

CANADA / JUDGMENT

A.M.R.L. v. J.C.L.

2025 BCSC 1919

COURT

Supreme Court of British Columbia

DECIDED

13 August 2025

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2025 BCSC 1919 A.M.R.L. v. J.C.L.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.M.R.L. v. J.C.L.,

2025 BCSC 1919

Date: 20250813

Docket: E69912

Registry: New Westminster

Between:

A.M.R.L.

Claimant

And

J.C.L.

Respondent

Before: Associate Judge Bilawich

Oral Reasons for Judgment

In Chambers

Counsel for Claimant:

K. Tiwana

Counsel for Respondent:

J.L. Stamm

Place and Date of Hearing:

New Westminster, B.C.

July 9 and 30, 2025

Place and Date of Judgment:

New Westminster, B.C.

August 13, 2025

Introduction

- [1] The respondent applies to transfer this action from New Westminster Registry to Victoria Registry for all purposes. The claimant opposes the application.

Background

- [2] The claimant and respondent began living together in 2009, married in 2011, and separated on April 22, 2024. They have two children of their marriage: [E], age 10 and [J], age 8.
- [3] Both parties resided in the Greater Victoria area during their marriage. Post separation, they both continue to work and reside there.
- [4] The claimant is 40 years of age. She is employed as an [redacted] with Island Health. She says her 2024 income was just under \$75,000.
- [5] The respondent is 46 years of age. He is a family physician and emergency physician. He practices through a medical corporation. The claimant says he has other business interests as well. The claimant says he has not yet provided his 2024 income information, but his 2022 gross corporate earnings were in the order of about \$407,000. In 2023 it was about \$533,357.
- [6] The respondent says both parties' parents, all of whom spend time with the parties and the children and as such are potential witnesses, live in Victoria. The parties' children attend school in Victoria. All of their medical, dental, and other service providers are located there.
- [7] No trial date has yet been scheduled. The respondent offers a preliminary estimate that 10-day trial will be necessary. He indicates that at the time of preparing this application there were no trial dates available for a ten-day trial either in New Westminster or Victoria until at least November 2026.
- [8] Respondent's counsel says he has repeatedly written to claimant's counsel demanding the action be transferred to the Victoria registry for the financial benefit of the parties, to allow the parties to have fulsome participation in all court matters, and for the benefit of the children. These demands were rejected without justification.

- [9] The claimant alleges the respondent has subjected her and the children to incidents of family violence. The respondent vigorously denies this. The claimant says she was initially prepared to apply for a protection order but hesitated out of concern for the respondent's professional reputation. On April 22, 2025, she informed the respondent of the separation. She claims the respondent initially expressed remorse and that she hoped there would be a cooperative process, so initially she chose not to proceed with an application for a protection order.
- [10] The claimant says there was an incident on May 10, 2025, in which the respondent ended up being arrested by Saanich Police for allegedly physically assaulting [E] in a parking lot at the University of Victoria. The incident resulted in charges under s. 266 of the Criminal Code, RSC 1985, c C-46, and he was released on an undertaking prohibiting him from having contact with the children or attending at locations where they are present. On May 20, 2025, the claimant made a without notice application for a protection order in this action, which was granted. The respondent had an application pending to set aside the protection order at the time this application was heard.
- [11] The claimant says since the parties separated, the respondent has maintained control over all family finances, including family home and its contents, 18 bank accounts held solely in his name and various business assets. She complains that she has had no access to them since leaving the family home with the children. The respondent did not begin paying interim support until November 2024. Since January 16, 2024, she has borrowed about \$237,000 from family members to support herself and the children. She has also incurred other personal debt of about \$64,000 as of June 30, 2025, on credit cards and a line of credit. She says she has been experiencing severe financial hardship due to the respondent's ongoing control of all family assets. She complains he has refused to provide adequate financial disclosure and has prevented her from valuing family assets. She says he has been taking an obstructionist approach in this litigation, which has forced her to make court applications to move matters forward.

Procedural History

- [12] On April 19, 2024, the claimant filed her notice of family claim in the New Westminster Registry. At the time, she was represented by her current counsel, Ms. Tiwana, who practices with YLaw Group in Surrey, BC.
- [13] On November 14, 2024, the respondent filed his response to family claim and counterclaim. At the time, he was represented by Ms. Tucker, who practices with Brown Henderson Melbye Law Firm in Victoria.
- [14] On January 21, 2025, the parties attended a judicial case conference before Associate Judge Muir.

