
CANADA / JUDGMENT

C.M.C. v. J.C.P.

2020 BCSC 2005

COURT

Supreme Court of British Columbia

DECIDED

16 December 2020

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2020 BCSC 2005 C.M.C. v. J.C.P.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

C.M.C. v. J.C.P.,

2020 BCSC 2005

Date: 20201216

Docket: E11859

Registry: Chilliwack

Between:

C.M.C.

Claimant

And

J.C.P.

Respondent

Before: The Honourable Mr. Justice Ball

Reasons for Judgment

In Chambers

Counsel for the Claimant:

P. Bright

Counsel for the Respondent:

P.K. Mann

Place and Date of Hearing:

New Westminster, B.C.

July 6, 2020

Place and Date of Judgment:

Chilliwack, B.C.

December 16, 2020

Introduction

- [1] These are reasons for judgment in a high-conflict family law case brought under the Family Law Act, S.B.C. 2011, c. 25 [FLA]. The parties lived together for approximately five years in a marriage-like relationship. There have been a number of applications heard by the Court with respect to the single child of the relationship who, for the purposes of maintaining the child's privacy, will be referred to in these Reasons as "the child".
- [2] For the same privacy reasons, the parties will be referred to as "the claimant" and "the respondent" in these Reasons.
- [3] The current applications by the claimant request that the Order Made after Application on October 2, 2017 by Master Caldwell, as he then was, be varied to provide that the claimant be the sole guardian of the child and have sole responsibilities for the child and that the respondent have no contact with the child or, in the alternative, contact will be supervised or exercised electronically, pursuant to s. 37 of the FLA. The claimant also seeks an order pursuant to s. 183 of the FLA that the respondent be restricted from attending at, nearing, or entering, the premises of the claimant in Abbotsford, British Columbia, or any other premises where the claimant resides from time to time. The claimant also seeks the same order with respect to her workplace.
- [4] The claimant also seeks an order that the respondent be restrained from following the claimant or the child. The claimant also seeks a police assistance clause to remove the respondent from the home or workplace of the claimant, immediately, at any time that he is found there.

The Facts

- [5] The parties lived together in a marriage-like relationship for approximately five years, from July 2009 until February 12, 2014.
- [6] The child was born in that relationship in December, 2009.
- [7] The claimant claims that the respondent has been physically abusive during the relationship; the respondent denies physically abusing the claimant.

- [8] The claimant asserts that some of the family violence perpetrated by the respondent occurred in the presence of the child.
- [9] Following the birth of the child, the claimant returned to a full-time job and the respondent remained at home as a caregiver. The respondent asserts that this arrangement continued until the parties separated in February 2014. The respondent also asserts that, after the claimant and respondent separated, the respondent remained a primary caregiver for about 11 months and that, as of December 2014, the parties were sharing roughly equal parenting time.
- [10] In or about the first week of June 2020, the claimant found the child to be very upset, "exhibiting explosive and irrational behaviour, then began saying he wished he was dead and he wanted to kill himself." (7th Affidavit of the claimant, dated June 17, 2020, para. 5). He has since been attending counselling.
- [11] On June 14, 2020, the spouse of the respondent, S.B., sent the claimant a Facebook message (Exhibit B to the 7th Affidavit of the claimant, p. 8), which stated that the respondent had been arrested and charged with assaulting S.B. and uttering threats to S.B. These allegations resulted in criminal charges against the respondent filed in the Provincial Court of British Columbia citing an offence date of June 14, 2020 for charges of assault and uttering threats pursuant to ss. 266 and 264.1(1) of the Criminal Code, R.S.C. 1965, c. C-46, respectively. The respondent was also charged with an offence on August 4, 2019 of driving while prohibited/license suspended contrary to s. 95 of the Motor Vehicle Act, R.S.B.C. 1995, c. 318. He was charged with a similar driving offence on August 30, 2019. All of these charges are set forth in Exhibit A at pp. 6-8 of the Affidavit referred to above.
- [12] The claimant also refers to ongoing difficulties with the respondent with respect to the child's parenting, which include: hostile communications despite an order that all communications be courteous and respectful; difficulty agreeing on what school the child will attend; the respondent refusing to participate in mediation; and the respondent preventing the child from spending Mother's Day with his mother.

