
CANADA / JUDGMENT

L.D.S. v. K.A.R.R.

2023 BCSC 1357

COURT

Supreme Court of British Columbia

DECIDED

25 July 2023

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2023 BCSC 1357 L.D.S. v. K.A.R.R.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

L.D.S. v. K.A.R.R.,

2023 BCSC 1357

Date: 20230725

Docket: E59948

Registry: New Westminster

Between:

L.D.S., also known as A.D.S.

Claimant

And

K.A.R.R., also known as K.R.

Respondent

Before: The Honourable Madam Justice McDonald

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

D.N.S. Wilson

Counsel for the Respondent:

M. Henricksen

Place and Date of Trial/Hearing:

New Westminster, B.C.

July 24, 2023

Place and Date of Judgment:

New Westminster, B.C.

July 25, 2023

- [1] THE COURT: On July 24, 2023, the respondent's July 6, 2023, application came on for hearing before me in chambers. The respondent seeks a declaration that the claimant has breached determinations of the parenting coordinator, Dr. Bolgar, and wrongfully denied him parenting time. He seeks compensatory parenting time. He also seeks an order incorporating the summer parenting time schedule as determined by Dr. Bolgar into an order.
- [2] The claimant, through her very recently retained counsel, submits to the court that the claimant, except for a small adjustment, consents to the respondent's request to incorporate the parenting coordinator's summer parenting time schedule into an order. Her counsel also submits that the claimant would provide the child's passport to the respondent, as long as the respondent provided her with contact information during the planned trip to Disneyland, the names of all persons travelling with the child, and confirmation of health insurance coverage. However, the claimant opposes the balance of the relief sought.

Background

- [3] The parties have one child together, G.C.R., born March X, 2018. On September 29, 2021, the court issued a final order that included the parties' parenting plan (the "Plan"). The Plan provides for a regular parenting schedule in two phases. The second phase applied for nine months from October 1, 2021, to June 30, 2022.
- [4] Under the Plan, the respondent's regular parenting time with the child is Wednesday afternoon daycare pickup to Thursday delivery to daycare every week, and alternate weeks, Friday evening pickup from daycare to Monday morning delivery to daycare. The Plan states the parenting time schedule will be reviewed with a parenting coach before June 30, 2022, to see how the child is managing, with a view to increasing time with Dad. The final order states that the parties will review the parenting schedule from time to time.
- [5] The Plan also includes terms for parenting time during holidays and special occasions and it provides that the regular parenting time schedule is temporarily suspended, including during the defined summer holiday period.

- [6] Under the Plan, the parties consented to the appointment of a parenting coordinator "to assist them in resolving any disputes within the jurisdiction of a parenting coordinator", pursuant to the then current agreement approved for use by the BC Parenting Coordinators' Roster Society.
- [7] On August 12, 2022, on the application of the respondent, Justice Dley appointed Dr. Bolgar as the parenting coordinator. By consent, it was ordered that the parenting coordinator could, among other things, assist with the implementation, maintenance, and monitoring of the parenting schedule set out in the final order and parenting agreement, including alterations and modifications to the parenting schedule, as well as the scheduling of holiday parenting time.
- [8] In the event the parties cannot agree on any matter respecting the parenting schedule, the court ordered that the parenting coordinator "will make determinations on such matters" pursuant to s. 18 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] as well as those matters set out in subsections 6(3) and (4) of the Family Law Act Regulation, B.C. Reg. 347/2012.
- [9] There were issues concerning retaining Dr. Bolgar. These issues led to the respondent filing a further application on July 27, 2022. The hearing of that application resulted in a second order by Dley J. made on February 1, 2023. The February 1, 2023, order included a term that Dr. Bolgar be retained on terms acceptable to the respondent and the need for the claimant to sign the parenting coordination agreement be dispensed with.
- [10] Justice Dley's reasons for judgment on February 1, 2023, state that he had concerns that the claimant was refusing to engage in the process and abide by court orders, and the claimant's then counsel was, even at that time, expressing that there should be a different parenting coordinator from Dr. Bolgar.
- [11] Dr. Bolgar has made three determinations: On February 23, 2023, she determined parenting time on the child's birthday; on May 25, 2023, she determined s. 7 expenses and the summer parenting time schedule from June 6, 2023, to September 5, 2023; on June 23, 2023, she revised the summer parenting schedule set out in the May 25th determination. Each determination has been filed in the court.
- [12] In the respondent's view, the claimant failed to abide by each determination of Dr. Bolgar that was filed in court, despite Dr. Bolgar engaging in repeated efforts to involve and assist each of the parties in resolving issues. The respondent submits that the claimant continues to deny parenting time to him, despite court orders and the determinations of the parenting coordinator.

