

CANADA / JUDGMENT

J.K.K. v. B.S.K.

2024 BCSC 2627

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Supreme Court of British Columbia

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2024 BCSC 2627 J.K.K. v. B.S.K.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

J.K.K. v. B.S.K. ,

2024 BCSC 2627

Date: 20240814

Docket: E50094

Registry: New Westminster

Between:

J.K.K.

Claimant

And

B.S.K.

Respondent

Before: The Honourable Justice Schultes

Oral Reasons for Judgment

In Chambers

The Claimant, Appearing by videoconference:

J.K.K.

The Respondent, Appearing by videoconference:

B.S.K.

Place and Date of Hearing:

New Westminster, B.C.

May 14, June 25, 26, and 28, 2024

Place and Date of Judgment:

New Westminster, B.C.

August 14, 2024

Introduction

- [1] Both of the parties to this family law matter are making applications.
- [2] The claimant seeks to have the respondent fined for breaches of several previous interim parenting orders, and to have a previous costs order made against her revisited because of his misconduct. The respondent seeks orders dealing with certain practical aspects of the current parenting situation, as well as to have the claimant fined for her breaches of an interim order.

Background

- [3] The matter has a lengthy history, and I will confine my recitation of it to what is necessary in order to understand the current applications.
- [4] The parties have two children, who are 15-year-old fraternal twins. Until September of last year the parenting arrangements were for equal time in the care of each party, based on a schedule of alternating weeks. This was pursuant to a final order that was made by consent in 2017.
- [5] In September the children refused to attend for their parenting time with the claimant, citing the deterioration of their relationship with her.
- [6] To address this situation, on October 6 I set a hearing for the parties' respective applications to vary the parenting arrangements in the final order. To reflect the reality of the situation pending that hearing, but also to attempt to preserve some form of relationship between the claimant and the children, I ordered that on an interim basis they would live primarily with the respondent. The claimant would have parenting time with them at their request, provided that it would not be less than two hours per week with each child, as well as a weekly phone conversation of not less than 10 minutes with each child. The respondent was required to ensure that these minimum periods were adhered to.

[7] On November 6, in response to concerns from each party about the manner in which this interim parenting time was being carried out, I made a further order with the following clarifying terms:

- The children and the claimant were to make arrangements for her parenting time directly with each other, rather than through the respondent;
- The respondent was to facilitate the attendance of the children at the parenting time that had been arranged between the children and the claimant;
- Unless she had an urgent medical appointment, the claimant was to exercise her parenting time with the children at the times and locations requested by them;
- The claimant was to make herself available for the required phone calls at the times requested by the children;
- The respondent was to encourage the children to communicate with the claimant, whether by text or phone call, in a respectful manner; and
- At the children's sporting or other events that were jointly attended by the parties, the respondent was to actively encourage them to acknowledge the presence of, and communicate with the claimant.

[8] In overview, these additional terms were intended to address the claimant's allegations that the respondent was exercising control over the children's behaviour in relation to her, and the respondent's allegations that she was not actually making herself available for the minimum parenting time that had been established by the previous interim order.

[9] Leaving aside the specific incidents that are the subject of this application, which I will address, in general the contact between the claimant and the children since these interim orders were made has been fraught.

[10] In their electronic communications relating to parenting time the children have frequently addressed the claimant in a hostile and accusatory manner, and she has not been as flexible about accommodating the timing and location of their proposed visits as one might expect an at least partially estranged parent to be.

[11] The application to vary the final order with respect to parenting was heard on December 18 and 19. I ultimately concluded that the issue could not be resolved without the assistance of a report on the children's needs and the ability of each parent to meet them, pursuant to s. 211 of the Family Law Act. Dr. Michael Elterman, a psychologist who is an experienced author of such reports, was appointed to prepare it.