Section 211 Report

- [13] A.P v. J.C., 2018 BCSC 1381 discusses the admissibility of s. 211 reports at paras. 108-127. At paras. 46 and 118, the Court notes that the facts in a s. 211 report are prima facie evidence of the truth of those facts, but the Court has the discretion to disagree or agree with the recommendations of the report as it sees fit. From para. 116, this is because the s. 211 reports involve investigators who "[i]n the truest sense act as the courts eyes and ears in what are all too frequently highly emotional areas of conflict. The safeguards built into the process include the early delivery of the investigation reports, the opportunity to call the investigator to the witness stand and the opportunity to respond to the report generally by other evidence."

- [14] A Section 211 Report was prepared by Dr. Deborah Bell, a registered psychologist in British Columbia, dated August 16, 2019 ("Report"). The 46-page Report prepared by Dr. Bell appears thorough and thoughtfully composed, including individual interviews with the child, the claimant, the respondent and S.B. The Report included parent-child and home observations.
- [15] A series of personality tests were administered to each of the claimant, the respondent, and S.B. These tests included the Personality Assessment Inventory, the Parenting Stress Index, the Child Abuse Potential Inventory, and the BASC Parenting Relationship Questionnaire. Responses to each of these tools were scored or response patterns were evaluated by the report writer. An attempt was made to interview collateral witnesses of each of the complainant and respondent. The collateral witness identified by the claimant communicated with Dr. Bell and was interviewed. The collateral witness identified by the respondent did not communicate with Dr. Bell and was not interviewed. Dr. Bell also interviewed a pre-school teacher who operated the pre-school attended by the child, a youth care worker at the school attended by the child, and a therapist counsellor providing counselling for the child.
- [16] The Report contained a "Summary and Formulation" section that discusses the effect of the high degree of conflict that has persisted between the claimant and the respondent, which was often openly displayed in front of the child. On multiple occasions, the child has taken responsibility when things do not go well between the claimant and the respondent. That conflict, in the opinion of the report writer, has disrupted "the natural process of [the child's] feelings of safety and security in relationship, his capacity to manage stress, and his ability to self-regulate. This caused [the child] to struggle to establish a secure relationship." "While [the claimant] appears to have some insight regarding the long-term impact of her behaviour, [the respondent] appears to struggle to see the connection. Tragically, this lack of insight has resulted in the very outcome that [the respondent] wanted more than anything for his son to avoid - for [the child] to not experience the trauma at the hands of his parents that [the respondent] suffered."
- [17] The intensity of the respondent's connection with his son is stressful for his son as "his father feels that he is needed and the center of [the child's] world." "This need for his father's approval will only become more complex and be a bigger burden as [the child] gets older, particularly as he begins to build awareness that his father is not perfect".
- [18] "One complicating factor is [the respondent's] dependency on marijuana." "[The respondent] has little apparent insight into the fact he is using a drug that alters his capacity to interface with the world. This means that [the respondent's] ability to respond to [the child], and to S.B. and [the claimant] will fluctuate depending on the timing" of the use of marijuana in any given day. At p. 25 of the Report, the report writer noted that the home of the respondent "smells of cigarette smoke and marijuana smoke".

[19] Comments made by the report writer about the ability of S.B. to be a moderating factor on the relationship between the claimant and the respondent likely have little meaning because of the criminal charges laid against the respondent for his actions towards S.B. and the fact they have separated (Exhibit B to the 7th Affidavit of the claimant).

[20] Dr. Bell provides answers to several questions posed, including:

(a) What are the needs and views of the child in relation to this family law dispute?

