

CANADA / JUDGMENT

Li v. Ho

2024 BCSC 225

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 225 Li v. Ho

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Li v. Ho,

2024 BCSC 225

Date: 20240206

Docket: E200959

Registry: Vancouver

Between:

Moning Li

Claimant

And

Rui Hou

Respondent

Before: The Honourable Justice K. Loo

Oral Reasons for Judgment

Counsel for the Claimant:

F. Lamer

Counsel for the Respondent

T.R. Bell

Place and Date of Hearing:

Port Coquitlam, B.C.

January 26, 2024

Place and Date of Judgment:

Vancouver, B.C.

February 6, 2024

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- [1] There are two notices of application before the Court in this family law dispute. Some of the prayers for relief were adjourned. The remaining applications all involve the parenting of the parties' only child, G.H.

Background

- [2] The claimant Moning Li and the respondent Rui Hou began living in a marriage-like relationship in September 2014, and G.H. was born on February 18, 2015. The parties separated on January 16, 2019.

- [3] The evidence regarding the events of 2019 is not entirely clear on the record, and those events are not critical to the issues on this application, but they do provide some context for what follows. I understand that during the summer of 2019, Ms. Li took G.H. on a trip to China. Sometime during 2019, Mr. Hou was evicted from the family home. In December 2019, Mr. Hou attempted to commit suicide.
- [4] Upon being released from hospital, Mr. Hou expressed a wish to resume a relationship with G.H. A report under s. 211 of the Family Law Act, S.B.C. 2011, c. 25 (the "FLA"), was commissioned from Dr. Rebecca England and released on June 15, 2021 (the "Section 211 Report").
- [5] Dr. England recommended that the family be referred to a therapy or counselling practice which specializes in family reunification work.
- [6] The parties engaged Alyson Jones and Associates and its Family Forward Reunification Program ("FFRP"). In 2021, the parties entered into the FFRP for a two-year term.
- [7] The FFRP initially made encouraging progress. Starting in August 2022, Mr. Hou has exercised informal but regular parenting time with G.H. - on Wednesdays from 2:10 p.m. to 5:30 p.m. and Saturdays from 10 a.m. to 4:00 p.m.
- [8] Starting in the fall of 2022, FFRP recommended increasing the parenting time for Mr. Hou, including overnights. Ms. Li became resistant to the process and did not agree to implement the FFRP's recommendations.
- [9] In the fall of 2022, G.H. was exhibiting behavioral issues. The parties' family doctor recommended that G.H. be assessed by a pediatrician for ADHD, and in November 2022, G.H. was examined by Dr. Clementine Tang. Dr. Tang recommended that G.H. be examined by a certified psychologist.
- [10] At the end of the FFRP program, on July 19, 2023, the FFRP issued a summary report including recommendations (the "FFRP report").

Issues

- [11] In his applications before this Court, Mr. Hou seeks a graduated increase in his parenting time, including overnight time, and the appointment of a parenting coordinator.
- [12] In response, the respondent Ms. Li points to anxiety and behavioral issues being suffered by the child, and argues that no change in the parenting time ought to be implemented, at least until a certified psychologist is able to examine G.H. and to report on his or her findings.
- [13] The primary issues to be determined on these notices of application are as follows:
 - a) Should parenting time be increased, and if so, how?
 - b) Should a parenting coordinator be appointed and if so, under what orders?

- [14] There are subsidiary issues regarding passport and travel, the appointment of counsellors, and other matters. These will be dealt with at the end of this analysis.

Discussion

Should Parenting Time be Increased?

- [15] As indicated, the informal parenting time presently allocated to Mr. Hou is on Wednesdays from 2:10 p.m. to 5:30 p.m. and Saturdays from 10 a.m. to 4:00 p.m.
- [16] Mr. Hou seeks a graduated increase which would add Monday afternoon parenting time commencing March 1, 2024; Friday overnight parenting time commencing April 1, 2024; and Monday, Friday and Saturday overnight parenting time commencing May 1, 2024. Commencing June 1, 2024, Mr. Hou seeks an order that the parties will share G.H.'s parenting time equally under a 2-2-5-5 care arrangement, which is described in the Section 211 Report as follows:

With this plan, one parent has Mondays and Tuesdays (beginning with the drop-off and school on Monday morning), the other parent has Wednesdays and Thursdays (beginning with the drop-off at school on Wednesday morning) and they alternate the weekends from Friday morning to Monday morning.

