

CANADA / JUDGMENT

J.R.V. v. N.L.V.

2025 BCSC 1137

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Supreme Court of British Columbia

DECIDED

19 June 2025

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2025 BCSC 1137 J.R.V. v. N.L.V.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

J.R.V. v. N.L.V.,

2025 BCSC 1137

Date: 20250619

Docket: 127322

Registry: Kelowna

Between:

J.R.V.

Claimant

And

N.L.V.

Respondent

Before: The Honourable Justice Loo

Reasons for Judgment

Counsel for the claimant:

L. Battye

The respondent, appearing in person:

N.L.V.

Place and Date of Hearing:

Kelowna, B.C.

May 30, 2025

Place and Date of Judgment:

Kelowna, B.C.

June 19, 2025

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Introduction

- [1] The parties to this matrimonial proceeding were married on June 25, 2011, in Kelowna, and separated in July 2019. There are two children of the marriage: J., born in August 2014, and N., born in December 2015. A final order in this proceeding (the "Final Order") was pronounced by Justice G.P. Weatherill on May 25, 2022.
- [2] The parties have advanced cross-applications before this Court.
- [3] The claimant seeks the appointment of a parenting coordinator and seeks to vary the Final Order with respect to the drop-off and pick-up locations for the children. He also seeks to vary the Final Order in relation to two issues concerning the children's passports.

- [4] The respondent seeks to vary the Final Order with respect to the parenting schedule and parenting time, exchange locations for the children, decision making for the children, child support, certain government and insurance benefits, and issues relating to the children's passports. She also seeks an order that a "hear the child" report be prepared, and she seeks various conduct orders, orders imposing penalties for violations of the Final Order and for contempt, and an order appointing her new spouse as a guardian of the children.
- [5] At the outset of the hearing, I advised counsel for the claimant and the self-represented respondent that the time required for the orders sought in the two notices of application far exceeded the time available and that there would be time to determine only some of the relief sought.
- [6] Ultimately, the Court was able to hear submissions in relation to all of the prayers for relief advanced by the claimant and some of the prayers for relief advanced by the respondent. The balance of the relief sought was adjourned generally, and I am not seized of this proceeding going forward.
- [7] On the Court's own motion, I have made an anonymization order to assist in protecting the privacy of the parties and their children. The style of cause has been amended and I have drafted these reasons in accordance with that order.

Issues

- [8] The following issues were dealt with during the course of the hearing and I will address them in turn.
- a) Pick up and drop off locations for the exchange of the children;
 - b) Variation of child support;
 - c) Appointment of a parenting coordinator;
 - d) Passport applications and travel issues; and
 - e) The preparation of a "hear the child" report.

Discussion

Pickup and drop off locations

- [9] The claimant is an RCMP officer and works on a five day on, four day off schedule. The parenting schedule in the Final Order was made to match that schedule. It states, in part:

The claimant shall have parenting time on the day that he concludes his last shift commencing at 12:30 pm, or after school if the Children are attending school; and ending at 7:15 am on the day he starts his five-day shift;

The respondent shall have parenting time commencing at 7:15 am on the day the claimant starts his five-day shift, and ending at 12:30 pm or after school if the Children are attending school on the day that the claimant ends his five-day shift;

[10] The Final Order also states:

The parties shall exchange the Children at a neutral location as agreed upon by the parties.

