

CANADA / JUDGMENT

E.R. v. J.S.

2024 BCSC 2190

COURT

Supreme Court of British Columbia

DECIDED

7 October 2024

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2024 BCSC 2190 E.R. v. J.S. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: E.R. v. J.S., 2024 BCSC 2190 Date: 20241007 Docket: E19228 Registry: Nelson Between: E.R. fka E.S. Claimant And J.S. Respondent Before: The Honourable Madam Justice Lyster in Chambers Oral Reasons for Judgment Appearing in person: E.R. Appearing in person: J.S. Place and Date of Hearing: Nelson, B.C. October 7, 2024 Place and Date of Judgment: Nelson, B.C. October 7, 2024

- [1] THE COURT: These are my oral reasons for judgment with respect to an application that has been filed by E.R. In it, she seeks five orders. She seeks:
1. A declaration that the application respondent, that being J.S., has wrongfully denied her parenting time;
 2. An order that the court make the current consent order, dated November 5, 2018, police enforceable;
 3. An order that the court impose a fine of \$5,000 to be paid to E.R. for the benefit of C., to be paid on or before December 31, 2024;
 4. A conduct order requiring that J.S. make a real effort to be polite and respectful when communicating with the claimant and not argue or say anything negative or hostile if the child can see or hear him; and
 5. Costs of the application.
- [2] J.S. opposes the application. As I understand J.S.'s position, he acknowledges that he has withheld C. since September 23, 2024, but he justifies his conduct on the basis of a combination of C.'s wishes to stay with him and allegations of family violence in E.R.'s home.
- [3] These parties have been frequently before the court in relation to parenting matters. In her submissions, E.R. said it was eight times. I have not taken the time to count up the appearances of the parties, but I certainly know they have been in court on multiple occasions, including multiple times before me, with respect to parenting issues related to C. and that, for a period of time, J.S. has wished to vary the parenting time set out in the consent order of Madam Justice Murray in order to have C. spend more time with him.

- [4] Most recently, I recall that, in or about May 2024, the parties were before me. J.S. had an application that was struck because he had not given sufficient notice to E.R. At that time I know I explained in some detail to J.S. what he needed to do in order to make an application that the court could address regarding varying parenting time with C. No such application has been made by J.S. since that time.
- [5] The parenting arrangements for C. are as set out in the final consent order of Madam Justice Murray made November 5, 2018 (the "Murray Order"). It provides at paragraph 7 that, commencing September 2018 and continuing thereafter during the regular school year, the respondent shall have parenting time with the child on alternating weekends, intended to coincide with the respondent's parenting time with Alexander, commencing Friday after school and lasting until Monday, when the child is dropped off at school. That is referred to as the respondent's school year parenting time in the Murray Order.
- [6] There are other provisions that deal with other kinds of parenting time at other times of the year. All other parenting time not exercised by the respondent shall be with the claimant unless otherwise agreed upon in writing.
- [7] As I have said, there is no dispute that C. has been with J.S., that J.S. failed to drop him off at school as required under the Murray Order on the morning of September 23, 2024, and that he has kept C. with him since that time.
- [8] The evidence before me indicates that, further, J.S. has attempted unsuccessfully to register C. for school in [location omitted]. I refer to the affidavit of E.R. filed October 1, 2024, and specifically to Exhibit E, which is an email exchange between J.S. and {name omitted}, who I understand is the principal of [name of school omitted] in [location omitted]. There is an initial email from J.S. where he says: Sorry, I had forwarded both documents from [E.R.], of course I have no clue how she had the order as it seems both I forwarded to you were the S211. Hope you can view this, if you have a problem...
- [9] [The principal] wrote that same day: Thanks for checking in today. I was able to speak with [E.R.] (mother) this morning, and she shared the court order document. My reading of this document is that both parents need to consent to any changes to education, among other things. [E.R.] made it clear she does not consent to this move; as a result, I am unable to process this registration for your son to attend [name of school omitted] at this time.
- [10] It is clear that J.S. was seeking to have C. registered at [name of school omitted] in [location omitted], but the principal there quite properly refused to do so as it would be inconsistent with the terms of the Murray Order.
- [11] I do not think there is any evidence specifically on this point, but I infer from the evidence that I do have that C. has, therefore, been out of school entirely since September 23.

