

CANADA / JUDGMENT

Beere v. Rajaratnam

2025 BCSC 103

COURT

Supreme Court of British Columbia

DECIDED

23 January 2025

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2025 BCSC 103 Beere v. Rajaratnam

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Beere v. Rajaratnam,

2025 BCSC 103

Date: 20250123

Docket: E241731

Registry: Vancouver

Between:

Sarah Christina Beere

Claimant

And

Alexander Mischa Rajaratnam

Respondent

Before: The Honourable Justice MacNaughton

Reasons for Judgment

Counsel for the Claimant:

E. Jalilian

Counsel for the Respondent:

N. Bernardi

Place and Date of Hearing:

Vancouver, B.C.

September 24, 2024

December 02, 2024

Place and Date of Judgment:

Vancouver, B.C.

January 23, 2025

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Background Facts

- [1] This is an application for interim relief regarding parenting arrangements, child support, and spousal support.
- [2] The claimant is currently 37 years old. She is a human resource professional in a Lower Mainland school district.
- [3] The respondent is currently 50 years old. He was married once before. He is an audio engineer working in the music industry but has never worked full time in that capacity. He has struggled to maintain his career since the pandemic.
- [4] The parties began living together in a marriage-like relationship in November 2012. They separated in 2023 but do not agree on the month. They have one son, G.R., who was born on July 11, 2016, and is now 8 years old.
- [5] After separation, the parties continued to live in their house located in North Vancouver, BC (the "Family Home"). The claimant lived on the main floor and the respondent in the basement.
- [6] On July 25, 2024, the claimant and G.R. moved out of the Family Home and into rental accommodation. The claimant says that she moved out due to significant ongoing family violence against her and G.R.
- [7] A 10-day family trial is scheduled to begin on January 26, 2026.

The Applications

- [8] Both parties have filed applications seeking interim relief. Unfortunately, they seriously under-estimated the time required for the hearing. As a result, there was a lengthy delay in scheduling a resumption of submissions.
- [9] Other issues are raised in the parties' applications, but the questions for me to decide are as follows:
 - a) What are the appropriate parenting arrangements for G.R.?
 - b) Depending on the appropriate parenting arrangements, what amount of child support is payable?
 - c) What, if any, spousal support is payable by the claimant to the respondent?

Parenting History

- [10] After G.R.'s birth in July 2016, the claimant took a maternity leave of four months from her employment. She used accrued vacation to return to work part time in December 2016. She returned to work full time in January 2017.

- [11] The parties disagree about whether the claimant wished to return to work or was financially required to do so. Nothing turns on that disagreement, so I need not decide it.
- [12] Although the claimant says that she was G.R.'s primary care parent, I accept on the evidence that the respondent was responsible for G.R.'s care while the claimant was at work. The claimant acknowledges that it was more practical for the respondent to take G.R. to most of his appointments because the respondent was not working.
- [13] I accept that the claimant cared for G.R. after work and on weekends. I accept that the parties shared household chores and that the claimant did most of the cooking and the majority of the house and yard work. Like so many couples in which one parent is the primary income earner and the other parent does not work or is marginally employed, the parties cooperated to make things work for their family. I find that neither parent played a primary role in parenting G.R. They shared the responsibilities as their schedules allowed.
- [14] It is apparent from the parties' affidavits that the respondent's failure to earn income at a level sufficient to contribute to their significant household expenses was an ongoing source of friction between them.
- [15] Starting when G.R. was about three-and-a-half years old, and from September 2019 to June 2021, G.R. began attending preschool two days a week for two hours a day. In September 2021, G.R. began attending full-time kindergarten at a local elementary school.
- [16] Beginning in the 2022-2023 school year, the claimant arranged for before- and after-school care for G.R. with a preschool that also provides school-aged care. The preschool operates between 7:30 a.m. and 6:00 p.m. and buses the children to and from school. The claimant's mother provides childcare support when the claimant is required to work late or if G.R. requires urgent pickup from school and the respondent is unavailable.
- [17] The daycare arrangements made it possible for the respondent to work full time, but he did not do so, despite repeated urging by the claimant and her efforts to show him opportunities for which she believed he was qualified.

Family Violence Involving the Claimant

- [18] The claimant makes a number of allegations of family violence. She lists several allegations of what she calls "significant" verbal, emotional, psychological, sexual, and financial abuse by the respondent that occurred "throughout" the relationship.
- [19] It is notable that none of those allegations formed part of her counsel's original demand letter to the respondent or to his counsel. It is also notable that despite the involvement of the police and the Ministry of Child and Family Services ("MCFD"), no charges have ever been laid against the respondent, the parties were not directed to separate by the police, and the Ministry closed its investigative file without putting a safety plan in place for G.R.

