The Father asked that this Court delay any decision on vaccination until the Child's doctors answer the following questions:

- a) Can you please advise the approved legal status of any COVID-19 vaccine and if it's experimental;
- b) Can you please provide details and assurances that the vaccine has been fully, independently and rigorously tested against control groups and the subsequent outcomes of those tests;
- c) Can you please advise the entire list of contents of the vaccine [Child] is to receive and if any are toxic to the human body;
- d) Can you please fully advise of the all the adverse reactions associated with this vaccine since its introduction;
- e) Can you please confirm that the vaccine you are advocating is NOT 'experimental mRNA gene altering therapy';
- f) Can you please confirm that [Child] will not be under any duress from in accordance with the Nuremberg Code;
- g) Can you please advise me of the likely risk of fatality, should [Child] be unfortunate to contract COVID-19 and the likelihood of recovery?

[22] He further requested that the Child's family doctor "confirm in writing that [Child] will suffer no harm" and that the doctor agree to "take full legal and financial responsibility for any injuries occurring to [Child] and/or from any interactions by authorized personnel regarding this procedure".

[23] The doctor responded to the email, directing the Father to the vaccine manufacturer for information regarding the vaccine, and advised that he cannot guarantee against any harm or death and would not take any responsibility for any outcomes.

- [24] The Father is not satisfied with the doctor's response to his questionnaire and insisted that it is his right to informed consent to receive the assurances directly from both doctors before agreeing to the vaccination.
- [25] The Father also stated that the Child's family doctor is in a conflict of interest and he sought to have another doctor named by the Court to treat his son. The basis of this claim is that the doctor works in the same office as the Mother.
- [26] In response to the allegation that he called his Child his 'property', the Father defended this view, which he argued emerged in England during the middle ages and is correct in common law. However, he also stated that the Child should have a say in the decision of whether to be vaccinated.
- [27] The Father accused the Mother of fear-mongering and pointed to an article that stated that the overall survival rate of minors is 99.997% and that the risk of myocarditis in young men is more prevalent with this vaccine.

IV. Analysis

a. COVID-19 Vaccines

- [28] In the recent decision *Sembaliuk v Sembaliuk*, 2022 ABQB 62, Whitling J held at para 8 that Courts may take judicial notice of the COVID-19 pandemic, and in particular, "its impact on Canadians generally, and the current state of medical knowledge of the virus, including its mode of transmission and recommended methods to avoid its transmission" (citing *R v Morgan*, 2020 ONCA 279; *R v Mella*, 2021 ABQB 785; and, *R v Aiello*, 2021 ABQB 772).
- [29] In *Aiello* at para 3, Devlin J took judicial notice of the fact that "...vaccination is a safe and highly effective means of preventing the spread of coronavirus, the development of COVID-19 infections, and severe illness in those who do become infected".
- [30] In *TRB v KWPB*, 2021 ABQB 997, Kubik J cited two cases in which the courts took judicial notice of certain specific facts related to COVID-19 and the Pfizer-BioNTech vaccine, including the fact of vaccine approval, recommendations for use, risk, safety, and efficacy: *Saint-Phard v Saint-Phard*, 2021 ONSC 6910; and *OMS v EJS*, 2021 SKQB 243.
- [31] Given the high degree of similarity of the issues raised, I rely on the judicial notice already taken by this Court and the rigorous analysis of Kubik J in *TRB*, which equally applies to this case. At paras 12-14 of her decision, she states:

[12] Since early 2020, Canadians have been living in the midst of a global pandemic caused by the SARS-CoV-2 virus. I take judicial notice of this fact which is so notorious and indisputable as to not require proof. I also take judicial notice of the regulatory approvals and directives issued by the various governments and agencies in Canada and Alberta. I accept that as a consequence of the pandemic, Alberta has, from time to time, invoked a state of public health emergency during which the Chief Medical Officer of Health has issued directives. At the time of this decision, Alberta is in a state of public health emergency, declared on September 15, 2021. On September 16, 2021 Health Canada approved the Pfizer-BioNTech vaccine for use in Children aged 12-17, and on November 19, 2021, approved the same vaccination (with an adjusted dosage) for use in Children aged 5-11. By virtue

of its approval by the regulatory authority responsible for testing and approval of drugs for use in Canada, the vaccine is not experimental. It is deemed safe and effective for use in Children aged 5-11, and 12-17. While not mandatory in Alberta, vaccination of Children aged 5-11 and 12-17 is recommended by the Chief Medical Officer of Health for Alberta.

