
CANADA / JUDGMENT

R.B. v. S.R.B.

2022 BCSC 1059

COURT

Supreme Court of British Columbia

DECIDED

8 June 2022

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2022 BCSC 1059 R.B. v. S.R.B.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R.B. v. S.R.B.,

2022 BCSC 1059

Date: 20220608

Docket: E64284

Registry: New Westminster

Between:

R.B.

Claimant

And

S.R.B.,

D.R.B. and A.B.

Respondents

Before: Master Krentz

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant, appearing by videoconference:

M. Goyal

Counsel for the Respondent, S.R.B., appearing by videoconference:

C.J. Carta

No other appearances

Place and Date of Hearing:

New Westminster, B.C.

June 8, 2022

Place and Date of Judgment:

New Westminster, B.C.

June 8, 2022

- [1] THE COURT: The following are my oral reasons for judgment in this matter. If a transcript is requested, I reserve the right to edit these reasons with respect to matters such as grammar, context and to provide clarification where necessary. Such editing will not change the outcome of my decision.
- [2] This is the application of the respondent father, Mr. S.R.B. He is seeking interim parenting time with his three children on weekends from Friday at 5:30 p.m. to Sunday at 7:30 p.m., and to include the statutory holiday; and, as well, an order restraining the removal of the children. The notice of application refers to the Lower Mainland, but counsel has advised me that for their purposes the jurisdiction of the court being the province would suffice. He also seeks that the amount of child support he started paying in April 2022 be confirmed by this Court.
- [3] These parties married in 2017. They have three young children together. I will just refer to them by initials as follows: "V." was born on [D.O.B.], 2018, so he is not yet four years old; "M" was born on [D.O.B.], 2019, so he is a year younger than V.; and "J" was born on [D.O.B.], 2021. That child is less than one year old.
- [4] For all intents and purposes, the parties separated on February 15, 2022. The parties, until that time, resided together in a home in Delta, along with the respondent's parents.
- [5] The respondent father says he returned home to find the claimant mother and children had left the family home. On that same date, he was served with the notice of family claim in this proceeding, along with orders that included a protection order that prevented him from having any contact with his children or the claimant.
- [6] That protection order was made by Master Robertson on February 15, 2022. It was set aside in its entirety by Master Robertson a month later on March 16, 2022. On that same date, Master Robertson put into place an order that is extant that contains the following provisions: it confirmed the parties are the guardians of the children and that the parenting responsibilities would be shared equally between the parties. There were conduct orders put

into place. Those conduct orders included: encouraging a good relationship with the other parent with the children; not to speak negatively about the other parent in front of the children; not to question the children; not to involve the children in adult issues; and, as well, communications between the parties were to be in writing and to be respectful and polite.

- [7] What occurs after that essentially leads to the application today. There was no order made for the respondent father's parenting time. The claimant mother had de facto residency of the children. She moved out of the residence but they have been living with her, and I am told that it is somewhere in Surrey, not a long distance from the former family residence in Delta.
- [8] There was another date set for a judicial case conference, to be held on August 11, 2022.
- [9] The respondent father says as soon as the protection order was set aside on March 16, 2022, he then started to make efforts to try to have regular parenting time with his children. He says he has been largely ignored or rebuffed, or the claimant mother has put on various conditions that he says are not satisfactory.
- [10] Unfortunately, another event occurred which was started by an effort for the respondent father to have some contact with the children. It was an arrangement made between counsel for the father to have a very brief visit, a couple hours at most, in a public setting such as a park where he would see his children on April 3, 2022.
- [11] It was agreed that, for their own purposes, each party could have a third party attend. From the claimant mother's side, the chosen person to attend was the nanny. From the respondent father's side, there were two or three people that attended, which included his mother.
- [12] The weather was such that remaining outside with the children was not feasible and the suggestion was to go inside. The suggestion of the respondent father was to go back to his home and they could do the visit in the home. The nanny then called the claimant. The suggestion was not agreeable to the nanny or the claimant mother and, unfortunately, it resulted in the police being called. When the police attended, it then led to another unfortunate circumstance in that they wrongly believed a protection order was still in place, which had just been set aside by Master Robertson. This resulted in a Ministry of Children and Family Development ("MCFD") representative being contacted, a social worker, and it concluded with the respondent father not having his parenting time. The respondent father returned the children to the claimant mother and the parties seem to agree this caused unnecessary upset to the children.