- [12] As I said, J.S. seeks to justify his conduct on the basis of C.'s views, and so it is useful to review the Views of the Child report which is in evidence before me, which I have read. I will not refer to all of it in these reasons, but I have read it. Catherine Williams, who is a registered clinical social worker, interviewed C. on February 7, 2024, and I have the transcript from that interview. As I say, I will not refer to all of it, but I have reviewed it all. I will highlight some portions of it.
- [13] At Question 8, Ms. Williams asked C.: What is your life like at your mom's? And he responded: I don't know it's pretty good um I've a loving family there so I think that's the only thing that really matters.
- [14] At Questions 23 and 24, C. was asked some questions about his relationship with his stepfather. He was asked what their relationship was like; he said: I don't know it's comme ci comme ça it's sometimes on, sometimes good sometimes not the best. Ms. Williams followed up with: Sometimes good, sometimes not the best? He responded: Like he's taking me to a lot of things like I'm gonna go get my hunter's or my pal and stuff core course. She followed up: What are the parts of the relationship that are not so, I'm seeing you move your hands up and down. And C. responded: We- we don't get along we don't really like agree on the same things sometimes and, that sometimes goes a bit off the road and not the best for our- the whole family.
- [15] At Question 29, Ms. Williams stated: I understand your parents are trying to figure out if it's a good idea for you to live more of the time with your dad or with your mom. And C. said: That's the question I've been thinking about for a while and I think like I know me and my mom discussed it this morning like I don't know like we- she's open to it like spending a bit more time it's just we don't know when there would be more time that would work.
- [16] At Question 34, C. indicated that he would like to spend a bit more time with his dad, "at least like a couple extra days a year probably." Ms. Williams follows up, "A couple of days extra." C. said, "Or a couple of weeks I don't know."
- [17] At Question 37, Ms. Williams asked what C. would envision if the parties' homes were closer together, and I will not read all of C.'s response, but I think is clear that C. indicated that he would like to have a little bit more flexibility if the parties lived in the same place, in the same town, that he would have a bit more choice about where he was, and when. That is, if the parties lived in the same community, which of course they do not.
- [18] At Questions 43 and 44, he was asked: If it was decided that you were to be spending more time living with your dad, what would be good about that for you? He responded: I think I'd have like I don't know, I don't think I don't think I really wanna go to school at [name of school omitted]. . . . Like I know some kids there but um, I'm gonna know a lot more kids at [name of school omitted]. I note that [name of school omitted] is C.'s school in [location omitted], and he says that he would still want to go to [name of school omitted].