[13] Further, I have considered the scientific evidence in the Canadian context, which includes the regulatory approvals of the Pfizer-BioNTech vaccination, and the recommendations of government health officials, including the Chief Medical Officer for Health in Alberta. I accept that evidence as an accurate reflection of the current state of scientific knowledge regarding both the virus and the vaccine. I prefer this evidence to the American documentation provided by the Father, noting that the state of regulatory approval of the vaccine in the United States is different than that in Canada. I have ascribed no weight to publications relating to vaccine mandates, which are not in issue in these proceedings. The documentation provided by the Canadian Covid Care Alliance is not a peer-reviewed, scientific publication, and, in the context of this special chambers application, its author was neither qualified as an expert nor subject to examination and cross-examination as to his opinion. Accordingly, I ascribe less weight to this documentation than I do to the regulatory approvals and the recommendations of public officials in Canada, who are tasked with protecting public health.

[14] From the various documents and affidavit evidence before me I also find the following facts:

- Vaccination is prophylactic medical treatment. Its primary purpose is to prevent the vaccine recipient from contracting illness. Vaccination also serves the purpose of limiting the spread of illness by limiting its transmissibility. Finally, vaccination of eligible recipients protects those who cannot be vaccinated due to contraindications to the vaccine or health conditions which might prevent vaccination.
- Vaccination, like all medical treatment, comes with risk. In the case of the Pfizer-BioNTech vaccine, those risks include transitory symptoms such as injection site pain, fatigue, and headache (to name a few), and more serious side effects such as myocarditis. Myocarditis was not observed in any of the clinical trials associated with testing of the vaccine on Children aged 12-17. To the extent that there have been reports of myocarditis in the 12-17 age group outside of clinical trials, Health Canada has recommended continued surveillance with respect to the side effect and a requirement that vaccine recipients in this age group receive information about this particular risk, as well as the other side effects. This ensures informed consent. It should be noted that the Pfizer-BioNTech vaccination had 100% clinical efficacy amongst 12-17-year-olds engaged in the clinical trial.

Additionally, vaccination for COVID-19 has not caused the death of any Children in clinical trials.

- Illness from COVID-19 also comes with risk, including transitory flu-like symptoms, more serious pneumonia-like symptoms, and the need for hospitalization including mechanical ventilation, and in some cases long-term health consequences. Children in Canada have died from COVID-19.

...

[32] The main distinction in **TRB** is that the Children in question in that case were healthy and had a robust immune system. Sadly, that is not the case for this Child. When asked why I should depart from Kubik J's decision, the Father advised me that his situation is different because his son's immune system was wiped out by his chemotherapy treatment.

[33] I further took judicial notice of two additional facts for which scientific consensus is notorious and beyond reasonable dispute: **R v Find**, 2001 SCC 32 at para 48.

1. That Canada is currently in its fifth wave of the pandemic with the dominant strain of Omicron resulting in unprecedented numbers of infections and higher rates of transmission.
2. That individuals, including Children, who are immunocompromised have a higher risk of severe illness or death from contracting COVID-19.

[34] Since giving my urgent oral decision from the bench on January 14, 2022, it has come to my attention that there may be some reasonable debate regarding the increased risk of severe outcomes in immunocompromised children. This is due to the limited number of studies and data on this topic. While there are several credible studies and Canadian statistics that confirm the heightened risk, I acknowledge that the limited scope of data available to indisputably substantiate this specific point results in some ongoing debate within the scientific community.

