

CANADA / JUDGMENT

Lange v. Lange

2024 BCSC 623

COURT

Supreme Court of British Columbia

DECIDED

23 January 2024

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2024 BCSC 623 Lange v. Lange

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lange v. Lange,

2024 BCSC 623

Date: 20240123

Docket: E124032

Registry: Kelowna

Between:

Kelly Todd Lange

Claimant

And

Christa Lea Lange

Respondent

Before: The Honourable Madam Justice Hardwick

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

H. Sidhu

(Agent for J. Gordon)

Appearing in person:

C. Lange

Place and Date of Trial/Hearing:

Kelowna, B.C.

January 23, 2024

Place and Date of Judgment:

Kelowna, B.C.

January 23, 2024

- [1] THE COURT: These are my oral reasons for judgment in respect of two cross applications that I heard today in the matter of Lange v. Lange. This is a relatively high-conflict family matter which has been before the court on previous occasions. There also has been a s. 211 report prepared by Dr. Michael Elterman back in 2021, which I have reviewed in some detail.
- [2] There are two children of the relationship who are currently nine and 11. They were ages three and five at the time the parties separated.
- [3] I am going to deal with my oral reasons for judgment in a manner that I have found to be effective in these high-conflict parenting files, which is to read into the record my specific orders, a copy of which has been provided to Madam Clerk and which can be circulated to both Ms. Lange and counsel for Mr. Lange, so that there is no discrepancy or controversy as to what my orders are. I will then explain why I have made those orders.
1. Pursuant to s. 45(1)(a) of the Family Law Act, the claimant's final decision-making authority pursuant to paragraph 2(m) the order of Master Schwartz (as he was then - now Associate Judge Schwartz) made December 9, 2022, does not permit the claimant to change the parenting schedule for the children without written agreement or further court order.
 2. Pursuant to s. 45(1)(a) of the Family Law Act, the claimant is entitled to travel with the children, as will be defined in the preamble, to Saskatchewan, Canada, for a period of up to 21 days during the summer, in accordance with the order of Judge Burdett made April 30, 2018, (hereinafter the "Saskatchewan Travel").
 3. The respondent is entitled to makeup parenting time for any Saskatchewan Travel exceeding 14 days. The makeup parenting time shall be scheduled at the discretion of the respondent, upon 60 days' notice in writing to the claimant.
 4. Pursuant to s. 45(1)(a) of the Family Law Act, the respondent shall be permitted to travel with the children to Mexico for a period up to and including 14 days each year, provided that the travel coincides with the children's spring break vacation.

5. The respondent shall provide completed passport applications for the children to the claimant's counsel forthwith and the claimant shall endorse those passport applications within three business days of receipt by his counsel.
6. Subject to further court order, the claimant shall sign any travel authorization provided by the respondent to permit travel with the children to Mexico, in accordance with this order, within seven business days of receipt.
7. Subject to further court order or written agreement, the passports for the children shall be held by counsel for the claimant and shall be released to the requesting party within three business days of being provided with an executed travel authorization, and shall be returned to counsel for the claimant within three business days of the conclusion of any travel contemplated in the authorization.
8. Pursuant to s. 45(1)(a) of the Family Law Act, the claimant shall be permitted to enroll Karter in soccer, including private soccer league academy and any tournaments, even where Karter's commitments conflict with the respondent's parenting time, pursuant to the order of Mr. Justice G.P. Weatherill filed November 20, 2023, on the following conditions:
 - a) Subject to paragraph (b), the claimant shall be solely responsible for all costs associated with Karter's soccer;
 - b) In the event that the respondent elects to attend a soccer tournament with Karter during her scheduled parenting time, the respondent shall be responsible for transportation, meals and accommodation costs, but the claimant shall continue to be responsible for registration fees and all other ancillary costs associated with participation in the tournament;
 - c) Within 7 days of this order, the claimant shall notify, in writing, all soccer organizations with whom Karter is registered that the respondent is to be added as a secondary contact and receive a copy of all email correspondence relating to practice schedules, game schedules, and tournament schedules;
 - d) In the event of any change in Karter's soccer registrations, the claimant shall, upon registration, notify any new organization that the respondent is to be added as a secondary contact and shall receive a copy of all email correspondence relating to practice schedules, game schedules, and tournament schedules.
9. Pursuant to s. 45(1)(b) of the Family Law Act, the respondent shall provide written notice to the claimant, via Our Family Wizard, in the event she is unable or unwilling to transport Karter to soccer practices, soccer games, or soccer tournaments as follows:
 - a) 24 hours before any practice;
 - b) three days before any game; and
 - c) 14 days before any tournament.