- [20] The claimant alleges that after separation, the family violence took on a new form that included the respondent surveilling and monitoring her, searching her vehicle, hiding household items, refusing to return her items to her, cutting off the Wi-Fi to her work computer, and refusing to notify her in advance when he planned to pick up G.R. With one exception, other than her statements, the claimant has not provided any independent support for her very serious allegations, all of which the respondent denies.
- [21] The only allegation for which the claimant provided proof involved the respondent placing a nest camera near the front door of the Family Home. In correspondence from the claimant's then counsel, the camera was described as a surveillance tool for monitoring the claimant's movements within the property and as a "form of controlling behaviour".
- [22] The claimant says that in March 2024, she reported the respondent's ongoing surveillance of her to the RCMP. There is no evidence of a police file number or of any action taken by the RCMP as a result of her report.
- [23] I have read the respondent's affidavit explaining that he placed the camera to record the claimant removing belongings, including G.R.'s toys, from the Family Home. He believed that she was doing so improperly. He also explained that he later removed the camera. I find that the respondent's placement of the camera was misguided and he acknowledged that he should not have done it.
- [24] On all the evidence, I am not satisfied that the respondent engaged in family violence or in controlling behaviour directed toward the claimant.

The Respondent's Health and Alleged Hoarding

- [25] The claimant's evidence in support of her suggestion that the respondent suffers from "Major Depressive Disorder" is the respondent telling her that he suffered depression after the breakdown of his first marriage and after significant past family traumas. The claimant's use of capital letters when describing the respondent's depression suggests that the respondent had been formally diagnosed with a DSM-5 mental disorder. There is no evidence to support such a diagnosis. In fact, the claimant's return to work and her decision to leave G.R. in the full-time care of the respondent belies her claim that she had any significant concerns in that regard.
- [26] The claimant also suggests that the respondent has a hoarding disorder. This appears to be a conclusion or diagnosis she has made without any proof from someone qualified to diagnose him. She provides, in support of her conclusion, photographs of the basement of the Family Home. The photos depict a cluttered and disorganized space used for storage. Some of the materials stored in the basement are the construction materials and tools the parties purchased for an anticipated renovation of the Family Home. Some of the materials are pieces of electronic equipment related to the respondent's chosen career as an audio engineer. The basement is also used to store sports equipment and household supplies.

- [27] The claimant now suggests that the state of the parties' basement is unsafe for a child and expresses concern about the emotional effect that storing excess items and waste has on G.R. However, the use of the basement for storage does not appear to be new. Both parties freely resided in a home with an overly cluttered basement. I find that the claimant is exaggerating her concern about the possibility of items falling from above, the risk of fire, and the risk of rodents.
- [28] The extent to which the claimant is prepared to cast the respondent in a negative light is evident from para. 92 of her August 12, 2024 affidavit, in which she expresses concern about the respondent's "troubling behaviour" and his wellbeing. She says that in June 2024, he took the laundry detergent out of the container "presumably to hoard it for his own use" and that he routinely washes most of his dishes after cooking but leaves chef and paring knives in the sink. It is unclear what she asks me to make of this evidence.

Family Violence Involving G.R.

G.R.'s Behavioural Issues and the Parties' Different Approaches to Discipline

- [29] Both parties agree that G.R. has engaged in physically aggressive behaviour towards them, typically in response to discipline or to being told that he cannot do something. It is apparent on their affidavit evidence that the parents have different approaches to dealing with G.R.'s aggression.
- [30] The respondent says that in late 2021 or early 2022, G.R. started exhibiting concerning behavioural issues. By the end of 2022, his tantrums became more physical, and he often punched, kicked, or threw objects. The respondent says that he tried to set behavioural boundaries and consequences for G.R., but that the claimant repeatedly undermined these attempts in front of G.R.
- [31] The respondent says that G.R.'s behavioral issues became difficult to ignore. He gave a number of examples. Once, during a tantrum, G.R. threw one of the claimant's exercise weights at a window and almost broke the glass. On another occasion, he smashed ceramic bowls from a kitchen counter on the floor and ran through the shards. On yet another occasion, G.R. threw rocks at the claimant's head while they were together in the garden. On this occasion, the claimant asked for the respondent's help because she could not handle G.R. on her own.
- [32] In March 2023, the respondent describes G.R. as having a big tantrum in which he pushed a wooden chair around the house, ramming it forcefully into things. The respondent was concerned that G.R. was going to hurt himself, so he approached G.R. from behind and put his hands under G.R.'s armpits to pull him away from the chair.