- [19] At Question 64 and forward, he was asked a number of questions. Essentially if he was in charge and he had a magic wand, how would he split the time up between J.S. and E.R., and I think it is fair to say that he, in an ideal world, would like it to be equal, but he recognizes that that is not really manageable, given that the parties do not live in the same town.
- [20] At Question 68, he says he thinks he would like to have his dad in his life a bit more, but he does not want to move to a different community and have to go to school someplace else.
- [21] At Question 79, he indicates that he has never felt afraid in either his mom's or his dad's care.
- [22] At Question 89, Ms. Williams said: It hasn't yet been decided if there will be a change in how much time you live with each parent. This is why you are . . . being interviewed today. Your mom and dad are making important decisions about your life. They want to hear what you think and feel about these questions I've asked you to help them make the best decision about that. And C. responded: I like it how it is now, I'd like, like I've told both of my parents like I've talked to them, I think I'd like to spend a bit more time at dad's than mom's. Not more, than at mom's but I'd like to spend more time there.
- [23] Views of the Child reports are ordered because they are the most reliable way of getting a child's own views before the court, as opposed to it being translated by a parent. I think it is clear overall that C. loves both of his parents and he would like to spend a bit more time with his dad, but he does not want to move to [location omitted] and he does not want to change schools. That is the best evidence I have about what C.'s views are. He would like to spend a bit more time with his dad. He recognizes that is difficult to accomplish because Dad lives in [location omitted] and Mom lives in [location omitted], but he does not want to completely upend the parenting schedule.
- [24] I do not have before me an application to vary the parenting schedule, but that is very useful evidence, and that is what I take overall from what C. had to say to Ms. Williams.
- [25] There have been some very concerning communications from J.S. At paragraph 8 of her September 24, 2024 affidavit, filed September 24, 2024, E.R. says that: 8 On September 1, 2024 when I went to [location omitted] to pick up C. after he had spent 18 days in [location omitted] as part of J.S.'s scheduled parenting time. C. was behaving very differently. He was crying and did not come over to get into my Car. I [witnessed] J.S. saying to C. "You dont have to listen to your mom" "Your mom doesnt own you. We both own you" "You dont have to go with your mom" "Tell her that you want to live In [location omitted]"
- [26] J.S. does not offer a specific response to those allegations. He says in his application response that he generally objects to every statement from E.R., but that is not an answer to E.R.'s evidence about what J.S. had to say on September 1 when E.R. went to pick C. up, and I accept that that is what J.S. in fact did say.
- [27] Also on September 1, we have texts from J.S. to C. They are found at Exhibit G of E.R.'s affidavit. I am going to read them: Love you my courageous C. [Names omitted] are all here for you. You are still a young man, sorry your mom is selfish. [Names omitted] etc will pick

you up anytime you need if I am not available. Love you fun kind sweet C. If your mom didn't want you to be around me, she should have had an abortion. She should have got a puppy dog she can control. You and your opinion are valued in [location omitted] Sorry your mom doesn't really love you enough to listen.

[28] I asked J.S. about those texts and he acknowledged that they were inappropriate, or at least he acknowledged the one about the abortion was inappropriate, but he said, "I was very mad." Being very mad is not an excuse for sending such obviously inappropriate texts to an 11-year-old boy. Telling an 11-year-old child that his mother is selfish, that she should have had an abortion, and that "she doesn't love you enough to listen to you" is family violence.

[29] We look to where the Family Law Act, S.B.C. 2011, c. 25 [FLA] addresses family violence. First, what is important to note is that in making any order concerning things such as parenting arrangements, the parties and the court must consider the best interests of the child only. In doing that, pursuant to s. 37(2), in determining the best interests of the child, all of the child's needs and circumstances must be considered. That includes:

- (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.

- (3) An agreement or order is not in the best interests of a child unless it protects, to the greatest extent possible, the child's physical, psychological and emotional safety, security and well-being.
- (4) In making an order under this Part, a court may consider a person's conduct only if it substantially affects a factor set out in subsection (2), and only to the extent that it affects that factor.
- [30] Under s. 38, in assessing family violence, a court must consider all of the following:
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.
- [31] In my view, it is clear that comments of the kind that were made in those text messages are family violence that C. was exposed to, and so I have to take that into account in considering what orders are appropriate to be made today. I will also add that, insofar as J.S. seeks to rely on family violence in the home of E.R., there is no evidence before this court that would substantiate that there is family violence. Certainly, in the Views of the Child report, C. indicated that he sometimes disagrees with his stepfather. That is not family violence and indeed I think anyone who has ever parented a child will know that there are times when the child and the parent or the stepparent disagree with one another.
- [32] E.R. seeks an order under s. 61 of the FLA, which deals with the denial of parenting time. Subsection (2) of s. 61 of the FLA provides:
- (2) If satisfied that an applicant has been wrongfully denied parenting time or contact with a child by a child's guardian, the court on application may make an order to do one or more of the following:

