IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *A.B. v. C.D. and E.F.,*
2019 BCSC 604

Date: 20190415
Docket: E190334
Registry: Vancouver

Between:

A.B.

Claimant

And

C.D. and E.F.

Respondents

Restriction on publication: A publication ban has been imposed by orders of this Court restricting the publication, broadcast or transmission of any information that could identify the parties referred to in these proceedings as "A.B.", "C.D.", and "E.F."; and also restricting the publication of the names of the parties and witnesses referred to by their initials or as "G.H." or "I.J." in relation to these proceedings and any related proceedings regarding A.B. This publication ban applies indefinitely unless otherwise ordered.

Before: The Honourable Madam Justice Marzari

Oral Reasons for Judgment

Counsel for the Claimant:	K. Scorer b. findlay, Q.C.
Counsel for the Respondent, C.D.:	H.J. Dunton C. Linde
Counsel for the Respondent, E.F.:	J.R. Lithwick
Place and Date of Hearing:	Vancouver, B.C. April 8, 2019
Place and Date of Judgment:	Vancouver, B.C. April 15, 2019

INTRODUCTION

[1] AB, a 14 year old transgender boy, applies for a protection order to restrain his father, CD, from publishing, speaking or giving interviews about this case or about AB's personal and medical information. He also seeks an order that would restrain his father from sharing related documents or information with other persons, including media and social media organizations, who might publish that information.

[2] CD opposes this relief on the basis that the public attention that he brings to AB's case through interviews, publishing information, and publicly speaking about this case is essential to society and to his rights as a parent.

[3] CD acknowledges that AB identifies as male, but fundamentally does not accept AB's chosen gender identity. Nor does he accept this Court's determination that it is in AB's best interests that AB be acknowledged and referred to according to his chosen gender identity. Finally, CD does not accept this court's previous determination that referring to AB with female pronouns or otherwise denying his gender identity is causing AB harm. CD says that an order of this Court cannot change his beliefs in this regard, and that there is and should be no restriction on his rights as a parent to express those beliefs to AB and to the world at large.

[4] AB's mother, EF, supports AB's application for a protection order. CD and EF share custody and guardianship of AB.

PROCEDURAL BACKGROUND

[5] AB filed a notice of family claim in early February 2019 seeking to be found competent to consent to and to proceed with hormone therapy for his gender dysphoria.

[6] AB's father opposed that relief, and filed his own petition in the civil registry seeking injunctive relief to prevent AB's doctors and counsellors from providing him with advice or treatment (the "petition").

[7] Mr. Justice Bowden heard AB's application for summary trial of this family claim and an application under CD's petition for injunctive relief. In his joint reasons for judgment, Justice Bowden reviewed the medical and other evidence of both parties and made a series of findings, which include the following:

a) Since age 11, AB has gender identified as a male. He informed his school counsellor of that when he was 12 years old and in Grade 7 (para. 11);

b) He is presently enrolled in Grade 9 at high school under his chosen male name and is referred to by his teachers and peers as a boy and with male pronouns. He has transitioned socially to being a boy (para. 12);

c) With his mother's help, AB sought medical assistance to allow him to begin a physical transition. He was seen by a licensed clinical psychologist experienced in treating children with gender dysphoria on a number of occasions. That psychologist diagnosed AB with gender dysphoria, which is a condition where an individual experiences significant distress as a result of the sex they were assigned at birth being in conflict with their gender identity (para. 13);

d) At BC Children's Hospital, AB was seen by a specialist in the field of pediatric endocrinology who concluded that hormone therapy was in AB's best interests. The original recommendation to commence this treatment was made in August 2018, but was deferred to allow time for C D. to consider information regarding the therapy (paras. 18-20);

e) CD advised the hospital that he did not consent to hormone therapy for AB (para. 20);

f) On December 1, 2018, AB's treating pediatric endocrinologist wrote to CD regarding the recommended hormone therapy. That letter stated that parental consent was not required due to AB having the capacity to consent pursuant to section 17 of the *Infants Act,* R.S.B.C. 1996, c. 223 (para. 22);

g) On January 8, 2019, AB informed his treating doctor that he was having "bad dysphoria" and worsening discomfort with his physical body as other boys his age were progressing through puberty. AB also informed him that he had attempted suicide in March 2018 (para. 24);

