

CANADA / JUDGMENT

P.R.R. v. S.C.R.

2024 BCSC 2221

COURT

Supreme Court of British Columbia

DECIDED

6 December 2024

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2024 BCSC 2221 P.R.R. v. S.C.R.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

P.R.R. v. S.C.R.,

2024 BCSC 2221

Date: 20241206

Docket: E52357

Registry: Vernon

Between:

P.R.R.

Claimant

And

S.C.R.

Respondent

Before: The Honourable Justice Hori

Reasons for Judgment

Counsel for the Claimant:

C. Walker

The Respondent, Appearing in Person:

S.C.R.

Place and Date of Hearing:

Vernon, B.C.

June 26, 2024

Place and Date of Judgment:

Vernon, B.C.

December 6, 2024

Introduction

- [1] The parties in this family law action were married on September 4, 1999. They separated on February 28, 2019, and they obtained a divorce order on July 26, 2022.
- [2] The parties have four children. Three of the four children are over the age of majority. The youngest child, E., is 15 years of age. The applications that are currently before the court relate only to E.
- [3] The claimant seeks the following orders:
- a) that the claimant may travel with E. to any location, including locations outside of Canada, without the written consent of the respondent;
 - b) that pursuant to s. 40(3)(a) of the Family Law Act, S.B.C. 2011, c. 25 [FLA], the claimant has the sole authority to exercise the parental responsibilities for E. set out in s. 41 of the FLA;
 - c) that pursuant to s. 183(3)(b) of the FLA, the respondent have no contact or communication, directly or indirectly, with the claimant or E. except:
 - i. by e-mail or text message for the sole purpose of arranging parenting time;
 - ii. as allowed by court order;
 - iii. through or in the immediate presence of a lawyer who has been given a copy of this order; and
 - iv. through court documents served by a third party, and during scheduled court appearances or case conferences, but only with a sheriff present unless waived by the court;
 - d) that pursuant to s. 183(3)(a) of the FLA, the respondent not go to or be within 100 metres of any place where the claimant or E. live, work, attends school, worships or happens to be, even if the respondent is an owner of any such place or otherwise has a right to possess or enter such a place, without the advance written consent of the claimant;
 - e) that pursuant to s. 228 of the FLA, the respondent pay penalties or costs with respect to applications filed by the claimant on February 19, 2024, February 27, 2024, May 14, 2024, and this application.

- [4] The respondent seeks the following orders:
- a) that pursuant to s. 40(3)(a) of the FLA, the respondent has the sole authority to exercise the parental responsibilities for E. set out in s. 41 of the FLA;
 - b) that E. reside primarily with the respondent; and
 - c) that the respondent may close a joint line of credit at the National Bank of Canada without the claimant's signature.

Background

- [5] After the parties separated, they executed a separation agreement dated April 13, 2022. Under the terms of the separation agreement, the parties agreed that:
- a) they would have equal parenting time with E. on a week on/week off basis; and
 - b) they would share parental responsibilities, but if they could not agree, or the respondent did not respond within 48 hours, the claimant would make the final decisions.
- [6] Difficulties arose between the parties involving E. in November 2023 when E. wanted to travel with the respondent to San Jose, California. The purpose of the trip was for E. to participate in a Tae Kwon Do tournament from November 3 to November 6, 2023. The claimant supported the wishes of E. and was willing to take E. to the tournament. However, the respondent was not willing to allow E. to travel to San Jose to participate in the tournament.
- [7] The claimant made numerous requests of the respondent for her consent and for E.'s passport, but the respondent did not respond. As a result, the claimant brought an application for an order authorizing E.'s travel to San Jose and for the respondent to deliver E.'s passport to the claimant ("Application 1").
- [8] The claimant served the material for Application 1 on the respondent. However, the respondent did not communicate any response to the claimant, she did not file a response to the application and did not appear at the hearing.
- [9] Associate Judge Schwartz heard Application 1 on October 24, 2023. Associate Judge Schwartz made the following orders ("Order 1"):
- a) that the claimant be permitted to travel with E. to San Jose California from November 3 to November 6, 2024, without the consent of the respondent;
 - b) that the respondent surrender E.'s passport to the claimant within 24 hours of receiving a copy of Order 1; and
 - c) that the respondent pay costs of \$500.

