

CANADA / JUDGMENT

Marriott v. Marriott

2023 BCSC 2455

COURT

Supreme Court of British Columbia

DECIDED

7 June 2023

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2023 BCSC 2455 Marriott v. Marriott IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Marriott v. Marriott, 2023 BCSC 2455 Date: 20230607 Docket: E54932 Registry: New Westminster Between: Cristina Ioana Marriott also known as Cristina Ioana Tanase Claimant And Frer Soleil Marriott Respondent Before: The Honourable Justice A. Ross Oral Reasons for Judgment In Chambers Counsel for the Claimant: J. Almonte Counsel for the Respondent: K. Russ Place and Date of Hearing: Vancouver, B.C. June 7, 2023 Place and Date of Judgment: Vancouver, B.C. June 7, 2023

- [1] THE COURT: Because of the urgency of this matter and for expediency, I am delivering these reasons orally. Should either party request a written copy of the reasons, I reserve the right to edit them for syntax and grammar. The result will not change.
- [2] There are two applications before me today, one from the claimant and one from the respondent.
- [3] The respondent's application relates to his desire to have the child of the parties apply for an American passport. Unfortunately, due to the time available today, we are not able to address that issue. It does not have the urgency of the other application before me. As a result, that application was adjourned.
- [4] The application that we dealt with, in the time available today, was the claimant's application for five different paragraphs of relief regarding international travel. I outline those paragraphs below.
- [5] By way of background, the parties were married and have one son aged eight. They are in the midst of divorce proceedings. It is relevant that the respondent father owns homes both in the Lower Mainland of British Columbia and in Bellingham, Washington. It is also relevant that he is an international pilot.
- [6] The main issue facing the court today relates to travel to Europe and, specifically, Romania.
- [7] To be clear, both the claimant and the respondent wish to travel with the child to Europe in July and August 2023. They will, in fact, exchange the child in London, England.

- [8] The point of conflict results from the claimant's plan to take the child to both Austria and Romania. Specifically, the claimant wishes to travel to Romania to visit her parents, the child's grandparents.
- [9] The major point of dispute is the respondent's position that Romania is not a safe place to travel at this time. The respondent's concern relates to the uncertain and unpredictable nature of the war in Ukraine. He relies on news stories and recent events, including the bombing of the Dnipro River dam, to show the prospect of an escalation which could involve Romania.
- [10] In response, the claimant notes that her parents' home is approximately 600 kilometres from the Ukrainian border. She also notes and, in my opinion, it is undisputed, that the Canadian Travel Advisory places no more than normal risk on travel to Romania. That stands in contrast to a higher level of risk to be exercised by Canadians traveling to both Germany and the United Kingdom.
- [11] In addressing the law and the facts in this case, I am applying the reasoning set out in the Ontario Court of Justice case of *Moussa v. Sundhu*, 2018 ONCJ 284 at para. 47, citing Laskin J.'s comments in *Ojeikere v. Ojeikere*, 2018 ONCA 3712. That case deals with the concept of taking a child into or out of a war zone. Justice Laskin wrote, "As with any risk assessment, the court must assess both likelihood and severity, in this case the likelihood of future harm and the severity of future harm."
- [12] Those comments seem apt in this situation where there is at present, according to the Canadian government, no special risk within Romania.
- [13] On that note, I find that the determinative evidence to me is the state of the Canadian Travel Advisory. I accept that the Canadian Travel Advisory is a snapshot in time, but it is clearly the best evidence of the risk faced by anyone traveling to Romania at this time.
- [14] I will also say, parenthetically, that I would expect that any parent would alter their plans should a situation change before the planned arrival in Romania on July 24. In that respect, I would expect that no parent would voluntarily take their child into a war zone or war-torn country. However, on the basis of the evidence before me, I find that Romania is, at present, a safe place to travel, and that becomes the foundation of my order.
- [15] I now turn to the orders sought by the claimant that are in paras. 1-7, the last two dealing with costs and any further orders. I am going to go through them in reverse order because I think they make more sense having approached them in that manner.
- [16] First, at para. 5 the claimant seeks an order that the claimant take all necessary steps and the respondent sign all necessary documents to renew the child's passport. I note that both parties need the child's passport to be renewed prior to traveling to Europe. The main question relates to a sub-issue, which is who will control the passport upon return to Vancouver.