- [13] I cannot determine from the evidence whether or not the mother took appropriate steps to try to inform the authorities, i.e. the police and/or the social worker, that the protection order had actually been set aside and it was no longer in place, but that is just to put into context what happened on that date. What is significant is that, other than maybe from electronic means, there has been no parenting time or contact that the father has had with the children since then.
- [14] There have been attempts by the respondent father to try to arrange, through his counsel, parenting time with the children. That has, as I indicated, resulted in there being a number of conditions and terms that the claimant mother has insisted upon, which includes that his parenting time be supervised.
- [15] While not entirely critical to the application today, there appears to have been some steps taken by the claimant mother since the order was made by Master Robertson, in that she now has two of the older children in daycare and has hired a caregiver or nanny.
- [16] The respondent father is a plumber by trade. Generally, he has been working; however, recently he was laid off. He may get recalled. Whether he gets recalled or not is not going to be critical today because if he does get recalled to work, he works Monday to Friday, so generally not working on weekends. If he is working weekends, as I indicated, he lives with his parents. I have affidavits from his parents and they have set out their background. I do not need to go through the details of it.
- [17] Turning to the children themselves, the oldest child has cerebral palsy and some other medical conditions, and I will further refer to that in a moment. The middle child also has some health conditions, largely because of his premature birth. There is nothing that I can see that would suggest special needs for the youngest child, other than they are not yet one year old.
- [18] As to other matters related to the parties themselves, it is agreed that the respondent father's income is \$60,000 per year. He has voluntarily been paying child support of \$1,223 per month, which commenced on April 1, 2022. The payments are divided each month. The claimant mother is unemployed at this time. There does not seem to be any anticipated immediate changes to that.
- [19] The opposition to the request for the parenting time by the respondent father largely seems to rest on a number of allegations which I will summarize.
- [20] First, the needs of the children, particularly the oldest child, V. He was developmentally assessed at Children's Hospital in Vancouver, on February 22, 2022, brought there by his mother. At that time, his age was three years and five months. The assessment, first of all, contains some information provided by the claimant. The claimant mother says that she has been able to access appropriate services for V. He started preschool, has a funded support worker, and a child development consultant. The claimant mother indicated concerns for V. were around his emotional impulse control, e.g. he may tend to be whiney, yell and be easily

distracted. However, she goes on to say:

In terms of the 'best things', [the] mother reported [V.] was "adaptable and independent, sociable and friendly, affectionate and loving, happy, playful and laughs a lot."

[21] As far as cognitive development, because of his diagnosis V. has some special needs that have been identified. It starts with his ability to communicate. He does need some speech and language support, which is described as being important for him. Sometimes his communication is described as "babbling". He also has some visual spatial constructional abilities that need to be developed because of the level he is at. These are just structured things that the professionals obviously can provide for V.

[22] The assessment goes on to say:

Behaviourally [V.] will need considerable support to help him develop his inhibitory control and regulate impulses. This in turn will support the development of his ability to regulate emotions, which is at this point the area of most concern.

[23] I have to take some of that into account in structuring an order today. As well, before I leave V., there is an allegation that perhaps when the respondent father has the care of V., his dietary needs are not being followed.

[24] The next factor is allegations that the respondent father has been violent in the past and has abused substances. I took the time to look as carefully as I could at the affidavits of the claimant mother and her witnesses, where she presents evidence of violence and substance abuse. A lot of the allegations are very dated. They have been denied by the respondent. I could not see anything that occurred prior to the separation that would substantiate a claim of family violence on the part of the respondent father. It is not unusual for these allegations to be brought forward and they are difficult to assess on affidavits, but I have taken the time to review them. I do not find there is significant substance to the allegations of violence and substance abuse.