"[The child] is a complex child. [The child] was mixed up about what would make his world better...What was clear, was that [the child] is full of sadness and the transfers between the homes causes [the child] a significant amount of stress that needs to be attended to immediately. These parents need to figure out how to have a cordial transition [The child] needs to be able to just be a child and not have to try to meet his father's emotional needs...An attachment-based parenting group such as the Connect Parent group may be beneficial for both parents to increase their response options in their parenting roles".

[21] It was also recommended that the parents arrange to have the child engage in a "full psycho-educational assessment done privately" to provide answers to his academic struggles, including whether he should continue with French Immersion instruction.

(b) What are the willingness and ability of the parents to satisfy these needs?

Both parents have a desire to parent their son. He is well cared for and there is no doubt he is loved. That said, the report writer noted that the respondent's own description demonstrates that it is his desire to provide the child with a positive childhood ensuring he feels loved. "At times, [the respondent's] goal may actually be interfering with the journey. [The respondent] sees [the child] as a miniature him, however, [the child] has his own ideas and interests that are outside of his father's." Several types of learning, including parenting consultation and exploration of understanding through therapy, will assist the respondent with his inability to handle criticism. Effective co-parenting in this case will likely require working with a Parenting Coordinator to help the parties "navigate parent planning". "Although, [the respondent] convinced me that he does not speak negatively about [the claimant], I do not think he really speaks positively about her either. It is important for [the respondent] to understand, if he does not treat [the claimant] with respect and kindness, he is unequivocally hurting [the child] in the process".

[22] With respect to [the claimant], Dr. Bell recommends:

1. attendance with the respondent to parent consultation sessions with a qualified therapist to help develop a common parenting language and to support the child by communicating well;
2. counselling to learn how to cope with her personal reactions to the respondent during transfers to provide a stronger and less fearful "front" to prevent damage to the child; and

3. working on the response of the child following transitions between households, which are very different.
- (c) What are the custody, guardianship, and parenting arrangements that are in the best interests of the child?

"Although [the child] was inconsistent in his reports of how he felt parenting time should be divided, he was consistent in wanting to spend more quality time with his mother." Dr. Bell recommended the continuation of a 50-50 parenting schedule and that the schedule should not have a travel restriction built into it as such a restriction provides "further opportunity for conflict". The child should have unlimited access to both parents, should they want such access. Again, it was a recommendation that a Parenting Coordinator be appointed and involved with these parties.

Change in Circumstance

- [23] The report of Dr. Bell was written on August 16, 2019, and the criminal charges and driving offences all occurred after the evidence collection by Dr. Bell was completed and/or after her report was written. There is little doubt that those matters involving the respondent would have been of significant interest to Dr. Bell and could very well have changed her views of the respondent. It is without a doubt that the assault and uttering threat charges, if proven, would constitute "family violence" as that term is defined in s. 1 of the FLA. The respondent did not make any statements in his two most recent affidavits filed in response to the 7th Affidavit of the claimant about the charges referred to above. However, in the 6th Affidavit of the respondent on July 2, 2020, the respondent states that while he is aware of the various charges, they are either not proven, untrue, or did not happen under circumstances that would affect the claimant or the child.
- [24] The claimant has cited *Fitzgibbon v. Fitzgibbon*, 2014 BCCA 403, which involved an appeal by a father of an interim order that required the father's parenting time to be suspended, following an alleged incident of family violence by the father, until an access supervisor could be retained. This arrangement was confirmed on appeal, even though the allegations of family violence did not lead to criminal charges.
- [25] The claimant thus requests that, as the respondent has been charged with crimes related to family violence, the respondent's parenting time be suspended or supervised.
- [26] Section 38 of the FLA provides:

Assessing family violence

38 For the purposes of section 37 (2) (g) and (h) [best interests of child], a court must 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.

[27] From s. 1 of the FLA, family violence has a much wider definition than simply events of physical contact, as it includes "psychological or emotional abuse of a family member including (i) intimidation, harassment, coercion or threats".

