

CANADA / JUDGMENT

Kular v. Kular

2022 BCSC 2175

COURT

Supreme Court of British Columbia

DECIDED

13 December 2022

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2022 BCSC 2175 Kular v. Kular

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kular v. Kular,

2022 BCSC 2175

Date: 20221213

Docket: E60499

Registry: New Westminster

Between:

Jaswinder Singh Kular

Claimant

And

Harjeet Kaur Kular

Respondent

Before: The Honourable Madam Justice Forth

(via videoconference)

Reasons for Judgment

Counsel for the Claimant:

R.S. Gill

Counsel for the Respondent:

K. Lally

Place and Dates of Hearing:

New Westminster, B.C.

July 15 and September 27, 2022

Place and Date of Judgment:

New Westminster, B.C.

December 13, 2022

Introduction

- [1] These parties were initially before me on October 22, 2020, arising from the respondent mother taking their child, J.S.K., to Calgary. In my reasons, indexed at 2020 BCSC 1782, I found that the respondent did not have the consent of the claimant father to take the child to Calgary. I ordered the child to be returned to British Columbia. The respondent and child returned to BC and are currently living in Delta. The claimant remains living in Squamish.
- [2] The claimant filed a notice of application on September 14, 2022 seeking the following substantive relief:
1. Pursuant to the order made by the Honourable Justice Forth on November 20, 2020, an order that the Respondent Harjeet Singh Kular (the "Respondent") shall relocate to Squamish, British Columbia or in a community close by.
 2. In the alternative, the Respondent will be responsible for either the pickup or drop off [of] the child during parenting time.
 3. An order that the child support order made by the Honourable Master Bilawich on June 2, 2022, be set aside or varied.
 4. An order that the financial restraining orders made on November 13, 2020, and November 19, 2020, be set aside.
 5. An order that the Respondent [] provide her job particulars and an updated financial statement.
- [3] The claimant advised that the first order sought, respecting the relocation of the respondent, was being adjourned generally.
- [4] I directed at the end of the hearing that the parties were required to file updated financial statements. I further ordered the claimant to provide bank documents for the frozen accounts which he was seeking to have unfrozen. The parties were given 30 days to do so.
- [5] On October 18, 2022, the respondent filed an updated financial statement.

- [6] On October 24, 2022, the claimant provided a letter to the New Westminster Registry providing an updated financial statement and bank documents relating to the frozen accounts.

Issues

- [7] The application materials and submissions raise the following issues:

- 1) Should there be a variation on the pickup or drop off of the child;
- 2) Should the order of Master Bilawich dated June 2, 2022, be set aside or varied respecting child support;
- 3) Should the financial restraining orders made on November 13, 2020 and November 19, 2020 be set aside;
- 4) Should the respondent provide her job particulars and an updated financial statement; and
- 5) What cost order should be made.

Issue 1: Should there be a variation on the pickup or drop off of the child?

- [8] The respondent returned to BC on January 14, 2021, as required by my order of November 20, 2020, and moved to Delta, BC.
- [9] On May 21, 2021, the parties attended at the judicial case conference ("JCC") where Justice Murray made the following consent orders which are not in dispute between the parties:
- a) The claimant will pay to the respondent child support for J.S.K. commencing on June 1, 2021, and continuing the first of each and every month until further court order or by the agreement of the parties. Child support is based on an income of \$41,000.
 - b) The claimant is to have parenting time Tuesdays from 9 a.m. to Wednesdays at 7 p.m. commencing May 25, 2021, and continuing every Tuesday and Wednesday thereafter until further order of the Court or agreement of the parties.
 - c) The claimant is responsible for picking up and dropping off the child in Delta, until further order of the Court or agreement of the parties.

("JCC Order")

- [10] The JCC Order contained a fourth term: "The parties agree that this is how parenting time is going to start and they both agree that it will increase as time goes on." The JCC Order has not been entered due to a disagreement between counsel for the claimant and the respondent's former counsel regarding this term. I remind counsel of their obligation to have orders entered on a timely basis: *Fallow v. Hanna*, [1996] B.C.W.L.D. 20168, 1996 CanLII 8570 at para. 8.