[35] If I erred on taking judicial notice of this second additional fact, it is not determinative of the best interests analysis. The Child's family physician and oncologist have both evaluated the Child's unique circumstances and needs and have recommended the COVID-19 vaccination to prevent infection while the Child undergoes chemotherapy treatment as noted in paragraph 22 of the Mother's Affidavit. This medical advice carries considerable weight in the analysis.

b. Best Interests Analysis

i. Was there a material change in circumstances?

[36] As the parents have joint decision making, variation of the April Order requires the Mother to demonstrate that there has been a material change in the circumstances of the Child since the making of that Order.

[37] Section 34(3) of the **Family Law Act**, SA 2003, c F-4.5 ("**FLA**") provides:

34(3) Before the court makes a variation order in respect of a parenting order, the court shall satisfy itself that *a change in the needs or circumstances of the Child has occurred since the making of the parenting order or the last variation order*

made in respect of that order, and in making the variation order, the court shall consider only the best interests of the Child...as determined by reference to that change. [Emphasis added]

- [38] The threshold issue of “material change” in a parenting order variation was set forth in the seminal case ***Gordon v Goertz***, [1996] 2 SCR 27 in the legislative context of the *Divorce Act*, RSC 1985, c.3 (2nd Supp) (the “*Divorce Act*”). At paragraph 13, the Court set out the applicable test as:

It follows that before entering on the merits of an application to vary a custody order the judge must be satisfied of: (1) a change in the condition, means, needs or circumstances of the Child and/or the ability of the parents to meet the needs of the Child; (2) which materially affects the Child; and (3) which was either not foreseen or could not have been reasonably contemplated by the judge who made the initial order.”

- [39] While the *Divorce Act* does not apply in this case, Alberta courts have applied the aforementioned material change test from ***Gordon v Goertz*** to matters under the *FLA*: see for example, ***Gordon v Towell***, 2010 ABQB 396 at paragraphs 21. Additionally, at para 22, the Court stated:

When it comes to the second step of the *Gordon* inquiry, Alberta Courts generally either use only the criteria in s. 18 of the *Family Law Act*, or the s. 18 criteria in addition to the *Gordon* criteria to determine the best interests of the Child. The Alberta Court of Appeal found the guidelines in *Gordon* helpful in determining the best interests of the Children in the 2006 mobility case of *MacPhail v. Karasek*, 2006 ABCA 238. In *Adams v. Wyatt*, 2007 ABQB 667, having found a material change, the Court considered the best interests of the Child by following the analysis required under the *Family Law Act*. The Court did also consider the *Gordon* criteria noted in *MacPhail*, specifically the Child’s relationship with the caregiving parent.

- [40] I am satisfied the test is met. When I issued my April Order, I did not foresee that the Father would refuse to follow medical advice to have his son vaccinated. In addition, the highly transmissible Omicron variant was not in circulation at that time.

- [41] My April Order required the Father to follow all medical advice and if he was not available to take the Child to an appointment, he was to allow the Mother to attend to it. He is in breach of my the Order by not taking his son to his chemotherapy appointment. He states it was because he was dealing with his own medical issues, but he made no attempt to reschedule it. I also accept the Mother’s evidence that the Father stated at one point that he believed cancer is fake and a way for governments and pharmaceutical companies to make money and that he wanted to withhold treatment or find naturopathic and alternative forms of medicine to treat his son. It goes without saying that these beliefs materially affect the Child.

- [42] Given the ongoing dispute, which was not resolved by my April Order, there is a change in circumstances which allows me to consider both the application seeking sole decision-making on all health and medical matters with specific authorization to vaccinate the Child.

1. Is Sole Decision-Making in the Child's Best Interests?

[43] For the reasons stated below, I find it is in the Child's best interests to grant sole decision-making authority to the Mother.

[44] Once the change in circumstances threshold is met, the best interests' analysis is framed by the requirements of s 18 of the *FLA*. It is understood that each case turns on its unique circumstances and reflects the best interests of the Child, not the interests and rights of the parents: ***Gordon v Goertz***.