- [33] Initillay, G.R. calmed down but then he started to get worked up again. The respondent saw that G.R. was about to kick the claimant when her back was turned, and he yelled at G.R. to stop. The parties were arguing, and the respondent saw G.R. about to grab something that was sharp, so he again yelled at G.R. to stop.
- [34] The claimant accused the respondent of being abusive and called the police. No charges were laid. The MCFD was contacted, but within days the MCFD file was closed without further action. The MCFD suggested several counselling services that were available to the family. G.R. has been attending therapy.
- [35] Two other independent witnesses have filed affidavits in support of the respondent. The first was filed by Katie Lauren Kewin, the respondent's friend. She met the respondent while both their children attended the same preschool. She regularly saw G.R. and the respondent at preschool drop-offs and pickups, and they often took their children to a park or playground after preschool. She described the respondent as alert to G.R.'s needs.
- [36] Ms. Kewin said that G.R. and her daughter started in the same kindergarten class together and the respondent cared for both children on several professional development days. They also spent time together on weekends. She described the respondent as empathetic, kind, and quite bright. She said that on occasion, she observed G.R. not listening to the respondent or getting frustrated with him, but she said the respondent comforted him and that they seemed to have a loving bond. She described the respondent's parenting style as firm but respectful. Their two children completed Grade 1 together but were not in the same Grade 2 class, so they saw less of each other in the 2023-2024 school year.
- [37] G.R.'s godmother, Fui Yeang Low also filed an affidavit in support of the respondent. She has known him for more than two decades and describes him as gentle, thoughtful, non-violent, and reasonable. Ms. Low observed the parties' different parenting styles. She observed G.R.'s temper tantrums in which he kicked or punched his parents. She observed the respondent physically restrain G.R. when the force of his tantrum put him in harm's way.
- [38] In one example, she says the respondent picked G.R. up to prevent him from knocking over furniture that could have toppled onto him. The respondent sat with G.R. and waited for him to settle down and then, post-tantrum, calmly talked to G.R. about what happened. She observed the respondent speaking sternly to G.R. in order to set a boundary, but never menacingly or violently.
- [39] The parties attended a few sessions of couples counselling but were unable to reconcile. The claimant said that she intended to separate, and the respondent moved into the basement of the Family Home.

- [40] While they lived separately in the Family Home, the parties continued to share parenting time, and G.R. moved between them. The respondent says that G.R. seemed to have more behavioural issues when both parents were present. As a result, the parties began to exercise separate parenting time. In August 2023, with the claimant's consent, the respondent took G.R. to Seattle for a multi-night vacation.
- [41] The claimant says that she has done her best to manage G.R.'s aggression as calmly as possible through de-escalation and setting firm boundaries. She acknowledges that there have been times when both parents have had to physically restrain G.R. when he was at risk of harming himself or others. The claimant says that if G.R. was breaking things, hitting heads, or otherwise in genuine danger, she would restrain him by wrapping her arms around him from behind in a bear hug. However, if G.R. was hitting her arms, legs, or torso or throwing soft things in a manner unlikely to break anything, she would try to talk to him gently, empathize with him, and block his hits.
- [42] The claimant says that, on many occasions, when G.R. was hitting or kicking the respondent's body, the respondent roughly grabbed and held G.R.'s wrists and ankles, and, in the process, yelled at him and took away his toys, which had the effect of escalating G.R.'s behaviour. On a few occasions, she claimed that the respondent's attempt to restrain G.R. left red marks or bruises, including finger-shaped bruises, on G.R.'s wrists and ankles.
- [43] Pictures of bruises allegedly caused by the respondent in 2023 were sent to the respondent's counsel in July 2024 and are attached to the claimant's August 12, 2024 affidavit. In the photographs, they are not serious. They look like the normal bumps and scrapes on a boy of his age. There are no five finger bruises. A single small round bruise is visible.
- [44] The claimant says that the respondent also intervened when it was unnecessary to do so. For example, when G.R. hid under the dining room table, the respondent pulled him out roughly by the wrists.
- [45] The claimant describes what she calls harsh discipline by the respondent. In addition to their different approaches to G.R.'s aggression, she says she observed the respondent:
- frequently yelling and screaming at G.R.;
 - criticizing and berating G.R.;
 - taking or threatening to take G.R.'s toys, sometimes for over a year, when G.R. could not stop his emotional outbursts;
 - giving G.R. cold showers;
 - taking G.R.'s food away; and
 - putting G.R. in time outs for over an hour.

- [46] The claimant says that the respondent demonstrated little patience with G.R. and did not recognize age-expected behaviour. He yelled at G.R. on several occasions to "act like an adult". On at least two occasions, when G.R. was slow getting ready for preschool or school, or was trying to play, the respondent removed his food.
- [47] The claimant says that on one occasion, when G.R. tried to hit the respondent, he repeatedly pushed G.R. backward onto his bed. As a result, G.R. hit his head on the claimant's knee which she described as very dangerous. On another occasion, the respondent dangled G.R. upside down by the ankles when he tried to avoid having a shower.
- [48] In his August 1, 2024 affidavit, the respondent says that he tried to set boundaries and consequences for G.R., such as taking a toy away if he hit himself or the claimant. He says that the claimant would often say, in front of G.R., that the respondent was a "mean" or "bad daddy". While the claimant said she did not recall using those words, she did acknowledge that, when they were all together, she attempted to protect G.R. from what she believed was unreasonably harsh discipline by asking the respondent to stop or by giving him looks. The respondent yelled at her in front of G.R. for undermining him or not disciplining G.R. enough.
- [49] There is no doubt that G.R. has been exposed to his parents' conflict and to their different approaches to discipline.
- [50] In the claimant's affidavit, she describes a number of incidents as a result of which she involved the RCMP and the MCFD. As I have said, despite those reports, no charges were ever laid against the respondent, and the MCFD did not order a safety plan to be put in place for G.R.
- [51] In each case, the parties give very different descriptions of what occurred. I have read both parties' affidavits about these incidents, all but one of which involves the parties' reactions to behavioural issues with G.R. The parties' inability to see that the other's approach might have some benefits, or to participate in joint counselling to determine an appropriate response to G.R.'s behaviour, or to support behavioural management techniques for G.R., has led to increased conflict and finger-pointing between them.
- [52] According to the claimant, now that the parties have separated, she has been working with G.R. on positive behavioural support and has seen an improvement. She says he no longer struggles with significant behavioural issues and she expects things to continue to improve.