- [13] On April 6, 2023, the respondent filed two notices of application. The first notice of application sought the preparation of a report pursuant to s. 211. The second application sought variation of the August 12, 2022, order of Dley J., including by giving the respondent sole decision-making authority on a variety of issues and by varying parenting time to provide the respondent with primary residence and parenting time or to switch to a week-on/week-off regular parenting time schedule.
- [14] On May 4, 2023, by consent, Justice Elwood ordered the preparation of a s. 211 report. Justice Elwood also adjourned paragraphs 1 to 6 of the respondent's second notice of application filed on April 6, 2023, including the paragraphs seeking a change in parenting responsibilities and parenting time, and he adjourned it generally, not to be reset without leave until the parties receive the s. 211 report.

Analysis

- [15] Following the issuance of Elwood J.'s order related to the respondent's second April 6th notice of application, the claimant began taking the position that Elwood J.'s order meant that the parenting coordinator lacked the authority to make determinations which were subsequently filed in court. However, at no time has the claimant sought to vary or set aside these filed determinations.
- [16] The respondent says the claimant has simply ignored the parenting coordinator's determinations and continued to deny him parenting time, as well as employ various tactics intended to thwart his parenting time and increase his legal costs, including by forcing him to bring multiple court applications aimed at enforcing either the final order or the parenting coordinator determinations.
- [17] Counsel for the claimant suggests that I ought to regard the claimant's position questioning the parenting coordinator's jurisdiction to make the determinations as reasonable, in light of the final order and the orders of Dley J. and Elwood J.
- [18] The weight of that submission might be different if there was an application before me by a party challenging any determinations pursuant to s. 19(1) of the FLA. However, no such challenge has ever been undertaken and instead, the claimant has ignored the determinations or deliberately undermined them.
- [19] The determinations have been made and they were filed in this court. As such, they have the effect of court orders. I am not satisfied that there is any reasonable explanation for failing to abide by the determinations or, if they are disagreed with, for failing to apply to vary or set them aside.
- [20] There is evidence of a clear pattern of ignoring orders by the claimant. For example, on June 1, 2023, Justice Verhoeven heard the respondent's application regarding the wrongful denial of parenting time, and he considered Dr. Bolgar's determination made May 25, 2023. In granting the respondent makeup parenting time, I note Verhoeven J. asked the claimant if

she planned to abide by the May 25, 2023, determination. When she equivocated, Verhoeven J. stated that, "It was critical to the child's welfare that the claimant respect and abide by the court orders and the determinations made by the parenting coordinator."

- [21] Despite those statements made to the parties, the claimant did not abide by the parenting coordinator's determination. On June 7, 2023, Verhoeven J. ordered that the respondent was entitled to 21 days of compensatory parenting time for wrongful denial of parenting time in the summer of 2022, to be determined by the parenting coordinator, and he required the claimant to pay a \$250 fine.
- [22] The respondent has not received his 21 days of compensatory parenting time, including because the claimant has not complied with the parenting coordinator's determination and the claimant has still not paid the fine.
- [23] One determination recently provided by the parenting coordinator was that the claimant provide the respondent with specified travel documents, including a passport necessary for the respondent to take the child to Disneyland. None of this has been complied with, although, as noted earlier, the claimant's counsel says that she is now willing to provide the passport, provided she receives certain information.
- [24] I agree with counsel for the respondent that the claimant is not entitled to come to this court and seek to negotiate the terms of the determination made and filed in this court. Rather, she is required to follow the determinations or apply to set it aside or vary it, none of which she has done.
- [25] Instead, the claimant has taken steps to thwart the determinations, including by making vacation plans that conflict with the most recent determination. This has caused the respondent to cancel his original plans to vacation with the child in Disneyland on the dates he selected.
- [26] While the claimant's counsel submitted at the hearing on July 24, 2022, that the claimant now consents to the summer parenting schedule, she also somewhat obviously seeks a further reduction in the respondent's parenting time to accommodate her upcoming vacation plans with the child. The evidence satisfies me the claimant has never raised her vacation plans with the parenting coordinator when the opportunity to do so arose. Unfortunately, while the claimant requests accommodation of her vacation plans from the court by cutting into the respondent's parenting time, she has not been prepared to offer the same level of consideration or accommodation to the respondent.
- [27] I think this is indicative of the claimant's ongoing approach to parenting time, and it speaks to why these parties require the services of a parenting coordinator to resolve such basic issues in the co-parenting of their child.