- [17] Ms. Li concedes, in her written materials, that it is in the best interests of the child to resume a healthy relationship with his father. However, Ms. Li resists any increase, and in particular any overnight stays, pending the advice of the psychologist recommended by Dr. Tang.
- [18] In determining the appropriate allocation of parenting time between the parties, it is trite that the court must consider only the best interests of the child. Section 37(2) of the FLA lists various factors which must be taken into account in determining those best interests.
- [19] In this case, unlike in many family law proceedings in which the Court has only uncorroborated assertions of the parties upon which to base its decision, the Court is fortunate to have the input of experienced professionals who have spent significant time with G.H. and his parents.
- [20] Dr. England was appointed under s. 211 of the FLA and she has certified that her duty is to assist the court and not to be an advocate of any party. Similarly, Alyson Jones is a neutral party whose mandate is to act in the best interests of the child. Both are experienced professionals and well-known to the family bar in British Columbia.
- [21] In the Section 211 Report, Dr. England opined that "in the absence of having substantial and meaningful contact with his father as a parental figure, G.H. is at risk of becoming further alienated such that the father-son relationship could become irreparably damaged".

- [22] Dr. England also expressed concerns about Ms. Li and opined that she is "far too willing to eliminate or marginalize Mr. Hou from G.H.'s life". Dr. England recommended that a parenting coordinator be appointed.
- [23] The FFRP report stated that the parenting schedule with G.H. and his father needs to be supported. It recommended an increase in parenting time and the implementation of overnights with G.H. at his father's residence.
- [24] Broadly speaking, both Dr. England and Ms. Jones have made findings and reached conclusions which are consistent with each other, and which support the position advanced by Mr. Hou.
- [25] On the other hand, in resisting overnights and an increase in parenting time for Mr. Hou, Ms. Li relies on the advice of Dr. Tang.
- [26] In assessing this advice, it is important to examine carefully what Dr. Tang has and has not concluded and recommended.
- [27] It is clear from her notes that Dr. Tang's information came only from Ms. Li and G.H.'s grandmother and that Dr. Tang had no opportunity to speak with Mr. Hou. In notes, Dr. Tang conceded that she only had a "one-sided history in a brief space of time".
- [28] Ms. Li deposes that Dr. Tang indicated that "she could not provide an opinion" but that G.H. may be suffering from anxiety stemming from the family's history.
- [29] Importantly, Dr. Tang does not say anywhere in her correspondence and her notes that are before the Court that there should not be overnights until a child psychologist's recommendations are received.
- [30] Ms. Li cites two events which occurred in the summer of 2023 which she says demonstrate G.H. is suffering from severe anxiety which requires treatment.
- [31] The first involved a refusal by G.H. to go with his father for scheduled parenting time on a Saturday afternoon when a cousin was visiting. G.H. refused to go and when he was brought to Mr. Hou's car, he became more and more upset, and ultimately fled into the house and was found hiding under a bed in the basement.
- [32] The second event occurred at Granville Island when his father told him to dispose of garbage in a receptacle which was across the street. The child was apparently scared by a car which drove by him, and when he reached home he reportedly was crying and distressed.
- [33] In my view, it is natural that these events caused Ms. Li to be concerned, but it must be remembered that these are two incidents from more than five months ago. In my view, neither is sufficient to warrant a delay in an increase in parenting time for Mr. Hou.

- [34] It is important to note that Mr. Hou has given evidence which shows that he has given serious consideration to how longer and overnight parenting time with G.H. would be managed. There are photos which appear to show that G.H. gets along with both Mr. Hou and Mr. Hou's new partner. It is expected that G.H.'s parental grandparents would also actively participate in G.H.'s care during Mr. Hou's parenting time.
- [35] On the basis of the foregoing, it is my view that the recommendations of FFRP ought to be followed - that is, that an increase in parenting time and overnights should be implemented.
- [36] The evidence advanced by Ms. Li is insufficient to persuade me that it would be in the best interests of the child to delay this course of action pending a further psychological examination.

Implementation

- [37] Now that I have concluded that it is in the best interests of the child to implement an increase in parenting time, including overnights, the next task is to address the mechanics and details.

Psychologists and Counsellors

- [38] The parties agree that a child psychologist shall be appointed for G.H., and so I make an order to that effect. If the parties have difficulty choosing a child psychologist, that choice will be a matter for determination by the parenting coordinator which will be discussed below.
- [39] The parties have also agreed and I order, pursuant to s. 224 of the FLA, that both parents will retain their own qualified personal counsellors for their own use.

Parenting Coordinator

- [40] The parties do not agree, but in my view, it would be appropriate, to appoint a parenting coordinator. This Court has the authority to appoint a parenting coordinator under sections 14 to 19 of the FLA.
- [41] In *OP v. JDP*, 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.
- [42] 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]
- [43] Counsel for Mr. Hou submits that two significant advantages that a parenting coordinator would have over the Court in this case are that a parenting coordinator would be nimbler and less adversarial in nature. I would add that a parenting coordinator has more expertise in the specific areas of children and families, and has the advantage of continuity whereas the parties may not always be able to appear before the same judge of this Court.
- [44] Ms. Li submits that there are no minor issues to be determined by a parenting coordinator, but this submission is belied by ongoing disputes about pick-up locations for G.H. and allegations that extra-curricular activities are intentionally being scheduled by Ms. Li during Mr. Hou's parenting time.
- [45] Importantly, in my view, Dr. England stated in the Section 211 Report that the implementation of a parenting plan will be difficult. She recommended the appointment of a parenting coordinator.
- [46] For these reasons, an order appointing a parenting coordinator shall be made in the form of the 11th prayer for relief in Mr. Hou's notice of application.