Current Parenting Arrangements

- [53] At some point in the 2023-2024 school year, the respondent says that the claimant started telling him that it was "unsafe" for G.R. to spend time alone with him.

- [54] Immediately after the claimant and G.R. moved out of the Family Home in July 2024, the respondent had parenting time with G.R. on Mondays and Wednesdays from 3:00 p.m. to 7:00 p.m., and on Sundays from 1:00 p.m. to 5:00 p.m. All exchanges took place at a local grocery store parking lot.
- [55] Since the parties' judicial case conference ("JCC") on August 6, 2024, the respondent has had parenting time on:
- a) Mondays, Wednesdays, and Thursdays from 3:00 p.m. to 7:00 p.m.;
 - b) Sundays from 11:00 a.m. to 7:00 p.m.; and
 - c) Starting August 18, 2024, and continuing every other week thereafter, Sundays from 11:00 a.m. until the Monday morning drop-off at school.
- [56] In her affidavit, the claimant says that when the respondent and G.R. spend time together, playing or engaging in other activities, their interactions are generally positive. However, when the respondent is responsible for G.R.'s day-to-day care, there is a potential for conflict, and the respondent is more likely to endanger G.R.'s health and safety by disciplining him inappropriately or harshly and neglecting him.
- [57] The claimant filed a fourth affidavit made on November 21, 2024. It was filed after this matter was first argued and before it resumed. I did not admit the affidavit because doing so would have resulted in the respondent filing a responsive affidavit and the matter being prolonged even further. A brief review of its contents indicated that it contained more allegations of the respondent's allegedly harsh discipline of G.R. I was advised that the respondent had prepared an affidavit in response, but I did not admit it either. I had a clear picture of the parties' parenting dispute on the material already filed.

Conclusion

- [58] On an interim application like this, competing affidavits alleging harsh discipline of G.R. are difficult to reconcile, and no clear findings of fact are possible. Rather, I must consider all of the information before me and the parties' behaviour to determine G.R.'s best interests.
- [59] On the undisputed evidence, the claimant agreed to let G.R. travel to Seattle alone with the respondent for several overnights and, at the JCC, agreed to increased parenting time and allowed parenting on one overnight. This is inconsistent with her now stated concerns about the respondent's care of G.R.
- [60] As I have said, the only independent evidence filed in this matter supports the respondent. There is no indication that G.R. is struggling in school. Further, his maternal grandmother, who provides some childcare for G.R., has not filed an affidavit. I have no report cards or information from G.R.'s school or his daycare expressing concerns about him. Having considered all of the evidence, I am not satisfied that the respondent has been violent towards G.R. or that his parenting time should be restricted.

Parenting Time

The Parties' Positions

[61] The respondent seeks 2-2-5-5 parenting time with G.R. The claimant wishes for the current arrangements to continue or for a reduction in the respondent's parenting time. Ideally, the claimant would prefer to return to a schedule in which the respondent had no overnight parenting time.

Applicable Law

[62] Per s. 37(1) of the Family Law Act, S.B.C. 2011, c. 25 [FLA], the best interests of the child is the only consideration in making orders for parenting arrangements. In determining what is in the best interests of the child, s. 37(2) of the FLA provides a non-exhaustive list of the factors I must consider:

- (2) To determine what is in the best interests of a child, all of the child's needs and circumstances must be considered, including the following:
 - (a) the child's health and emotional well-being;
 - (b) the child's views, unless it would be inappropriate to consider them;
 - (c) the nature and strength of the relationships between the child and significant persons in the child's life;
 - (d) the history of the child's care;
 - (e) the child's need for stability, given the child's age and stage of development;
 - (f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise the person's responsibilities;
 - (g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - (h) whether the actions of a person responsible for family violence indicate that the person may be impaired in the person's ability to care for the child and meet the child's needs;
 - (i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
 - (j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

[63] An order is not in the best interests of the child unless it protects, to the greatest extent possible, their physical, psychological, and emotional safety, security, and well-being: FLA, s. 37(3).