h) AB's doctor at BC Children's Hospital concluded that AB was experiencing ongoing and unnecessary suffering, and that gender-affirming hormone therapy could improve AB's gender dysphoria and other co-morbid mental issues. Delay in provision of this treatment was not a neutral option, as it will AB at greater risk of suicide (paras. 25-26);

i) A psychiatrist in the mental health department of BC Children's Hospital met with AB and concluded that AB had the capacity for informed consent for testosterone treatment. She found that there was no indication that AB's decision was influenced by depression, anxiety or psychosis, or any systemic influences that were unduly affecting his decision to pursue testosterone treatment. AB's psychologist and endocrinologist agreed (paras. 28-30);

j) Another qualified doctor reviewed AB's charts and the procedures involved and confirmed that the above conclusions were made following appropriate guidelines. That doctor also opined that in the case of a child who is dealing with gender identity issues and who has previously attempted suicide, "…there is a significant risk of further attempts – and possibly even completion – if treatment is delayed" (para. 31);

k) AB swore his own affidavit stating that he was desperate to start the treatment. He states that every day his body develops more "female-ness" and he looks less and less like a boy it causes him distress and exposes him to the risk of bullying and harassment (para. 32); and

l) AB's mother evidence included her belief that "If his treatment is put on hold, I am terrified that AB will conclude there is no hope and will take his life" (para. 33).

[8] Justice Bowden concluded that AB's hormone treatment should not be delayed further and that further delay may result in AB attempting suicide again. Justice Bowden was satisfied that AB fully understands the benefits and risks of the treatments recommended, has the capacity to consent, and that the recommended treatments are in AB's best interests.

[9] At paragraph 60, Justice Bowden concluded that "delaying hormone therapy for AB is not a neutral option as he is experiencing ongoing and unnecessary suffering from gender dysphoria."

[10] Mr. Justice Bowden granted AB's summary trial application, dismissed CD's application for an interlocutory injunction, and made a series of declarations and final orders that are relevant to the matter before me, including:

1. It is declared under s. 37 of the *Family Law Act,* S.B.C. 2011, c. 25 [*FLA*] that it is in the best interests of AB that:

   (a) he receive the medical treatment for gender dysphoria recommended by the Gender Clinic at BCCH;

   (b) he be acknowledged and referred to as male, both generally and with respect to any matters arising in these proceedings, now or in the future and any references to him in relation to this proceeding, now or in the future, employ only male pronouns; and

   (c) he be identified, both generally and in these proceedings by the name he has currently chosen, notwithstanding that his birth certificate presently identifies him under a different name.

2. <u>It is declared under the *Family Law Act* that:</u>

(a) AB is exclusively entitled to consent to medical treatment for gender dysphoria and to take any necessary legal proceedings in relation to such medical treatment;

(b) Pursuant to para. 201(2)(b), AB is permitted to bring this application under the *Family Law Act* and to bring or defend any further or future proceedings concerning his gender identity; and

(c) Attempting to persuade AB to abandon treatment for gender dysphoria; addressing AB by his birth name; referring to AB as a girl or with female pronouns whether to him directly or to third parties; shall be considered to be family violence under s. 38 of the *Family Law Act*.

3. AB is permitted to apply to change his legal name from that on his birth certificate to his chosen name and the consent of his mother or father for such change is not required.

4. AB is permitted to apply to change his gender pursuant to s. 27 of the *Vital Statistics Act*, without the consent of his father or mother.

5. In these proceedings, including all applications associated with the proceedings, the names of the applicant young person, his father and his mother shall be anonymized. The applicant young person shall be referred to as AB, his father shall be referred to as CD and his mother shall be referred to as EF

[Emphasis added.]

[11] CD has appealed those orders. That appeal has yet to be heard. Unless or until the Court of Appeal reverses any of the above declarations or orders, they are binding on the parties in this proceeding, and are not open to re-determination.

THE ORDER SOUGHT

[12] In his amended application, AB seeks a series of orders that would restrain his father, CD, from publishing, speaking or giving interviews about AB's case and his medical records. The orders sought are extensive, and as drafted would prevent CD from communicating to anyone about this case or his position in the case other than to his legal counsel, the Ministry of Children and Families, medical professionals, or AB's mother EF, unless AB agrees to that communication or the court so orders.