Parenting Time

- [47] In my view, in order to implement an increase and eventual equalization in parenting time for Mr. Hou while still allowing for adjustment in case the parenting coordinator and child psychologist are of the view that the schedule is too fast, the appropriate course is to make a parenting order with some leeway for the parenting coordinator, in coordination with G.H.'s psychologist, to delay implementation of the overnight steps if appropriate.
- [48] Accordingly, subject to the paragraph immediately following this one, I order that Mr. Hou shall have parenting time with G.H., as follows:
- a) Commencing immediately, Wednesdays from 2:10 p.m. to 5:30 p.m. and Saturdays from 10 a.m. to 4 p.m.;
 - b) Commencing March 1, 2024, Mondays from 2:10 p.m. to 5:30 p.m., Wednesdays from 2:10 p.m. to 5:30 p.m. and Saturdays from 10 a.m. to 4 p.m.;
 - c) Commencing April 1, 2024, Mondays from 2:10 p.m. to 5:30 p.m., Wednesdays from 2:10 p.m. to 5:30 p.m. and Fridays from 2:10 p.m. to Saturdays at 4 p.m.;
 - d) Commencing May 1, 2024, Mondays from 2:10 p.m. to Tuesdays at 5:30 p.m., and Fridays from 2:10 p.m. until Saturdays at 4 p.m.;
 - e) Commencing June 1, 2024, the parents will share G.H.'s parenting time equally under a 2-2-5-5 care arrangement.
- [49] This order is subject to determinations by the parenting coordinator, in consultation with the child psychologist to be appointed for G.H., that any of the steps (c), (d) and (e) may be delayed for up to 60 days each if the parenting coordinator determines that it is in the best interests of the child to do so.
- [50] Holidays and extended parenting time shall be matters for the determination of the parenting coordinator, consistent with the stage that the parenting plan is at.
- [51] Counsel are optimistic that a parenting coordinator can be chosen by agreement between the parties. If they cannot agree, each party will suggest one or two available persons to fill that role, and the selection will be arbitrated by Morag MacLeod K.C., or such other person who may be agreed to by the parties or ordered by the Court.

Conduct Orders

- [52] Certain "conduct" orders have been agreed to by the parties. By consent, pursuant to s. 225 of the FLA, the parties:
- a) Will put the best interests of G.H. before their own interests;
 - b) Will encourage G.H. to have a good relationship with the other parent and speak to G.H. about the other parent and that parent's partner in a positive and respectful manner;

- c) Will make a real effort to maintain polite, respectful communications with each other, refraining from any negative or hostile criticism, communication or argument in front of G.H.;
- d) Will not question G.H. about the other parent or time spent with the other parent beyond simple conversational questions;
- e) Will not discuss with G.H. any inappropriate adult, court or legal matters;
- f) Will not blame, criticize or disparage the other parent to G.H.; and
- g) Will encourage their respective families to refrain from any negative comments about the other parent and their extended family, and from discussions in front of G.H. concerning family issues or litigation.

Travel and Passport

- [53] In their notices of application, the parties raised issues regarding international travel with G.H. and the obtaining of a passport for G.H., but those issues were mostly resolved between the parties by the end of the hearing.
- [54] The parties shall cooperate in the obtaining of a passport for G.H., but once obtained the passport shall be held by counsel and shall be released to a traveling party only upon agreement of the parties or upon direction of the parenting coordinator or the Court.
- [55] When travel with G.H. is contemplated, the traveling parent shall provide the other parent with a detailed travel plan in advance, including dates of departure and return, an itinerary and contact information. When traveling, the traveling parent shall adhere to the travel plan.
- [56] The resolution of disputes regarding travel and vacations shall be matters for determination by the parenting coordinator.

Financial Matters

- [57] The 10th prayer for relief in Mr. Hou's notice of application regarding the payment of the FFRP fees and the 5th prayer for relief in Ms. Li's notice of application regarding financial disclosure are adjourned generally.

Costs and Other Issues

- [58] As Mr. Hou has been largely successful on this application, he shall be entitled to his costs of the application at scale B.
- [59] I shall be seized of parenting issues in this proceeding, subject to matters of urgency which may be brought before another member of this Court if I am not available. I am not seized of financial or other issues.

"The Honourable Justice Loo"

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