10. In the event that the claimant is unavailable or unable to make alternate arrangements for the transportation of Karter to soccer activities, as contemplated pursuant to paragraph 9 of this order, the respondent is not obliged to or obligated to take Karter to said activities during her parenting time.
11. In the event that the claimant transports Karter to and from soccer activities in accordance with paragraph 9 of this order, the claimant shall, unless otherwise agreed in writing between the parties:
 - a) pick up Karter no more than 30 minutes prior to any practice and no more than 60 minutes before any game;
 - b) pick up Karter no more than 90 minutes before any tournament located in the City of Kelowna, the District of West Kelowna, or the District of Lake Country (hereinafter the "Local Tournament");
 - c) return Karter to the respondent's residence within 30 minutes of any practice or any game;
 - d) return Karter to the respondent's residence within 60 minutes of the conclusion of any local tournament; and
 - e) shall promptly return Karter to the respondent's residence upon return from any out-of-town tournaments. Those are tournaments that do not qualify as a "hereinafter Local Tournament".
12. Paragraph 5 of the claimant's notice of application is dismissed as abandoned.
13. The respondent's Guideline income for the period commencing July 1, 2023, is determined, pursuant to ss. 16 and 19 of the Federal Child Support Guidelines, to be \$30,050 per annum.
14. Pursuant to s. 9 of the Guidelines, the support arrangements for the children shall be as follows commencing July 1, 2023:
 - a) the claimant shall pay the sum of \$1,055 to the respondent;
 - b) the respondent shall pay the sum of \$485 to the claimant; and
 - c) having regard to the offset, pursuant to s. 9, the claimant shall pay the sum of \$570 to the respondent on the first of each month.
15. Nothing in paragraph 14 varies the annual disclosure and recalculation contemplated by paragraphs 13 and 14 of the order of Master Schwartz made December 9, 2022.
16. Paragraph 4 of the order of Master Schwartz made December 9, 2022, is varied to provide that:
 - a) a response must be provided, except in the case of emergency, within 48 hours of the Our Family Wizard message being delivered; and

- b) the claimant and respondent will, except in the case of emergency, not send more than four Our Family Wizard messages to the other per calendar week.
17. The claimant's application for fines pursuant to the Family Law Act, namely paragraphs 8 and 9 of the claimant's notice of application, are dismissed.
18. Finally, the parties shall bear their own costs of the cross applications.
- [4] As indicated, I have chosen to address this matter by providing my orders in a summary fashion. I do not think that a long recitation of the law is particularly helpful to these parties. What the parties need is better clarity.
- [5] There is unfortunately some ambiguity in the previous court orders which, in the circumstances, I think has led to further conflict than might have been necessary. My orders may not be perfect, but I have spent my time crafting them in a way that I hope will assist the parties in reducing the conflict and moving forward in a manner that is helpful for the children.
- [6] The children enjoy a shared parenting arrangement with both parents. It previously was a more complicated arrangement, which made sense when the children were younger given their ages at the date of separation. They are now in a much more straightforward week-on/week-off parenting schedule pursuant to the order of Mr. Justice Weatherill. This likely, although probably required some transition, simplifies matters. Thus, what I have attempted to do is make orders that are consistent with that parenting schedule and are consistent with the increasing maturity of the children.
- [7] I make these orders in accordance with s. 37 of the Family Law Act, which requires that I only make orders that are in the best interests of the children. That is my only concern. I do not consider the personal wishes or animosity between the parents. I am only considering what is in the best interests of the children.
- [8] As noted, I did review the report of Dr. Elterman in its entirety, but I note that any criticisms of either party appear to have been addressed by the fact that there is still a shared parenting arrangement.
- [9] With respect to the issue of Mexico travel, I do find that there is a degree of control from the claimant's position in this regard. There was travel to Mexico when the parties were together. There is evidence that the claimant has travelled to Mexico. It is clear from the evidence that the relationship between the respondent and her family has had ebbs and flows, but I am not satisfied that it is unsafe for the children to travel to Mexico. It is entirely appropriate that the respondent have the opportunity, while her father is still alive and well, given that he is 79 years of age, in order to have the children visit, I am thus satisfied that there is not an inordinate risk of travelling to Mexico, notwithstanding certain travel advisories that may have been issued previously. The travel plan that has been prepared by the respondent seems entirely reasonable.