- [12] Dr. Elterman has recently completed his report and, subject to the claimant's decision about whether she will seek to cross-examine him on it, which she is required to make by August 30, we are in a position to fix dates to complete the parenting application. My hope is that this will result in a period of longer-term clarity and stability on the issue of parenting for the parties, and most importantly for the children.
- [13] The other interim development that bears on the current applications was a trip to Mexico that the respondent took with the children in April. The contentious issue there was the claimant providing the required authorization for the children to travel. Her position was that the respondent was not providing her with the details about the proposed travel that were required under the existing final order.
- [14] On April 9, addressing the respondent's application to have the claimant sign the authorization, I ruled that the interpretation of the terms of the order that the claimant had been operating under (and which had apparently been applied by at least one of the parenting coordinators who have been appointed in this case), was incorrect. The correct interpretation is that the non-travelling parent is to provide an authorization at least 14 days before the travel date, pursuant to paragraph 32 of the final order, and that this is not conditional on the travelling parent having provided the details of the trip required by paragraph 33, which could actually be provided as late as the departure date. In other words, the non-travelling parent providing consent within the specified time period was a stand-alone obligation on that parent.
- [15] In order to understand the nature of the current application, it is necessary also to refer to the items of travel information that are required to be provided by the travelling parent under the existing order. They are:
- a) Destination of travel including the (city, region, series or stops, etc.);
 - b) Accommodation (hotel, private home, camping, etc.);
 - c) Date of departure;
 - d) Date of return;
 - e) Flight numbers and times, if applicable; and
 - f) Contact details (cell phone, land line, etc.).
- [16] In addition to requiring the claimant to sign the travel authorization immediately after the conclusion of the hearing, I added the following term with respect to the respondent's informational obligations:
- If the respondent knows any of the details currently that are set out in paragraphs (a) to (f) above, he will provide those to the claimant by email as soon as court is concluded and he will update her with additional details under that section as they are known to him; and

· Under 33(f), if the children are bringing their cellphones with them on the trip, contact details under 33(f) will include the children's cellphone numbers, if known.

[17] Costs were ordered against the claimant in any event of the cause, because I concluded that the refusal to provide the travel authorization required was not due to any reasonable interpretation of the final order, however, a past parenting coordinator may have addressed it.

Current Issues

The Claimant

[18] The claimant's basis for being relieved of the costs order that I made on April 9, and one of the bases of her request to have fines imposed on the respondent, is that he did not comply with the terms that I imposed with respect to providing information to her. Although he provided his own cell number and his sister's phone number as emergency contacts, he did not provide the children's phone numbers. The night before their departure, he sent her an email that read, in part:

The Children[s] phones are limited use phones and we will not be paying for internation[al] usage rates so they will not be able to make calls or receive texts.

Further they do not want you to have their contact numbers. They said they will just block you.

[19] An ongoing issue in this case has been the children's refusal to provide the claimant with their cellphone numbers. Their text messages to the claimant are currently sent from the respondent's phone.

[20] The respondent explains that the term of the order that I made about the children's cellphones came at the end of the hearing and caught him by surprise, because it had not formed part of the claimant's application response. He said that if he had had time to reflect, he would have informed me that the children's phones were not being used in the capacity as cellphones on the trip, and would be kept in airplane mode to avoid data roaming charges being incurred. I infer that they were to be used only on Wi-Fi for internet browsing purposes. As a result, there would be no utility in him providing the numbers, which the children do not wish her to have in any case.

[21] He also points out that she failed to refer to another previous determination by a parenting coordinator, which he reproduces in his affidavit, that clarified that what is required of the travelling parent is to provide the details for an emergency contact if the travelling parent cannot be reached, and that calls should only be made to the travelling parent or to the emergency contact (rather than to the children, I infer).

- [22] Further shortcomings that the claimant refers to are that the respondent did not advise her that the children had arrived safely at their destination, as a previous parenting coordinator had apparently directed, and did not facilitate any phone calls between her and the children while they were away.
- [23] On the issue of facilitating in-person parenting time and phone calls, the claimant provides an extensive list of dates since the original October 6 interim order in which she has not received one or both of those forms of contact with the children. She attributes this to the negative attitude towards her that the respondent has instilled in the children, and the control he exercises over their activities.
- [24] The respondent replies that she has omitted several recent phone calls that took place between her and the children, and more generally reasserts his main position on the parenting issues - that it is her own behaviour towards the children that inhibits them from wanting additional contact with her.
- [25] The claimant asked for an opportunity to respond to aspects of the respondent's application that were not contained in his request to appear. However, her supplementary affidavit turned out to be a broadly-based rehashing of the overall issues in this litigation, including the respondent's income and his ability to pay child and spousal support, and it did not assist me in determining the issues that he had raised.