- [10] Counsel for the claimant delivered a copy of Order 1 to the respondent by e-mail on October 25, 2023. The respondent replied to the e-mail on the same day with a statement that neither the claimant nor his counsel had permission to send her an e-mail. Even though it is clear that the respondent received a copy of Order 1 on October 25, 2023, the respondent failed to respond to the order and failed to surrender E.'s passport to the claimant in accordance with Order 1.
- [11] As a result of the respondent's failure to comply with Order 1, the claimant brought a short leave, without notice, application to compel the respondent to surrender E.'s passport ("Application 2"). Justice Hardwick heard Application 2 on October 30, 2023, after which Hardwick J. made the following orders ("Order 2"):
- a) that the respondent deliver E.'s passport to the office of claimant's counsel no later than 4:00 pm on October 31, 2023;
 - b) that a copy of Order 2 be served on the respondent by e-mail; and
 - c) that the matter be brought forward to Hardwick J. on November 1, 2023, to address compliance with the order.
- [12] On October 30, 2023, claimant's counsel served the respondent by e-mail with a copy of Order 2 and the application materials for Application 2. The respondent acknowledged receipt of the e-mail by sending a responding e-mail that indicated only that the claimant did not have permission to send communications to that e-mail address. The respondent made no comment on the issues raised by the application.
- [13] On November 1, 2023, the matter was back before Hardwick J. ("Application 3"). Contrary to Order 2, the respondent had not delivered E.'s passport to the office of the claimant's counsel. The respondent did not file any response material to the claimant's Application 2 and she did not attend the hearing on November 1, 2023. As a result, Hardwick J. ordered the police to seize the passport from the respondent and deliver it to the claimant ("Order 3").
- [14] The police seized E.'s passport from the respondent pursuant to Order 3 and delivered it to the claimant. When the claimant received the passport, he discovered that it had expired. Since it was not possible to renew the passport in time for E.'s trip to San Jose, E. was unable to attend the Tae Kwon Do tournament.
- [15] On November 3, 2023, counsel for the claimant mailed a passport application for E. to the respondent. The claimant asked the respondent to sign the application and return it within seven days. The respondent did not respond to this request.
- [16] On November 21, 2023, the respondent sent an e-mail to the claimant's employer accusing the claimant of being addicted to cocaine, using cocaine continuously, and using his work e-mail for personal purposes. The claimant denies all of these allegations, but the respondent persisted by suggesting to the children that the claimant was poisoning them with cocaine.

- [17] On January 5, 2024, the claimant filed an application ("Application 4") seeking orders:
- a) requiring the respondent to sign the passport application for E.;
 - b) requiring the respondent to reimburse him for lost travel expenses related to the San Jose trip and costs associated with the passport applications; and
 - c) restraining the respondent from making negative comments about the claimant to the children or his employer.
- [18] Justice Betton heard Application 4 on January 22, 2024. The claimant did not respond to Application 4 and did not attend the hearing. After hearing the application, Betton J. made orders ("Order 4"):
- a) requiring the respondent to complete or execute E.'s passport documents within seven days of receiving Order 4;
 - b) allowing the claimant to serve the respondent by e-mail with documents in the action that do not require personal service;
 - c) prohibiting the respondent from having any communications with the claimant's employer or co-workers;
 - d) requiring the respondent to pay \$1,344.43 to the claimant to reimburse him for lost travel expenses;
 - e) awarding ordinary costs to the claimant for Application 2;
 - f) awarding special costs to the claimant for Application 3; and
 - g) awarding ordinary costs to the claimant for Application 4.
- [19] On January 31, 2024, claimant's counsel served Order 4 on the respondent. The respondent did not respond to the order and did not return an executed passport application for E.
- [20] On February 9, 2024, the claimant filed a further application ("Application 5") seeking penalties against the respondent for non-compliance with previous court orders. The application came before the court on February 20, 2024, but it could not proceed due to insufficient court time. As a result, the court adjourned the application to March 4, 2024.
- [21] Before the March 4, 2024, hearing date, the claimant obtained leave to file another application ("Application 6") regarding parenting and school for E. Both Applications 5 and 6 were set for hearing on March 4, 2024.
- [22] The respondent did not file any responding material to either of the applications set for hearing on March 4, 2024, and she did not attend the hearing.