[64] In terms of assessing the family violence factors in s. 37(2)(g)-(h) above, s. 38 of the FLA requires me to consider all of the following:

- (a) the nature and seriousness of the family violence;
- (b) how recently the family violence occurred;
- (c) the frequency of the family violence;
- (d) whether any psychological or emotional abuse constitutes, or is evidence of, a pattern of coercive and controlling behaviour directed at a family member;
- (e) whether the family violence was directed toward the child;
- (f) whether the child was exposed to family violence that was not directed toward the child;
- (g) the harm to the child's physical, psychological and emotional safety, security and well-being as a result of the family violence;
- (h) any steps the person responsible for the family violence has taken to prevent further family violence from occurring;
- (i) any other relevant matter.

[65] "Family violence" is defined in s. 1 of the FLA to include:

with or without an intent to harm a family member,

- (a) physical abuse of a family member, including forced confinement or deprivation of the necessities of life, but not including the use of reasonable force to protect oneself or others from harm,
- (b) sexual abuse of a family member,
- (c) attempts to physically or sexually abuse a family member,
- (d) psychological or emotional abuse of a family member, including
 - (i) intimidation, harassment, coercion or threats, including threats respecting other persons, pets or property,
 - (ii) unreasonable restrictions on, or prevention of, a family member's financial or personal autonomy,
 - (iii) stalking or following of the family member, and
 - (iv) intentional damage to property, and
- (e) in the case of a child, direct or indirect exposure to family violence.

[66] Recently, in *Barendregt v. Grebliunas*, 2022 SCC 22, the Supreme Court of Canada discussed the role of family violence in the best interests of the child analysis. Although expressed in the context of a relocation case under the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), the Court's comments apply generally:

[143] The suggestion that domestic abuse or family violence has no impact on the children and has nothing to do with the perpetrator's parenting ability is untenable. Research indicates that children who are exposed to family violence are at risk of emotional and behavioural problems throughout their lives: Department of Justice, *Risk Factors for Children in Situations of Family Violence in the Context of Separation and Divorce* (February 2014), at p. 12. Harm can result from direct or indirect exposure to domestic conflicts, for example, by observing the incident, experiencing its aftermath, or hearing about it: S. Artz et al., "A Comprehensive Review of the Literature on the Impact of Exposure to Intimate Partner Violence for Children and Youth" (2014), 5 I.J.C.Y.F.S. 493, at p. 497.

[146] The recent amendments to the Divorce Act recognize that findings of family violence are a critical consideration in the best interests analysis: s. 16(3)(j) and (4). The Divorce Act broadly defines family violence in s. 2(1) to include any violent or threatening conduct, ranging from physical abuse to psychological and financial abuse. Courts must consider family violence and its impact on the ability and willingness of any person who engaged in the family violence to care for and meet the needs of the child.

Appropriate Parenting Arrangements for G.R.

[67] Parenting time with G.R. is the most contentious issue between the parties. G.R. currently resides with the claimant in rental accommodation, while the respondent continues to live in the Family Home. The claimant does not wish the respondent to have more overnight parenting time with G.R. due to the respondent's alleged history of violence against G.R. As a result, she does not wish to implement the 2-2-5-5 schedule sought by the respondent. She raises concerns about the one overnight G.R. currently spends with the respondent.

[68] It is difficult on an interim application to resolve the conflicting affidavits and the incidents described in them. Credibility determinations are not well suited to conflicting affidavits.

[69] However, it is of note that despite the claimant's reports to the RCMP and the MCFD, neither agency has felt it necessary to take steps to protect G.R. The respondent freely admits that he has physically restrained G.R. but explains that he did so for the parties' and G.R.'s own safety. The claimant also acknowledges that she has also been required to physically restrain G.R. for the same reasons.

[70] It is also of note that, after separation, and while the parties continued to reside in the same home with G.R., the claimant left G.R. in the respondent's care, including when she permitted the respondent to travel to Seattle with G.R. in August 2023. Text communications between the parties showed a relatively cooperative approach to parenting. There are no abusive communications between them.

- [71] The respondent gives evidence about the counselling he has attended to deal with the depression he was feeling around the breakdown of the parties' relationship and his reduced role in G.R.'s life.
- [72] The respondent has recently begun working for the Pacific Association of First Nations Women ("PAFNW"). Sherri-Beth Rosette, the Executive Director of PAFNW, is the respondent's close friend. PAFNW is a 100% Indigenous, women-led organization that provides services in the community by transporting Indigenous children living in foster care. They work with vulnerable people and at-risk youth.
- [73] In early 2024, Ms. Rosette learned that the respondent was looking for work, and she suggested that he apply to PAFNW to be a transporter or driver. She explained in her affidavit that drivers need to keep their cool in high-stress situations. She describes observing the respondent as having a calming presence.
- [74] A transporter with PAFNW drives children to and from school, medical appointments, and visits with their biological families throughout the Vancouver area. Transporters are busy. They start around 7-8:00 a.m., picking up the children and taking them to school or day care. After a lull while the children are in school, the work starts up again around 3:00 p.m. and remains busy into the evenings.
- [75] Ms. Rosette did not participate in the respondent's interview process. To work for PAFNW as a transporter, applicants need to pass a vulnerable sector screening because they are in a position of trust and authority over children. The screening involves an expanded police information check. No concerns about the respondent were raised in the check.
- [76] New transporters do ride-alongs with senior, experienced drivers who report back on their observations. Ms. Rosette said that reports from the senior drivers regarding the respondent were extremely positive. The respondent was described as being particularly good at helping calm children down when leaving their biological families to return to foster care. He was able to distract them with music or toys, explain what was happening, and improve their mood. She also understands and believes that dispatch has received positive feedback about the respondent from foster parents and biological families.
- [77] In addition, Ms. Rosette says that the respondent has begun working as a supervised access worker on children's visits with their biological families. To become a supervised access worker, candidates must complete training and possess strong reporting skills and a calm demeanor. Ms. Rosette says that she has not heard about any concerns about the respondent's performance.
- [78] As set out, the respondent has also filed affidavits from G.R.'s godmother and a neighbour. Both give their observations about the respondent's ability to care for G.R. and speak about his calm, but firm, demeanor.