[25] The respondent father may have drank alcohol to excess on occasion. However, I cannot see how it has any direct bearing on the application today that he makes for parenting time with his children.

[26] Now, another important factor is that in December 2021, for a period of about one month, the claimant mother left for Calgary where she has family and she only took the youngest child with her. That meant she left the two older children, including V. with his special needs, with the respondent father and with the respondent's parents who live in the same home. I could not find, and I looked for, any evidence that he had an inability, again in concert with his parents, to look after V.'s needs. I have to assume that V.'s needs, as I have identified them today largely from the assessment from Children's Hospital, were being met by the respondent father and that he is capable of meeting V.'s needs.

- [27] I do not know the extent, if any, to which the respondent father has involved himself in meeting the needs of V. I am hopeful that if he has not been involved, he will take steps to become involved. Largely these professionals, who are involved in taking care of children with special needs such as V., do encourage and want to have involvement of parents, even parents who are separated. That gives some regularity and stability to the care of these children when it is being met by both parents. I am not making any order or direction today, that is just something that I am hopeful, if the respondent father has not done so, he will do that.
- [28] I need to consider only best interests of children. That is directed by s. 37 of the Family Law Act, S.B.C. 2011, c. 25, s. 1 [FLA]. This includes consideration of the children's health and emotional well-being. I have already covered that to some extent.
- [29] As for the children's views, they are too young to even consider them.
- [30] As to the nature and strength of the relationship with the children and other significant persons, including the parents and extended families, I am satisfied that there is strength in the relationship between the children and both parents, and including the respondent's parents.
- [31] Regarding the history of the children's care, I would conclude from the evidence that has largely fallen to the claimant mother and that could be for many reasons, but that does not mean that there has not been a history of the children being cared for by the respondent father.
- [32] As to the children's need for stability, particularly given their age and stage of development, I have touched upon that with V. Again, I have concluded that the respondent father has the ability to meet the needs of the children for stability.
- [33] I have already commented on what I find is a lack of significant evidence to suggest that there is an impact of violence on the children's safety, or that there has been violence directed toward the children or other family members. Therefore, I do not need to consider s. 38, which requires the court to assess family violence.
- [34] The claimant mother's position as to what would be an appropriate order for parenting time going forward is set out in her affidavit. She submits that what would be appropriate is parenting time each Tuesday and Thursday for about four hours, presumably after the respondent father was working, as he has recently been working but was laid off. It would be under the supervision of a neutral third party, and in addition to Tuesday and Thursday, on alternating weekends, another four hours with the same conditions, and it could be reviewed after three months.