[45] Section 18 of the *FLA* sets out the best interests test as follows:

18(1) In all proceedings under this Part except proceedings under section 20, the court shall take into consideration only the best interests of the Child.

(2) In determining what is in the best interests of a Child, the court shall

(a) ensure the greatest possible protection of the Child's physical, psychological and emotional safety, and

(b) consider all the Child's needs and circumstances, including

(i) the Child's physical, psychological and emotional needs, including the Child's need for stability, taking into consideration the Child's age and stage of development,

(ii) the history of care for the Child,

(iii) the Child's cultural, linguistic, religious and spiritual upbringing and heritage,

(iv) the Child's views and preferences, to the extent that it is appropriate to ascertain them,

(v) any plans proposed for the Child's care and upbringing,

(vi) any family violence, including its impact on

(A) the safety of the Child and other family and household members,

(B) the Child's general well-being,

(C) the ability of the person who engaged in the family violence to care for and meet the needs of the Child, and

(D) the appropriateness of making an order that would require the guardians to co-operate on issues affecting the Child,

(vii) the nature, strength and stability of the relationship

- (A) between the Child and each person residing in the Child's household and any other significant person in the Child's life, and
- (B) between the Child and each person in respect of whom an order under this Part would apply,
- (viii) the ability and willingness of each person in respect of whom an order under this Part would apply
 - (A) to care for and meet the needs of the Child, and
 - (B) to communicate and co-operate on issues affecting the Child,
- (ix) taking into consideration the views of the Child's current guardians, the benefit to the Child of developing and maintaining meaningful relationships with each guardian or proposed guardian,
- (x) the ability and willingness of each guardian or proposed guardian to exercise the powers, responsibilities and entitlements of guardianship, and
- (xi) any civil or criminal proceedings that are relevant to the safety or well-being of the Child.

[46] The best interests test requires that I ensure the greatest possible protection of the Child's physical, psychological and emotional safety and that I consider all of his needs and circumstances, including his physical, psychological and emotional needs (*FLA* s 18 (2)(a) and (b)).

[47] This Child has medically complex needs that requires trust between the parents and the treatment team. Despite the previous allegations of the Father's refusal to adhere to the Child's medical treatment for leukemia, which were documented in evidence, the Father promised this Court that he would follow expert medical advice. In the time since that April Order, there have been numerous further allegations of his continual denial of his Child's medical condition and flat-out refusals to comply. He denies much of these allegations, but many are documented in text and email communications. He seems to have tremendous suspicion and little respect for any authority – be it the Court or the Government.

[48] I find the Father's attitude at the hearing of this matter to have been cavalier in regards to his past actions. He flouted the Court Order, expressed disdain for government public-health policies, and believes he has greater knowledge than the doctors who have decades of expertise. He has now twice come to Court and promised to abide by his son's cancer protocol and denied having made contradictory comments, even when the evidence is presented to him. I find he is not to be trusted with his son's medical decisions.

[49] I conclude it is in the best interests of the Child to grant the Mother sole decision-making authority in respect of the Child's medical and healthcare needs.

2. Is Vaccination Against COVID-19 in the Child's Best Interests?

[50] I make a further, specific direction that the Mother is authorized to have the Child vaccinated against COVID-19, without the consent of the Father.

[51] The issue of the Child's immunocompromised state on account of his extreme asthma and leukemia is intrinsically linked to the question of whether he should be vaccinated against the risk of COVID-19.

[52] The National Advisory Committee on Immunization (NACI) is comprised of experts in pediatrics, infectious diseases, immunology, epidemiology and other relevant fields. The committee is an external advisory body that provides the Public Health Agency of Canada with independent medical, scientific, and public health advice relating to immunization. The NACI strongly recommends that children 5 to 11 years of age who are moderately to severely immunocompromised be immunized with a primary series of three doses of the Pfizer-BioNTech COVID-19 vaccine.

