

CANADA / JUDGMENT

E.C.L. v. D.W.C.

2024 BCSC 2044

COURT

Supreme Court of British Columbia

DECIDED

11 June 2024

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2024 BCSC 2044 E. C. L. v. D. W. C.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

E. C. L. v. D. W. C.,

2024 BCSC 2044

Date: 20240611

Docket: E-173127

Registry: Victoria

Between:

E. C. L.

Claimant

And:

D. W. C.

Respondent

Before: The Honourable Justice Wolfe

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

C. Ziegler

Counsel for the Respondent:

R.G. Dieno

Place and Date of Hearing:

Victoria, B.C.

June 11, 2024

Place and Date of Judgment:

Victoria, B.C.

June 11, 2024

- [1] THE COURT: These are my oral reasons for judgment. The claimant mother (the "Mother") applies for an order to vary a previous order made by Justice Murray on April 22, 2022, with respect to parenting time. The parties have one child, C., born January 18, 2012. C. is now 12 years old.
- [2] The Mother's application is based primarily on the outcome and recommendations of a jointly-commissioned updated s. 211 report prepared by Dr. Snell in October 2023. The Mother also seeks orders granting her all parental responsibilities under s. 41 of the Family Law Act, S.B.C. 2011, c. 25, confirming her authority to travel with C. nationally and internationally without the respondent father's consent, and orders to address how and to what extent the respondent father (the "Father") is provided information about C.
- [3] The Father did not file a response to the application, but I have permitted his recently retained counsel to make submissions about the Father's opposition to some of the orders being sought. The Father also prepared and filed an affidavit yesterday. After hearing submissions with respect to the admissibility of the late-filed affidavit, I declined to admit it, noting that it was improperly sworn, the exhibit stamp on one exhibit was not completed -- and there are only two exhibits -- and there was no satisfactory explanation for why it could not have been prepared earlier given the Father has had notice of the application since December 2023 and counsel was retained by April 23, 2024.
- [4] This matter has a long and relatively litigious history. The parties married in 2011, separated in 2015, and obtained an order for divorce from Justice Dillon in May 2018 as part of a final order in this family law matter. Justice Dillon's order granted the Mother the majority of parental responsibilities under s. 41 of the Family Law Act, but preserved the Father's rights to also request and obtain information about C. from third parties. Justice Dillon ordered that C. reside primarily with the Mother and provided that the Father should have reasonable specified parenting time based on a schedule to be agreed between the parties.

- [5] Unfortunately, disagreements about various issues, including parenting time and travel, have resulted in numerous subsequent court applications. Among the applications and outcomes relevant to the present matter, in February 2020, following an application by the Father for increased parenting time (among other things), Justice Gaul ordered a full s. 211 report and ordered that parenting time remain the same pending completion of that report.
- [6] It is clear from the outset of this matter that the Court has felt it important to obtain an independent perspective on the best interests of C., including with respect to parenting time. In April 2020, following a further application by the Father to restrain a perceived relocation by the Mother, Justice Murray confirmed a specific parenting time schedule for the Father and C. on Tuesdays and Sundays, with a court-ordered suspension of that schedule until June 1, 2020, to permit the Mother and C. to remain in a COVID-safe location. The Father was granted Skype visits with C. during that brief period.
- [7] The parties retained Dr. Anita Snell to prepare the s. 211 report ordered by Justice Gaul. Dr. Snell's initial report is dated November 2, 2020. In that report, consistent with the expectations of a s. 211 report writer, Dr. Snell sets out the results of her investigations based on her interviews with the Mother and Father, as well as collateral sources. Dr. Snell also provides her assessment of C.'s needs and best interests as well as her recommendations on parenting arrangements.
- [8] At the time of the initial s. 211 report, Dr. Snell recommended that the Mother exercise a discretionary veto over C.'s access, but also that the parties work towards a 50/50 parenting time schedule provided the Father took certain steps to address concerns over stability and several other issues. Dr. Snell recommended the Mother maintain parental responsibility for C. and recommended a review within 10 to 12 months. Dr. Snell also recommended the parties focus on cooperation and compromise for C.'s best interests, and recommended the family utilize a parenting coordinator.
- [9] The evidence indicates that the Mother attempted to obtain the Father's consent to implement the recommendations of the s. 211 report by way of a court order. That consent was not obtained. The evidence also indicates that the Father communicated his desire to seek a review of the s. 211 report based on disagreements with its contents and conclusions. That review did not occur and there is no evidence of an application to challenge the original s. 211 report.
- [10] There is evidence to indicate that the Father attempted to encourage the use of a parenting coordinator or to engage in a multi-counsellor approach to parenting. Those applications did not go forward for various reasons. There is also evidence to indicate that for various reasons -- including COVID, the Father's employment outside of Victoria, and occasional cancellations of parenting time -- the Father's parenting time with C. during 2021 was sporadic. The parties have different perspectives on the reasons for this.