- [79] I have considered the critical statutory definitions of family violence and our society's heightened awareness of the long-lasting impact of family violence on the long-term outcomes for children who see and experience it.
- [80] However, on the evidentiary record before me, I am not concerned about G.R. being in the respondent's care.
- [81] As I have said, my primary concern, as mandated by the FLA, is to protect G.R.'s emotional safety, security and well-being to the fullest extent possible. Upon considering all of the evidence, I conclude that it is in G.R.'s best interests to have expanded parenting time with his father, including further overnight parenting time.
- [82] I have considered all of the concerns raised by the claimant, but after sifting through the allegations made in the affidavits, I conclude that there is no concern about the respondent's ability to exercise parenting responsibilities.
- [83] With respect to the specific factors in s. 37 of the FLA, I am satisfied that the respondent is capable of considering G.R.'s health and emotional well-being. On the whole of the record before me, G.R. has a strong emotional bond with his father. For most of G.R.'s life, the respondent was actively involved in his life and care. The respondent was a stay-at-home parent from when G.R. was four months old until G.R. started attending school full time. G.R. is at a stage in his development in which he and the respondent have common interests. They went to the Abbotsford Airshow this summer, and both enjoy building things with Lego.
- [84] The respondent played an active role in G.R.'s life. Any instability G.R. experienced was a result of moving out of the Family Home and into rental accommodation with the claimant.
- [85] On the evidentiary record before me, the respondent has not perpetrated family violence against the claimant or G.R. The parties have conflicting views about how to deal with G.R.'s behaviour, but I accept that G.R.'s behaviour was exacerbated by that parental conflict which, on both accounts, occurred in front of him. Both parents have physically restrained G.R. when he was about to harm himself or one of them.
- [86] Both parties would benefit from counselling about how to deal with G.R.'s behavioural issues, which is no doubt challenging. It is not helpful for G.R. to be able to escalate the conflict between his parents by playing one against the other. They need a consistent approach.
- [87] The parties have shown themselves to be able to co-operate around parenting, and, as I have said, their initial communications in that regard post separation were respectful and co-operative.
- [88] There are no criminal proceedings in this case.

- [89] In all the circumstances, I conclude that equal parenting time is in G.R.'s best interests. To transition to equal parenting time on a 2-2-5-5 schedule, overnight parenting time should gradually increase.
- [90] In my view, the 2-2-5-5 parenting schedule should be put in place by the end of June 2025. I do not propose to order detailed terms of the gradual increase, as I expect the parties to work that out with the assistance of their counsel. However, the gradual increase is to start immediately with the respondent having one more overnight a week.
- [91] If the parties are unable to agree on the terms of a gradual increase beyond what I have ordered, they may provide me with their proposals, and I will decide between them.

Child Support

- [92] At this time, I decline to determine the amount of child support owing prior to this decision. In my view, on the record before me, it is not clear whether an income should be imputed to the respondent before now. Nor is it clear on the record whether any child support would be payable prior to July 25, 2024, when the claimant left the Family Home.
- [93] As a result, I will only deal with child support as of the date on which the parents implement the shared parenting regime that I have ordered. Any arrears of child support prior to that time should be determined at trial.
- [94] Once the parties have achieved a shared parenting regime, child support should be calculated based on their respective 2024 incomes based on shared parenting. If the respondent's 2024 income is less than the amount I impute to him later in these reasons, child support will be calculated on the imputed income.