- [10] Similarly, the travel to Saskatchewan is something that has been historically gone on and is again important to the children as they appear to have a close relationship with their paternal grandparents and, as they get older, having up to 21 days would seem to be appropriate.
- [11] I have made my order, as set out above, to compensate for the extra seven days, because I am only authorizing the respondent to take the children to Mexico for 14 days. So if the claimant has the benefit of travel to Saskatchewan for 21 days, then his extra days need to be made up at some point in time. That is only fair and in accordance with the order of Mr. Justice G.P. Weatherill and, I consider, in the best interests of the children, given that they have been living in a shared parenting arrangement since they were effectively elder toddlers, following the separation of the parties.
- [12] The most significant issue that needs to be addressed from a legal perspective is with respect to the final decision-making authority. The authority that was relied upon in the notice of application filed on behalf of the claimant is inapplicable. That relates to conduct orders and neither of the sections that were pled are helpful in that regard. Parenting responsibilities and decision-making authorities arises out of s. 45 of the Family Law Act, and so I consider it appropriate to assist the parties in hopefully resolving some issues based on s. 45(1)(a), which I find I can rely upon because there is a, what we call, basket prayer for relief in the claimant's notice of application for relief that the court considers just. To be clear, this is not to say that this final decision-making authority permits changes to the parenting schedule without written agreement or further court order, or in accordance with this court order which wherein I have specifically contemplated what the Saskatchewan travel would look like, what Mexico travel would look like, and what Karter's soccer schedule will look like.
- [13] The alternative interpretation to this would require Ms. Lange to come to court repeatedly under s. 49 of the Family Law Act to seek review of the decisions with respect to changes in the parenting schedule. That is simply not feasible.
- [14] Further, given the fact that, pursuant to the order of Mr. Justice Weatherill, that the parenting schedule is now week-on/week-off, there should be some greater simplicity in arranging these types of matters.
- [15] With respect to the passport applications, there is no reason why the children should not have passports. There is no suggestion that there has been any attempt to abscond with the children. Any issues with respect to compliance with court orders, as I will come to in a moment, have been relatively minor in all of the circumstances. All parties have roots in the Okanagan area, in particular, in British Columbia, and I am satisfied that there is no risk that the passport applications would result in an unreasonable risk of the abduction of the children.

- [16] Further, I have authorized travel to Mexico which, as noted in submissions by Ms. Lange and of which the court is aware, is a participant in the Hague Convention. These children will not be going anywhere other than on a vacation.
- [17] It is important that I found, pursuant to s. 7 of my order, that there be clear information between the parties as to when they wish to travel with the children, and that is the reason for the travel consents. I am not dispensing with the requirement for consent or the requirement to sign the passports, because each parent here is involved in these children's lives and needs to know what is going on with them.
- [18] With respect to Karter's soccer, I consider Karter's participation in soccer to be in his best interests. I realize the position of Ms. Lange is that it might be a little bit too much, but it would appear that he has a particular talent in this regard and that he enjoys participating in this activity.
- [19] Further, his father, the claimant, is prepared to take on the lion's share of responsibilities for Karter's participation in soccer, both by not only funding its costs, but also stepping in to help transport Karter to practices, tournaments, and games when that might not be realistic for the respondent, given that she is a single parent and she still has another child at home who may, I take judicial notice of, not always want to be going to her brother's soccer games.
- [20] So I have crafted my order accordingly to take into consideration Karter's dedication to soccer and his talent in that regard, and also the combined family circumstances.
- [21] I am not making any order, as would be clear, that the respondent contribute to costs associated with Karter's soccer.
- [22] The respondent receives the child tax benefits in order to assist her in providing basic necessities to the children. She is in a relatively low income bracket, having regard to the fact that she receives disability benefits and does not have outside employment. Those monies are spent on the children for necessities and, while Karter's participation in soccer is, I consider to be, in his best interests, it is something that is not within her financial means in the circumstances. And so if the claimant wishes to pursue this on Karter's behalf, that is something he can do at his expense, given that, although he does not himself have a particularly high Guideline income, there is a significant discrepancy between the household income of the claimant and the household income of the respondent, as she is a single parent and the claimant has re-partnered.
- [23] I hope that my provisions with respect to the transportation of Karter to and from games will provide some assistance to the parties. I will simply say that those are, as I indicated, subject to written agreement between the parties. In the event that that is not feasible, I encourage you, through Our Family Wizard, to make alternative arrangements. What I am trying to do in those provisions is ensure that the parenting time of the respondent is not infringed upon more than is necessary to facilitate Karter's participation in soccer. However, I had to be somewhat arbitrary in trying to determine what 30 minutes and 60 minutes

might be. As I indicated to the parties and counsel, because I have children, I have a pretty good idea of what it is like to drive them to and from practices or games. That, I concluded, with judicial notice, was probably realistic within local tournament times. Kids need to be at games earlier than they need to be at practice.