- [35] For lack of a better term, I do not know if the claimant mother entirely comprehends what ultimately is in the best interests of her children. To have a relationship with both parents after separation is a very important factor that we often hear about from psychologists who routinely provide opinions to our court. The fact that there has been no contact now since the beginning of April 2022 is concerning to the court. It has to be rectified now and it has to be rectified immediately.
- [36] I do not need to make orders with respect to conduct and communication as Master Robertson has already done that. Those orders would continue, and the same with guardianship and parenting responsibilities. Those orders were put into place because they have a reason. It is expected that guardians will work with each other to continue to parent children after their separation. That is what I do not think the claimant entirely gets.
- [37] I do understand the claimant mother's concerns about the needs of her children, particularly V. I have to accept that the respondent father should also share those concerns and he will meet the needs of the children, including V.
- [38] The reintroduction of the respondent father into the lives of the children should be gradual. The reason for that, though no fault of his, there has been a period of time where the children have not seen him but he is still in the family home with his parents. It is going to be immediate, but it is going to be gradual, just until the children get used to going back and spending time with their father in the former family home.
- [39] I will now provide the dates of the respondent father's parenting time going forward and will show that it is anticipated it is going to go into a regular schedule. I am not going to say it is without prejudice, I do not think it is necessary. It is an interim order but I will put a date that it can be reviewed, and I am going to time it with, among other things, the judicial case conference.
- [40] The parenting time of the respondent father, and I will emphasize is unsupervised, will be as follows. I am going to start it this Saturday, June 11, 2022 from 11:00 a.m. to 2:00 p.m. Then the next day, June 12, 2022, from 11:00 a.m. to 4:00 p.m. The same -
- [41] THE CLERK: From 11:00 a.m. to 4:00 p.m.?
- [42] THE COURT: Yes. The same time on June 18, 2022. June 19, 2022 is Father's Day, it will be extended - expanded, 10:00 a.m. to 6:00 p.m.
- [43] The next weekend, which is June 25, 2022, will be overnight. June 25 is a Saturday, so June 25, 2022 at 10:00 a.m. to Sunday, June 26, 2022 at 6:00 p.m.
- [44] THE CLERK: Six p.m.?
- [45] THE COURT: Yes.
- [46] THE CLERK: Thank you.

- [47] THE COURT: Thereafter it will be alternate weekends, again from Saturday morning at 10:00 a.m. to Sunday at 6:00 p.m. So his next weekend after that would be July 9, 2022. That gives the mother what is the first weekend of July 2022, but it is alternating after that.
- [48] It is to be reviewed but no earlier than August 11, 2022, which is the date of the JCC. That is just a review. If there is no other order agreed to at the JCC, then I anticipate this order will continue as I have just indicated on the alternate weekends.
- [49] I do not need to put this in the order but counsel know, pursuant to s. 215 of the FLA, if there is a change of circumstances prior to that, then presumably an application would be made, but I am setting it as not to be reviewed any earlier than August 11, 2022.
- [50] Both parties will be restrained from removing the children from the jurisdiction of this Court, unless with the written agreement of the other party or court order.
- [51] I will put the date effective April 1, 2022, the respondent father will pay child support to the claimant mother in the sum of \$1,223 per month, payable every second week in the amount of \$564.
- [52] THE CLERK: Sorry, what was the commencing date?
- [53] THE COURT: April 1, 2022.
- [54] THE CLERK: Thank you.
- [55] THE COURT: Counsel, costs? And you are going to have to be quick, because there is a welcoming ceremony for three judges that the clerk and I need to attend, literally in a couple of minutes.
- [56] CNSL C. CARTA: I'm just - I -
- [57] THE COURT: Go ahead.
- [58] CNSL C. CARTA: Well, I say Mr. [S.R.B.] should have his costs. This - he has made extensive efforts to try and get this resolved, you know -
- [59] THE COURT: Mr. -
- [60] CNSL C. CARTA: - she was steadfast in her supervision being required. I think he won on all points. He didn't get exactly the time he was asking for but that's no surprise. He was substantially successful and that's the test. He should have his costs.
- [61] THE COURT: Mr. Goyal? You are on mute, sir.
- [62] CNSL M. GOYAL: Sorry, Your Honour. In my submission, I just want to say that we were - we were trying to [indiscernible/videoconference] the time since day one. Somehow there was not [indiscernible] between the parties. It's our position that the costs should be in the cause right now. It should not be given to the respondent at this point.

[63] THE COURT: Well, counsel, costs do follow the event and I agree that the respondent father was successful on his application, so he is entitled to costs, but I do not see any need to be any different than the respondent father is entitled to costs of this application in the cause.

[64] CNSL M. GOYAL: Yes, Your Honour. That's something -

[65] CNSL C. CARTA: Yes, Your Honour.

[66] THE COURT: Thank you.

[67] THE CLERK: So it's costs to the respondent in the cause?

[68] THE COURT: Yes, thank you.

[69] THE CLERK: Thank you.

[70] THE COURT: Thank you, counsel.

"Master Krentz"

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