
CANADA / JUDGMENT

Lee v. Jung

2022 BCSC 1004

COURT

Supreme Court of British Columbia

DECIDED

15 June 2022

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2022 BCSC 1004 Lee v. Jung

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lee v. Jung,

2022 BCSC 1004

Date: 20220615

Docket: E221211

Registry: Vancouver

Between:

Ki Min Lee

Claimant

And

In Hye Jung, also known as, Sarah Jung

Respondent

Before: Master Muir

Reasons for Judgment

In Chambers

Counsel for the Claimant, appearing via video conference:

A. Sung, Articled Student

Counsel for the Respondent, appearing via video conference:

S.Y. Kim

Place and Date of Hearing:

Vancouver, B.C.

June 1, 2022

Place and Date of Judgment:

Vancouver, B.C.

June 15, 2022

Introduction

- [1] The respondent, In Hye Jung, also known as Sarah Jung ("Ms. Jung"), at paragraphs 2-5 of her notice of application filed May 22, 2022, seeks the following orders:
- (2) Interim parenting arrangements for the child of the parties to be as follows until written agreement of the parties or further order of this court:
 - a) During the school year, Ms. Jung shall drop off the child at school in the morning;
 - b) After school, the child will attend his paternal grandmother's home and remain there until Ms. Jung picks up the child at or around 8 p.m. on Mondays, Tuesdays, and Thursdays;
 - c) Wednesdays, Ms. Jung will pick up the child directly from school;
 - d) The claimant, Ki Min Lee ("Mr. Lee") will have parenting time from after school on Friday to Sunday morning between 9 and 10 a.m., when Ms. Jung will pick up the child from the paternal grandmother's home;
 - e) Ms. Jung will have overnight parenting time on Sundays, Mondays, Tuesdays, Wednesdays, and Thursdays; and.
 - f) Mr. Lee will have overnight parenting time on Fridays and Saturdays.
 - (3) Mr. Lee shall return the child's clothes, video games, toys and personal effects to Ms. Jung forthwith, until written agreement of the parties or further order of this court;
 - (4) Interim applications for parenting time and parental responsibilities shall be heard after a judicial case conference is held and in the usual course; and,
 - (5) Special costs against Mr. Lee or, in the alternative, the issue of costs to be determined by subsequent application of either party.
- [2] Paragraph 1 of the notice of application was not proceeded with, as the parties advised they had agreed on a consent order after the hearing.

Background

- [3] Ms. Jung is 46 years old and works as an esthetician at a spa that she owns and operates. Mr. Lee is 49 years old and works at a logistics company.
- [4] The parties married on April 10, 2020 and separated on March 18, 2022. They have one child, who is 11 years old. The child is in Grade six.
- [5] Although the parties separated in March 2022, they remained living in the same house until sometime in May 2022.
- [6] The child care routine was for the child to be primarily cared for by Ms. Jung, who would give him breakfast, and get him ready for and take him to school each morning as Mr. Lee had to leave for work early. After school, the child would walk to his paternal grandmother's condominium where he would stay until his father arrived from work at 6:30 p.m. or 7 p.m. The grandmother would prepare dinner and Mr. Lee would take the child back to the family home around 8 p.m., when Ms. Jung would get home from work.
- [7] Ms. Jung does not work on Wednesdays and Sundays. On Wednesdays, she would pick up the child directly from school.
- [8] Mr. Lee would spend time with the child on Saturdays and Ms. Jung would spend time with the child on Sundays, when she and the child would regularly go to church together.
- [9] The child has regular extra-curricular activities, which include:
 - a) Piano lessons on Wednesdays at 4 p.m.;
 - b) Soccer, which begins again in September;
 - c) Kumon for math tutoring on Wednesdays at 6:15 p.m. by Zoom;
 - d) English lessons on Tuesdays and Thursdays at 5 p.m. by Zoom which will change to a longer session on Tuesdays beginning in June; and
 - e) Korean language school on Saturdays at 10 a.m. by Zoom.
- [10] Ms. Jung says that she has arranged all of the extracurricular activities for the child and that Mr. Lee does little. She notes in particular that the math and English tutoring were arranged by her as the child was getting poor grades at school. In addition, she had learned that he was not doing well socially and that is partly why she arranged for soccer in the fall. She also arranged for him to attend a Christian Youth Assembly on Thursday nights, but it seems that Mr. Lee is resisting taking him due to the drive involved.

