
CANADA / JUDGMENT

F.C.S. v. C.E.S.

2022 BCSC 1804

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 1804 F.C.S. v. C.E.S.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

F.C.S. v. C.E.S.,

2022 BCSC 1804

Date: 20221014

Docket: E203099

Registry: Vancouver

Between:

F.C.S.

Claimant

And

C.E.S.

Respondent

And

E. HOLDINGS LTD.

Respondent

By Counterclaim

Before: Master Robertson

Supplementary Reasons for Judgment

In Chambers

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Counsel for the Respondent by Counterclaim

No Appearance

Place and Date of Hearing:

Vancouver, B.C.

August 17, 22 and 24, 2022

Place and Date of Judgment:

Vancouver, B.C.

October 14, 2022

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Introduction

- [1] These reasons are supplementary to my reasons issued September 16, 2022, and indexed at 2022 BCSC 1636 (the "Prior Reasons"). For the purpose of these reasons, I adopt the defined terms as contained therein.
- [2] As noted in the Prior Reasons, the parties did not have sufficient time to make full argument as to paras. 7 and 8 of the claimant's application filed May 9, 2022 (the "First Travel Application"), and paras. 1 and 2 of the claimant's application filed July 28, 2022 (the "Second Travel Application"), by which he sought permission to travel with the Children, and issues relating to the passports in that respect.
- [3] Given that the factual background had been set out before me, and that the claimant had already provided written submissions on that point, I gave the parties the option to have that matter completed by written submissions, which they agreed to, and a schedule was created for that purpose. The written submissions, with reply and sur-reply, were all submitted as of October 5, 2022.
- [4] In addition, it has been brought to my attention that there are some typographical errors in my reasons and orders set out therein which require correction, and some issues that have subsequently arisen for which the respondent sought further direction.

Circumstances Since the Parties Last Appeared Before Me

- [5] I am advised by the respondent that since the parties last appeared before me, she provided signed passport applications to the claimant, and the passports have now been obtained for both children. As such, that relief is no longer needed.
- [6] At the time of my Prior Reasons, there was an intent to seek an adjournment of the November 2022 trial date. That has now been done. Specifically, on September 29, 2022 an order was pronounced adjourning the trial to the next mutually available date prior to September 30, 2023.
- [7] As an update as to the status of the s. 211 report, I am advised that while there is no further estimate as to its completion, the author, Dr. La Torre, has now scheduled his appointments to observe the parties with the Children during October.
- [8] The respondent has also raised various new allegations in her reply submissions, and submitted affidavits in this respect, regarding issues as to timely disclosure by the claimant, disposition and sale of personal property by the claimant including artwork created by her as an artist, for which she alleges she did not receive payment and other issues; all of which the respondent says has been discovered or occurred since the parties last appeared before me.

[9] For the most part, these issues are being raised in response to specific allegations made by the claimant in the course of his submissions which addressed other issues that have either been dealt with, or adjourned.

[10] As such, I will only comment on those new allegations to the extent they are relevant to issues as to travel.

Preliminary Issues

Corrections of Typographical and Inadvertent Errors in Previous Reasons

[11] In the respondent's written submissions, she has asked for clarification as to the Prior Reasons, specifically as to the obligation to pay for drug testing and the home inspection.

[12] There are typographical errors in my reasons where I interchanged respondent and claimant. I apologize for those errors and any confusion caused by them. I confirm that my intent was to have the claimant pay for these items in the first instance, for the reasons I clearly set out in para. 118.

[13] Thus, the order as granted at para. 136(d)(v) contained a typographical error and should read as follows:

- v. The costs of the Required Drug Tests are to be paid by the claimant, on a without prejudice basis subject to a final allocation and determination as to whether the respondent ought to indemnify the claimant for such costs, or further agreement of the parties.