- [15] On May 20, 2025, the claimant obtained a without notice protection order which was made by Justice Taylor. It restrained the respondent from directly or indirectly communicating with or contacting the claimant, from attending at, nearing, or entering a place regularly attended by the claimant and/or the children or from attending or being within 500 metres of the claimant's residence, place of employment, and children's school, their counselor's office, music school, any places where their scouting activities were taking place and certain other locations where [E] was attending other activities.
- [16] On June 20, 2025, the parties attended a case planning conference before Associate Judge Hughes. An order was made which provided that a document disclosure application made by the claimant was adjourned to July 9, 2025, and the respondent's application for a change of venue was to be served by June 20, 2025, and set for a hearing on July 9, 2025. Both parties were to file updated F-8 financial statements by July 15, 2025.
- [17] On July 9, 2025, the parties consented to an order providing for appraisal of the former family home and that the respondent produce an amended list of documents which included numerous specific classes of documents.
- [18] This application was heard on July 9 and continued on July 30, 2025, with video conferencing being utilized on both dates.

Applicable Law

- [19] The application is made pursuant to Rule 22-2(13) of the Supreme Court Family Rules, B.C. Reg. 169/2009:

Transfers

- (13) At any time after a family law case is started, the court may on application order the family law case to be transferred from the registry in which it is being conducted to any other registry of the court for any or all purposes.
- [20] The factors considered in an application to transfer an action to a new registry are set out in *Carter v. Gobis*, 2024 BCSC 357 at para. 37:
- [37] The court has discretion to transfer a family law case from one registry to another. The two considerations are: (1) the claimant has the right to choose the venue; and (2) the onus is on the person seeking the move to establish that the balance of convenience requires the file to be transferred: *Matteucci v. Greenberg*, 2016 BCSC 1773; *Schuler v. Schuler*, 2000 BCSC 1498; and *Hov v. Hov*, 2021 BCSC 558.
- [21] In *C.C.R. v. T.A.R.*, 2014 BCSC 620 [C.C.R.], at paras. 50-51:

- [50] The principles to be applied to a request to transfer a proceeding from one registry to another are summarized in *Robertson v. Zimmer*, 2001 BCSC 1067 at paras. 3-4. There are only two grounds for ordering a change of venue on application by the defendant: the interests of justice or the preponderance of convenience.
- [51] In *Cooper v. Lynch*, 2009 BCSC 1317, Mr. Justice Barrow noted that the plaintiff "has the right to control the course of the litigation," a right which extends to choosing the location and registry for the trial. While that right is not absolute, and the Rules do permit the defendant to apply for transfers, "overriding the plaintiff's decision as to the course of the litigation is only to be done where the "great preponderance" of convenience supports doing so" (para. 10). The balance of convenience is generally assessed by looking at the witnesses involved and the expenses of attendance.
- [22] In appropriate circumstances, the court has discretion to order transfer of the proceeding for a limited purpose, such as only trial only, but maintain the action in its original registry for purposes of pre-trial applications. See *C.C.R.* at paras. 52-56:
- [52] The action was commenced in Terrace shortly after the parties separated. As noted above, the plaintiff's decision to commence this action in Terrace is entitled to considerable deference. However, both parties now reside in Kelowna as does the child. The defendant's counsel has an office in Kelowna. No evidence was provided by either party respecting potential witnesses or their location.
- [53] If the action remains in Terrace both the plaintiff and the defendant will incur the expense of travelling to Terrace for trial, as will defendant's counsel.
- [54] In my view the great preponderance of convenience, at least with respect to the trial of the matter, favours Kelowna.
- [55] With respect to pre-trial applications, which normally do not require the presence of the parties, it has not been shown that there is such a great preponderance of convenience.
- [56] As a result, I order that the trial of this matter shall be heard in Kelowna and that the file be transferred to the Kelowna registry for that purpose. However, I am not ordering that transfer for any pre-trial applications, which shall continue out of the Terrace registry. See *Okayasu v. Poulsen*, 2001 BCSC 729 at para. 48.

Analysis

- [23] The respondent argues that access to justice and the preponderance of convenience overwhelmingly mandate that the action be transferred to Victoria. The parties reside there. The children reside there. The most likely witnesses in any trial that is required reside there. Counsel for the respondent resides there. The real property in issue is located there. The company which is in issue has its corporate presence there. The cost for counsel, the parties and the anticipated witnesses at trial to travel between Victoria and New Westminster for proceedings would involve significant expense and inconvenience. The children would be in

third-party care outside of their normal school hours more than would otherwise be necessary if the action proceeds in Victoria. During argument, respondent's counsel also complained about the cost and inconvenience of having to file the voluminous application record materials via couriers and registry agents, transported between Victoria and New Westminster. This action has no connection to the New Westminster registry, apart from geographic convenience for claimant's counsel.