- [23] Due to a lack of court time on March 4, 2024, the court adjourned Application 5 but proceeded with the urgent aspects of Application 6. Justice Wilson heard Application 6 and ordered ("Order 6"):
- a) that E. continue to attend school at [name of school omitted];
 - b) that E. reside primarily with the claimant with the respondent having reasonable parenting time as agreed between the parties and in consideration of the wishes of E.; and
 - c) that if the respondent wrongfully denied the claimant his parenting time, the police were authorized to apprehend and take E. to the claimant.
- [24] When the respondent did not return E. to the claimant, the police attended to apprehend him. However, when the police arrived they decided not to enforce the order because E. did not wish to go and threatened to run away.
- [25] The claimant brought a further application ("Application 7") to compel the police to apprehend the respondent and bring her before the court. The court heard Application 7 on March 11, 2024. The respondent filed response materials for this application and attended at the hearing.
- [26] Justice Wilson heard Application 7 and ordered ("Order 7"):
- a) that E. be returned to the care of the claimant; and
 - b) that E. be returned to [name of school omitted for privacy].
- [27] The respondent brought E. to the hearing on March 11, 2024, but the court directed the respondent to have E. wait outside the courtroom. The respondent returned E. to the claimant following the hearing after she was urged to do so by the sheriff.
- [28] The parties bring the applications that are currently before the court in the context of this procedural history.

Credibility of the Respondent

- [29] I have significant concerns about the respondent's credibility and the reliability of her evidence.
- [30] The respondent makes assertions without any evidence to support them. In particular, the respondent makes serious allegations that the claimant is addicted to cocaine and uses cocaine continuously. The respondent went so far as to make these allegations to the claimant's employer. She even suggested to the children that the claimant was poisoning them with cocaine. However, during the hearing of the applications, the respondent admitted that she only "believed" that the claimant used cocaine and that she had no direct evidence to support such an assertion. I can only assume that the respondent made these unsubstantiated allegations to gain leverage against the claimant in this family law case.

- [31] The respondent claims that she was the victim of sexual abuse as a child. She relates how she was "molested as a baby" by her father. She describes, in great detail, how her grandmother removed her diaper and prepared her for the abuse by placing her on the bed. She recalls her grandmother calling her father to tell him she was ready. She claims to recall the exact words spoken by her grandmother when she was being molested and the specific details of the abuse. However, the respondent deposes that this abuse occurred "every night until [she] was able to learn to speak the words to ask [her] mother to make it stop". The respondent further deposes that in this timeframe, her mother thought she was so cute and took photos of her "baby babbling".
- [32] Regardless of whether I accept that the respondent was a victim of sexual abuse as a child, I find it hard to believe that she would have such a detailed recollection of the events. The respondent's evidence about the abuse is that it occurred while she was still in diapers and before she could form words. I find it unlikely that the respondent would have such detailed recollections of the abuse and the words spoken by her grandmother during her pre-linguistic stage of development.
- [33] The inference that I draw from the respondent's detailed recollections is that the respondent is prone to enhancing her evidence or to filling in the blanks when her recollections are not clear. In either case, this tendency raises concerns about the reliability of her evidence.
- [34] With respect to her failure to comply with court orders, the respondent claims that she did not know what was happening. This assertion is not believable. The claimant served copies of each of the orders on the respondent by e-mail. The respondent acknowledged receipt of the e-mails by responding to them and the terms of the orders made by the court were clear. In these circumstances, the assertion that the respondent did not know what was happening is unbelievable.
- [35] With respect to E.'s expired passport, the respondent claims that the claimant knew that the passport had expired and that the applications for delivery of the passport were not genuine. The respondent's claims in this regard are also not credible. If the respondent in fact thought that the claimant was aware that the passport had expired, a simple e-mail reminding him of that fact would have avoided much of this controversy. Instead, the respondent remained mute and said nothing in response to the applications.
- [36] For these reasons I find the respondent is not a credible witness and that her evidence cannot be relied upon where it conflicts with the evidence of the claimant.

