

CANADA / JUDGMENT

C.K.C. v. P.R.C.

2023 BCSC 658

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Supreme Court of British Columbia

DECIDED

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2023 BCSC 658 C.K.C. v. P.R.C.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

C.K.C. v. P.R.C.,

2023 BCSC 658

Date: 20230425

Docket: E64496

Registry: New Westminster

Between:

C.K.C.

Claimant

And

P.R.C.

Respondent

Before: The Honourable Justice Schultes

Reasons for Judgment

Counsel for the Claimant:

E. Chhina

The Respondent, appearing on his own behalf:

P.R.C.

Place and Dates of hearing:

New Westminster, B.C.

November 4, 9, 2022,

January 31, 2023

Place and Date of Judgment:

New Westminster, B.C.

April 25, 2023

Introduction

- [1] The respondent in this family law case is applying to vacate consent orders that were made by a master on April 13, 2022.
- [2] His position is that he did not fully understand the terms that his counsel was agreeing to on his behalf, or the likely duration of the order. Its most contentious terms relate to the primary residence of, and his parenting time with, the parties' daughter, J., who is six years old.
- [3] A protection order was also made by consent at that time, which the respondent says has adversely affected his eligibility for employment.
- [4] An additional issue that has arisen is whether an interim conduct order that I made during the hearing of this application should continue. That order prohibited the respondent from posting on the Internet any information about, or opinions concerning the claimant's counsel, including any photographs of her.
- [5] He explains that the posting of a photo of the claimant's counsel that triggered the order was not the result of any deliberate action on his part, and instead occurred through the automatic operation of software on his computer, and its interaction with the social media services in question.
- [6] I also ordered that the respondent was to communicate with the claimant's counsel only by email, only on substantive matters relating to the conduct of this hearing, and in a polite and respectful manner, but I do not understand that portion of the order to be in issue.

Background

- [7] The parties began living together in 2011 and were married in 2013. They separated in February 2022. J. is their only child.
- [8] They immigrated to Canada from the United Kingdom in 2016.
- [9] The claimant is a marketing manager and the respondent is an IT professional.

The Consent Orders

- [10] They were pronounced by the master on April 13, in response to an application on short notice by the claimant on April 7.
- [11] The allegations underlying her application were that the respondent's longstanding mental illness and substance abuse were causing him to behave in an angry, irrational and verbally abusive manner towards her and members of her family.
- [12] This included accusations that she and her parents had irreparably damaged his career by preventing him from taking a Christmas break in 2018. Shortly before the separation he was alleged to have confronted them with spreadsheets showing the financial harm that they had caused to him by these actions. He also complained that the claimant had been "psychologically torturing" him over the past three years.
- [13] However, the claimant's key allegation for the purposes of the present application was that the respondent was sharing harmful information with J. about the family conflict.
- [14] Just before the separation, he told J. that she was not allowed to see the claimant's parents because they had misbehaved.
- [15] Following the separation, and despite being aware that the claimant was video-recording him at the time, he read a note to J. informing her that the claimant had "decided that we can't be a family anymore", that the claimant wanted both of the family properties (there is also a condominium that she claims as excluded property and that is currently rented out), and that as a result that the respondent would have nowhere to live and would have to stay with his mother in the UK.
- [16] J. became extremely distressed in response to hearing this, which was further aggravated when the respondent swore at the claimant.
- [17] On a later date, he repeated the comment to J. that the claimant did not want them to be a family anymore, adding that "Dadda tells the truth but Mommy does not tell the truth."
- [18] The claimant also expressed fear of the respondent because of his behaviour and what she characterized as his deteriorating mental state.
- [19] During their post-separation discussions about property division, he sent her an email that included an expression that he had previously used to describe getting rid of people who do not agree with him.
- [20] He also had a confrontation with the claimant and her parents in the back yard of the family home, during which he stated that he would get her parents in trouble with the FBI, blamed the claimant for making him homeless, and told her that it was not wise to get into a fight with a homeless person because "they have nothing to lose". He also told her that there were recording devices in the house, and that because their conversation was taking place outside (in other words, away from those devices), it had "never happened".