- (a) require the parties to participate in family dispute resolution;
- (b) require one or more parties or, without the consent of the child's guardian, the child, to attend counselling, specified services or programs;
- (c) specify a period of time during which the applicant may exercise compensatory parenting time or contact with the child;
- (d) require the guardian to reimburse the applicant for expenses reasonably and necessarily incurred by the applicant as a result of the denial, including travel expenses, lost wages and child care expenses;
- (e) require that the transfer of the child from one party to another be supervised by another person named in the order;
- (f) if the court is satisfied that the guardian may not comply with an order made under this section, order that guardian to
 - (i) give security in any form the court directs, or (ii) report to the court, or to a person named by the court, at the time and in the manner specified by the court;
- (g) require the guardian to pay
 - (i) an amount not exceeding \$5 000 to or for the benefit of the applicant or a child whose interests were affected by the denial, or (ii) a fine not exceeding \$5 000. Specifically here, E.R. seeks an order under s. 61(2)(g)(i) and she seeks \$5,000 payable by December 31, 2024.

[33] In considering that, it is important to note that this is not the first time these parties have been before the court with respect to the wrongful denial of parenting time. In a decision I rendered on August 18, 2021, E.S. v. J.S., 2021 BCSC 2148, I found that J.S. had wrongfully denied parenting time.

[34] In that particular case, he picked C. up or he had not taken C. to school so they could go skiing. I did find that that was a denial of parenting time because the day in question was part of E.R.'s parenting time. In that case, I ordered a fine of \$500 payable to E.R. for the benefit of C.

[35] At para. 18 of that decision, I turned to a consideration of the relevant factors in terms of whether a fine ought to be ordered, and I stated:

[18] First, there is no pattern of breaches of the order. I have found a single breach of the order, that being in relation to the March 2021 spring break.

[36] At para. 19, I dealt with deterrence, I stated:

- [19] I accept that is a relevant factor here. Mr. S. admits to the conduct in question, that is, that he removed C. early from school and that is to his credit. At the same time, Mr. S. in his submissions sought to justify that conduct and I have not heard him clearly tell the court that he will not repeat it. So I do believe that deterrence is a relevant factor in this case.
- [37] At para. 20, I dealt with the parties' relative means. At para. 21, I dealt with the seriousness of the breach. I stated:
- [21] I consider the breach to be relatively minor. While the school day was part of Ms. R.'s parenting time, it was not time she was actively parenting C. Certainly, taking a child out of school to ski for the day is a decision a parent might reasonably make. Unfortunately, it was not Mr. S.'s decision to make on that day.
- [38] In the result, in that case, I ordered a fine of \$500.
- [39] This is a much more serious breach of the Murray Order than the breach which I found in that case. This breach has been ongoing now since September 23, so we are now at two weeks of wrongful denial, and J.S. is unrepentant. He still seeks to justify his conduct. He believes that it is justified, I think. But he seems to think that it is within his power to take the law into his own hands.
- [40] Having failed to pursue an application to vary the parenting order and perhaps obtain an order from the court that would vary the parenting order, he has instead simply withheld C. In doing so, he has clearly placed undue pressure on C., as the comments as stated in E.R.'s affidavit and in the texts clearly show.
- [41] This is a much more serious breach and it is one that shows that deterrence continues to be an important factor, and so I am going to order a fine payable by J.S. in the amount of \$3,000 to E.R. for C.'s benefit no later than December 31, 2024.
- [42] E.R. further seeks an order pursuant to s. 231(1) and (4) of the FLA which provides:
Extraordinary remedies 231 (1) This section applies if (a) a person fails to comply with an order made under this Act, and (b) the court is satisfied that no other order under this Act will be sufficient to secure the person's compliance. []
- (4) If satisfied under section 61 [denial of parenting time or contact] that a person has been wrongfully denied parenting time or contact with a child by the child's guardian, a court may make an order requiring a police officer to apprehend the child and take the child to the person.
- [43] I am satisfied that J.S. has wrongfully denied parenting time, so the court does have jurisdiction to make such an order. However, I can tell the parties that courts are always extremely reluctant to make such orders. No one wants to have to involve the police in a family matter and have a police officer go and pick up a child. Sometimes such an order is necessary, but if there is any other way to ensure compliance then that is what the court will do.