- [11] By agreement, the claimant's parenting was increased by one overnight visit to provide parenting time every Monday from 9 a.m. to Wednesday at 7 p.m.
- [12] On June 2, 2022, Master Bilawich heard applications of the parties and made the following orders ("Bilawich Order"):
1. BY CONSENT, the Claimant, Jaswinder Singh Kular, shall have extended parenting time with the Child every Monday at 9:00 AM to Thursday at 6:00 PM;
 2. BY CONSENT, the Claimant, Jaswinder Singh Kular, shall continue to be responsible for the pick up and drop off of the Child during parenting time;
 3. The Application of the Claimant, Jaswinder Singh Kular, for the Respondent, Harjeet Kaur Kular, to relocate to Squamish is dismissed.
 4. BY CONSENT, the arrears owing by the Claimant, Jaswinder Singh Kular to the Respondent, Harjeet Kaur Kular, is the amount of \$5,789.96, for the period of November 1, 2020 to May 1, 2022, are payable forthwith.
 5. The Claimant, Jaswinder Singh Kular is found to be a resident of British Columbia and is found to have gross annual income of \$42,000.00. The Respondent, Harjeet Kaur Kular is found to be a resident of British Columbia and is found to have a gross annual income of \$13,000.00.
 6. The Claimant, Jaswinder Singh Kular will pay to the Respondent, Harjeet Kaur Kular, the sum of \$351.64 per month for the support of the Child, which is the [set-off] amount based on the parties' annual incomes, commencing June 1, 2022 and continuing on the 1st day of each and every month thereafter, for as long as the Child is eligible for support under the Family Law Act or until further agreement of the parties or Court order.
 7. BY CONSENT, the claimant, Jaswinder Singh Kular will apply for a duplicate of the Child's birth certificate and retain it, and it is agreed that the Child does not have a passport.
 8. The Claimant, Jaswinder Singh Kular will pay a fine of \$1,500 to the Respondent, Harjeet Kaur Kular, pursuant to Section 230(1)(2)(b) of the Family Law Act.
 9. The parties will each bear their own costs of the applications.
- [13] As a result of the Bilawich Order the parties were in a shared parenting arrangement.
- [14] The distance from Squamish to Delta is approximately 150 kms each way. Counsel for the claimant in submissions says the round trip takes between four and six hours.
- [15] In accordance with the JCC Order and Bilawich Order, the claimant has been solely responsible for the pickup and drop off of the child. The claimant does not own a car but does have a driver's licence. He relies on his family members to assist with the pickups and drop offs.

- [16] The claimant argues that it is unfair that he has to take on the sole responsibility for the pickup and drop off which amounts to eight to twelve hours a week. He points out that the respondent left Squamish and then chose to settle in Delta, a four to six hour drive away from him.
- [17] The respondent submits that the claimant consented at the JCC and again in June 2022 to be solely responsible for the pickup and drop off of the child. The respondent has lived in Delta since January 2021. There has been no change in circumstances and, as such, the status quo should continue.
- [18] The respondent does not own a car and does not have access to a vehicle to borrow. She further advised that she does not have the financial ability to purchase or lease a vehicle and would not be able to pay for gas, insurance, and loan payments. She is 100 percent reliant on public transport.
- [19] I agree with the claimant that the respondent moving to Delta has created the situation whereby the child has to be transported between Squamish and Delta for parenting time. I understand that the respondent decided to settle in Delta since she was able to find accommodation and work there. She also points out that the cost of living is higher in Squamish, compared to the Lower Mainland. She has developed friends and a community there.
- [20] However, the claimant has to rely on his family to assist him in the pickup and drop offs. It is not the responsibility of the claimant's family to do this, it is the responsibility of the parents of the child.
- [21] The suggestion by the claimant that they share equally in the drop offs and pickups is not reasonable. I accept that the respondent does not have the current financial capability to buy or lease a vehicle. This leaves the respondent with public transit as the only means of travel. The logistics of taking public transit to Squamish from Delta and return would be challenging. This suggestion fails to recognize that this young child, who is only three years old, has to sit on public transit for a very long period of time. I cannot ignore the best interests of the child in this pickup and drop off dilemma.
- [22] In my view, the best compromise that will, to some extent, equalize the transport issue, is to direct that either on Monday or Thursday, the respondent uses public transport to travel to a designated spot in North Vancouver. I anticipate that the parties can agree on an appropriate location. It must be one readily accessible by public transit. The claimant will still be responsible to transport the child from Squamish to North Vancouver on that date. This change will, at the very least, save the claimant and his family from having to drive to Delta and return to Squamish four times a week. That will now be reduced to twice a week to Delta and twice a week to North Vancouver.
- [23] I will leave the parties to decide which date works best, particularly with regard to the respondent's work schedule and what would be in the best interests of the child.