[14] The order at the conclusion of para. 136(a)(iii) should read:

with the costs to be paid by the claimant on a without prejudice basis subject to a final allocation and determination as to whether the respondent ought to indemnify the claimant for such costs, or further agreement of the parties

[15] In addition, given the adjournment of the trial, the claimant has requested that the order made with respect to the payment of spousal support, which was not opposed, make specific reference to the terms of the marriage agreement, rather than be subject to a final agreement or court order between the parties, given that the final order is not likely to be made until after the term for spousal support expires under the marriage agreement.

[16] I agree that my order was not intended to amend or alter the terms of the marriage agreement in any way, and that that wording was inadvertent. Accordingly, the order I made at para. 136(c) of my Prior Reasons are amended to read follows:

On an interim basis, the claimant shall pay the respondent \$4,000 per month in spousal support in accordance with the terms of the October 11, 2016 marriage agreement, unless otherwise agreed to or ordered by the court.

- [17] As the order has not yet been entered, the parties are at liberty to submit that order for entry with these amendments being made, which are made pursuant to R. 15-2(18) of the Supreme Court Family Rules, B.C. Reg. 169/2009.

Further Orders as to Supervised Parenting

- [18] The respondent also seeks a further order as to who may provide supervised parenting when the claimant's father is unavailable. In this regard, the respondent has filed new evidence that the claimant's father has left the country for three weeks, a fact the respondent argues was known by the claimant, but not disclosed to me when the parties appeared.
- [19] The claimant opposes any substantive relief being granted other than relating to the travel issues. The claimant also opposes the introduction of this new evidence, disputing much of it, although not providing any specific affidavit evidence in response given. Further, the claimant states that he has agreed to the respondent's mother providing supervision while his father was away, provided the respondent completes and passes the Required Drug Test although the respondent disputes that there has been such cooperation.
- [20] I have concerns that, if known, the unavailability of the claimant's father should have been disclosed so that another option could be put in place as I clearly intended to have supervised parenting continue only as a bridge pending further drug testing results.
- [21] In addition, during the original hearing the issue of appropriate supervisors was, to some extent, discussed. This included argument as to whether or not the respondent's mother would be appropriate, despite not living in the lower mainland, or whether the Children's godmother would be, despite her wanting to exercise such supervised parenting at her own residence. Given the limited time of the continued supervision, I did not find it necessary to provide any order for an alternative or other supervisor. Had I known that there was a potential issue as to the claimant's father's availability, I would have.
- [22] To the extent it may assist the parties in resolving any issues in this respect, but without making an order, based on the argument I did hear I did not see any issue with either the respondent's mother or the Children's godmother providing supervised parenting, subject to the logistical issues being worked out.
- [23] Nonetheless, the only issue I agreed to hear by way of written submissions was that related to travel.
- [24] As such, it would not be appropriate to determine the alternative supervisor issue without the parties having the full opportunity to present their full arguments as to appropriate supervisors. If necessary, they have leave to seek further time before me to resolve that issue, but may set the matter down in regular chambers if it is more convenient for their scheduling.

Records to be Provided to s. 211 Author

- [25] Both parties have included in their written submissions arguments as to the provision of documents to the s. 211 author. When the parties appeared before me on September 14, 2022 to settle the terms of a different order, it appeared they agreed as to the documents that were to be delivered and an order was made by consent in that regard.
- [26] Although that issue was not strictly before me at that time, we did discuss some of the issues they were having in coming to an agreement on the wording of the s. 211 disclosure order. One of the claimant's concerns was that the wording of the order was so broad that it would require everything to be delivered, even if previously delivered. As such, the wording was made more permissive so that would not be required.
- [27] The respondent is arguing that the claimant is now using the changed language, to avoid providing what she argues are clearly relevant documents which the order was meant to address, specifically the Vancouver Police Department ("VPD") records from the 2018 Incident.
- [28] As much as it was hoped when we discussed this matter on September 14, 2022 that this could be resolved and that I had understood, rightly or wrongly, that the police records including the VPD records from the 2018 Incident would be delivered, I cannot address that issue on these submissions as it would require full submissions of both parties.