Primary Residence

- [37] The respondent seeks an order that E. reside primarily with her. The respondent's application for primary residence is based on her allegation that the claimant is addicted to cocaine. The respondent alleges that the claimant intends to harm E. and his other children by exposing them to cocaine and other illicit drugs. In her notice of application, the respondent claims that the "[C]laimant has tested questionable drugs on his son [I.] and as a consequence [I.] nearly died." There is no evidence to support such an allegation.
- [38] As I indicated in my assessment of the respondent's credibility, I cannot accept the allegations of the claimant's drug use. There is no evidence to support such allegations. Further, there is no reliable evidence that it would be in the best interests of E. to reside primarily with the respondent.
- [39] On the contrary, the conduct of the respondent in this litigation as it relates to E.'s best interests suggest that it would not be in E.'s best interests to reside with the respondent. The respondent refused to allow E. to travel to a Tae Kwon Doe tournament and ignored court orders to surrender E.'s passport. The respondent further refused to return E. to the claimant when ordered to do so by the court and she continually accuses the claimant of exposing E. to drug use without any foundation for that accusation.
- [40] The primary residence for E. at the present time is with the claimant as ordered by Wilson J. in Order 6. In my view, it continues to be in E.'s best interests to reside primarily with the claimant in accordance with Order 6.
- [41] Therefore, E. will continue to reside primarily with the claimant. The respondent will have reasonable parenting time with E. as agreed between the parties in writing and in advance and with consideration given to the wishes of E.

No Contact

- [42] The claimant seeks an order pursuant to s. 183(3)(b) of the FLA, prohibiting the respondent from having contact or communication with the claimant or E. except:
- a) by e-mail or text message for the sole purpose of arranging parenting time;
 - b) as allowed by court order;
 - c) through or in the immediate presence of a lawyer who has been given a copy of this order; and
 - d) through court documents served by a third party, and during scheduled court appearances or case conferences but only with a sheriff present unless waived by the court.

- [43] The no contact or communication order sought by the claimant is not practical in the circumstances of this case. The respondent will have reasonable parenting time with E. during which she must have contact and communication with him. In addition, the parties must find a way to communicate with each other in order to do what is in the best interests of E.
- [44] Therefore, I am not prepared to grant the protection orders sought by the claimant. However, I will make an order pursuant to s. 225 of the FLA that the respondent will not:
- a) question E. about the claimant or about time spent with the claimant beyond simple conversational questions;
 - b) discuss any inappropriate adult, court, or legal matters with E.; or
 - c) blame, criticize or disparage the claimant to E.

No Go

- [45] The claimant seeks an order pursuant to s. 183(3)(a) of the FLA, that the respondent not go to or be within 100 metres of any place where the claimant or E. live, work, attends school, worships or happens to be, even if the respondent is an owner of any such place or otherwise has a right to possess or enter such a place, without the advance written consent of the claimant.
- [46] I am not prepared to grant this order to the claimant for essentially the same reasons that I deny the no contact order. In the circumstances of this case, such an order is not practical when the respondent will have parenting time with E.