- [11] A dispute regarding exchange locations has arisen largely, but not only, because both parties have moved since the Final Order has been made. The claimant now lives in Vernon. The respondent lives in Lake Country. This situation has created logistical problems in ensuring that the children get to school in a timely way. It has also created disputes regarding the distance each parent must drive to pick up and drop off the children.
- [12] In the past few months, the exchanges of the children from the respondent to the claimant have been occurring at the RCMP detachment in Vernon. It appears that this exchange location has been working satisfactorily and that the parties are content with it. Accordingly, this Court orders that the exchanges from the respondent to the claimant shall occur at that location.
- [13] The dispute regarding the location of the exchanges from the claimant to the respondent is more contentious. The parties appear to agree that logistically those exchanges should happen in Lake Country since those exchanges occur in the morning and the children go to school in Lake Country.
- [14] The respondent seeks to have the exchanges happen at the Lake Country RCMP detachment. The claimant argues that the exchanges should not occur at his place of employment. He raises safety concerns, given that he is a police officer. He deposes: "I believe that it would be unsafe to exchange the Children at that location on a frequent basis, as it is frequented and surveilled by individuals who know me as a police officer and dislike me for that reason."
- [15] The respondent cites occasions on which the children have gone into the police station and on which the claimant has appeared in uniform with the children in public. She says that these occasions demonstrate that the claimant does not object to having his relationship with the children publicly known. She argues that other locations in Lake Country proposed by the claimant are unsafe, given that they are remote, such as the parking lot of a provincial park, or closed at the time of pickup, such as the District of Lake Country municipal building or the Dairy Queen. She suggests, in the alternative, that the claimant's drop off time be moved to the day before, so that he can drop the children off at school on his off-day.
- [16] I am not prepared to change the parenting schedule so that the claimant must drop the children off at school on his off-day. Such a change would deprive him of one of the four nights with the children in his nine-day work cycle and would significantly vary the shared parenting arrangement. No material change in circumstance has been shown to me which would warrant such a variation. Further, I agree with the claimant's position that it is not appropriate for the exchange to be at his workplace. Exchanges at the detachment where he

works give rise to issues both of security and privacy.

- [17] In my view, the appropriate course is to maintain the exchange time set out in the Final Order but to choose a place in Lake Country that is open for business at 7:15 am, when the drop-off occurs.
- [18] A number of drop off locations were proposed and discussed between the parties and the Court during the hearing. Near the end of the hearing, it was acknowledged by both parties that the Lake Country Starbucks would be a suitable location for the claimant to drop off the children. It is open at 5:30 am and is located in a public and fairly busy area in Lake Country. This Court orders that the exchanges from the claimant to the respondent shall occur at that location.

Variation of child support

Prospective support

- [19] Section 215 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] provides:

215 (1) Subject to this Act, a court on application by a party may change, suspend or terminate an order, if there has been a change in circumstances since the order was made.

- [20] The Final Order, made in 2022, states that the claimant's guideline income was \$82,127, and the respondent's guideline income was \$55,000. The respondent's income was an imputed figure, as she did not earn significant employment income before separation.
- [21] The claimant's F8 financial disclosure form shows that his income increased significantly after the making of the Final Order - to \$114,692 in 2022 and \$116,955 in 2023. In my view, this increase constituted a material change. The claimant's child support obligations going forward shall be based on the income set out in his F8 form for 2023.
- [22] The respondent's F8 financial disclosure form states that her 2023 income as a self-employed registered massage therapist was \$30,748. The claimant asserts that the respondent is underemployed but that due to the late service of the respondent's materials, the claimant has not had a sufficient opportunity to assemble the evidence necessary to challenge the respondent's assertions regarding her income.
- [23] Based on the very limited evidence and submissions before this Court regarding the respondent's circumstances, I am not prepared at this time to alter the income imputed to the respondent in the Final Order, either downwards as sought by the respondent or upwards as sought by the claimant. The application to vary the respondent's imputed income is adjourned generally.
- [24] Subject to the determination of any application to vary the respondent's imputed income, the parties' child support obligations going forward shall be calculated on the basis that the claimant's annual income is \$116,955 and the respondent's annual income is \$55,000.