- [11] After separation, Ms. Jung retained counsel and tried to resolve the break up amicably, encouraging Mr. Lee to get a lawyer. He did not do so. She alleges that in one such conversation on April 17, 2022, he became enraged and assaulted her in the presence of the child. She provides photographs of her injuries and injuries from a prior alleged assault. She alleges that Mr. Lee was violent throughout the relationship and that he has a volatile temper.
- [12] I note that Ms. Jung did not report these assaults to the police until after being served with the notice of family claim. She says she did not do so as she is not familiar with Canadian culture and feared that the child would be apprehended. She was encouraged to report the incident by a friend who is a member of the RCMP, and she did so. As a result of reporting the assault, Mr. Lee is now under conditions that he not attend the family home or Ms. Jung's business and that he only communicate with her through a Korean networking app.
- [13] For his part, Mr. Lee says that Ms. Jung was the abuser and that she was violent to both him and the child during the relationship. He says that the injuries suffered by Ms. Jung were a result of her calling him "worthless", and threatening and provoking him regarding the family assets and the child. Mr. Lee says that he grabbed her collar to make her stop, and "she started shaking her head and body, which left some red markings on her neck and chest area from my grip."
- [14] Eventually, I gather Mr. Lee agreed to get counsel and move out of the family residence and said he would do so May 15, 2022. On that day, he told Ms. Jung that he was moving and was taking the child with him. Ms. Jung refused to let him take the child and said she would call the police if he did so. As a result, he stayed that night and Ms. Jung cooked breakfast and took the child to school as normal and then went to work.
- [15] Sometime during the day of May 16, Mr. Lee removed both his and the child's possessions from the family home in Coquitlam and took them to his mother's two-bedroom condominium where he is now staying. He kept the child there and advised Ms. Jung that she could see the child only on her days off--Wednesdays and Sundays.
- [16] Initially, the child had to sleep in the living room, as the grandmother had a tenant-friend. Apparently, that tenant has now left, and so the child gets to sleep in the second bedroom while Mr. Lee sleeps in the living room.
- [17] It is Mr. Lee's allegation that Ms. Jung had agreed to him taking the child and that she agreed with the 5/2 parenting time division, which allegation is denied by Ms. Jung.
- [18] Ms. Jung advises that since Mr. Lee took the child, the child's extracurricular activities have been disrupted. He is not doing his Kumon math lessons, and says he plays video games instead. The English tutor has told Ms. Jung that she cannot continue the child's English lessons for now as Mr. Lee has been unable to get his video connection working properly for the lessons.

Parenting Time

[19] There is no dispute on the law or the test regarding parenting time. Section 37(1) of the FLA provides that when considering parenting arrangements, the only consideration is the best interests of the child.

[20] Section 37(2) of the FLA s sets out the factors that must be considered on that analysis:

- a) the child's health and emotional well-being;
- b) the child's views, unless it would be inappropriate to consider them;
- c) the nature and strength of the relationships between the child and significant persons in the child's life;
- d) the history of the child's care;
- e) the child's need for stability, given the child's age and stage of development;
- f) the ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities;
- g) the impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
- h) whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
- i) the appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members;
- j) any civil or criminal proceeding relevant to the child's safety, security or well-being.

[21] I will consider each of these factors below.

- a) The child's health and emotional well-being

[22] The child has undoubtedly been negatively affected by the separation and sudden change in parenting arrangements. Ms. Jung has concerns that the child is not eating properly or being cared for adequately. She points out that Mr. Lee's mother is 80 years old and should not be required to cook and clean for her son and grandson.