- [28] On my review of the evidence and the submissions, I am fully satisfied that the claimant has failed to comply with the parenting coordinator's filed determinations which, like any order, is binding until such time as it is varied or set aside. The failures to comply include in respect of parenting time and other matters, such as providing travel documents, and the other matters raised by the respondent.
- [29] While I appreciate that the claimant may have concerns about the parenting coordinator's jurisdiction or the correctness of the determinations made, she could have but did not seek to vary or set those determinations aside. I am not called upon in this application to consider whether the determinations are correct or otherwise valid.
- [30] The claimant's tactic of simply ignoring determinations she does not like undermines not only the best interests of the child and the co-parenting relationship she has with the respondent, but also the administration of justice. I agree with the respondent that there is a concerning pattern of the claimant ignoring orders in this case.
- [31] I have no difficulty concluding that the claimant has once again wrongfully denied the respondent parenting time. The claimant has failed to demonstrate that her denial of parenting time to the respondent is not wrongful.
- [32] The claimant was asked by Verhoeven J. on June 7, 2023, if she planned on abiding by determination of the parenting coordinator, and when she equivocated, the court stated in no uncertain terms that abiding by the parenting coordinator determination was critical to the child's welfare. Again, despite that statement, the claimant has decided not to follow the determinations.

Disposition

- [33] I grant the respondent the following orders:
- 1) The respondent is entitled to 10 days of compensatory parenting time for the claimant's wrongful denial of parenting time, and if the parties have not reached an agreement by July 31, 2023, at 4:00 p.m. on when those makeup days will occur, the respondent shall be entitled to unilaterally select the additional 10 days of parenting time from the summer parenting schedule that was otherwise determined by the parenting coordinator, Dr. Bolgar on May 25, 2023, and June 23, 2023.
 - 2) The parenting coordinator's summer parenting schedule, subject to any adjustment caused by the makeup parenting time referred to in the paragraph above, is incorporated into my order as set out in paragraph 2 of Part 1 of the respondent's July 6, 2023, notice of application.
 - 3) During the summer parenting schedule, the party starting their parenting time will pick the child up from daycare, or at 9:00 a.m. from the other parent if there is no daycare, subject to any further determinations by the parenting coordinator.

- 4) The claimant shall deliver to the respondent the travel-related items, including but not limited to the child's passport and letter of permission referred to in the parenting coordinator's June 23, 2023, determination by no later than 4:00 p.m. on Friday, July 28, 2023.
 - 5) The claimant will pay a further fine to the respondent in the amount of \$500, payable forthwith.
 - 6) The respondent is entitled to the costs of this application in any event of the cause, payable forthwith. While I appreciate that the claimant at the hearing consented to the summer parenting schedule and she did so on the basis that she be granted additional parenting time, in light of the nature of that consent, which is last minute and not unconditional, I conclude that an award of costs against her is appropriate, and I deny her request for an adjustment to the summer parenting schedule in her favour.
 - 7) I deny the respondent's request for special costs, as I do not agree that the conduct with the claimant warrants special costs in circumstances where I am imposing a fine.
 - 8) I also deny the respondent's request for a police-assistance clause, as I do not think it is appropriate in the present circumstances. However, I am seizing myself for a period of 45 days from today's date to deal with any issues regarding the implementation of or compliance with the terms of this order.
- [34] I grant the parties leave to contact Supreme Court Scheduling to seek a time to appear before me at 9:00 a.m. should the parties need to request an appearance before me. For clarity, I am not seizing myself of applications in this family law proceeding generally. Rather, I am seized only in respect of those matters that relate to the implementation or compliance with this order for a period of 45 days from the date of this order.
- [35] Thank you, counsel, those are my reasons.
- "E. McDonald J."

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