[53] Instead of taking a balanced approach to the publicly-available information, the Father's correspondence revealed a deep-seated belief in conspiracy theories (e.g., COVID-19 is fake, it is a "deadly experiment" by the government, if his son gets sick, there are proven effective homemade treatments such as hydroxychloroquine).

[54] The Father argued that he will agree to the vaccine so long as the doctors answer his questionnaire to his satisfaction. However, the questions are a trap; he will never be satisfied with the response. Dr. Scanga provided an appropriate response and directed the Father to the information available online from the vaccine manufacturer. Dr. Scanga also properly refused to take responsibility for any legal and financial responsibility if the Child suffered any harm. Vaccines are not a magic bullet. However, they reduce the risk of serious illness or death. The Father's insistence on an absolute assurance of safety is an impossible standard to meet.

[55] Despite inflammatory remarks in his communications with the Mother, the Father came to Court with a plea to allow him more time to verify vaccine safety. However, he took no steps to seek a second opinion from a properly qualified expert, nor was a proper application filed before me to allow him to do so.

[56] Finally, the Father raised a concern of bias on account of the fact that the child's doctor and the Mother share an office. There was no proper evidentiary basis for me to even consider this allegation. The mere fact that they shared an office is insufficient.

[57] I find that the Father has no insight into the impact of his actions on his Child, despite evidence of harm that could arise if his Child were to contract the COVID-19 virus. As with any vaccine, there is risk. The Father did not present any evidence that the vaccine presents a risk that is outweighed by the benefits.

[58] He argued that the vaccine is useless because his Child has no immune system. That is the point. He has little to no immune system to be able to fight the COVID-19 virus and therefore needs the vaccine to give him the best chance of survival.

[59] Any further discussion on such a polarizing issue is futile.

[60] I do not intend to foreclose all possibility of a meritorious argument against vaccination, nor do I suggest that vaccination will always be in the best interests of children in all circumstances. However, based on the facts presented to the Court in this specific case, it is readily apparent that vaccination is in the Child's best interest.

[61] The Father's position with respect to vaccination is based on misinformation and conspiracy theories. His willingness to share this with the Child and cause him to fear the vaccine, further demonstrates that he is not able to make decisions in the Child's best interests.

[62] The Child is young and vulnerable. He also loves his Father. I also have no doubt the Father loves his son. However, I conclude that the Father's actions in this regard take advantage of the Child's impressionability and are contrary to his emotional and psychological safety, security, and well-being.

a. Voice of the Child

[63] The Father urged me to listen to the voice of the Child; he advised that his son will refuse the vaccine. While Children have a voice in proceedings that affect them, they do not have a choice: s 12 *United Nations Convention on the Rights of the Child* 1577 U.N.T.S. 3 (1990), Can T.S. 1992 No. 3 in force in Canada on 12 January 1992.; Rachel Birnbaum, Nicholas Bala and John-Paul Boyd, *The Canadian Experience with Views of the Child Reports: A Valuable Addition to the Toolbox?*, 2018 27th Annual Institute of Family Law Conference 18C, 2018 CanLIIDocs 10856 at 172.

[64] In *Re A.F.*, 2006 ABPC 225, affirmed *T.W. v Alberta (Child, Youth and Family Enhancement Act, Director)*, 2008 ABQB 97, reversed *T.W. v Alberta (Child, Youth and Family Enhancement Act, Director)*, 2009 ABCA 25, the Court held that counsel for four Children in a Child protection case, the oldest of whom was 8 years old, was not obliged to advocate based on the Children's stated wishes, as they were subject to "undue adult influence, coupled with unreasonable loyalty, thereby making it impossible for the Children to make reasonable choices": *Re A.F.* at para 57.

[65] I acknowledge that the Child does not want the vaccine as both parents have noted his wishes, although this is hearsay. Depending on the age and maturity of a Child, those wishes are given more or less weight in making parenting decisions.