Spousal Support

Applicable Law

- [95] Entitlement to spousal support is determined based on a consideration of the objectives set out in s. 161 of the FLA:

Objectives of spousal support

161 In determining entitlement to spousal support, the parties to an agreement or the court must consider the following objectives:

- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
- (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
- (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;

- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

[96] Section 216(1) of the FLA authorizes this Court to grant an order for interim spousal support. In *Robles v. Kuhn*, 2009 BCSC 1163 at para. 12, Master Keighley stated that the statutory regime for spousal support must, on an interim application, be qualified by the following established considerations:

1. On applications for interim support the applicant's needs and the respondent's ability to pay assume greater significance: *Gibb v. Gibb*, [2005] B.C.J. No. 2730 (S.C.);
2. An interim support order should be sufficient to allow the applicant to continue living at the same standard of living enjoyed prior to separation if the payor's ability to pay warrants it: *Grossi v. Grossi*, [1993] B.C.J. No. 878 (S.C.);
3. On interim support applications the court does not embark on an in-depth analysis of the parties' circumstances which is better left to trial. The court achieves rough justice at best: *Randhawa v. Randhawa*, [1999] B.C.J. No. 3299; *Newson v. Newson*, [1998] B.C.J. No. 2906, 65 B.C.L.R. (3d) 22 (C.A.);
4. The courts should not unduly emphasise any one of the statutory considerations above others;
5. On interim applications the need to achieve economic self-sufficiency is often of less significance;
6. Interim support should be ordered within the range suggested by the Spousal Support Advisory Guidelines unless exceptional circumstances indicate otherwise: *Ladd v. Ladd*, [2006] B.C.J. No. 1930, 2006 BCSC 1280 (S.C.);
7. Interim support should only be ordered where it can be said a *prima facie* case for entitlement has been made out: *L.G.B. v. M.A.C.M.*, [2005] B.C.J. No. 2966, 2005 BCSC 1786 (S.C.);
8. Where there is a need to resolve contested issues of fact, especially those connected with a threshold issue, such as entitlement, it becomes less advisable to order interim support: *L.G.B.*

[97] In *I.F. v. R.J.R.*, 2015 BCSC 793, Justice Ballance discussed the purposes of an interim spousal support order:

[122] The main purpose of an interim order for spousal support is to bridge the period between when the action is commenced and the trial at which time the court will be in a position to make a decision on the merits: *D.R.M. v. R.B.M.*, 2006 BCSC 1921; *Goriuk v Turton*, 2011 BCSC 652.

- [123] Because interim orders are summary in nature and temporary, they provide a rough justice at best: *Newson v. Newson*, 65 B.C.L.R. (3rd) 22 (C.A.) at para. 11. The "rough justice" approach underlying the temporary order implicitly recognizes that the evidence before the chambers judge on the interim application is often insufficient to permit an in-depth analysis of the wide array of factors relevant to entitlement and quantum of support: *R.C.G. v. C.L.G.*, 2010 BCSC 1596, para. 11; *Johnson v Johnson*, [1993] B.C.J. No. 2140 at 16.
- [124] The legal test governing interim support is not necessarily the same as the test applicable in reaching the final order: *Goriuk*. This is because the full picture of many of the considerations under the applicable legislation will not be known until a fulsome inquiry on the merits is embarked upon a trial.
- [125] Relying on *Newson*, *Goriuk* confirmed that where the marriage is admitted and need is proved interim support should be ordered without adjudicating the issues, unless the action is frivolous or vexatious.
- [126] While the other relevant factors that inform the issue of spousal support are to be considered to the extent possible, the respective needs and means of the parties are ordinarily the central factors, if not the most prominent, on an interim application. The corollary is that considerations such as compensatory factors and the need to achieve self-sufficiency often hold less significance: *R.C.J. v. C.L.G.*, 2010 BCSC 1596 at para. 11; *Goriuk* at para. 33.
- [98] I am satisfied that an order for interim spousal support is appropriate in this case.
- [99] Although the respondent is trained and educated as an audio engineer, he has had difficulty finding work in his field post-pandemic. He has effectively been out of the workforce for eight years.
- [100] The claimant says that she has been G.R.'s primary care parent since his birth, but the facts do not support her view. The reality is that she returned to work four months after G.R.'s birth and has worked full time since January 2017. The primary responsibility for the day-to-day care of G.R. fell to the respondent while the claimant was at work.
- [101] Like many working parents, I accept and find that the claimant played an active role in G.R.'s life in the evenings and on weekends. Nonetheless, I find that his primary care was the respondent's responsibility so that the claimant could advance her career.

The Claimant's Income and Expenses

- [102] The claimant is employed in a senior human resources capacity at a local school district. She currently earns about \$106,000 annually, and she also receives the Canada Child Tax Benefit and BC Family Bonus. Since early 2014, she has paid the mortgage payments on the Family Home, as well as groceries and G.R.'s expenses, including the cost of his before- and after-school care.

[103] As she has now moved out of the Family Home and is paying for rental accommodation for her and G.R. at \$2,300 a month, the claimant's annual expenses exceed her income by about 40 percent.

The Respondent's Income and Expenses

[104] Since G.R.'s birth, the respondent has earned between \$0 and \$10,750 annually. He acknowledges that the parties have previously relied on the claimant's income to cover the mortgage and groceries. He says he used his income and savings to cover other household expenses, such as utilities and property insurance. When his income and savings fell short, he drew on the family's line of credit, which is secured against the Family Home, to meet the expenses. Clearly, that is not a long-term sustainable option.

[105] The respondent says that he and the claimant planned that he would start working more once G.R. started kindergarten. In fact, it appears that the claimant has been asking the respondent to make a financial contribution to the family since before then.