[28] In *D.N.L. v. C.N.S.*, 2014 BCSC 1417 at paras. 71-75, the Court held that emotional abuse can consist of demeaning remarks about the other parent to the child, threats of physical violence, and suggestions that the other parent was responsible for family conflict: see also *K.R. v. J.D.*, 2017 BCSC 182, *aff'd* 2018 BCA 232. Importantly, in *C.L.M. v. M.J.S.*, 2017 BCSC 799 at para. 365, Donegan J. noted that "[t]he court must also be careful not to label conduct as 'family violence' where there is no evidence the child has suffered any physical or emotional harm as a result of the parents' conduct": see also *L.S. v. G.S.*, 2014 BCSC 187, *aff'd* 2014 BCCA 334 at para. 26.

[29] The speech contained in the text messages sent by the respondent to the claimant, contained in Exhibit "C" to the 7th Affidavit of the claimant, is but one of the examples of the respondent's conduct that comes within the rubric of emotional abuse and family violence: see *C.L.M.* at para. 392. The respondent made disparaging comments to the claimant, stating that she could not get "any dumber" and was a liar, and suggested that she put the lives of him, S.B., and the child in danger through her parenting of the child. From p. 39 of the Report, these types of conflicts stress [the child] out and cause him emotional and psychological harm.

[30] Similarly, in *D.N.L.* at paras. 58 and 72, the Court found demeaning remarks and threats to use physical force to compel the complainant constituted emotional abuse. Further, the Court found that "while the respondent does not intend to subject the child to psychological abuse, his derogatory outbursts and demeaning comments concerning the claimant disturb the child, elevate her level of anxiety, diminish her trust in her father, and set back his efforts to build a relationship with her, and thereby cause her emotional harm." Similarly, as

evidenced in the previously mentioned text messages, the respondent made demeaning comments to the claimant. Furthermore, he sent a series of text messages to the claimant threatening that "if [the claimant] did not return [his iPad] in 12 hours", he would call the local police and have her charged. At p. 10 of the Report, the complainant recalls that the respondent yelled and screamed at her and made threats such as "I could just push your face through the wall right now" and then forcefully pushed her with his chest. She also recalled at p. 11 that the respondent "threatened to kill her if she ever tried to take [the child] away from him" and promised to make her life hell so should would want to kill herself, prompting her to get a restraining order. On a more recent occasion detailed at p. 17, the claimant recalls that the respondent "began yelling at [the complainant] insulting her. He eventually grabbed [the child] out of the car. [The complainant] got [the child] back in the car. [The respondent] threw [the complainant] on the ground " There are numerous other occasions of physical and emotional abuse by the complainant detailed throughout the Report.

[31] In *L.A.R. v. E.J.R.*, 2014 BCSC 966 at para. 149, the Court found that the father's lengthy and acrimonious text messages, disparaging comments, and involvement of the children in topics that are beyond their maturity amounted to emotional abuse. In the case at bar, the respondent sent consecutive acrimonious messages disparaging the claimant that involved property, [the child], and their ongoing litigation.

[32] In light of the above, I find that the respondent's conduct amounted to family violence.

Conclusions

[33] After considering the matters raised in the evidence, it is concluded that:

- a) pending further order of this court, the primary residence of the child will remain with the claimant;
- b) the claimant shall have sole parental responsibilities for the child, pursuant to s. 41 of the FLA, including without limitation: the ability to travel with the child; and apply for passports for the child or sign any document in relation to the child, without the need for the respondent's signature or the respondent's consent;
- c) the respondent shall have contact with the child, not less than four hours per week, by phone or on-line parenting time (collectively, "Virtual Parenting Time") or supervised parenting time ("Supervised Parenting Time") on Tuesdays and Saturdays, each week with a maximum of two hours on each Tuesday and Saturday and such other time or times as the claimant may determine;