Travel with the Children

The Parties' Positions

- [29] The relief sought in the First Travel Application is a blanket order permitting the claimant to travel anywhere in North America without the consent of the respondent, provided that an itinerary is provided in advance.
- [30] The relief sought in the Second Travel Application is largely duplicative, in that it seeks the same blanket relief, but then the alternative relief to permit a particularized trip to Hawaii scheduled from October 9, 2022 to October 16, 2022. The claimant has now rescheduled the proposed trip to November 1, 2022 to November 10, 2022 (the "Hawaii Trip").
- [31] The respondent is opposing there being a blanket order allowing the claimant to travel without any consent of the respondent, but is not opposing the relief sought with respect to the Hawaii Trip, provided that:
- a) she receives compensatory parenting time in accordance with my previous order, and that if the conditions to allow for parenting to be unsupervised as I previously ordered based upon negative hair test results are not ready, and if the claimant's father is not available to supervise the respondent's make up parenting time, the compensatory parenting time will occur under the supervision of a professional supervisor;

- b) the trip does not delay any appointments with the s. 211 author, Dr. La Torre, although this seems to have resolved itself given the rescheduling of the trip to November; and
 - c) she be provided with the full itinerary.
- [32] The claimant does not oppose there being compensatory parenting time for any parenting missed during travel, on mutually convenient and agreeable dates, or the provision of the itinerary and contact information, with confirmation of health insurance.
- [33] There was also an indication in the respondent's written submissions that her agreement to the Children's travel would be dependent upon the trial being adjourned, as the travel would have otherwise been on the eve of the trial. As the trial has now been adjourned, that is no longer an issue.

Analysis

- [34] Given that there is no opposition to the Hawaii Trip, I will not address that trip specifically.
- [35] Rather, I will address whether or not there ought to be a blanket order for travel without the respondent's consent, and terms for any travel, including for the Hawaii Trip.
- [36] In the First Travel Application, the basis for the blanket allowance for travel was as follows:

The claimant wishes to take the Children on a trip to Hawaii

Pursuant to s. 222 of the FLA, the Court may make an order to facilitate the settlement of an issue that may become the subject of a family law dispute and may make an order to facilitate arrangements pending final determination of a family law dispute.

- [37] In the Second Travel Application, as noted, the claimant sought not only the blanket order, but the alternative order that he be permitted to travel with the Children to Hawaii from October 9 to 16, 2022.
- [38] Under the basis, in addition to that argument which was in the First Travel Application, the claimant added:

Pursuant to s. 41 of the FLA, parental responsibilities with respect to a child include applying for a passport for that child.

- [39] In her responses, the respondent states only that she does not agree that the claimant may travel with the Children without her consent or authorization as she is worried the claimant will not return with the Children. In her evidence, the respondent makes allegations that the claimant has been involved with gang activity, and raises issues as to family violence involving the respondent and the Older Child, as I referenced in my previous reasons.
- [40] All of these allegations have been denied by the claimant.