[13] I must therefore address two issues:

a) Whether a protection order restraining CD is warranted on the evidence; and,

b) If so, what the appropriate terms of such an order are.

[14] I will first address the test for the issuance of a protection order, I will then move on to the evidentiary basis for the orders sought, and determine whether a protection order is warranted in this case.

SHOULD THE COURT MAKE A PROTECTION ORDER?

[15] AB seeks a protection order pursuant to s. 183(2) and s. 182(3)(a)(i) and (e) of the *FLA*. Section 183(2) gives the court jurisdiction to make a protection order if the court determines that family violence is likely to occur against an at risk family member, and s. 183(3)(a)(i) provides that the protection order may restrain a family member from communicating with that at risk person or another specified person. Section 183(3)(e) also authorizes this court to include in a protection order any terms or conditions it considers necessary to protect the safety of the at-risk family member or implement the order.

> **Orders respecting protection**
>
> **183** …
>
> (2) A court may make an order against a family member for the protection of another family member if the court determines that
>
> (a) family violence is likely to occur, and

> (b) the other family member is an at-risk family member.
>
> (3) An order under subsection (2) may include one or more of the following:
>
> (a) a provision restraining the family member from
>
> (i) directly or indirectly communicating with or contacting the at-risk family member or a specified person,
>
> …
>
> (e) any terms or conditions the court considers necessary to
>
> (i) protect the safety and security of the at-risk family member, or
>
> (ii) implement the order.
>
> …

[16] Because AB is a child who is a family member, I must consider the factors set out at both s. 184 and s. 185. These factors include, among other things, an assessment of the history of family violence, whether it is repetitive or escalating, psychological harm, and the possibility of harm to children.

[17] The purpose of protection orders is to ensure that courts have the means of ensuring the safety of those who are at risk. The court must distinguish between mere unpleasantness and conduct that amounts to family violence. Where behaviour amounts to family violence, and in particular where the behaviour is escalating or repetitive, the court may make the necessary order to ensure the safety of the person at risk: see *Morgadinho v. Morgandinho*, 2014 BCSC 192 at paras. 59-67. The inquiry as to the risk of family violence is future oriented, but is informed by past conduct and future circumstances: *S.M. v. R.M.,* 2015 BCSC 1344 at para. 25.

Is AB an at-risk family member?

[18] The definition of an “at-risk family member” is found at s. 182 of the *FLA*. I find that AB is an at risk family member under that definition.

[19] Based on the evidence as well as the pre-existing findings of fact and law in this family law case, I find that AB is in a particularly vulnerable position given his age, his dependency on both his parents, his love for his father, his discomfort with his physical body, his risk of suicide, and his exposure to bullying and harassment.

Is CD likely to commit acts of family violence against AB?

[20] Family violence can take many forms. Family violence is defined in s.1 of the *FLA*, but that definition is inclusive and not exclusive. The inclusive definition of "family violence" recognizes that the risk of harm extends beyond the infliction of physical violence: *Morgadinho* at para. 59. I note that in particular, the definition encompasses psychological abuse in the form of harassment or coercion, and unreasonable restrictions or preventions of a family member's personal autonomy. In the case of a child, both direct and indirect exposure to such harm may constitute family violence.

[21] This Court has already determined that it is a form of family violence to AB for any of his family members to address him by his birth name, refer to him as a girl or with female pronouns (whether to him directly or to third parties), or to attempt to persuade him to abandon treatment for gender dysphoria. AB says that the evidence establishes that CD has done all of the above, and has continued to do so even after the Court found that these actions were contrary to AB's best interests and constitute family violence.

[22] In argument, the focus of AB's concern was CD's continued willingness to provide interviews to the media and social media outlets in which he identifies AB as female, uses a female name for AB, discusses AB's personal and medical information in detail, and expresses his opposition to the therapies AB has chosen.

[23] AB relies on a number of examples which he says establish CD's ongoing family violence against him.

[24] CD is quoted in two articles in the well-established online conservative newspaper, the Federalist: one just before Justice Bowden's decision on February 26, 2019, and one shortly thereafter on March 1, 2019. Those articles indicate on their face that CD was interviewed for those articles, and contain quotes from CD including the following in the March 1 article:

> Throughout our interview [CD] continued to refer to his daughter as a girl, "because she is a girl. Her DNA will not change through all these experiments

> that they do." [CD] understood that this statement might be construed as a violation of the court's interdict against "referring to [Maxine] as a girl… to third parties," but felt that he could not honestly take any other stand.