[44] So here I have to ask you a question, J.S., will you return C. to E.R.'s care by 4:00 p.m. today?

[45] J.S.: Until he runs away.

[46] THE COURT: Sir, that is not the answer.

[47] J.S.: I will.

[48] THE COURT: You will. I do not have to --

[49] J.S.: Until he runs away.

[50] THE COURT: -- make a police order.

[51] J.S.: Until he runs away again.

[52] THE COURT: J.S. --

[53] J.S.: Yes, I will.

[54] THE COURT: -- I have no evidence of him running away. You will take him to E.R. by 4:00 p.m. today?

[55] J.S.: I will take him to the school immediately.

[56] THE COURT: Okay. So E.R., I -- so C. is here in the city currently, is he?

[57] J.S.: And he will be at the school immediately and he will probably run away as soon as he can.

[58] THE COURT: Well, J.S., we do not know that and it is not a debating society. So you will take C. at the conclusion of this to school?

[59] J.S.: Yes, Justice Lyster, I will --

[60] THE COURT: Thank you.

[61] J.S.: -- take him to school right away and he will likely run away right away, again like he did last time.

[62] THE COURT: Well, I have no evidence of --

[63] J.S.: And --

[64] THE COURT: -- him running away, J.S., do I?

[65] J.S.: -- I may as well throw some more money at E.R., because --

[66] THE COURT: J.S.

[67] J.S.: -- that's what it's about.

[68] THE COURT: J.S., have a seat. The only thing that this court is concerned with is the best interests of C., and that is the only thing that you and E.R. should concern yourselves with.

- [69] J.S.: Well, then I would suggest another s. 211 report to see what his views are, 'cause this is a year old.
- [70] THE COURT: That is not before me today, J.S.
- [71] J.S.: Well --
- [72] THE COURT: Please sit down. All right, so there will be an order requiring J.S., on consent, to take C. to school at [location omitted] upon the conclusion of this court hearing. In light of J.S.'s consent to do so, I am not going to make that order police enforceable at this time.
- [73] E.R. sought conduct orders and, so far as I am aware, there have been no conduct orders made in this case and I am going to make three of them now:
- [74] J.S., are you listening?
- [75] J.S. : All ears.
- [76] THE COURT: The parties will put the best interests of the children before their own interests. They will encourage the child to have a good relationship with the other parent and speak to the child about the other parent and that parent's partner in a positive and respectful manner, and make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication, or argument in front of the child.
- [77] The parties will not question the children about the other party, about the other parent or time spent with the other parent beyond simple conversational questions; (b) discuss with the children any inappropriate adult, court, or legal matters; or (c) blame, criticize, or disparage the other parent to the child.
- [78] Those conduct orders will be in place, and what they are intended to do is to ensure that both parents do as those conduct orders say, encouraging C. to have a good relationship with the other parent, speaking about the other parent and that parent's partner in a positive and respectful manner, and not discussing with C. any inappropriate adult, court, or legal matters.
- [79] Those conduct orders are in place as of now, and so when you walk out those doors, you are to govern yourselves by those conduct orders.
- [80] The last order sought by E.R. was an order for costs. E.R. has been substantially successful in this application and is entitled to her costs of this application.
- [81] That concludes my reasons for judgment. "L.M. Lyster J." LYSTER J.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/24/21/2024BCSC2190.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/e-r-v-j-s-2024>

Prepared on 28 October 2026 · Esheria