Issue 2: Should the order of Master Bilawich dated June 2, 2022, be set aside or varied respecting child support?

- [24] The claimant seeks to set aside or vary the Bilawich Order on the basis that at the time this order was made there had been no financial disclosure made by the respondent that supports what her income is.
- [25] The Bilawich Order set the annual income of the claimant and respondent at \$42,000 and \$13,000, respectively. The updated financial information supports that the claimant's current income for child support is \$29,991.48. The claimant explains that the change in his income since the Bilawich Order is because he was working full-time in June 2022 and now he is only working once a week. He is still working for the same employer, Whistler Blackcomb Emp Company. He says the change to only once a week is due to the extended parenting time he now has. He further claims that his job is seasonal and that it is going to reduce further in the winter season. The claimant has secured another job with Outstanding Cleaning Services Ltd. where he works 80 hours per month and works from Friday to Sunday when he does not have parenting time.
- [26] In light of the change in parenting time with the claimant now responsible for caring for the child from Monday to Thursday, it is understandable that his income would be impacted. I am not prepared to impute any income based on the current circumstances. Hopefully, once the child is older and can attend daycare or pre-school, the claimant can increase his work hours.
- [27] I find that the claimant's current income is \$30,000 annually, for the purposes of the Federal Child Support Guidelines, SOR/97-177 [Guidelines].
- [28] I now turn to consider the respondent's income. She has provided undated financial information in her financial statement sworn October 18, 2022 that her Guidelines income is \$45,968.09. She makes the following statement:
- I was notified by my supervisor last week that Prepac Manufacturing will be reducing my hours from full time hours to part time hours within the next few weeks. When my hours are reduced, my income will decrease. My debt load will increase as a result of having a lower income.
- [29] She does not indicate what her income will be once she is reduced to part-time hours.
- [30] I direct that the respondent advise the claimant of what her current income is and her current work schedule. She is to provide this information within 14 days of the pronouncement of these Reasons. If it has been reduced, she is to provide her annual income under those reduced hours. If she is still employed full time at Prepac Manufacturing then her Guidelines income will be set at \$46,000.
- [31] The Bilawich Order will be varied to set out the claimant's current income at \$30,000 and the respondent's current income as shall be disclosed by her.

[32] Once the respondent's current income has been disclosed, the parties can figure out the ongoing child support that should be paid on a set-off basis. The change in child support will be made as of November 1, 2022.

Issue 3: Should the financial restraining orders made on November 13, 2020 and November 19, 2020 be set aside?

[33] On November 13, 2020, the respondent obtained financial restraining orders on a without notice basis. Justice Ball ordered that the bank accounts in the name of the claimant maintained solely or jointly with any other person at the Royal Bank, TD Bank, or any other financial institution be frozen.

[34] On November 19, 2020, the order of Ball J. was varied to release the joint bank account that the parties held.

[35] As a result, the claimant's other two RBC bank accounts continue to be frozen. The claimant says that all the monies in these two RBC accounts has been deposited by the claimant since the date of separation. The claimant says he is in immediate need of the money in these RBC accounts.

[36] Relying on the affidavits of the claimant and, in particular, the statement made by counsel in his letter of October 24, 2022 that "All the money which is in the frozen bank accounts has been deposited by the Claimant after the date of separation with the Respondent", (emphasis in original), I order the unfreezing of the two bank accounts.

[37] The order of Ball J. made on November 19, 2020, is varied to unfreeze the two RBC bank accounts with account numbers ending in 937 and 855.

Issue 4: Should the respondent provide her job particulars and an updated financial statement?

[38] As directed in paragraph 30, the respondent must provide particulars of her current work schedule and current income. She is required to provide to the claimant a paystub proving what her current income is. The information and documentation shall be provided within 14 days of the pronouncement of these Reasons. There is no need for an order for an updated financial statement since the respondent has already provided one.

Issue 5: What costs order should be made?

[39] The claimant was successful in having the respondent contribute to the pickups and drop offs of the child, a variation in the child support paid, and in the unfreezing of his two RBC accounts. However, I note that it was not until the morning of the hearing on September 27, 2022, that the claimant advised that he was not pursuing the relocation order. This was by far the most significant issue raised between the parties. There was no merit in the claimant's assertion that I ordered the respondent to relocate to Squamish. That was not the order I made on November 20, 2020. In addition, the Bilawich Order dismissed the claimant's application for the respondent to relocate to Squamish. As such, I am ordering that each party bear their own costs of the application heard on September 27, 2022.

"Forth J."

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