The Respondent

- [26] His first issue has to do with the child tax credit that is payable in relation to the children. In accordance with the change in parenting arrangements in September, he applied in December, successfully he initially believed, to have the entire benefit paid to him. Despite this, he received a letter from the Canada Revenue Agency in January advising that they had received information that there may be a shared parenting situation in place, and that someone else had applied for the benefit for the same period. He responded with a copy of my interim order and receipts for expenses that he has incurred on behalf of the children, but in March he received another letter from the CRA advising that they had determined that both he and another individual were both primarily responsible for the children's care, and that his entitlement to the benefit had been adjusted accordingly.
- [27] He asks me to infer that the information in question came from the claimant, which would have involved a false representation to the CRA on her part, given the actual interim parenting arrangement since September.
- [28] As of the date of his affidavit, she would have received \$5200 in benefits on this basis. He asks me to require her to correspond with the CRA in a letter drafted by him, in order to correct the situation.

- [29] The claimant denies having made any false statements to the CRA on this issue. During the hearing she produced a document that appeared to be a printout of a CRA web page showing that according to its records the person to whom it applied was not primarily responsible for any children. Unfortunately the page does not contain any identifying information that links it specifically to the claimant.
- [30] The second issue raised by the respondent is that the claimant will not permit their son to retrieve a gaming monitor, keyboard, speakers, and a mouse pad, which he bought with his own funds, and a PlayStation that the claimant gave him as a combined Christmas/birthday gift, from her home. This dispute led to an altercation between her and the children on February 29, when their son tried to remove the items with his sister's assistance, which has further harmed her relationship with the children.
- [31] As of the date of the respondent's affidavit, she had not permitted the children to come to her house since the incident, and there are numerous acrimonious text messages between her and the children on the topic of retrieving these items. The children seek the opportunity to go to her home and retrieve these items, as well as the son's Crocs[1].
- [32] The respondent has supplemented the original record with numerous additional text exchanges from May and June, in which the hostile impasse between the children and the claimant - relating to the retrieval of the PlayStation and the ability of the children to attend the claimant's home - continues.
- [33] The claimant's response material on this point deals mainly with the PlayStation, with a brief reference to her son attempting to take the monitor during a visit from Dr. Elterman for the preparation his report. She explains that the children have a similar gaming console at the respondent's house for their use, and that she also uses the one at her residence as a Blu-ray player, to have movie nights with the children.
- [34] She also describes the circumstances that occurred on February 29. When their son, assisted by their daughter, attempted to physically remove the console despite her resistance, the respondent was waiting for them outside in his vehicle, positioned in a manner that she characterizes as being akin to a getaway driver.
- [35] More generally, the respondent alleges that since the order was made requiring the claimant to meet with the children at the times and locations requested by them, she has on nine occasions failed to do so.
- [36] He has attached the text exchanges in question, which show her rejecting proposed meeting times and locations proposed by the children on the basis that they would not "work", that she had an appointment, or in one instance that she had a medical appointment. She frequently offered them the alternative of meeting them at a restaurant or other location, at a different time.

- [37] In her material the claimant did not really engage with the broader allegations about her uncooperativeness in scheduling time with the children, other than to reiterate that the children are acting under the harmful influence of the respondent, and that she attempts to keep them out of her conflict with him.
- [38] She has provided one note from a physician confirming that she had a medical appointment on April 9, which is one of the days on which she said she was unable to see the children.
- [39] Lastly, the respondent proposes an alternative to the current situation in which the children communicate with the claimant using his cellphone, which is subject to allegations by her that he controls the communications. To avoid those repeated accusations, he suggests that she either supply them with cellphones for communicating with her at her own expense, or that the children utilize an old iPhone of their daughter's to exchange iMessages and have FaceTime calls with her, which would not need a cellular plan.
- [40] The claimant did not consider either of these alternatives to be viable. Regardless of the means by which the communication occurs, her belief is that the respondent's negative influence on the children's relationship and communications with her would be the same.

Discussion

- [41] Dealing first with the claimant's applications, I am not persuaded that it would be appropriate to revisit my previous costs orders or to find the respondent in breach of the term of my April 9 order dealing with the children's cellphone numbers. The respondent's uncontradicted evidence is that the phones were not being used in that capacity during the trip. If, as he has deposed, the phones remained in airplane mode throughout, then having the phone numbers, which is a hotly contested issue with the children, would not have assisted the claimant in contacting them.
- [42] More generally, it appears that in the haste of concluding the hearing I added that term, despite it neither being explicitly or implicitly provided for in the applicable paragraph of the final order, and without engaging in any analysis of whether there should be a variation of that order on an interim basis.
- [43] With respect to the claimant's concerns about the respondent not facilitating the visits and calls required by my order, the current state of the evidence does not permit me to ascribe responsibility for any interruptions in that contact that may have occurred. On the basis of what I have seen so far in the messages, it may be that the children have adopted the open hostility modeled by the respondent. It may also be that the claimant's own failure to interact effectively with them has led to their estrangement from her. Or it may be some combination of both. Hopefully the resolution of the main parenting application through the insights in the s. 211 report will move us farther towards a clear understanding of that issue.