[25] The Federalist articles use the pseudonym Maxine, but also originally identified AB by his chosen name. They also contain links to materials in this family law case, including a full copy (not redacted for anonymity or marked as an exhibit) of a letter sent to CD on December 1, 2018 by AB's doctor discussing AB's decision to proceed with hormone therapy.

[26] The Federalist accepts and posts online comments on its website. Comments posted with respect to the February 26, 2019 article include personal and derogatory comments about AB, including statements that AB is mentally ill, and anticipating and even encouraging his suicide.

[27] After CD's second interview with the Federalist published after Justice Bowden's decision, the published comments included:

- …Maxine should be told she is no longer welcome in the family home.
- So apparently trannies have a high suicide rate… is this a bad thing? Having difficulty seeing a downside here.

[28] CD has also been active in providing interviews and information about AB to a Langley-based organization known as Culture Guard. Culture Guard has posted interviews online with CD about AB and this case on January 24, 2019, and March 3, 2019.

[29] In those interviews, CD refers to AB as female, and expresses both his rejection of the permanence of AB's gender identity and his opposition to AB's chosen course of treatment. He discusses in detail AB's medical history, and trivializes AB's suicide attempt. CD expresses pleasure at the breadth of attention and publication his story is getting, and expresses hope that Breitbart and Fox News might also cover his story.

[30] CD's legal counsel, Mr. Dunton, has also provided interviews about this case on the Culture Guard website, and Culture Guard has been given copies of the

pleadings and reasons in this case. I can only assume these have been authorized by CD.

[31] In February 2019, CD posted comments on Culture Guard's website about himself under his own name stating that he had agreed to be a keynote speaker in an event in March. He has also posted on Facebook in his own name regarding AB's case. I am advised that CD ultimately did not speak at that event, and that CD now understands that exposure of his name and image also publicly exposes the identity of AB contrary to existing orders of this court.

[32] In his direct evidence, AB describes his reaction to these posts. He states:

> Those posts make me terrified that my father is going to go public in some way that will identify me and open me up to terrible bullying or violence. If he speaks in public "as my father" about me in my case, I will be "outed" and I can never go back in the closet.
>
> My mom told me that there are also interviews with my father on the Culture Guard website but I cannot bear to watch them. It feels as if my dad is going behind my back and I feel really sad and disappointed that he is doing that. I am scared to watch the interviews.…
>
> I believe that my father is associated with groups that hate trans people, including Culture Guard ….
>
> I love my father. I want to have his name as my middle name. When I was born, I was given the middle name "[REDACTED]" as the female version of my dad's name. But I cannot be around him unless he respects who I am and my gender identity. It messes with my head and I cannot stand his berating me all the time.
>
> I am concerned for my physical and emotional safety around my dad, and very worried what he will do.

[33] Culture Guard and its main spokesperson, Kari Simpson, are involved in fundraising for CD's legal expenses in this case and the related petition opposing AB's legal position in this action. Reported comments from Ms. Simpson frequently conflate CD and Culture Guard as the litigant. On March 1, 2019, after the release of reasons for judgement in this matter, the Culture Guard Facebook page read: "We are APPEALING!!" That post also links to the March 1, 2019 Federalist article. Below this post on the Culture Guard Facebook page are a series of public comments,

including comments that advocate abduction of AB, disowning AB, and “post birth abortion.”

[34] On the weekend of March 15-17, 2019, after the release of Justice Bowden’s reasons, AB states in his evidence that CD sat him down to watch an online video with him while AB was staying with CD. The video was about “Maxine” which AB immediately recognized as the name CD uses to refer to AB in public interviews. AB told CD he did not want to watch the video, and went to his room.

[35] AB also says that over the course of the weekend, CD was unable to call AB by his chosen name or gender, and the visit ended prematurely and badly. The following Monday, CD wrote AB an email stating his love for AB but also blaming AB for CD’s inability to speak with AB or spend time with AB. For example, the email says “I am so sorry you have put me in this position,” and says that CD had to cancel planned summer vacation time with AB because CD is unable to comply with “your court ordered demands.”

[36] CD says that the above evidence does not establish that his actions are or have been harmful to AB in any way, and that his conduct has not breached any orders of the court.