- [21] A further example of the respondent's irrational behaviour that was relied on by the claimant was that after she began the present action he started his own action in Provincial Court, characterizing himself as the victim of her misbehaviour. Among the allegations he made in support of the action were that the claimant and her counsel were forcing him to lie to J. about the claimant's behaviour. He also obtained a protection order against the claimant in that action, based on the allegation that she had "mentally abused" him.
- [22] Although they had initially both continued to live in the family home after the separation, while the respondent was on a trip back to the UK, the claimant changed the locks on the doors and her counsel informed him that he was not to return there. He nevertheless returned to the home accompanied by police officers, who told the claimant that she needed to leave if she felt unsafe (likely due to the absence of any order at that point granting her exclusive possession of the home.) She moved back into the home with J. after the consent orders were granted.
- [23] When the respondent was in the UK, the claimant had also withdrawn most of the funds from their joint account, citing her need to safeguard the mortgage payments on the house.
- [24] At the time of the separation, the claimant had agreed that she and the respondent should share parenting. After the incidents involving his inappropriate disclosures to J., the claimant took the position, conveyed through counsel, that his parenting of J. should be professionally supervised, and that while he was in the UK his opportunity to have video calls with J., was conditional on not discussing the litigation with her.
- [25] Although the respondent was represented by counsel at the hearing of the application, the affidavit he filed in response to it appears to have been prepared without legal assistance. For the present purposes, the essential points it contained were that:
- He had played an integral role in J.'s life, sharing her care equally with the claimant, but was being deprived of contact with her by the claimant in order to force a property settlement.
 - The claimant sought to impose a settlement on him that would jeopardize his relationship with J. and exclude him from the home.
 - He had shared the information with J. about the separation that the claimant described in her affidavit, but he justified his actions on the basis that this information was all factually accurate. He added that the claimant was aware in advance of what he would be saying to J.
 - He denied currently suffering from any mental illness, but said that the claimant had previously attempted to convince him that he did, which had caused him significant depression. This required him to take antidepressants and to be hospitalized three times. He pointed out that none of his mental health or medical care providers, all of whom were under a duty to report a person who poses a danger to the safety of others, had ever suggested anything of that nature about him.

- As the claimant had described in her affidavit, he maintained the allegation that he had "missed out on a career" due to the claimant's actions in relation to the 2018 family holiday, which had impacted his "self worth [and] financial worth". He described this incident in great detail, including confirming her claim that he had confronted the claimant and her parents with the "financial impact spreadsheet" shortly before the separation.

[26] The relevant terms of the main consent order were that:

- J. would reside primarily with the claimant;
- the respondent would exercise supervised parenting time for four to six hours per week. If a mutually agreeable supervisor could not be arranged, it would be professionally supervised;
- the respondent was prohibited from removing J. from the lower mainland without the claimant's written permission or a further order;
- the parties were prohibited from making negative or disparaging comments about each other to the other party's family members;
- the claimant and J. would exclusively occupy the former family home; and
- the respondent would pay interim child support for J. of \$1309 per month.

[27] Most significantly, this order contained the following term:

the Respondent shall not:

- a. make negative or disparaging comments about the Claimant or her family to [J.] or within her hearing.
- b. Involve [J.] in the court proceedings.

[28] There was also a consent protection order, which prohibited the respondent from having contact with the claimant, except through emails and text messages with respect to parenting, and with J., except when he was exercising his supervised parenting. In addition, it prohibited him from going to the claimant's workplace, the homes of several of her family members, J.'s daycare, and other specified places where J. engaged in recreational activities. This protection order was intended to replace the one that had been obtained by the claimant in provincial court.

[29] Either party was at liberty to apply to set the protection order aside on 14 days' notice.

Relevant Events Since the Consent Orders

[30] The claimant deposed that the respondent exercised professionally supervised parenting time until May 9. Although the supervision reports were positive, J. continued to express her worry about the respondent, repeatedly advising the claimant that he has no family in Canada and would be alone. That was one of the things that the respondent had said to her during the video-recorded conversation that I have previously summarized.