[23] Ms. Jung has Multiple Sclerosis ("MS") and her evidence is that she is particularly concerned with healthy eating for herself and for the child. Although the child used to regularly be provided dinner by the grandmother, Ms. Jung says that the child would often eat something that she made for him when he got home.

- [24] I expect that it is difficult for the child to live in a two-bedroom apartment with two adults when he is used to the \$1.5 million family home.
- [25] It also appears that his extracurricular activities and tutoring have suffered since the move.
- b) The child's views, unless it would be inappropriate to consider them
- [26] Mr. Lee says that the child prefers the 5/2 schedule that he has unilaterally initiated. Ms. Jung says that this is only because the child is not supervised appropriately and spends all his time playing video games.
- [27] I am not satisfied that what the child may or may not have told Mr. Lee accurately reflects the child's true views.
- c) The nature and strength of the relationships between the child and significant persons in the child's life; and
- d) The history of the child's care
- [28] I have concluded that until May 16, 2022 when Mr. Lee took the child to live with him, the primary caregiver for the child was Ms. Jung. Despite her limited facility with English, she has clearly tried to promote the best interests of the child.
- [29] I accept that Mr. Lee has had a parental role, but I conclude it has been secondary.
- [30] I also accept that Mr. Lee's mother has had a significant role in the child's life. That is acknowledged by Ms. Jung and she hopes it will continue--albeit along the lines proposed by her, which reflect the schedule for the child pre-separation.
- e) The child's need for stability, given the child's age and stage of development
- [31] Both parties agree that the child is having some difficulties at school, both socially and academically.
- [32] In those circumstances, stability will be particularly important for him so that he can have the confidence in his home environment that will allow him to engage with others outside the home.
- f) The ability of each person who is a guardian or seeks guardianship of the child, or who has or seeks parental responsibilities, parenting time or contact with the child, to exercise his or her responsibilities
- [33] Ms. Jung works long hours and is coping with MS. Nevertheless, she has historically seen to the child's needs and is capable of continuing to do so.
- [34] Mr. Lee also has long days, exacerbated by a lengthy commute, but says that he intends to quit his job and become a driver for "Skip the Dishes" in order to have more time to care for the child.

- [35] In the meantime, both parties have relied on the paternal grandmother to care for the child when they are working.
- g) The impact of any family violence on the child's safety, security or well-being, whether the family violence is directed toward the child or another family member;
 - h) Whether the actions of a person responsible for family violence indicate that the person may be impaired in his or her ability to care for the child and meet the child's needs;
 - i) The appropriateness of an arrangement that would require the child's guardians to cooperate on issues affecting the child, including whether requiring cooperation would increase any risks to the safety, security or well-being of the child or other family members; and
 - j) Any civil or criminal proceeding relevant to the child's safety, security or well-being
- [36] I am satisfied that the family violence alleged by Ms. Jung was not directed at the child. Now that the parties are separated, I believe the impact of such family violence will be minimal, particularly given the criminal conditions imposed on Mr. Lee.
- [37] As to Mr. Lee's allegations of violence, they are more troubling. He alleges that Ms. Jung is violent with the child, that she would slap him, hit him with rulers, and that the scars he has recently seen on the child's wrists and ankles were due to Ms. Jung's violence.
- [38] I find his allegations incredible and I accept Ms. Jung's evidence that she is not violent with the child.
- [39] There are several factors I considered in coming to this conclusion, including that the notice of family claim has not raised any allegation of family violence, that the family violence allegations were not mentioned until Mr. Lee's reply affidavit, and that there has been no involvement of the Ministry of Children and Family Development, despite the obligation to report any such violence against children.
- [40] I have concluded that family violence is not a limiting factor in considering parenting time for either parent.
- [41] I do note, however, that the criminal conditions imposed on Mr. Lee prevent him from attending Ms. Jung's residence and any arrangements or orders will have to take that into consideration.