[37] With respect to the specific conduct AB alleges, CD says that AB’s evidence of the Federalist and Culture Guard interviews are hearsay and so cannot be considered by the Court in relation to this protection order.

[38] However, I am not concerned with the truth of what CD has said in those interviews, but with the words having been said at all. The videos are with CD and there is no issue as to their authenticity. While the Federalist articles are not sworn evidence of CD’s statements, they are statements against interest on the part of CD, and are reliable enough to be admitted for the purposes of this family law proceeding concerned with the best interests of AB (see *S.M.A. v. R.E.W.*, 2015 BCPC 34 at paras. 56-58 with respect to the admissibility of hearsay evidence in family law proceedings). Had CD given his own evidence that he did not make the statements

quoted in the Federalist, I would have preferred his direct evidence over that of the unsworn accounts of his statements in the articles. However, CD does not disavow the statements or quotations attributed to him, and says only that he did not intend to disobey any court orders.

[39] CD denies that he gave the December 1, 2018 letter to the Federalist, However, he does not account for how a letter addressed to him was provided to the Federalist. Rather he argues there is no proof that the doctors involved in AB's care did not provide it. He also says it is not AB's medical information because it was addressed to him and related to his parental rights. While I accept that CD may not have directly provided this letter to the Federalist, I find he must have been the original source of the publication of that letter though a third party. I also find that the letter primarily pertains to AB's private medical information.

[40] With respect to AB's evidence that CD tried to get AB to watch a Culture Guard video about AB, CD simply says that he did not "sit [AB] down" to make AB watch a video about this court case. He argues AB is too old to make him sit down. He agrees that he was watching "a video about parental rights in the context of child gender transition" and in argument acknowledges that AB left the room when he realized what the video was about.

[41] CD implies that AB's sworn evidence should not be relied upon and argues that others have pressured and co-opted AB such that AB is not speaking for himself. In defence of advancing his dispute with his child so publicly, he says that this is not a dispute with his child so much as with "activists" that want to take away his parental rights.

[42] I have no evidence before me to support this implication. To the contrary, I have the findings of Justice Bowden that AB is able to make his own decisions in relation to his chosen treatment and his gender identity on the basis of substantial evidence, including medical evaluations. AB is represented by his own counsel in these proceedings and has sworn his own affidavits.

[43] Unlike the situation in *B.(R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315 paras 83-85, which CD relies upon to support of his position that parents must have freedom of choice to support their children when their children are unable to assert themselves, I have no evidence here that AB *is* unable to assert his rights to security of the person. Indeed, that is the very nature of AB's successful claim.

[44] Finally, CD says that even if the conduct AB alleges is established, this does not amount to family violence or harm to AB. Essentially his position is that as long as CD obeys the Court's orders regarding anonymizing AB in his public comments, AB is not harmed by his publicly expressed concerns or comments regarding AB's chosen gender identity and medical treatment.

[45] I reject this assertion because the risk to AB is not simply a risk that AB can be identified through CD's public opposition to AB's position. The risk to AB that I must consider is how CD's public and private statements has and will affect AB directly.

[46] On all the evidence, I find that CD's conduct both before and after the determinations made by this Court indicate that he is likely to continue to engage in conduct that constitutes family violence against AB, including through conduct already determined to be family violence by this court, and the publication and sharing of deeply private information that is harmful to AB.

Freedom of Expression and the Open Court Principle

[47] Because CD has pursued his case against AB and AB's care providers publicly, restraining CD from this conduct will also restrict CD's freedom of expression not only within his family but more broadly.

[48] No constitutional challenge has been made by CD to s. 183(a)(i) which expressly provides for restraining the communications of a parent. Indeed, CD agrees that that provision in most cases will not raise a constitutional issue.

However, in this case he says his freedom of thought and speech will be compromised by the orders sought, as will his rights as a parent.

[49] CD's rights as a parent are necessarily guided and constrained by the *FLA* and orders of this Court. His rights do not include harming his child.

[50] Neither is CD's freedom of belief engaged by the orders sought. There is no requirement that CD change his views about what is best for AB. It is only how he expresses those views privately to AB and publicly to third parties that is affected.

[51] While I reject CD's argument that this engages the same constitutional analysis as a publication ban that applies to third party media, I do accept that the protection order sought in this case requires some consideration of the necessity of the order sought by AB, and the proportionality of the constraints it would impose on CD's freedom of expression.