[66] A Child may have a say if he or she is a mature minor. Informed consent of a decision-maker, including a child, requires he/she: "1) has capacity to make the decision, 2) is adequately informed, that is, given all relevant information that a reasonable person would require to make a decision, and 3) the resultant decision must be voluntary and free of coercion": Kevin W. Coughlin, *Medical decision-making in paediatrics: Infancy to adolescence*, Canadian Paediatric Society, Bioethics Committee Paediatric Child Health, 2018, 23(2): 138-146 accessed by: <https://cps.ca/documents/position/medical-decision-making-in-paediatrics-infancy-to-adolescence>.

[67] First, the Child's age is a factor when it comes to determining capacity to make medical decisions. However, there is no legally defined age for consent in Canada; the capacity of a paediatric patient varies with age and the assessment of the circumstances on a case-by-case basis: Coughlin, *ibid*.

[68] The second issue to consider in this case is the reason for the child's refusal. Refusal or unwillingness to be vaccinated may be the result of the Child exhibiting stress in relation to a particular procedure. Here, I am convinced that it is the result of the Father's misinformation on the perceived evils of the vaccine. He has not sought to present a fair and balanced perspective on vaccine safety to his son, instead telling him that home remedies such as hydroxychloroquine, which has been proven to be deadly, will cure him.

[69] It is the Court's role to determine what is in the best interests of the Child. In this case, I believe that the Child's reticence about the vaccine is a direct consequence of the Father's overbearing insistence of its harm and is unreasonable. In the result, the Child's desire to not be vaccinated is not voluntary and free of coercion.

[70] The Child is nine years old. Given his age and all the other relevant factors in this matter, including the seriousness of the medical decision and the impact of the parental influence noted above, he is not considered a mature minor.

[71] The vaccine is approved by Health Canada and is safe and effective for use in children age 5-11 and 12-17. It is widely known that the risks associated with vaccination are minimal and are outweighed by the risk of serious illness and death to unvaccinated individuals, including children. Vaccination is the Child's best protection against contracting COVID-19 and suffering serious illness or death as a result.

[72] Moreover, vaccination will limit the risk of transmission and will allow the Child to fully participate in school and activities. It is impossible for him to live in a hermetically sealed environment and thus, vaccination provides him with the best available tool to protect his health. Social interaction is important for his mental and emotional health and well-being.

[73] I conclude that it is in the best interests of the Child for the Mother be authorized to have the Child vaccinated without the Father's consent.

[74] Additionally, I direct that the Father will not discuss, or permit any third party to discuss, the issue of the COVID-19 vaccination or COVID-19 generally with the Child, or supply any information about the vaccine or the disease to the Child.

3. Should the Father should be ordered to take the Child to all medical appointments scheduled on his parenting time?

[75] I ordered that the Father take the Child to all appointments scheduled on his parenting time or to reschedule any missed appointment as soon as possible. This does not alter my April Order allowing the other parent to take the Child to appointments if the parent who is exercising their parenting time is unable to do so. The Father must notify the Mother as soon as he knows he is unavailable.

V. Order

[76] In light of the exigent circumstances, the potential harm that could occur if the Child were to contract COVID-19, I order the following to take effect immediately:

1. The Mother will have sole joint decision making authority with respect to all medical and health related decisions;

2. The Mother is authorized to have the Child vaccinated against COVID-19 without the Father's consent; and,
3. The Father will not discuss, or permit any third party to discuss, the issue of the COVID-19 vaccination or COVID-19 generally with the Child, or supply any information about the vaccine or the disease to the Child.
4. The Father shall take the Child to all appointments scheduled on his parenting time or to reschedule any missed appointment as soon as possible.

VI. Costs

[77] I order that the Mother be awarded \$665 in costs, payable by the Father forthwith.

Heard on the 14th day of January, 2022.

Dated at the City of Edmonton, Alberta this 4th day of February, 2022.

A. Loparco
J.C.Q.B.A.

Appearances:

Amanda C. Habershtock
for the Applicant

JTM
Self-represented