- [44] At this point however, there is no basis on which to find that the occasions that the children did not have minimum contact required under the order were due to the respondent's actions.
- [45] Turning to the respondent's application, it is clear from the CRA's correspondence that as of March they maintained the view that this was a shared parenting situation, despite having been provided with my interim order. While I do not suggest that the webpage printout provided by the claimant is not genuine, it does not reliably establish that she has disavowed any current entitlement to the child tax benefit, or if she did disavow it, when she communicated that position to the CRA.
- [46] Therefore, I order that within seven days the claimant will send a letter to the Canada Revenue Agency, with a copy of it to the respondent, advising that as of September 2023, and continuing up to the present date, the children have been in the continuous primary care of the respondent.
- [47] On the second issue raised by the respondent, if the parties' son has not already retrieved the gaming monitor, keyboard, speakers, and mouse pad from the claimant's home, she must permit him to do so immediately. The claimant did not raise any issue with respect to them in the affidavit, and it seems in keeping with the child's best interest to have the ongoing use of items that he had earned the money to purchase himself.
- [48] I would not make that direction with respect to the PlayStation. It is not clear from the material whether the child has any legitimate basis for requiring that item in the respondent's home, so that having it there would be in his best interests (assuming that gaming could fall into that category). In general, I think parents ought to be able to remain in control over purported gifts to children who are under the age of majority, whether for disciplinary purposes, household needs, or any number of other valid reasons.
- [49] I do not say that it is necessarily wise for the claimant to make an issue of this, given the precarious state of her relationship with the children - only that, for better or worse, it is a call that she is currently entitled to make.
- [50] Looking at the text messages between the claimant and the children as a whole, I think there is some validity to the respondent's assertion that she is not facilitating the type of contact that the children wish to have with her. Throughout these messages she repeatedly deflects their requests to attend at her home at specified times, despite their growing frustration with what seems like an obvious tactic on her part.
- [51] Of the appointments that she relied on for some of these deflections, she has only reliably documented one of them as having been for medical purposes. While, as I have said several times previously, I do not condone the children's attitude towards her and remain concerned about its origins, the reality is that if she had acted in a more straightforward manner towards them she would have had significantly more contact than she has actually been able to achieve to this point.

- [52] It completely baffles me why she would resist the children's efforts to have contact with her in this manner, flawed as their attitudes may be. I am very concerned that she is putting process over substance where the children are concerned, to her and their detriment.
- [53] While I conclude on the current evidence that she is in breach of the term that she make herself available at the times requested by the children unless she has an urgent medical appointment, I would not impose a fine or other sanction on her to address it. The reason is that her conduct carries with it its own deterrent, which is greater than any fine could achieve, because it reduces the parenting time that is available to her under the interim order.
- [54] It is all very well for her to blame the respondent for the current parenting situation. Some degree of responsibility on his part could well be established when the main parenting application is resolved. But when she throws up such needless roadblocks to parenting time that the children are trying to schedule, she is herself contributing to their estrangement, by conforming to the accusations about her behaviour that they are making. Until she realizes that and begins to meet the children where they are on this issue, so to speak, enhanced contact of the current nature will not benefit the children, and I would not fine her in order to enforce it.
- [55] The respondent's suggestions of alternative devices for communicating with the children would be similarly for the claimant's benefit, particularly the no-cost option of recycling an old iPhone for Apple-specific electronic communication. Once again, if she chooses to let her suspicions of the respondent's involvement stand in the way of having a dedicated channel of communication with the children, then requiring her to use it is unlikely to achieve any breakthrough in the relationship with them.
- [56] Therefore, other than the specific requirement of the letter to the CRA by the claimant and her return of the specified items to the parties' son, all other relief in the two notices of application is dismissed.
- [57] While the respondent succeeded in having two of the forms of relief specified in his application granted, I cannot say that he achieved substantial success in that application overall, so the parties will each bear their own costs of it.
- [58] He did, however, succeed in having the claimant's application dismissed in its entirety, and so he will receive his costs of it in the cause at the ordinary scale of difficulty.

"Schultes J."

- [1] It may be helpful to know that based on previous determinations made by the parenting co-ordinators, the children have a complete set of their belongings at each parent's residence.

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