Parental Responsibilities

- [47] Pursuant to s. 40(3)(a) of the FLA, both the claimant and the respondent apply to be the only party authorized to exercise parental responsibilities for E.
- [48] The nature of the numerous applications brought by the claimant since November 2023 lead me to conclude that having the parties exercise parental responsibilities jointly is not workable. The respondent was incapable of working cooperatively with the claimant with respect to the simple matter of arranging travel for E. to San Jose.
- [49] Further, the respondent's failure to respond to the numerous applications outlined in these reasons and her failure to comply with court orders indicates that the respondent is not capable of exercising good judgment with respect to the interest of E.
- [50] In my view, the claimant has demonstrated that he is the party who will exercise his parental responsibilities in a way that is in the best interests of E. Therefore, pursuant to s. 40(3)(b), the claimant will have the sole responsibility to exercise parental responsibilities with respect to E. The parental responsibilities are those set out in s. 41 of the FLA.

[51] The claimant will advise the respondent of significant decisions made by the claimant in the exercise of his parental responsibilities. The respondent has leave to apply to the court, under s. 49 of the FLA, for directions on any decision that she considers contrary to the best interests of E.

Travel with E.

[52] The claimant seeks an order that he may travel with E. to any location, including locations outside of Canada, without the written consent of the respondent.

[53] The claimant brings this application as a result of the respondent's refusal to cooperate on travel plans for E.'s Tae Kwon Do tournament. Earlier in these reasons I outlined the history of the applications brought by the claimant as a result of the respondent's refusal to cooperate.

[54] The respondent's failure to respond to the numerous applications with respect to travel, her failure to surrender E.'s passport even when ordered to do so by the court and her failure to advise the claimant, in a timely manner, that E.'s passport had expired, raises serious concerns about future travel.

[55] In my view, the respondent's past conduct makes the order sought by the claimant reasonable and necessary to ensure that the respondent will not complicate or prevent the claimant's future travel with E.

[56] The respondent resists this application on the basis that there is a risk that the claimant will leave the country with E. and not return. The respondent suggests that the claimant intends to relocate to South Africa to be with his fiancé. The respondent claims that the claimant has no ties in Canada that would keep him here.

[57] I cannot accept the respondent's claim that the claimant is a flight risk because such an allegation has no basis in the evidence. The claimant deposes that his mother and his father reside in British Columbia. The claimant has purchased a house in British Columbia and has a job with a local company. I find that the respondent's suggestion that the claimant will leave the jurisdiction with E. and not return has no merit.

[58] Therefore, the claimant may travel to any location, including locations outside of Canada, with E. and without the written consent of the respondent. However, before leaving for locations outside of Canada, the claimant will provide a detailed itinerary to the respondent showing travel dates and locations.

Joint Line of Credit

[59] The respondent seeks an order that she may close a joint line of credit at the National Bank of Canada without the claimant's signature. The claimant consents to the order sought.

[60] Therefore, the respondent may close the joint line of credit at the National Bank of Canada without the claimant's signature on closing documents.

Penalties and Costs

[61] The claimant seeks special costs or a financial penalty or both related to the respondent's failure to comply with Orders 4, 6 and 7. The claimant also applies for costs related to Application 5 and for costs related to the current applications.

[62] Justice Betton dealt with the costs of the applications prior to and including Application 4 in Order 4. Therefore, I must not revisit the issue of costs related to those applications. The claimant seeks to recover costs of the applications made subsequent to Application 4 and to impose a financial penalty on the respondent for her conduct after Application 4.

[63] The claimant has presented his application for penalties and costs as a separate claim for each application. He applies for special costs and penalties on each of the applications he filed subsequent to Application 4. The difficulties with this approach are:

- a) the court did not hear and decide Application 5 and the claimant has incorporated the relief sought in Application 5 into the current application; and
- b) Application 6 is an application for parenting and protection orders which have no connection with the respondent's failure to comply with previous orders.

Costs and Penalties for Application 5

[64] In Application 5, filed February 9, 2024, the claimant sought a financial penalty and special costs because the respondent breached Order 4 by failing to deliver an executed passport application. The claimant filed Application 5, but the court never heard the application due to a lack of court time. Instead of rescheduling Application 5, the claimant incorporated the relief sought in Application 5 into the application that is now before the court.