[52] This is not the first time that a parent's freedom to express their views publicly has sought to be constrained for the protection of their child. While there is no direct case law on point in the context of a protection order, courts have grappled with similar circumstances in the family law context under different statutory regimes and different causes of action.

[53] In *A.T. v. L.T.H.*, 2006 BCSC 1689, Madam Justice Gray considered an application by a father to enjoin the mother of their children from posting allegations about him and the child on the internet. The mother had been unsuccessful at trial in establishing that the father had sexually abused the child. She nevertheless continued to believe this to be the case, and turned to the internet to garner support for her situation. She posted information which described the alleged sexual abuse by the father, providing both particulars of the alleged abuse and personal details of the child. The father objected, and applied for an injunction restraining the mother from publishing certain information in various places, including the internet.

[54] Justice Gray issued an injunction restraining the mother from posting this information. She found that the publication of the information constitutes an invasion

of both the child's and the father's privacy, and the stigma and harm associated with this intrusion was likely irreparable.

[55] With respect to the effects of such an injunction on the mother's freedom of speech, Justice Gray found that the restraint resulting from an interlocutory injunction was reasonable, so long as the mother was not constrained from advancing her position lawfully in court and with governmental and health care professionals, and with adult members of her family.

[56] Justice Gray dismissed the mother's concerns that stifling her public speech would stop her from obtaining the public support that she saw as necessary to succeed in her further law suits. Justice Gray reminded the parties that "The decisions of this court concerning that relationship are based on evidence and the law, not public pressure": see para. 52.

[57] CD seems to have forgotten this fundamental nature of our family justice system. Repeatedly, he argued that his ability to speak publicly about AB was necessary to advance his position that his parental rights should not be abrogated. However, the decisions of this Court are made on the evidence before it, and the law as it stands. Making AB the public centrepiece of CD's parental rights cause will not change this Court's views of that evidence, and will not help AB. Indeed, the evidence is that CD's public campaign is harming AB.

[58] As in *A.T. v. L.T.H.*, I find that the balance of the values at issues in this case favours the protection of the safety and security of AB. The best interests of the child and the child's protection from family violence is a paramount consideration in family law matters.

[59] I note that a similar order was also made by this Court in *R.W. v. P.C.*, 2015 BCSC 748. In that case, a mother posted to the internet images of her children and a description of her "personal journey through the relationship" in which she accused the father of abuse. Mr. Justice Abrioux used the *RJR-Macdonald* test to grant an injunction that is analogous to the protection order sought in this case.

[60] In *S.L.C. v. C.J.R.C.*, 2016 BCSC 656, at para. 134, Justice Gray comments that it is a "course of wisdom" to limit the distribution of information, including even reasons for judgment and orders where they may have an effect on the privacy of a child: "A parent is expected to act in the best interest of the children, and so may be criticized for distributing the Court's reasons for judgment inappropriately, such as to children and neighbours."

[61] Although none of the above cases consider the use of a protection order under Part 9 of the *FLA* to restrain the conduct and communications of a parent to prevent family violence to a child, I find that this is the appropriate tool in this case. I therefore am not required to consider whether there is a common law cause of action that might also give rise to the basis for an injunction restraining CD's conduct. Nor need I consider this Court's inherent jurisdiction or *parens patriae* authority.

[62] In coming to this conclusion, I am also aware of the admonition of our Court of Appeal in *Chellappa v. Kumar*, 2016 BCCA 2, that parties do not have the right to insist that family proceedings and information revealed in them remain private simply because it is a family matter. That decision establishes that a risk of significant harm must be established before such an order should issue (in that case a conduct order).

[63] I find that a significant risk of harm has been established to AB by CD's conduct.

[64] To go back to the principles of necessity and proportionality, I find that it is necessary to restrain CD's public expression to protect AB from harm. I also find such an order is proportionate. As between protecting AB from the harm and the family violence of a public denial of his gender identity by his father, and allowing his father to speak publicly about his parental rights as they concern this deeply private aspect of AB's innermost thoughts and feelings, the balance strongly favours the protection of AB.

CONCLUSION

[65] The protection order that AB is seeking essentially prevents CD from committing acts declared to be family violence against AB. While the existing order identifies what is in AB's best interests and identifies certain conduct as family violence, it does not expressly require CD to refrain from doing acts that cause that harm.