Retroactive support

- [25] In *Colucci v. Colucci*, 2021 SCC 24 at para 114, the Supreme Court of Canada summarized the principles applicable to cases in which the recipient applies to retroactively increase child support:
- a) The recipient must meet the threshold of establishing a past material change in circumstances. While the onus is on the recipient to show a material increase in income, any failure by the payor to disclose relevant financial information allows the court to impute income, strike pleadings, draw adverse inferences, and award costs. There is no need for the recipient to make multiple court applications for disclosure before a court has these powers.
 - b) Once a material change in circumstances is established, a presumption arises in favour of retroactively increasing child support to the date the recipient gave the payor effective notice of the request for an increase, up to three years before formal notice of the application to vary. In the increase context, because of informational asymmetry, effective notice requires only that the recipient broached the subject of an increase with the payor.
 - c) Where no effective notice is given by the recipient parent, child support should generally be increased back to the date of formal notice.
 - d) The court retains discretion to depart from the presumptive date of retroactivity where the result would otherwise be unfair. The D.B.S. factors continue to guide this exercise of discretion, as described in *Michel*. If the payor has failed to disclose a material increase in income, that failure qualifies as blameworthy conduct and the date of retroactivity will generally be the date of the increase in income.
 - e) Once the court has determined that support should be retroactively increased to a particular date, the increase must be quantified. The proper amount of support for each year since the date of retroactivity must be calculated in accordance with the Guidelines.
- [26] In this case, both parties provided limited financial information to the other in 2023 and 2024. That information was sufficient for the respondent to know that the claimant's income had increased significantly. However, the respondent did not seek an increase in child support from the claimant until 2025.
- [27] In my view, the evidence does not set out a sufficient basis to depart from the general rule that child support orders ought to be made retroactive to the date of effective notice. The application for a variation of support was commenced on May 14, 2025. No other evidence of notice regarding the respondent's demand for increased child support has been provided. Accordingly, the child support payable by the claimant is retroactive to May 2025 only.

Parenting coordinator

- [28] This Court has the authority to appoint a parenting coordinator under sections 14 to 19 of the FLA. In *O.P. v. J.D.P.*, 2022 BCSC 1823, Justice Donegan held at paras. 199 and 200:

- [199] Division 3 of Part 2 of the FLA establishes a basic framework for the work of parenting coordinators. Parenting coordinators are an option for resolving disputes between parents in high conflict situations and may be put in place by agreement of the parties or by court order. Their role is to assist the parties by building consensus (s. 17(a)), or making determinations (s. 17(b)). In respect of making determinations, the court has a supervisory role: *Fleetwood v. Percival*, 2014 BCCA 502 at paras. 44-45.
- [200] In high conflict cases, the court should encourage decision-making by parenting coordinators where permissible "to fulfill the purpose expressed in s. 4(c)(i) of the FLA of resolving conflict other than through court intervention": *F.J.V. v. W.K.S.*, 2019 BCCA 67 at para. 40.
- [29] In *Fleetwood v. Percival*, 2014 BCCA 502, Justice Groberman held:
- [46] Court procedures are not always conducive to the successful resolution of such disputes, and they can become intractable, particularly where animosity between the parties is entrenched. Sometimes, such disputes become bogged down in the complexity and rigidity of litigation processes. A more flexible resolution process may be desirable.
- [47] As well, while judges possess considerable expertise in family law and in dispute resolution, some cases may be more effectively dealt with by specially trained professionals who are dedicated to dealing with high-conflict parental disputes.
- [48] The statute does not set out criteria that must be satisfied before a court will order that a parenting coordinator be engaged to "build consensus" or make determinations. It seems to me that such an order will typically be made only where a judge is convinced that a parenting coordinator will enjoy significant advantages over the court in achieving a resolution that will benefit the parties and their children. As well, because a parenting coordinator will be paid for by the parties, the court must consider the parents' ability to pay, and the economic costs or savings that the appointment of a parenting coordinator will entail.
- [Emphasis added.]
- [30] In this case, the claimant seeks the appointment of a parenting coordinator. The respondent opposes such an appointment on the basis that the appointment of a parenting coordinator is inappropriate where one party alleges a significant power imbalance and family violence. She also argues that a parenting coordinator would be too expensive.
- [31] I am not aware of any authority for the proposition that a parenting coordinator ought not to be appointed where one party alleges a significant power imbalance and family violence, and no such authority has been provided to me. It will be up to whichever parenting coordinator is proposed to ensure that they are comfortable and able to execute their duties in relation to these parties.