- [41] I agree with the claimant that there is no reliable evidence currently before the court to support these allegations. The new evidence that the respondent has filed as part of these submissions includes a suggestion that records from the VPD have been in the claimant's possession since before the application came on for hearing before me, and were not disclosed, notwithstanding that they are relevant to the allegations of family violence and, specifically, the 2018 Incident. Regardless, the 2018 Incident did not involve the Children.
- [42] The most telling evidence as to the claimant's ability to parent, whether that be at home or while on vacation, in a safe manner having regard to the Children's physical and emotional safety, health and well being is the fact that he has been the primary parent for over two years.
- [43] In addition, the respondent deposes that the claimant gets stressed while travelling and has "panicked on airplanes". This is denied by the claimant, who deposes that he travels frequently and has no fear of flying. I am not satisfied that this allegation, even if true, would support prohibiting the claimant from travelling with the Children.
- [44] Finally, the respondent deposes that she "fears" that the claimant will not return to Canada with the Children, noting that he is "capable of anything".
- [45] The claimant relies upon *El-Murr v. Kiameh*, 2006 ONCJ 111 ("*El-Murr*"), and specifically the comments of the court as follows:
- [17] Where, as here, she has been parenting responsibly, restrictions on her freedom to travel with the child for vacations need to be grounded on solid evidence. The evidence advanced by the father falls far short of providing a basis for such restriction.
- [18] In light of her parenting dedication and success with this boy, there is no good reason to subject her decision-making about this boy's travel to the supervision or scrutiny of a court
- [46] And further, at para. 23:
- [23] There is no factual basis for the father's fear that she will not return from Lebanon with this child. She has been in Canada some 14 years, is a Canadian citizen, has secure employment and a career as a mortgage administrator in Toronto, has a husband here in Toronto who has also put down solid roots in the workforce in Toronto and they own property in Canada. In addition, her parents and siblings, also Canadian citizens, are in Toronto. There is a rootedness in this country that buttresses the mother's own assurance that she has no intention of remaining in Lebanon, whatever her misgivings about remaining in Canada as a young newlywed some 14 years ago. She has also traveled outside Canada with this child to the United States, as permitted by the order of Justice Lynn King, and returned as expected.
- [47] I agree with the claimant that, as was the case in *El-Murr*, the evidence supports that the claimant has a strong connection to BC, with family living here, including his father who has a strong and well rooted connection with the Children having set up his basement as a playroom for them.

- [48] There is nothing in the evidence before the court to support the fear that he will not return from a vacation to Hawaii.
- [49] At para. 12 of *El-Murr*, the court noted as follows:
- [12] It is part and parcel of the ordinary life of a boy of ten to travel with his custodial parent for vacation periods and to have the vacation planning left in the hands of the custodial parent, where economic circumstances permit and where there is no reason to restrict that parent's freedom of movement with the child.
- [50] A notable distinguishing factor in *El-Murr*, however, was that there was a court order giving the custodial parent all parental responsibilities and legal custody, but with a prohibition from obtaining a passport without consent which necessitated the application that was before that court. The order that was ultimately pronounced allowed the mother to have the parental responsibilities relating to travel, without any restrictions.
- [51] In this respect, the respondent argues that the court does not have jurisdiction to make the order under s. 222 of the FLA, as sought by the claimant. In particular, the respondent relies upon *Pasco v. Pasco*, 2016 BCSC 2484 ("*Pasco*"), where the court noted at para. 23 that making an order requiring the signing of an application for a Nexus card was a "strained interpretation" of s. 222.
- [52] It was unclear in the respondent's submissions if her argument was that the court had no jurisdiction to order *carte blanche* travel, or merely whether the application relating to the obtaining of the passports had to be done under s. 41. As to the latter point, the claimant also relied upon s. 41 of the FLA. As to the former, s. 41 of the FLA does not specifically enumerate responsibilities relating to travel. However, s. 41(a) includes day to day decisions. The court in *Pasco*, found at para. 24 that s. 41(a) and 42(2), read together, include making decisions to take trips when exercising parenting.
- [53] As such, the court may make an interim order providing the claimant with sole parenting responsibilities for travel while he is exercising his parenting time.
- [54] The respondent argues that until the results of the s. 211 report are known the court should not make any orders providing either party with any parental rights or responsibilities to the exclusion of the other. I agree that the court, on an interim application such as this, should be cautious in doing so.
- [55] The respondent states that allowing *carte blanche* authority for all travel decisions without any limitations diminishes and dismisses her role and importance as the Children's mother. In short, she is a guardian of the Children and ought to be involved with any important decisions, including travel.
- [56] Given that the respondent is actively involved in the Children's life, and no order has been made to deny her any parenting responsibilities, I do not see a basis to deny her any responsibilities under s. 41 at this time.