- [31] On May 10, following an in-person meeting with their counsel, the parties agreed that the respondent could exercise unsupervised parenting time three days per week. When the claimant agreed to these unsupervised visits, she understood that he was taking his medication as prescribed and was mentally stable.
- [32] The consent order was not varied to reflect this agreement between the parties however.
- [33] The claimant said that after "a couple" of these unsupervised visits, J. started resisting going to them, becoming quite upset each time. The respondent actually gave up some of his scheduled visits in acknowledgment of J.'s emotional state.
- [34] The claimant suggested involving J. in counselling to address her reluctance to have parenting time with the respondent. She also thought counselling would be beneficial to address the effects on J. of the respondent sharing the details of the litigation with her. The respondent was not opposed to the suggestion, and actually assisted in looking for suitable counsellors. J.'s current counsellor was ultimately selected.
- [35] The respondent misbehaved himself during his communications with the counsellor, and during his attendance at J.'s first session with her in June, to the extent that he was banned from attending the counsellor's office any further. The claimant has attached to her affidavit the letter from the counsellor and the director of the clinic that sets out this misbehaviour and its consequences. He subsequently lodged a complaint against the counsellor with her regulatory body. As a result of the complaint, the counsellor was not prepared to consider seeing J. until I made an order permitting her to do so (which I did, on November 9).
- [36] In June and July the respondent again shared inappropriate information with J.
- [37] He told J. that he had no more money, and she reported to the claimant that she had seen him putting items that he could not afford back on the shelves at a store. J. was very upset and worried about the respondent when she related this information to the claimant.
- [38] The respondent also emailed the claimant a chart expressing his desire to share the in-depth details of the separation with J. The chart contained comments denigrating the quality of the parenting time that he was being provided with, and describing the claimant as his emotional and financial abuser.
- [39] Most significantly, on July 22, during a video call with J., the respondent raised issues that he was prohibited from discussing with her under the terms of the consent order. He repeatedly directed J. to ask the claimant, who was monitoring the call, why he was no longer allowed to attend J.'s counselling sessions. Then, when the claimant tried to redirect the conversation to his next scheduled parenting time with J., the respondent told her that he could not see her anymore because "a man came to his house" and took all his money (likely referring to the enforcement of child support arrears by the Family Maintenance Enforcement Program). He asked the claimant to explain this to J., and later added that it was the claimant who had sent this man.

- [40] The claimant described J. as being inconsolable both during and after this call. In the ensuing days, J. began to demonstrate anxiety and to describe having stomach pains.
- [41] The respondent then left for another trip to the UK. When he returned in August, the claimant's counsel advised the respondent's counsel that because of his behaviour, and its adverse effects on J., he would now have to exercise supervised parenting time once again, as the consent order provided.
- [42] Despite the agreement of his counsel to this change, the respondent went to J.'s daycare and demanded to pick her up. The claimant had anticipated such behaviour and picked J. up earlier.
- [43] The respondent then retained new counsel.
- [44] The claimant deposed that she then offered the respondent one last opportunity to demonstrate that he could exercise unsupervised parenting time without providing harmful information to J. He exercised this parenting time on three dates - in late August and early September. Then, after making the ominous comments that J. was being assigned a social worker for investigation, and was close to becoming a "ward of the state", he advised the claimant that he would not be seeing her further until February 2023.
- [45] By this time, he was self-represented.
- [46] The claimant deposed that the respondent went to the UK from mid-November until late December or early January. While he was in the UK he informed the claimant and her counsel that he would not be returning.

The Respondent's Position

- [47] His affidavits contain a great deal of material that is not relevant to the present application, especially a detailed history of his relationship with the claimant and her family and his extensive grievances against her. I have attempted to extract his positions on the relevant points from this large body of material.
- [48] As an overview, he emphasized that the arrangements that were put in place by the consent orders were unsustainable for him, both financially and emotionally.
- [49] In his first affidavit for the present application, which was sworn on September 3, the respondent deposed that he was "bewildered" by the claimant's sudden actions excluding him from the home. He explained that this bewildered state "made me act in ways that I now regret", out of anxiety for J.'s wellbeing.
- [50] As I have previously summarized, he denied suffering from ongoing depression, or that he was unstable. He advised that his current psychiatric diagnosis was of an adjustment disorder arising from the separation, which has improved as he became used to his new situation.

