

**REDACTED VERSION**  
**KING'S BENCH FOR SASKATCHEWAN**  
**Family Law Division**

Citation: **2025 SKKB 176**

Date: **2025 10 15**  
File No.: FLD-SA-00086-2022  
Judicial Centre: Saskatoon

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BETWEEN:

T.B.

PETITIONER

- and -

K.M.

RESPONDENT

**Appearing:**

Jessie Buydens  
K.M.

for the petitioner  
self represented respondent

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FIAT  
OCTOBER 15, 2025

RICHMOND J.

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[1] T.B. and K.M. are scheduled to attend their trial in March 2026. T.B. commenced an action requesting division of property and parenting arrangements and costs in 2022. The parties separated in July 2021. Their daughter, E.M., was born November 2, 2018 and their daughter, H.M., was born after they separated on February 1, 2022.

[2] K.M. suggests they initially shared parenting and T.B. unilaterally changed that. T.B. argues his work schedule impacted his time and, when the Petition was issued over three years ago, he was spending time with E.M. from Saturday at

10:00 a.m. until Sunday at 2:00 p.m. and visiting H.M. at her home.

[3] Interestingly, in her Petition, she advised, “I am prepared to transition to the same parenting schedule for H.M. as the Respondent has with E.M. when it is age appropriate to do so”, and “As H.M. gets older we will adjust the parenting schedule.” The Petition gave no indication of conflict between the parents and other than T.B.’s request that H.M.’s time be shorter due to her age and breast feeding, she clearly intended both parents would enjoy parenting time with the children and commented, “The children will have quality contact with both parents in accordance with the Respondent’s work schedule and H.M.’s age.” (para. 25, Petition)

[4] Unfortunately, the peaceful rapport suggested by the Petition was short lived. On July 25, 2022, T.B. applied for a without notice order requesting E.M.’s return and a police assist clause to ensure her return. K.M. had decided he was not returning E.M. at the end of one of his visits. Baldwin J. made an order on July 25, 2022 requiring E.M. to be returned to her mother and setting K.M.’s time with E.M. from Saturday at 10:00 a.m. until Sunday at 2:00 p.m. each weekend until August 10, 2022. Despite the Court file having been commenced in 2022, the Baldwin J. order is the only parenting order made and it has since expired.

[5] The parties proceeded to a pretrial on January 30, 2024 before Schatz J. who ordered a parenting assessment. The parties negotiated Minutes of Settlement that provided for K.M. to parent E.M. from Friday at 5:00 p.m. until Sunday at 5:00 p.m. every second weekend and Tuesday at 7:30 a.m. to Wednesday after school in alternate weeks. It was also agreed he would have H.M. from 3:00 p.m. to 5:00 p.m. every second weekend which initially was to be exercised in the presence of K.M.’s mother.

[6] The pretrial was to be reconvened following the assessment. The assessment was completed and filed in November 2024. A further pretrial was held in May 2025 and no settlement was reached. K.M. has now brought a “notice of

application – variation of an order” and sought “A variation to the interim consent parenting order of the Honourable Justice Ms. Schatz dated January 30 2024, Minutes of Settlement.”

[7] The parties were advised in chambers that this is not a variation of an order as no order of Justice Schatz respecting parenting exists. The only parenting order ever made was that of Baldwin J. and that has long since expired. The parties have been operating pursuant to an agreement, without a Court order, for years. K.M. is of the view that the agreement was unilaterally imposed and seeks to have his time expanded.

[8] T.B. argues that with a trial only months away, nothing should change and K.M. should continue to parent as he has been. T.B.’s counsel conceded that K.M.’s failure to bring his application in the appropriate form was a mere technicality and one that can be overlooked. The question is whether, on this original application for interim parenting, an order should be made to increase K.M.’s time with his children as he argues, or whether *Guenther v Guenther* (1999), 181 Sask R 83 (QB) [*Guenther*] applies as argued by T.B. and the *status quo* should be maintained.