- [57] Specifically, the responsibility under s. 41(g) regarding the passports has now been resolved. To the extent any travel is to be undertaken with the Children in accordance with s. 41(a) and 42(2), the respondent ought to be consulted and provide her agreement.
- [58] Further, notwithstanding the broadness of the First Travel Application, it is evident from the basis on which the order was being sought that the application was being brought to specifically accommodate the Hawaii Trip.
- [59] As such, the applications for carte blanche travel without consent of the respondent are dismissed.

Terms for Travel

- [60] Having regard to the Hawaii Trip, I agree that certain terms should be included.
- [61] The claimant agrees to the term requiring him to provide a travel itinerary, contact addresses, telephone numbers and evidence of reasonable travel medical/health insurance coverage obtained for the Children for the duration of the trip, and I make that order.
- [62] As to compensatory parenting time, the respondent seeks an order that it be on specific days, namely on October 29, 2022 and November 12, 2022. The claimant has agreed to provide compensatory parenting, but says that it ought to be on such days as the parties may agree.
- [63] Given the issues with these parties, particularly as to any ambiguity, it is appropriate to make the order with specific dates in mind. The claimant raised no specific dispute as to the dates of October 29 and November 12, 2022. As such, I order that there be compensatory parenting time on those two dates.
- [64] In addition, and for clarity, if the conditions to allow for parenting to be unsupervised as ordered in my Prior Reasons have not been met, and if the claimant's father is not available to supervise the respondent's make up parenting time, the compensatory parenting time will occur under the supervision of either (i) a professional supervisor at the expense of the respondent (ii) the respondent's mother, or (iii) the Children's godmother.

Conclusion and Order

- [65] I am somewhat troubled by the issues which remain outstanding, particularly given discussions in court by which it appeared that issues were being resolved by agreement.
- [66] I echo the concern raised by Madam Justice Sharma when the application for adjournment of the trial first came before her as to the delays being caused by the putting up of procedural hurdles. The Children are young, and it is in their best interests that the parties not rely upon logistical and procedural barriers to delay matters. As a result of doing so here, further court applications are now necessitated, and it appears that such positions cause considerable delay as both counsel have largely irreconcilable schedules.

[67] I sincerely hope the parties will take more pragmatic approaches in the future. A failure to do so may result in cost consequences.

[68] I make the following orders:

- a) The parties have leave to set down a further application as to appropriate supervisors further to the Prior Reasons, and which documents are to be sent to the s. 211 author, and if those issues require further direction from the court, they may set those matters in regular chambers if more convenient.
- b) The claimant may travel to Hawaii with the Children from November 1, 2022 until November 10, 2022.
- c) The respondent will have compensatory parenting time with the Children from 9:00 a.m. to 1:00 p.m. on each of October 29, 2022 and November 12, 2022 to compensate her for the missed parenting time between November 1, 2022 and November 10, 2022. If, however, the conditions to allow for parenting to be unsupervised as ordered in the Prior Reasons regarding hair test results are not ready, and if the claimant's father is not available to supervise the respondent's make up parenting time, the compensatory parenting time will occur under the supervision of either (i) a professional supervisor at the expense of the respondent (ii) the respondent's mother, or (iii) the Children's godmother.
- d) Seven days before such travel, the claimant must provide to the respondent with a travel itinerary, contact addresses, telephone numbers and evidence of reasonable travel medical/health insurance coverage obtained for the Children for the duration of the trip.
- e) The remainder of paras. 7 and 8 of the claimant's application filed May 9, 2022, and paras. 1 and 2 of the claimant's application filed July 28, 2022, that are not addressed within this order, regarding travel with the children are dismissed, and regarding the passports is adjourned.

[69] Given the division of success, and circumstances of this matter, costs will be in the cause.

"Master Robertson"

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