- [51] With respect to his consent to these orders, he said that his counsel "caused [me] to believe that all is lost", and that if he wanted to see J. at all, he should agree to them.
- [52] The proposed orders were also not explained to him in sufficient detail. In particular, he did not understand the significance of the "parenting" and "primary residence". He was only familiar with the term "custody", which is used to describe parenting arrangements in the UK. He had previously advised his counsel that he would not be negotiating the issue of custody with the claimant, and that shared custody of J. between them was the only acceptable outcome for him. The restrictions on his parenting time and the term that J. would reside primarily with the claimant in the order meant that the shared custody regime that he was adamant about preserving would not be imposed.
- [53] He also felt rushed through the process.
- [54] His counsel told him that the proposed arrangement was temporary "to give everyone a month to calm down", but did not negotiate a specific end date to it. In fact, counsel did not fully explain the implications of these orders to him until July 28.
- [55] In addition to suggesting that his counsel had inadequately informed him about the implications of consenting to the orders, in a subsequent affidavit the respondent described his dissatisfaction with his counsel's overall level of service in the ensuing months.
- [56] He also expressed suspicion about "an existing relationship [between his counsel and the claimant's counsel] that hadn't been declared", potentially placing his counsel in a conflict of interest. He based this suspicion on his counsel's comment that he was "starting to like" the claimant's counsel, and the fact that his counsel gave her a file relating to another case they had together during the meeting between the parties on May 4, despite previously telling the respondent that he had not worked with her before.
- [57] The respondent claimed that it was improper for the claimant to now restrict his access to J. based on allegations of his improper communications with J., when she had previously been willing to relax the requirement in the consent order for supervised parenting "without qualm". Any suggestion that he had violated the consent order was also undermined by the fact that she had agreed to it occurring.
- [58] He accused the claimant's counsel of deliberately delaying the resolution of the property matters by not setting a JCC until early January, which placed him in a dire financial position until then[1]. Throughout his affidavits he has impugned her counsel's honesty and competence, in virtually all aspects of her handling of this case.

- [59] He also pointed out that the existence of the protection order made him ineligible for the security certificates that are necessary for further employment, and jeopardized the security clearances that he has acquired in past positions. In January of this year he deposed to his unemployability in the gaming industry, in which he had a recent job opportunity, because his gaming licence in the state of his potential employment had been revoked (due to the existence of the protection order, I infer).
- [60] He exercised professionally supervised parenting time with J. on November 6, which was his first in-person contact with her since the parenting time in early September. During the continuation of the hearing on November 9, I encouraged him to repeat that process as often as he could afford to (he is responsible for the cost of supervision), in J.'s best interests.
- [61] After this application failed to complete on November 9, I adjourned it generally, and by subsequent memo proposed a continuation date during the week of December 5-9. On November 15, the respondent contacted Scheduling advising that he did not wish to proceed further with the application until he had retained new counsel. I advised the parties of my willingness to adjourn the matter further for that purpose. I subsequently granted him until January to make those arrangements.
- [62] He retained counsel to assist him in time for the JCC that was scheduled for early January, but because of some misunderstandings between them that counsel did not end up being able to represent him at the JCC, and did not participate in this application.

The Conduct Order

- [63] This application was set to be heard on November 4, after having been previously adjourned.
- [64] On November 3, the respondent filed a notice of application seeking that the claimant's counsel be removed from the courtroom, and that she pay "all costs for both sides up until today", because of collusion between her and his former counsel (in his communications with the claimant, he referred to an "open investigation" and "charges" against both counsel in the UK for their actions).
- [65] The application to have the claimant's counsel removed was apparently based on her comment at a previous appearance, when the matter was adjourned, that she was not available on November 4.
- [66] The notice of application attached a photo of the claimant's counsel, so that she could be identified for removal by the sheriffs.
- [67] One of the respondent's emails to the claimant's counsel on November 3 informed her that he reserved the right to have a reporter present in court on November 4, and that she and the claimant would be "infamous" after that date.

[68] Also on November 3, the respondent posted a photo of the claimant's counsel to Instagram and Facebook, accompanied by the following caption:

We get judged by the friends we keep and what those do around us. If we let those that get caught fester, they ruin our children and in that way they bring down those around us.