- [17] The claimant says that it makes sense for her to control the passport because she will always be in the Lower Mainland; whereas, the respondent is working flying around the world seven days on and seven days off.
- [18] I do not accept the claimant's reason for that result. In my opinion, it makes sense for the respondent to hold the passport and to deliver it to the claimant when necessary. The respondent, as noted, has homes in Bellingham and in the Lower Mainland. He is much more likely to be crossing the border with the son. So, with respect to para. 5, I order that the respondent is to take all necessary steps and the claimant is to sign all necessary documents to renew the child's passport.
- [19] For the sake of certainty, it will be the respondent's application for the renewal of the child's passport. The respondent will then travel with the child to Europe, and the passport will be exchanged on July 24 in London, England. Upon return to the Lower Mainland, the claimant will return the passport to the respondent. That will be on an interim, without prejudice basis until that issue can be decided on a full application. If there is a cost to the urgent application to renew the passport application, those costs will be split 50/50 by the parties.
- [20] I now move to para. 4. The notice of application, as drafted, seeks an order requiring the respondent to surrender the child's Canadian passport forthwith. In my opinion, that is not practical. As noted above, the respondent will be traveling to Europe with the child and passing the passport off at that time. As a result, in my opinion, para. 4 is not required given my order in respect of para. 5.
- [21] I grant the relief sought in para. 3 as sought by the claimant, that being: that the respondent will provide a written travel authorization to the claimant allowing her to travel to Romania, the United Kingdom, and Austria with the child.
- [22] Paragraph 2 is, in my opinion, an offer by the claimant to provide information to the respondent. The respondent does not oppose that relief except in respect of opposing generally the travel to Romania, which I have dismissed. As a result: At least three weeks prior to departure for the Romania vacation, the claimant will provide to the respondent: (a) a flight itinerary; (b) a trip itinerary; and (c) addresses and contact information for the duration of the trip, including any local family member phone numbers and email addresses.
- [23] That leads me to para. 1 of the notice of application. I grant the order sought pursuant to s.45 of the Family Law Act, S.B.C. 2011, c. 25, that being an order that the claimant will have the following vacation parenting time: The claimant will take the child to Romania and Austria from July 24, 2023, to August 14, 2023.
- [24] In my opinion, the results of this application have been mixed, and each party should bear their own costs.
- [25] THE COURT: Anything arising, Mr. Russ?

- [26] CNLS K. RUSS: Yes, Justice. I just note for the record, it seems like an anomaly, but my client is traveling with the child between July 10 and July 24 to Europe. I note in paragraph 3 my client is required to provide a written authorization to allow travel. I note that an order for the exchange to take place on July 24 means the child has to be there. So, I'm just asking that it be mutual and that both parties will sign a travel authorization to allow the child to travel with the respective parent, my client between July 10 and 24, and then my client will do the same.
- [27] THE COURT: That makes complete sense to me. Ms. Almonte.
- [28] CNLS J. ALMONTE: That's agreeable.
- [29] THE COURT: All right. So, paragraph 3 is amended such that it is a mutual obligation to provide a written travel authorization allowing travel to Europe, including Romania, the United Kingdom, and Austria from July 10 through August 13.
- [30] CNLS K. RUSS: Yes, yes.
- [31] THE COURT: All right. Anything else from you, Mr. Russ, or is that it?
- [32] CNLS K. RUSS: We're all pretty new to this file. I'm not too sure if there were any interim orders declaring these parties to be guardians of the child. I'm not too sure that was ever done. They were living together when the child was born and after the child was born, so they -- they meet the definition of a guardian under s. 39 of the Family Law Act, and I think that would be important when they show up at the border to establish that they actually are guardians.
- [33] THE COURT: Sorry, we are on affidavit #13 and that has not been established yet?
- [34] CNLS K. RUSS: I'm just asking. Like I said, I'm new to the - I'm new to the file, so I was --
- [35] THE COURT: Okay, okay, okay. It is 4:21. We are not opening up new gates.
- [36] CNLS K. RUSS: No, no. I just want to -- I just want to make sure -- I just don't want either parent to have a situation to establish are you actually a guardian? That's all. And I think a term in the order would satisfy that.
- [37] THE COURT: Ms. Almonte.
- [38] CNLS J. ALMONTE: I don't believe an order was granted confirming that these are both guardians, correct.
- [39] CNLS K. RUSS: The co-parenting agreement in July 2021 --
- [40] THE COURT: Sorry, do both parties consent to an order that they are both guardians, which they are as a matter of law?
- [41] CNLS J. ALMONTE: My client is agreeable to that.

- [42] CNSL K. RUSS: Yes.
- [43] THE COURT: All right. I will put a paragraph 6 on that that both parties are guardians of the child.
- [44] CNLS K. RUSS: It can be in the introductory paragraph. I'll help my -- I'll work with my friend drafting it.
- [45] THE COURT: Thank you for that, Mr. Russ.
- [46] CNSL J. ALMONTE: Mr. Justice, just one clarification. Paragraph 3, I believe you mentioned from July 10 to August 13. Could we change that to 14 being the last day?
- [47] THE COURT: Yes.
- [48] CNSL J. ALMONTE: And then one other quick thing. At paragraph 2, the order regarding travel to Romania. Does she need to provide notice of the flight itinerary, trip itinerary, et cetera, three weeks or six weeks prior?
- [49] THE COURT: We are at six weeks.
- [50] CNSL J. ALMONTE: Yeah, sorry. I thought I heard -
- [51] THE COURT: And I said three.
- [52] CNSL J. ALMONTE: Okay. Thank you. "A. Ross J."
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