[66] AB also seeks protection from his father's public discussion of his case, including his gender identity and his private medical records. I have found that CD has and continues to publish and share AB's personal information. In this case, the personal information CD is sharing is related to AB's gender identity, an area of great sensitivity and vulnerability for AB. He is doing so without AB's consent, and over AB's objections.

[67] Furthermore, the people and organizations CD chooses to share his views with are those that AB views as being fundamentally opposed to his right to choose his gender identity. What is worse is that in the course of doing so, CD has also publically shared information and made lighthearted comments about AB's depression and suicide attempts.

[68] I find that CD's sharing of AB's private information has exposed his child to degrading and violent public commentary. CD has nevertheless continued to support the media organizations posting this commentary with additional interviews, and has expressed a desire for further opportunities to do so.

[69] I find that CD is using AB to promote his own interests above those of his child, by making AB the unwilling poster child (albeit anonymously) of CD's cause.

[70] I find that this conduct puts AB at a high risk of public exposure and acts of emotional or physical violence, in the form of bullying, harassment, threats, and physical harm, including self-harm.

[71] I find that CD's attempts at anonymizing himself and AB do not immunize AB from the harms associated with this publicity or the commentary arising from it. AB knows that his father, the public commentators, and online posters are all talking about him.

[72] AB is further harmed by the fact that it is his own father, whom he loves, who appears to be publicly rejecting his identity, perpetuating stories that reject his identity, and exposing him to degrading and violent commentary in social media.

[73] CD has not been deterred by AB's requests, or even by his litigation. While I accept that CD does not agree with AB as to what is in AB's best interests, he has been irresponsible in the manner of expressing his disagreement and the degree of publicity which he has fostered with respect to this disagreement with his child. I find that AB is highly likely to continue to be exposed to family violence if an order under s. 183 is not made with respect to his father's behaviour.

[74] In conclusion, I find that AB is an at-risk family member who is highly vulnerable. I find that his father's expressions of rejection of AB's gender identity, both publicly and privately, constitutes family violence against AB. Finally, I find that CD's conduct in this regard is persistent and unlikely to cease in the absence of a clear order to restrain it.

[75] I therefore find that AB has established that he requires a protection order. I now must turn to what the appropriate terms are for such an order.

SCOPE OF ORDER

[76] In *A.T. v. L.T.H.*, Justice Gray suggested a number of factors that should be considered in defining the scope of the order she made in that case. Those include:

a) the length of any such order;

b) who it should apply to; and

c) the scope of the communications it should affect.

[77] The default term of any protection order under Part 9 of the *FLA* is one year: s. 183(4). AB is content with that term, and does not seek to make the term longer than that, subject to his right to apply for an extension if required. I agree that this is an appropriate term.

[78] I must also consider whether the protection order should restrain only CD, or whether it should apply more generally. Unlike injunctions that commonly apply not only to the person they name but also to all others with notice, protection orders are a specific statutory tool to restrain family violence by family members. Only CD has been alleged and found to have engaged in family violence creating a risk of harm to AB. The protection order will therefore be against him alone.

[79] The scope of the communications constrained by the order is more difficult. It must be tailored to the harms and family violence that AB requires protection from, and should not restrain communications or conduct that is not harmful to AB.

[80] AB and his mother, EF, say that although they have tried to suggest a more tailored order, nothing short of a complete prohibition on CD speaking to anyone about AB's case or medical records, without AB's consent, will adequately protect AB. They say that the evidence establishes that even when CD himself does not publish information, he is the source of other publications of AB's deeply personal information, and so all third party communication should be restrained. They would exclude from this requirement CD's communications with EF and with medical professionals, and of course his legal advisors. They would also suggest that an order of the Court could allow additional communications.

[81] I believe a more specific order is possible and required.

[82] I begin with conduct that has already been declared by this Court after summary trial to be family violence. This includes attempting to persuade AB to abandon treatment for gender dysphoria, addressing AB by his birth name, and referring to AB as a girl or with female pronouns, whether to AB directly or to third parties and publicly. This Court's declaration that this conduct is harmful to AB and

constitutes family violence has not been enough to restrain CD from engaging in that conduct. I consider that the continuation of this conduct must therefore be restrained in the protection order.