- [24] The claimant says she started the action in the New Westminster registry for two reasons: (a) due to difficulty she was experiencing in securing experienced family law counsel in Victoria and (b) to avoid potential reputational harm to the respondent, who is a practicing physician on Vancouver Island. She contacted several Victoria law firms but most were not accepting new clients or had long wait times. As this matter was urgent and complex, she required experienced family law counsel with immediate availability. Her choice to retain Surrey-based counsel was borne from financial necessity; it was not a tactical decision.
- [25] The claimant argues there has been only one urgent application so far, namely the protection order application following the respondent's alleged assault of the parties' eldest child, [E].
- [26] She says if the action is moved to Victoria registry, she would incur significant additional legal expenses, travel time, travel-related disbursements and accommodation expenses for her counsel. This is on top of the financial hardship she is already experiencing. This is not something she can absorb, and the financial impact on her would be disproportionate. The respondent is in a significantly stronger financial position. Changing venue would jeopardize her ability to continue on with her current legal counsel.
- [27] The claimant says it is premature to seek a change of venue for trial because no trial dates have been canvassed and no expert witnesses have been retained or identified yet. The number of potential lay witnesses remains unknown. Given the failure to complete financial disclosure or resolve key interim issues, it is impossible to address trial logistics at this stage of the proceedings.
- [28] I agree this action is in the relatively early stages, such that much of the evidence regarding anticipated applications, the location and identity of experts, and numbers and identity of key witnesses is speculative at this point. The claimant's evidence about her efforts or difficulty securing acceptable family law counsel in Victoria is vague and general in nature.
- [29] It is apparent that, for the purposes of a trial at least, the overwhelming "centre of gravity" of this action is squarely based in Victoria. To the extent that the parties may choose to retain a particular expert who may be located outside the Greater Victoria area, if travel and accommodation cost for that individual to attend trial is a concern, that can be addressed by permitting selected out-of-town witnesses to testify by video conference. In a trial involving a substantial number of witnesses, the costs to have one counsel travel for the duration of trial will be relatively modest in comparison to the cost of having one counsel, all of the parties and numerous non-party witnesses travel from Victoria to New Westminster for trial,

plus associated accommodation expenses. While many aspects of the anticipated trial are uncertain given the early stage of this action, the practical reality is that trials must be booked long in advance, so delaying setting a trial date while waiting for these details to become clearer is not really a practical option.

- [30] It is reasonable to anticipate that a significant number of interim applications are likely necessary. The claimant says that some of these which are already pending are time-sensitive and would be prejudiced by a change in venue. Concern was also expressed about there being fewer chambers days available through the Victoria registry compared to either the New Westminster or Vancouver registries.
- [31] Attendance at interim applications will involve only one counsel or the other having to travel, if in-person attendance is desired, regardless of whether an interim application is heard in New Westminster or Victoria. Counsel have the option of attending applications by video, as was done for this one. Parties' attendance to observe the hearings can easily be accommodated by allowing them to do so by video conference. Registry location is not as critical a cost consideration for interim proceedings. To the extent there is added cost to file physical copies of application records for hearings, that can be addressed through appropriate costs awards. The use of electronic hearing records and materials is also an option. I note that during the COVID-19 pandemic, a File Transfer Server was established to accommodate transfer of larger-sized electronic files. It is my understanding that it remains an available tool, to the extent that larger volumes of electronic files need to be used for a video conference hearing.
- [32] In my view, the approach adopted by Justice Punnett took in C.C.R. is the one which makes sense here. I find that the great preponderance of convenience requires that the trial of this action be held in the Victoria registry. I am not persuaded that this same high standard of convenience has been made out in relation to interim proceedings in this action. The latter can reasonably be accommodated through the current registry, New Westminster. I order that the action be transferred to Victoria registry for the purposes of trial only, and that it otherwise remain resident in the New Westminster registry for all other purposes.
- [33] The success on this application has been divided. My preliminary view is that it is appropriate that the costs be in the cause.
- [34] CNSL K. TIWANA: Thank you, your Honour. With respect to costs, can we make additional submissions on that; if there was correspondence sent that duplicated the findings, which is that we had corresponded with my friend saying that we were agreeable to the file being transferred to Victoria for the purposes of trial but that all interim applications should be held in New Westminster?
- [35] THE COURT: I have to base costs on the positions that were taken in the hearing. This is not like a formal offer to settle. Whomever is ultimately successful in the action will get costs of this application. Given there was divided success, I think that is fair.

"Associate Judge Bilawich"

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