Conclusion

- [42] In weighing the factors above, I have concluded that it is in the child's best interests to return to the parenting schedule that he had been used to before the parties' separation. This parenting schedule allows the child to see his father most days and spend quality time with his grandmother, while maintaining the stability of Ms. Jung being responsible for getting him to school and attending to his extracurricular activities.

- [43] I do not accept that Ms. Jung initially agreed to Mr. Lee taking and moving the child to live with him and his grandmother in a two-bedroom condominium. His actions in doing so do not appear to have the child's best interests in mind. Mr. Lee, indeed, says he was and is driven by fear that Ms. Jung will take the child from him or use the child as a lever in negotiations. I do not have those concerns.
- [44] I agree with the parenting schedule proposed by Ms. Jung in her notice of application. I agree that the child's clothes and toys should be largely returned to Ms. Jung. The child will be going to school during her care and will require his personal belongings. Counsel should arrange for those belongings to be returned to Ms. Jung without having Mr. Lee attend at the family home. Perhaps the delivery can be made by a mutually agreed third party. If there are issues, there is liberty to apply.
- [45] I also agree that a judicial case conference should be held before any further applications regarding parenting time or parental responsibilities are made.
- [46] Thus, the application of Ms. Jung in paragraphs 2 to 4 of the notice of application is allowed.

Costs

- [47] As to costs, Ms. Jung has clearly been totally successful and is entitled to her costs. She seeks special costs because she says Mr. Lee has acted in a high-handed manner deserving of rebuke.
- [48] I agree that the actions of Mr. Lee in unilaterally taking the child and restricting access between him and his mother were wrong.
- [49] I also disapprove of the way that Mr. Lee handled the financial restraining order Master Schwartz granted May 10, 2022 (the "Financial Restraining Order").
- [50] Despite having obtained an entered copy of the Financial Restraining Order from the court on May 11, 2022, Mr. Lee did not serve it on Ms. Jung until he served on her the notice of family claim on May 16, 2022. In the meantime, he served the Financial Restraining Order on the financial institutions involved, causing Ms. Jung's bank accounts to be frozen such that she could not pay her employees and her business as well as her personal expenses. The financial institution which held the family home's mortgage even withheld the mortgage payment.
- [51] Despite knowing that there was \$1 million equity in the family home and having Ms. Jung's May 22, 2022 affidavit setting out her evidence as to her financial circumstances, Mr. Lee refused to agree to vary the Financial Restraining Order.
- [52] Counsel for Ms. Jung was successful in having Master Robertson release the Financial Restraining Order as against one financial institution on May 24, 2022. Costs of that day were adjourned to the hearing before me.

- [53] Ms. Jung sought special costs due to Mr. Lee having put her through an abusive and unnecessary ordeal with the Financial Restraining Order.
- [54] Mr. Lee sought costs of Ms. Jung's May 24, 2022 application, arguing she had brought the application to set aside or vary the Financial Restraining Order without proper three days' notice.
- [55] The issue with respect to the Financial Restraining Order had not been totally resolved until after the hearing before me.
- [56] There is clearly a tension between taking necessary steps to prevent the dissipation of family assets and the unnecessary disruption of a party's financial existence.
- [57] It is incumbent on anyone who obtains a "without notice" s. 91 restraining order to promptly serve it on the restrained party so that they can, if appropriate, immediately apply to have it varied or set aside. Parties should also instruct their counsel to take appropriate cooperative steps to ensure that unnecessary financial havoc does not ensue.
- [58] I agree that Mr. Lee's actions regarding the Financial Restraining Order were worthy of rebuke. Ms. Jung is entitled to costs of the application before Master Robertson as well as today. As that issue settled, I have concluded that special costs are not warranted. I do not know how long the application on May 24, 2022 took, so I will assess costs based on a half-day.
- [59] The costs order should, however, reflect some disapproval of Mr. Lee's actions. Ms. Jung shall have her costs of this application and the application before Master Robertson in any event of the cause in the amount of \$3,000, payable forthwith.

"Master Muir"

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