[83] I would add for clarity (although I consider it implicit in the existing order) that exposing AB to videos and other materials that question whether his gender identity is real or the treatments he seeks are in his best interests, is an attempt to persuade AB to abandon treatment. While those arguments may be properly advanced in court, they are harmful when made to AB by his father.

[84] I also find that the existing orders are no longer sufficient to ensure that CD does not do further harm to AB by exposing AB to the above behaviours from third parties, and to bullying and harassment, through CD's dissemination of AB's personal and private information to the public more broadly.

[85] The key information that CD must be restrained from sharing is commentary, information or documentation about AB's sex, gender identity, sexual orientation, mental or physical health, medical status or therapies. Because CD was unclear on this point in argument, I clarify here that the order would preclude sharing letters from AB's doctors written to CD about AB's gender dysphoria or his proposed treatment.

[86] This would allow CD to speak publicly and to third parties, for example, about when he will be attending court, or to speak to AB's teachers or extended family about how AB is doing in school without reference to the above topics.

[87] I have considered whether this restriction should apply only to specified persons, as authorized by s. 183(3)(a)(i) of the *FLA*, or whether a broader order is required pursuant to s. 183(3)(c) to protect AB's safety and security.

[88] In this case, it is possible to identify the persons and organizations that CD has spoken to thus far in contravention of AB's declared best interests, with the intention and knowledge that his comments would be made public. Furthermore those persons and social media organizations, with knowledge of the Court's

previous orders, have continued to misgender AB and to publish degrading and violent comments about AB.

[89] However, CD has also expressed a hope that additional news outlets might also cover “his” story. In addition, there is evidence that CD is sharing information with third parties that is eventually making its way to these publications. As a result, an order limited to these persons or news organizations is not sufficient to protect AB’s safety and security from CD’s conduct in this regard.

[90] I would exclude from the scope of this order communications by CD to his counsel, as well as to his own or AB’s medical professionals. Communications with EF, and legal counsel retained on this file and on CD’s Petition, shall also be permitted.

[91] CD shall be free to communicate to the court with respect to AB’s sex, gender identity, sexual orientation, mental or physical health, medical status or therapies through submissions, pleadings or affidavits, but these materials may not be shared with third parties. In other words, the protection order shall not restrict what can be filed or said in court, but shall restrict what can be shared from the court file or said outside of court.

[92] In *A.T. v. L.T.H*., Justice Gray permitted strictly private communications with family members, subject to a copy of the injunction order being provided to them. I have given serious consideration to this option, but as this is a protection order applicable to CD and not an injunction order, service of the order would not necessarily provide the level of protection required to prevent further dissemination of the information. In addition, CD has not explained who in his support network provided AB’s medical information to the Federalist. Finally, I am concerned that AB not be exposed to hearing his father’s comments about his sex, gender identity, sexual orientation, mental or physical health, medical status or therapies through other extended family members.

TERMS OF ORDER

[93] The protection order is required to be prepared by the Registry. However, I will summarize the substance of the order here:

a) CD shall be restrained from:

   i. attempting to persuade AB to abandon treatment for gender dysphoria;

   ii. addressing AB by his birth name; and

   iii. referring to AB as a girl or with female pronouns whether to AB directly or to third parties;

b) CD shall not directly, or indirectly through an agent or third party, publish or share information or documentation relating to AB's sex, gender identity, sexual orientation, mental or physical health, medical status or therapies, other than with the following:

   i. His legal counsel;

   ii. Legal counsel for AB, EF, and the named respondents in the Petition currently filed as Vancouver Registry S-191565;

   iii. The Court;

   iv. Medical professionals engaged in AB's care or CD's care;

   v. Any other person authorized through written consent of AB; and

   vi. Any other person authorized by order of this court;

c) CD shall not authorize anyone, other than his own retained counsel, to access or make copies of any of the files from the Registry in relation to this proceeding or any related proceeding, including CD's petition proceedings currently filed as S-191565; and

d) The term of the protection order shall be one year, subject to any extension issued by the court.

[94] AB shall have his costs of this application against CD. I consider that the proceeding was of more than ordinary difficulty given the constitutional values raised and the lack of precedent on these issues.

[95] Finally, AB sought, by way of an amended application, an order to prevent CD from bringing any further applications in this proceeding without further order of the court. That relief was brought late and adjourned generally. I am not seized of it.

"Marzari J."