- [24] Pursuant to the well-governed law, I am not including the child tax benefits as part of the respondent's Guideline income and I have, as indicated, chosen not to make an order that she contribute to Karter's soccer costs. She is, pursuant to my order, giving up parenting time in order to facilitate Karter's participation in this, but I do not consider that she has the means in order to support an elite-level sport. She needs those funds to pay for basic expenses with respect to the children.
- [25] The arrangements with respect to support are thus relatively straightforward. I have not made any adjustment to the claimant's income. It stays as was previously set pursuant to court order, and I have increased the respondent's income somewhat to reflect what she is receiving in her benefits, and including a gross-up for the fact that a certain portion of that is non-taxable pursuant to s. 19. That is why I have referenced in my order both s. 16 of the Guidelines, which is the presumptive determination, and s. 19 of the Guidelines, which allows me to impute income in these types of circumstances.
- [26] For the benefit of the parties, as I indicated, this determination with respect to child support is not final. I am not changing anything in the provisions of paragraphs 13 and 14 of the order of Associate Judge Schwartz which provides for the ongoing annual disclosure and the adjustment effective July 1st of all years going forward. I have just gone and adjusted this order retroactive to July 1, 2023. It will need to be dealt with again, if the parties so choose, in accordance with that order. To clarify, the disclosure needs to be made no matter what, but if there needs to be any adjustment, that will be effective July 1, 2024.
- [27] With respect to the Our Family Wizard order, the order that was made before Associate Judge Schwartz on December 9, 2022, is, as I reflected upon, probably too vague. This point was made by Mr. Justice Weatherill, which is that it does not actually stipulate when you have to respond, and so that is an unfortunate ambiguity in the order which cannot be faulted to Associate Judge Schwartz because it was an order that was read in by consent. However, it can be read in both the way that the respondent suggests and the way that the claimant suggests.
- [28] The difficulty with the way that the respondent suggests that the order should be interpreted is that, technically speaking, if you did not log in to Our Family Wizard for 30 days, you would only have to respond within 48 hours of 30 days. That, I conclude, is not what was intended. What was intended was there to be a timely communication on issues related to the children through a mechanism which is actually extremely helpful to the court. And the reason why it is extremely helpful to the court is that Our Family Wizard cannot be altered like a text message, so the court gets the full context of it. It also shows very clearly what date the message was sent and when it was read, and that is why Our Family Wizard is a very

helpful tool for the court. It is effectively a business record.

- [29] And so, but for the ambiguity in the underlying order, I would have made a fine because there has been delay, more than 48 hours, but the order does not say it is 48 hours upon being delivered. So if you read it and then replied within 48 hours, I cannot find, under either s. 227 or s. 230 of the Family Law Act, that a fine is appropriate in these circumstances. That is why I have clarified that order to hopefully assist, which is that a response must be provided within the message being delivered. You will both be familiar with that, it says exactly in it, right on Our Family Wizard, when it was delivered and when it was read.
- [30] The date, namely the 48 hours, starts upon delivery. In order to address a concern that there is a lot of communication and some of the communication, notwithstanding it be through Our Family Wizard, does have a tone that is not necessarily helpful for co-parenting, I have said that except in the case of emergencies, there is no more than four Our Family Wizard messages per week.
- [31] So you need to think about what you want to say -- but once it is delivered, that is it. You have got 48 hours in order to respond to it. It is not just if you "choose" to check your phone. Otherwise, you know, a fine pursuant to s. 227 or s. 230 of the Family Law Act might be appropriate. It is only because the consent order is ambiguous that I am dismissing that relief.
- [32] Finally, costs are always at the discretion of the court. I appreciate that there actually was not a prayer, as pointed out by Mr. Sidhu and as I noticed, for costs in the respondent's notice of application. However, I think as will be clear from my orders, there has been divided success and I cannot say that either party has been substantially successful, and I think it is appropriate that they bear their own costs of the cross applications.

"Hardwick J."

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