- d) the Supervised Parenting Time is to be supervised by a supervisor chosen by the parties, and if the parties are not able to agree on a supervisor within three days of the commencement of this order, parenting time is to be supervised by a supervisor chosen by the claimant and, where payment for supervision services is required, the payment will be paid in advance by the respondent;
- e) each month on the first day, the claimant will send to the respondent, in accordance with this order, a calendar showing the Supervised Parenting Time and supervisor(s) for the following month ("the Schedule") and the respondent will confirm his acceptance of the Schedule within 48 hours by email. If the respondent fails or refuses to confirm his acceptance of the Schedule within the said 48 hours, the Supervised Parenting Time offered for the following month will be forfeited;
- f) the issue of the respondent's parenting time (both Virtual Parenting Time and Supervised Parenting Time) will be subject to review ("the Review") on application by the respondent, provided that the Review cannot be scheduled any earlier than September 2021 and must be scheduled in consultation with the claimant's legal counsel, or if the claimant is no longer represented by legal counsel, then by email directly with the claimant;
- g) further, the Review cannot occur or be set for hearing unless and until the respondent has engaged in at least six months of regular professional counselling with a properly qualified expert (either a psychiatrist or psychologist) who is fully informed and provided a copy of these Reasons and the Report of Dr. Bell, and who will undertake to provide the court, in connection with the Review and at the expense of the respondent, an expert report that addresses (at a minimum) the willingness of the respondent and ability to satisfy the needs of the child. I will be seized of the Review;
- h) these orders concerning the respondent's parenting time before the child replace all previous orders concerning his parenting time;
- i) with respect to communications between the claimant and the respondent, the protocol, pursuant to ss. 222 and 227 of the FLA, is as follows:
 - i. the parties may communicate with one another by one email per week on Saturdays, and if a response is required, the responding party will respond within 24 hours;
 - ii. the parties are to be limited to matters relating to the child, and must be concise and informative;
 - iii. unless, in her opinion, circumstances require more frequent reporting than once a month on a Saturday, the claimant will communicate with the respondent by email any significant decisions she makes concerning the child; and
 - iv. except as set out in subparas. (i) and (ii) above, or in case of an emergency relating to the child, the respondent will not communicate with the claimant;

- j) except as permitted in relation to arranging parenting time for the child, neither parent will:
 - i. discuss any conflict, parenting issues or parenting arrangements with the child;
 - ii. speak with the child about the other parent or time spent with the other parent beyond simple conversational questions;
 - iii. discuss with the child any inappropriate court or legal matters, or matters beyond the maturity of the child;
 - iv. speak disparagingly about the other parent or spouse or the other parent's family to the child or in their presence; and
 - v. allow the child access either to email communications between the claimant and the respondent or to court documents for or filed with the court in this action including these Reasons;
- k) with respect to any further applications, the respondent may wish to make in this action:
 - i. except for the Review, the preconditions for which are set out above, the claimant is prohibited from making further applications in this proceeding without first seeking leave of the court;
 - ii. the request for leave must be initiated by completing the applicable form on the court's website ("Request to Appear Back Before a Specific Judge"), with a copy sent to the claimant's legal counsel or to the claimant, by email, if she does not have a legal counsel, and in such a fashion that the completed document is not more than three pages in length. The request for leave must contain a concise statement of the nature of the application that the respondent intends to make and the reason(s) why the respondent says leave should be granted; and
 - iii. unless I am unavailable, I am seized of any leave application;
- l) the claimant is entitled to her costs of this application payable forthwith after assessment pursuant to Scale B as a matter of ordinary difficulty;
- m) pursuant to s. 183 of the FLA, the respondent is restrained from attending or entering the premises of the claimant or any other process where she is residing from time to time;
- n) the respondent is also restrained from attending any work place where the claimant may be employed from time to time; and
- o) the respondent is also restrained from following or watching the claimant, or the child when the child is not in parenting time with the respondent.

"Ball J."

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