[9] A recommendation was made by the parenting assessor to increase K.M.’s time and K.M. relies on the assessment for purposes of this chambers application but will be arguing for more time come trial. He claims he has been requesting T.B. comply with the recommendations of the assessor to no avail. As was explained to K.M. during argument, simply ordering a parenting regime as was recommended by the assessor is not an option. The unsworn material prepared by an expert who has yet to be qualified as such and who has not been subjected to cross examination is not binding on the Court and the Court must be hesitant to use such evidence in chambers.

[10] The Court of Appeal in *Babich v Babich*, 2017 SKCA 48, [2017] 11 WWR 54 [*Babich*] noted the difficulties chambers judges face when making parenting

decisions on affidavit evidence and unchallenged custody/access assessments. The Court of Appeal referenced the decision of Ryan-Froslic J. (as she then was) in *Burka v Burka*, 2003 SKQB 407, 239 Sask R 107 [*Burka*]:

[12] It is difficult, if not impossible, on interim applications for a judge to make any factual determinations. Affidavits are often contradictory and it is impossible to weigh credibility based on affidavit evidence. The evidentiary basis necessary for the admission of a custody/access assessment is rarely present and the assessor's findings are seldom tested by cross-examination. Moreover, often on an interim application an assessor's qualifications are unknown. Those qualifications would of course affect the weight a judge gives to opinions rendered. For judges on interim applications to rely on such assessments may well usurp the role of the trial judge. The danger of over-reliance on assessments is exemplified by the Saskatchewan Court of Appeal decision of *Haider v. Malach* (1999), 177 Sask. R. 285 (C.A.), leave to appeal to the Supreme Court of Canada refused (1999), 189 Sask. R. 319. While that case dealt with the use of such an assessment at trial, it illustrates the fact that important information may be missing from such assessments and that the evidentiary basis for the assessment may not be supported by witnesses who address the same issue. It is important to recognize that custody/access assessments are "tools" for the use of the court. They do not usurp the judge's role and they are not determinative of the issues between the parties.

...

[17] ... There are a number of factors a court should consider in determining whether or not it is proper to consider an assessment on an interim application. Such factors include but are not limited to:

1. The nature of the application (i.e., whether it is an interim application or an application for variation);
2. The nature of the relief sought (i.e., custody, access, a change from supervised to unsupervised visitations, etc.);
3. The purpose of the assessment (i.e., whether it is for use by the chamber judge and/or at trial);

4. The scope of the assessment (i.e., whether it is a full custody/access assessment, a focussed assessment, a voices of the children report, etc.);
5. Whether the assessment raises some immediate concern relating to the health and/or safety of the children;
6. Whether the parties agree to the use of the assessment;
7. Whether an evidentiary basis has been established for the opinions expressed in the assessment; and
8. Whether the assessor can be subjected to cross-examination before the report is used.

[11] The Court of Appeal then noted Justice Ryan-Froslic's (as she then was) decision in *Koeckeritz v Secord*, 2008 SKQB 92, 312 Sask R 276 where she clarified *Burka* further, commenting:

[10] Custody and access assessments are ordered by the Court for the benefit of the judges who must deal with these matters. The danger of using such assessments on interim applications is that the parties do not generally have an opportunity to challenge the basis for the assessor's opinions.

[11] *Burka v. Burka*, *supra*, does not stand for the proposition that custody/access assessments should never be used on interim applications.

[12] While, as a general rule, assessors' recommendations ought not to be acted upon without a full hearing, there are exceptions. The most obvious one is where the safety of a child has been called into question but the Court in *Burka* also refers to other situations and sets out the factors to be considered in determining whether or not such reports should be used on interim applications. ...

...

[12] In the present case, we are dealing with an interim application seeking an increase in parenting time. The purpose of the assessment was for use at trial and the assessment was a full parenting assessment (or full custody/access assessment as

referred to in *Babich*). There were concerns raised by T.B. respecting K.M.'s parenting which have largely been addressed. There is no agreement to use the assessment for purposes of the chambers application and, in fact, T.B. is opposed. Although the assessor has set out the evidentiary basis for the opinions expressed in the assessment, his findings and considerations have not been tested by cross-examination. I am not prepared to blindly follow the recommendations of the assessor given his qualifications are as yet untested and his evidence is neither sworn, nor tested by cross-examination. Having said that, however, I am also not prepared to leave the parenting arrangement in its current form.