- [11] The Mother's evidence is that in spring 2022, she became concerned about C.'s behaviour following parenting time with the Father. The Mother cancelled parenting time for a period that spring. It resumed in the fall of 2022, but after two specific incidents in fall 2022, the Mother cancelled the Father's parenting time entirely. As indicated in the updated s. 211 report of Dr. Snell dated October 2023, the parties have very different perspectives on the September 2022 incidents. It is not necessary for me to resolve those conflicts.
- [12] What is clear is that there was a transition of C. on September 25, 2022, in a parking lot, where an attempt by the Father to interact with the Mother made C. very uncomfortable. It is also clear that on the following Tuesday, when C. was to have parenting time with the Father after school, C. refused to go with his Father and instead sought refuge in the principal's office at school. The Mother attended after a phone call to take C. away from the school.
- [13] The Mother's evidence, supported by the updated s. 211 report, is that C. did not wish to see his Father after that. It is not disputed that C. has not seen his Father in person since September 2022. It is also not disputed that in late February/early March 2023, C. reached out to his Father via text message and shared what appeared to be several positive exchanges. However, the text messages do not continue after March 1, 2023.
- [14] It is also not disputed that in the summer of 2023, the Mother and C. moved to the Duncan area after providing the Father with notice. The Mother's evidence, again supported by the updated s. 211 report, is that C. is doing well in his new school and has new friends.
- [15] In the fall of 2023 and spring of 2024, there were two further court applications made by the Mother after failed attempts to obtain the Father's consent in a timely manner to permit the Mother to travel with C. In December 2023, Justice Gaul made an order that permitted the Mother to travel nationally and internationally with C. without the Father's consent as long as the Mother provided notice, seven days' prior to departure, of the country where they were travelling to and the dates of departure and return.
- [16] There was a further order made in March of 2024 by Justice Morley that allowed the Mother to travel with C. to the United States for the spring break between March 12 and March 24 without the consent of the Father, and that entitled the Mother to costs of that application because of an inability to obtain the Father's consent in a timely fashion.
- [17] The updated s. 211 report was prepared based on the parties consenting to it. Dr. Snell completed the updated report in October 2023. At the hearing before me, the Father's counsel made submissions attempting to call into question the impartiality of the updated report and possibly the original report as well. Those submissions were not supported by any evidence, nor has the Father brought an application to challenge the s. 211 report or seek cross-examination of the report writer. In the circumstances, while I am not bound to accept all of the conclusions in the s. 211 report, I have not been provided with any evidence that would allow me to draw conclusions different from those of the report writer.

- [18] I have reviewed the updated report in its entirety. It was based on interviews with C., the Mother, and the Father. I recognize the Father expressed concern that Dr. Snell's interview with him lasted only an hour while he was on a boat in Tonga, and there was no follow-up.
- [19] The updated s. 211 report provides many useful observations about what is in C.'s best interest, including Dr. Snell's observations that C. is a mature young man whose wishes and opinions deserve to be taken seriously. It is clear from the updated report that C. loves both of his parents and that both of his parents love him very much. I have no doubt this is the case. However, it is also clear that continued struggles over parenting time have had a detrimental impact on C. and his clearly expressed wish at this time is not to see his Father and to have control over the timing of his contact with his Father going forward.
- [20] While I have reviewed the report in its entirety, I will simply point out several highlights from Dr. Snell's conclusions or suggestions going forward that begin at page 172 of that report. These include the fact that Dr. Snell respectfully suggests that C.'s strongly held wish to control the timing of contact with his Father be supported, and that the Father's parenting time with C. be conditional upon C.'s agreement. That is in recognition of the fact that the Father, understandably, wishes to continue to have meaningful contact with his son, but the report writer notes that there are gaps in the necessary level of consistent kindness that the Father has shown to C. over the past three years.
- [21] In terms of other suggestions, the report writer indicates that a parenting coordinator be utilized to assist with ongoing family matters as a way of ensuring that the interactions between the Mother and Father that create conflict for C. are mitigated and kept to a minimum. It is respectfully suggested by the report writer that the Mother have full parental control for and responsibility for C., meaning and including the ability to travel nationally or internationally without requiring the Father's consent. It is also respectfully suggested that the Father seize the opportunity to ensure that C. is in his life, but on terms that C. dictates.
- [22] Dr. Snell's recommendations are based on clear observations of the change in dynamics between the initial report and the updated report. Her observations are balanced and appear to recognize the positive qualities of both parents and where both parents have behaviours that impact C. I feel confident in relying on her recommendations about the next steps for this family.
- [23] On an application to vary parenting time and other matters under s. 47 of the FLA and various aspects of the Divorce Act, the primary and paramount consideration must be the best interests of the child. The updated s. 211 report is the best independent evidence this Court has at this time about what is in C.'s best interest. Taking into account all of the evidence and the submissions that were made before me, it is my view that the following orders should be made in C.'s best interest.

- [24] I order first that the order of the Honourable Justice Murray dated April 22, 2020, be varied to provide that C. shall reside primarily with the claimant, E.L., and, second, that the respondent, D.C., shall have no parenting time with C. unless C. wishes.
- [25] The next term of the order will be that the claimant, E.L., shall provide C. with D.C.s' contact information in order that C. may contact him if C. chooses to do so. In making those previous two orders, I make it clear to the parties that there is no veto granted to the Mother. It is solely for C. to choose when and how he wishes to contact his Father.
- [26] I will make an order that the claimant, E.L., shall have full parental responsibility for C. in accordance with s. 41 of the Family Law Act. I note that that term of the order was consented to.
- [27] I will make an order that the claimant, E.L., shall be allowed to travel with C. nationally and internationally without the consent of the respondent, D.C.; however, consistent with the order made by Justice Gaul in December 2023, the claimant, E.L., shall no later than 14 days prior to departure advise the respondent, D.C., of the country where the claimant is going with C. and the dates of departure and return.
- [28] I will make a further order with respect to information, that the claimant, E.L., shall provide the respondent, D.C., with general information about the following:
- a) any geographic change to C.'s residence -- and that should include a general area such as the Duncan area or the Victoria area, etc.;
 - b) any proposed national or international travel with C., which is also covered by the terms of the previous order; and
 - c) that twice per year, once in January and once in July, the claimant will provide the respondent with information about C.'s educational progress and accomplishments.
- [29] I will make an order for costs in favour of the Mother on the usual scale as she has been substantially successful on this application.
- [30] Those are my reasons.

"K. Wolfe J."

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