[106] In February 2020, the respondent suffered a concussion after a road rage incident. The claimant blames the respondent for the incident, but nothing turns on who was to blame. The concussion impacted his ability to work. The COVID-19 pandemic, which followed his concussion, severely impacted the music industry, limiting the number of opportunities for the respondent to work as a freelance audio engineer.

[107] By the time G.R. started kindergarten in September 2021, the music industry still had not recovered. In the time since, the respondent has had limited employment opportunities in his field, and he says he had ongoing concussion symptoms. As a result, he says he has been unable to increase his income. At the application hearing, the claimant provided this Court with some job postings that the respondent appeared to be qualified for, but for which he had not applied. He has not provided any evidence of attempts to find a job in his field or otherwise. He did not provide medical support for ongoing concussion symptoms affecting his ability to work.

[108] In the fall of 2022, while G.R. was in after-school care, the respondent says that his concussion symptoms flared up and he became depressed. At the same time, the parties' relationship was deteriorating. There is no medical evidence in the record to support that the respondent was unable to work in this period, although the claimant was concerned enough about the respondent's mental health to request an RCMP wellness check.

[109] While I accept that the respondent was capable of earning an income once G.R. returned to school, the fact is that he did not do so. He only started working in May 2024, as I set out earlier in these reasons.

- [110] In all the circumstances, I am satisfied that the respondent has established a needs-based spousal support claim. Although he suggests that he has established an arguable compensatory claim, it is not clear that his career has suffered because of his caregiving responsibilities. That issue will be left for trial.
- [111] In the circumstances, I order interim spousal support based on the claimant's income of \$102,062. I impute an income to the respondent of \$50,000, effective June 1, 2024, for the reasons that follow. In my view, the respondent is capable of earning at least minimum wage, which would put his income at about \$35,000. His current hourly rate with PAFNW, according to his employment contract, is \$28 an hour, significantly higher than the current minimum wage of \$17.40 an hour. I have set his income at \$50,000 to reflect the fact that he does not yet work full-time hours.
- [112] I note that while the respondent is working part time and does not have G.R. on a shared parenting arrangement, there is no reason that he cannot pursue other part-time work in the music industry or another field.
- [113] The evidence before me of the respondent's credit card bills indicates that despite the parties' precarious financial circumstances, he has not curbed his spending in any meaningful way. He is spending considerably more than the parties can afford. Spending at that level is not sustainable.
- [114] Spousal support is to be paid to the respondent by the claimant at the mid-range starting on January 1, 2025. If the parties are unable to agree on the appropriate amount of spousal support, they may provide me with their respective calculations, and I will set the support.
- [115] Retroactive spousal support is to be dealt with at trial. I note that, since separation, the claimant has paid many of the expenses for the Family Home without any contribution from the respondent. These expenses will be adjusted upon the sale or transfer of the Family Home or at trial.
- [116] Upon commencement of spousal support, the respondent is to assume responsibility for the mortgage payments and other expenses on the Family Home, also to be adjusted upon the sale or transfer of the Family Home, or at trial. To the extent that the respondent needs to use borrowed funds for the purpose of the mortgage payments or other expenses of the Family Home, he is to keep records of the amounts borrowed.

Other Issues

- [117] Although I was not asked to address the sale of the Family Home, the likelihood that the parties will need advances under s. 89 of the FLA for the purposes of this litigation, and for the preparation of a s. 211 report, means that a sale of the Family Home is likely necessary. In his affidavit, the respondent made some proposals about how he might be able to afford to retain the Family Home, but he appears to have taken no steps in that regard.

[118] I urge the parties to attempt to resolve their dispute. If they do not, they will very quickly exhaust their financial resources. Their asset and debt picture is relatively clear. They both assert excluded property claims that are presumably provable and quantifiable. The respondent is now working. The only contentious issue for trial will be parenting. In all the circumstances, a 10-day trial appears unnecessary to resolve the remaining issues with respect to parenting of G.R.

Conclusion

- [119] Based on the evidence before me, I am not satisfied that the respondent engaged in family violence against the claimant or G.R. I find that it is in G.R.'s best interests to have expanded parenting time with his father.
- [120] On this basis, I order that overnight parenting time gradually increase until the parties have achieved a 2-2-5-5 parenting schedule. This schedule must be achieved by the end of June 2025. If the parties are unable to agree on the terms of the gradual increase, they will present their proposals to me, and I will decide between them.
- [121] Child support will be payable once the 2-2-5-5- parenting schedule has been achieved. Retroactive child support is left for trial.
- [122] I order that the claimant pay to the respondent interim spousal support at the mid-range, based on their incomes as found or imputed in this judgment, by January 1, 2025. If they are unable to agree on the amount, I grant the parties leave to bring calculations, and I will set the amount of support.
- [123] The respondent must assume responsibility for the mortgage and other expenses on the Family Home once spousal support begins, and he must keep a record of any amounts borrowed to pay it, if necessary.

"MacNaughton J."

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