[13] T.B. argues *Guenther* applies and suggests it is an error to vary an interim order absent risk to the child. The Saskatchewan Court of Appeal in *Gebert v Wilson*, 2015 SKCA 139, 467 Sask R 315, recognized *Guenther* as standing for the principle that *de facto* or legal interim parenting arrangements should not be varied in the absence of a child being at risk or other compelling reason but pointed out the following as clarification:

11 First, the principle expressed in *Guenther* does not displace the legislative requirement enunciated in both the *Divorce Act*, RSC 1985, c 3 and *The Children's Law Act*, 1997, SS 1997, c C-8.2 that in making decisions with respect to parenting arrangements, the paramount consideration is the best interests of the child. In our view, the principle itself is rooted in that paramount consideration. It recognizes that changes in custody and primary residence have a profound effect on children — altering their day to day home environment, their routine, their contact with important people in their lives including caregivers, siblings, extended family and friends and may result in a change of school and activities — and thus, generally should not occur on an **interim** or temporary basis as a final resolution may result in such a change being reversed with all of the same attendant disruptions to the child.

12 Second, the principle applies generally to changes in custody and primary residence, as opposed to changes in access. In *Guenther*, while Laing J. refused to change the child's

custody on an **interim** basis in the face of the parent's written agreement, he did increase the mother's parenting time with the child. Usually, changes in access will not have the same profound effect on a child as changes in custody or primary residence.

13 Third, the principle recognizes that the *status quo* may be changed on an **interim** basis if there is a compelling reason to do so, or if the child is at risk. That is how this Court interpreted *Guenther* in the recent case of *Napper-Whiting v. Whiting*, 2014 SKCA 33, 433 Sask. R. 235. That case involved the appeal of an **interim** order which changed primary residence of a child from the mother to the father. Herauf J.A. speaking for this Court quoted with approval para. 5 of *Guenther*, and then stated the following in reference to that paragraph:

[4] We wish to reiterate that this is the appropriate test for applications of this nature. In this particular appeal we find that the Chambers judge failed to find that the child was "*in some way at risk, or other compelling reason....*"

[Emphasis added]

In short, risk to the child is not the only reason for varying the *status quo* on an **interim** basis.

[Bold emphasis mine]

[14] K.M. is not requesting a change in the *status quo* of T.B. being the primary care giver but rather seeks only an increase in his parenting time. Brown J. commented on such a change in *Flett v Laidlaw*, 2016 SKQB 244 at para 14, "... interim tweaking of access may be permissible if the facts establish that it is in the child's best interests, but a substantial change to the *status quo* requires a child who is at risk or some other compelling reason." I am not convinced that either child is at risk in either parent's care.

[15] Many of T.B.'s concerns are speculative and although she is undoubtedly correct that H.M. is not comfortable with her dad, that is largely a problem of her own making. H.M. is now three and one-half years old and does not spend overnights with

her dad. T.B.'s Petition contemplated increasing K.M.'s time with H.M. and yet, she continues to resist that increase. H.M. deserves a relationship with her father and is also being deprived of time with her sister when her sister is in his care. K.M.'s time with E.M. pursuant to the stop gap agreement reached at pretrial and as evidenced in the Minutes of Settlement has since been reduced due to his work schedule not allowing the mid-week parenting time. He now requests an increase of time with E.M. as well and suggests that he have three weekends per month from Thursday at 3:30 p.m. until Sunday at 5:30 p.m. with an extension for statutory holidays. H.M.'s parenting time will be the same but with only one overnight for the first three weeks and pick ups at daycare at 3:30 p.m. The parties would share the Christmas break and spring break. He also proposed sharing the summer break.