[32] As noted above, the Court in Fleetwood held that the appointment of a parenting coordinator will typically be made only where a judge is convinced that a parenting coordinator will enjoy significant advantages over the court in achieving a resolution that will benefit the parties and their children. In my view, that requirement is met in the circumstances of this case.

[33] Moreover, as stated by this Court in *Callaghan v. Charbonneau*, 2021 BCSC 1525 at para. 42:

A parenting coordinator may be more cost effective, and can respond quicker and with a wider range of dispute resolution solutions than the court system. A parenting coordinator may be able to build consensus and mediate the dispute. The parties may be able to establish new ways of communicating on the myriad disputes that will inevitably arise from time to time, without the court's intervention. A parenting coordinator may help prevent this from morphing into a high-conflict relationship.

[34] In these reasons, I have resolved an issue that would ordinarily be decided by a parenting coordinator, that being the pickup and drop-off locations. That said, it is clear that there is significant conflict between these parties. The fact that they had to come to Court for a decision regarding where they will exchange their children is illustrative of the extent of the conflict.

[35] When conflicts about parenting arise, it is difficult to have them resolved by the Court in a timely and economical way. As stated in *Callaghan*, a parenting coordinator is generally able to respond to disputes more quickly.

[36] Even if most disputes might be ultimately resolved by agreement, there is value to the parties to have a knowledgeable third-party adjudicator available to them who will render a decision if they cannot agree upon a resolution. Parties are generally more motivated to be reasonable when they are faced with an immediate adjudication process.

[37] Regarding the costs of a parenting coordinator, I have determined above the incomes to be attributed to the parties, subject to any application that may be advanced to vary the respondent's imputed income. Regardless of whether the amount of income imputed to the respondent is increased or decreased in the future, it is clear that the respondent earns significantly less than the claimant; in my view, as a matter of fairness to the respondent, the cost of a parenting coordinator ought to be divided in proportion to their incomes.

[38] The claimant argues that permitting the respondent to pay a smaller proportion of the cost will incentivize her to use the parenting coordinator more often, but her portion of the cost is not insignificant. Further, in my view, the issue of overuse as well as the overall financial constraints on the parties can be mitigated by imposing a cap. Subject to further order of the Court or agreement of the parties, the amount to be paid for a parenting coordinator shall be limited to \$10,000, split in accordance with the parties' incomes.

- [39] The claimant has suggested that Betty Gabriel be appointed as parenting coordinator. If the parties do not agree that Ms. Gabriel shall be appointed or she is no longer available, the claimant shall list three candidates from the B.C. Parenting Coordination Roster who are available, and the respondent shall choose one of them.

Passports and travel issues

- [40] The parties sought direction and further clarity regarding the term in the Final Order regarding the children's passports and travel with the children. That term provides:

The parties may travel with the Children outside of the province of British Columbia provided that the traveling party provides the other party with advance written notice of the itinerary, dates of travel, location of travel, and contact information for the Children. Neither party shall unreasonably withhold their consent or the Children's travel documents. The parties shall cooperate in renewing the Children's passports as soon as practicable.

- [41] Regarding the renewal of the Children's passports, both parties allege that the other has been uncooperative, but it appears that the passports have not been obtained because the parties have been unable to agree on who is entitled to hold the children's passports and whose address shall be on the passports. During the hearing, a suggestion made by the respondent was accepted: the respondent will apply for and hold J.'s passport using the respondent's address, and the claimant will apply for and hold N.'s passport using the claimant's address.
- [42] This Court also orders that a parent who wishes to travel with the children shall provide the other parent with one month's notice regarding travel with the children outside of Canada, and two week's notice regarding travel outside of British Columbia. These notices must be accompanied by an itinerary which includes airline flight numbers if applicable, a day-by-day record which sets out the location at which the traveling parent and the children will be staying each night, and contact information for each location.
- [43] For travel outside of Canada, the other parent shall provide the traveling parent with the passport that he or she is holding within seven days of the notice described above. If there is a dispute as to whether travel outside of Canada is appropriate or safe, that dispute shall be determined by the parenting coordinator if one is still retained, and the Court if not.
- [44] Finally, the parties shall sign a blanket travel authorization to be used by each parent when travelling with the children across international borders. The signed authorization may be used by a parent only when the proper steps in respect of travel have been taken, as described above.