[69] These actions led me to make the interim conduct order that I referred to at the outset. I concluded that it was necessary to make it in order to "manage behaviours that might frustrate the resolution of a family law dispute by an order" and as contemplated by s. 222(b) of the Family Law Act. Specifically, the personal targeting of the opposing party's counsel by means of the Internet, by posting a photograph of her accompanied by a cryptic but vaguely ominous caption, would escalate the level of acrimony in the proceedings to a point where it would be more difficult to manage them towards an appropriate outcome.

[70] I gave the respondent the opportunity to provide support for his allegation that the posting of counsel's photo was not deliberate, and expressed my willingness to revisit the order if that evidence provided to be persuasive.

[71] In a subsequent affidavit he explained that in 2019 he had written code for a charity called Lyp Radio, to allow album covers and song lyrics to be posted to its website. This code had been running in the background (on his computer, I took him to mean), and when it found the claimant's counsel's photo in the computer's directory, it went through the process that it would normally apply to an album cover. This included posting the image to locations such as Instagram, with a default set of lyrics. The respondent said that as soon as he realized what was happening he stopped the process. He further explained that the facial recognition software that scans images and connects "friends" on Instagram and Facebook, posted the image to both services because of the large number of mutual friends that the claimant and respondent both still have on those social networking services.

[72] He attached a printout of the "workflow" of the operation of the "robot software" to his explanatory affidavit.

Discussion

[73] Section 216 of the Family Law Act describes the circumstances under which interim orders can be changed:

- (3) On application by a party, a court may change, suspend or terminate an interim order made under subsection (1) if satisfied that at least one of the following circumstances exists:
 - (a) a change in circumstances has occurred since the interim order was made;
 - (b) evidence of a substantial nature that was not available at the time the interim order was made has become available.
- (4) In making an order under subsection (3), the court must take into account all of the following:

- (a) the change in circumstances or the evidence, or both, referred to in subsection (3);
- (b) the length of time that has passed since the interim order was made;
- (c) whether the interim order was made for the purpose of having a temporary arrangement in place, with the intention that the arrangement
 - (i) would not adversely affect the position of either party during negotiations, during family dispute resolution or at trial, and
 - (ii) would not necessarily reflect the final arrangement between the parties;
- (d) whether a trial has been scheduled;
- (e) any potential adverse effect, on a party or a child of a party, of either making or declining to make an order under subsection (3).

[74] Because the respondent struggled at times with the proper scope of this application and the evidence that is relevant to deciding it, I will emphasize for his benefit that the actual merits of the parenting and property issues between him and the claimant will be decided at a trial, or by an agreement between them. I am considering only whether the existing interim orders, which are intended to manage the situation until there has been a resolution on the merits, should remain in place.

[75] As an overview, I am not satisfied that a change in circumstances of any significance has occurred since the consent orders were made, or that any of the additional evidence that has been provided by the respondent is of a substantial nature, in terms of the actual issues. If anything, the case for those orders has become stronger since they were made.

[76] First of all, I do not accept that the respondent failed to understand the effect of the consent orders on parenting, as he claims. It is difficult to see how a person of his obvious intelligence could fail to grasp the significance of language in the order providing that J. would reside primarily with the claimant, or that he would have supervised parenting time with her.

[77] Even if there were deficiencies in the explanation of those terms by his counsel, which has not been shown, that would be an issue of professional responsibility for his counsel, and does not affect the validity of the consent to the order that counsel provided to the Court on his behalf.

[78] The allegations of collusion with the claimant's counsel are absurd on their face, and must be flatly rejected. There is simply no evidence that would give rise to a reasonable inference of impropriety.

[79] Any defects in the obtaining of the consent orders are ultimately irrelevant however, because the evidence provided in this application amply justifies their terms in any event.