[16] There is nothing in any of the material filed that leads me to believe H.M. would not benefit from having the same amount of time with her father as E.M. T.B.'s initial Petition contemplated that would one day occur. At three and one-half years old, it is well past time that their relationship be given an opportunity to flourish. I am not prepared, on an interim application, to give K.M. three weekends a month. T.B. should also have weekend time with the girls. From now until trial, K.M. will have E.M. from Thursday at 3:30 p.m. with a pick up from school until Sunday at 5:30 p.m. on alternate weekends. Should K.M.'s weekend fall on a long weekend, his parenting time will be extended accordingly.

[17] K.M. will also begin having H.M. alternate weekends. However, for the first weekend, he will have H.M. only Friday night and Saturday night with a pick up from daycare at 3:30 p.m. on the Friday. K.M.'s first weekend with H.M. shall be at his parents' home to aid in the transition. The second weekend shall be at his home for Friday and Saturday night with a pick up at 3:30 p.m. on Friday and a return on Sunday at 5:30 p.m. along with E.M. Thereafter, K.M. shall have H.M. alternate weekends from Thursday until Sunday with the same pick up times and extensions for

holidays as E.M.'s. K.M. and T.B. shall share the children equally over the Christmas school break; and for the 2026 February break, T.B. and K.M. shall share the break equally. For future years and the Easter and summer break, the trial judge may determine the appropriate schedule.

### **Costs**

[18] Normally, as the successful party, K.M. may have been entitled to costs. However, some of the material filed in support of his application is of concern and, for that reason, I decline to order costs in his favour. I had addressed in open chambers the fact that much of his reply brief was argument and, as such, was struck but I did not order costs against him for that infraction. K.M. had also filed a brief of law. Normally a brief of law should be of assistance to the Court but in this case, the brief was problematic. The cases referenced in the brief of law filed do not exist or do not exist by the name, nor do they represent the principles K.M. suggests they do.

[19] K.M. referenced *A.M. v C.H.*, 2019 SKQB 162, 45 CPC (8<sup>th</sup>) 212 which is actually *Watch v Live Nation Entertainment Inc.*. He referenced *Baker v Baker*, 2007 ONCA 329, 220 CCC (3d) 74 which is actually *R v Mariani*. *R.C. v R.C.*, 2013 NSCA 71, 331 NSR (2d) 151 was cited in the brief but it was actually *Antigonish/Guysborough Federation of Agriculture v Antigonish County (Municipality)*. K.M. referenced *M.K. v S.K.*, 2010 ABQB 150, 99 CPC (6<sup>th</sup>) 367 which is actually *Magnus v Condominium Plan No. 9511228*. *Gordon v Goertz*, [1996] 2 SCR 27 was referenced but with an incomplete citation. Suffice it to say that the brief is of no use and does K.M. a disservice as the material contained therein cannot be trusted. K.M. was questioned as to whether he had utilized AI to complete the brief but he replied only that he had received assistance. Regardless of whether K.M. used AI or relied on someone else to prepare the material, ultimately the responsibility to ensure his materials are accurate rests with him.

[20] In *Zhang v Chen*, 2024 BCSC 285, Masuhara J. was considering circumstances where a lawyer had relied on AI in preparation for Court and had submitted cases which did not exist. The Court commented at para. 29:

[29] Citing fake cases in court filings and other materials handed up to the court is an abuse of process and is tantamount to making a false statement to the court. Unchecked, it can lead to a miscarriage of justice.

[21] Although not a lawyer and not subject to a code of professional conduct or the sanctions which might be imposed by a Law Society, a self-represented individual nonetheless has an obligation to not mislead the Court whether with respect to the evidence led or the argument. Fabricating law is unacceptable and, as Masuhara J. pointed out, left unchecked it may lead to a miscarriage of justice. I accept K.M.'s statement that the material was not prepared by him and he did not intend to mislead the Court. Nonetheless it is his case and as he is representing himself, he has an obligation to ensure that he is not misleading the Court and, in future, he had best ensure that if he is citing cases, those cases exist.

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J.  
C. M. RICHMOND