Hear the child report

- [45] The respondent applies for an order that a "hear the child" report be prepared to ascertain the views of N. and J. Such a report is a non-evaluative report of what the children have said to a trained child interviewer. Such reports have been used by other judges of this Court: see, for example, *C.M.L. v. A.J.*, 2025 BCSC 37.
- [46] It is well established that when making orders respecting guardianship or parenting arrangements, the Court must consider the best interests of the child only, and that must consider the child's views unless it would be inappropriate to consider them. Nonetheless, in my view, a "hear the child" report ought not to be ordered unless the Court concludes that the report will be of assistance in determining an application before it, and that such a report is preferable to other ways in which the Court could obtain the views of the child.
- [47] In this case, the prayers for relief in the respondent's notice of application for which a "hear the child" report might be relevant are the respondent's application for a change in parenting time and for an order that the respondent's new spouse to be appointed as a third guardian of the children. As I have not heard any part of these applications, I am not in a position to determine whether a "hear the child" report would be appropriately ordered for those purposes.
- [48] The respondent's application for an order that a "hear the child" report be prepared is adjourned generally.

Summary

- [49] This Court orders that:
- a) the exchanges of the children from the respondent to the claimant shall occur at the Vernon RCMP detachment;
 - b) the exchanges of the children from the claimant to the respondent shall occur at the Lake Country Starbucks;
 - c) commencing in May 2025, the claimant's child support obligations shall be based on an income of \$116,955;
 - d) the application to vary the respondent's imputed income for the purpose of calculating child support is adjourned generally;
 - e) a parenting coordinator shall be appointed as set out in these reasons;
 - f) the parties shall apply for and hold passports for the children and they shall follow the further orders regarding travel with the children as set out in these reasons;
 - g) the respondent's application that a "hear the child" report be prepared is adjourned generally;

- h) all of the other prayers for relief in the respondent's notice of application filed February 12, 2025, are adjourned generally.

Costs

- [50] Subject to a specific issue to be discussed below, it is my view that success on this application has been divided and that there shall be no costs payable to either party.
- [51] The specific issue regarding costs that must be addressed concerns the use by the respondent of a generative artificial intelligence ("generative AI") computer program to prepare parts of her written argument. Because of the respondent's use of this program, her argument contained citations to non-existent cases which have become known as "hallucinations." The claimant seeks an order for costs in the amount of \$500 for having to research and respond to the legal basis section of the respondent's notice of application, in light of the respondent's citation of non-existent case law.
- [52] In *Zhang v. Chen*, 2024 BCSC 285, a lawyer had used generative AI to prepare court filings and had cited non-existent cases in materials submitted on behalf of her client. In that case, Justice Masuhara held:
- [29] Citing fake cases in court filings and other materials handed up to the court is an abuse of process and is tantamount to making a false statement to the court. Unchecked, it can lead to a miscarriage of justice.
- [53] In *Zhang*, Justice Masuhara commented that it was unfortunate that the lawyer was not aware of the various notices from the Law Society regarding the risks of generative AI, and ordered costs to be paid personally by the lawyer.
- [54] In this case, the respondent was not represented by counsel. She apologized to the Court and advised that she only became aware that generative AI is capable of providing non-existent case citations after receiving the claimant's written submissions. The respondent did not rely on any non-existent case citations during the hearing. Further complicating the matter, the claimant's allegations were not wholly correct: in at least two instances, claimant's counsel accused the respondent of citing non-existent cases although the cases were real.
- [55] Taking all of the foregoing into account, I have concluded that the respondent shall pay costs to the claimant in the amount of \$200 within 30 days of the date of these reasons.

"The Honourable Justice Loo"

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