[65] I am satisfied that the respondent received a copy of Order 4 and that the terms of the order are clear. I find that the respondent was aware of Order 4 and that she knew what the order required her to do. Therefore, I find that the respondent breached the terms of Order 4 by failing to deliver an executed passport application.

[66] The respondent's breach of Order 4 is part of a history of ignoring court orders. The court cannot condone such blatant disregard for its orders. The respondent must be made to understand that she cannot simply ignore court orders. It appears that the special costs orders made by Betton J. in Order 4 were insufficient to secure the respondent's compliance with court orders. Therefore, in my view, more severe sanctions are necessary.

[67] Accordingly, the claimant will have costs for the preparation of the application materials for Application 5 on a solicitor and client basis. However, there will be no costs to the claimant for hearing the application since no hearing occurred.

- [68] In addition, pursuant to s. 228 of the FLA, the respondent will pay \$1,000 to the claimant for the benefit of E. for failing to comply with Order 4.

Costs and Penalties for Application 6

- [69] The claimant filed Application 6 on February 27, 2024. Application 6 is the claimant's application for orders relating to E.'s school, E.'s primary residence, the respondent's parenting time, decision-making authority for E. and protection. As far as I am aware, Application 6 is the first time that the claimant sought this type of relief. There are no aspects of Application 6 that relate to non-compliance with court orders.
- [70] Given the nature of the relief sought in Application 6, there is no basis upon which I can impose increased costs or financial penalties for this application. However, since the claimant was successful on the issues heard by the court on March 4, 2024, I see no reason for denying the claimant his costs of Application 6.
- [71] Therefore, the claimant will recover his costs of Application 6 as ordinary costs. Those costs will include preparation costs and the costs of the hearing before Wilson J.

Costs and Penalties for Application 7

- [72] Application 7, filed by the claimant on March 7, 2024, applied for a police enforcement order to enforce Order 6 granting the claimant primary residence of E.
- [73] As a result of this application, the claimant secured the return of E. to his care.
- [74] This is another instance where the respondent failed to comply with a court order. I am satisfied that the claimant delivered Order 6 to the respondent and that the order was clear in requiring her to return E. to the claimant. Therefore, the respondent was in breach of the order.
- [75] In order to secure compliance with future orders of the court, the sanctions for breaching Order 6 ought to be more severe than those imposed for the breach of Order 4. The respondent must understand that continuing to breach court orders could result in increasingly more significant financial consequences.
- [76] Accordingly, the claimant will have his costs of Application 7 on a solicitor and client basis. Those costs will include both preparation for the application and the hearing.
- [77] In addition, pursuant to s. 228 of the FLA, the respondent will pay \$2,000 to the claimant for failing to comply with Order 6.

Costs and Penalties for the Current Applications

- [78] The applications that are currently before the court consist of two notices of application filed by the claimant and one notice of application filed by the respondent.

- [79] The two notices filed by the claimant include applications to impose financial consequences upon the respondent for breaching previous court orders. Since I have already imposed financial consequences for those breaches in these reasons, it is not appropriate to penalize the respondent for those breaches again in the applications currently before the court.
- [80] After stripping away the claims for financial penalties from the claimant's current applications, what remains are applications for orders relating to travel with E., parental responsibilities, protection and the return of E.'s possessions. None of these claims for relief would, in the ordinary course, attract special costs or penalties against the respondent. The court has already dealt with the conduct of the respondent in breaching court orders through Order 4 of Betton J. and these reasons.
- [81] However, the claimant was substantially successful in his applications. Therefore, the claimant will have ordinary costs of this application. Even though the claimant filed two notices of applications, he could have and ought to have incorporated all of the relief in one notice. Therefore, the claimant's costs of this application will be assessed as one filing rather than two.
- [82] In addition, the respondent filed her own application to which the claimant responded. Since the claimant was successful in resisting the respondent's claims, he will have costs for responding to the respondent's application as ordinary costs.

"D.K. Hori J."

HORI J.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/24/22/2024BCSC2221.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/p-r-r-v-s-c-r-2024>

Prepared on 26 October 2026 · Esheria