- [80] What emerges with great clarity from the evidence is that the respondent has a distorted understanding of the kind of information that is appropriate to share with a young child, and that he is incapable of restraining himself from passing his hostility towards the claimant, as well as his sense of victimhood, on to J., despite his awareness of, or wilful blindness to, the severe emotional consequences of those actions to her.
- [81] Further, his refusal to see J. between early September and his resumption of supervised parenting in November, which I am satisfied he did purely to spite the claimant, shows a callousness towards J.'s feelings that is quite disturbing.
- [82] Until he obtains professional assistance in reining in his destructive impulse to vent his anger towards the claimant through J., or otherwise shows himself capable of exercising that degree of restraint, it is not in J.'s best interests for him to have unsupervised contact with her.
- [83] In reaching this conclusion, I have kept in mind that it is generally inappropriate for parties to agree to vary existing parenting orders informally, as occurred in this case, even when counsel are involved in the process. The danger such an approach poses is clearly demonstrated by the present circumstances - the party in whose favour the order was originally made ends up being able to insist on strict compliance with the order again whenever they see fit, based on their assessment of the other party's behaviour, and the party whose additional parenting time is then withdrawn will quite reasonably feel aggrieved.
- [84] Instead, the proper approach is for parties who have reached such an agreement to enter into a consent order varying the existing one. That removes the discretion about whether or not to enforce an existing condition from the party in whose favour the original order was made, because they will have to return to court and seek to have it tightened again.
- [85] Nothing turns on that shortcoming here, because the respondent's conduct towards J. makes it inappropriate that there be further unsupervised contact with J. at the moment, regardless of any unfairness that he might perceive from the claimant's exercise of discretion in previously permitting it.
- [86] I also take into account that the claimant agreed to relax the existing order on the advice of experienced counsel, to benefit J. and increase the respondent's parenting time, and that the respondent and his counsel participated fully in the agreement to do so
- [87] Accordingly, the respondent's application to vacate the main consent order is dismissed.
- [88] With respect to the protection order, while I would not have vacated it based on the respondent's arguments about a lack of understanding of its terms or the ineffective assistance of counsel, the reality is that pursuant to s. 183(4) of the FLA it was to expire on April 13 of this year. It would not be appropriate for me to impose a new protection order for a further year in the absence of a full opportunity for both parties to address whether it is currently required, but since the claimant might reasonably have held off seeking a new

order because these reasons were still on reserve, I will extend the current order until May 1, to allow her to make an urgent application if she requires it, and for the respondent to prepare to oppose it if he sees fit.

- [89] Finally, there is the matter of the conduct order. I do not believe the respondent's technical explanation for how the photos were posted. I find it implausible that this unforeseen operation of an old piece of software would coincidentally combine with the facial recognition and friend-matching capabilities of Instagram and Facebook on exactly the same day as the respondent was making scurrilous accusations against the claimant's counsel, reserving the right to involve a reporter in the court hearing, and threatening to make her "infamous". His explanation also does not account for the accompanying caption, which despite its obscurity still seems intended as a warning of some sort.
- [90] In my opinion, what is much more likely is that he posted counsel's images on both services, accompanied by the ominous caption, deliberately, as part of his overall campaign to embarrass her publicly.
- [91] I remain satisfied that the respondent's hostility towards the claimant is closely intertwined with his hostility towards her counsel, and that there is a danger that personal attacks on counsel will inevitably disrupt the orderly progress of this case towards final orders if they are not curbed. However, I think that the conduct order needs to be more narrowly tailored, to ensure that it prevents online behaviour with respect to counsel that will impede a resolution, without curbing the respondent's freedom to express himself more generally about the case.
- [92] The real danger of disruption of the progress of this case is from the publication of personal information about the claimant's counsel, as well as images of her. That is where the respondent's previous bizarre behaviour and apparent lack of boundaries could reasonably serve to instil fear in counsel, and interfere with her full participation in the case on behalf of her client. Comments about the case or her conduct of it that are simply untrue can be dealt with by her in her personal capacity, under the law of defamation, including her ability to obtain an injunction to restrain them.
- [93] Accordingly, I will vary that portion of the interim conduct order to provide that the respondent is prohibited from posting any personal information about the claimant's counsel on the Internet, including any photographs or other images of her. The provision of the order dealing with the manner of his communication with counsel will remain in its present form.
- [94] The claimant has had substantial success on this application, and will receive her costs of it in the cause.

"Schultes J."

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- [1] On September 16, he obtained leave from a judge to make this application before a judicial case conference had been held, but only with respect to vacating the consent orders and seeking a report pursuant to s. 211 of the Family Law Act, dealing with parenting of J. On the first day of the hearing, the parties agreed that such a report should be prepared, by Dr. Robert Colby, and I made an order on that basis.
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