
CANADA / JUDGMENT

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

2020 BCSC 2172

COURT

Supreme Court of British Columbia

DECIDED

8 October 2020

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

2020 BCSC 2172 R.K.B. v. R.S.B.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

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

2020 BCSC 2172

Date: 20201008

Docket: E17031

Registry: Chilliwack

Between:

R.K.B.

Claimant

And:

R.S.B., J.S.B., and P.K.B.

Respondents

Before: The Honourable Justice Morellato

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant, by teleconference:

U.K. Dhaliwal

Counsel for the Respondents, by teleconference:

L.W. Pippard

Place and Date of Trial by teleconference:

New Westminster, B.C.

August 25, 2020

Place and Date of Judgment by teleconference:

New Westminster, B.C.

October 8, 2020

I. INTRODUCTION

[1] On August 17, 2020, the applicant respondent, R.S.B. ("Father"), brought a notice of application ("Application") seeking ten orders in this family matter. During the course of the hearing before me, counsel for the Father confirmed that the Father wished to proceed with some but not all the orders sought in his Application, and to adjourn the rest. Specifically, the Father now seeks the following orders:

1. to adjourn the relief sought in paragraphs 1-9 of the Application;
2. to vary the Amended Protection Order granted by Justice Crabtree on February 27, 2020 ("Amended Protection Order") by deleting reference to the child A.S.B., born May 2017 ("Child");
3. an interim-interim order that the Father have parenting time from 10:00 a.m. Friday thorough to Saturday at 8:00 p.m. until the adjourned portions of this Application is heard; and
4. costs of the Application.

[2] The Father wished to have the adjourned portions of his Application to later reconvene before Justice Crabtree. Counsel for the Father recognized this may not be possible. Accordingly, this scheduling matter was left with both counsel to address at another time.

[3] The Amended Protection Order that is the subject of this application provides as follows:

1. Under s. 183(3)(a) of the Family Law Act, [R.S.B.], born January 1990, shall not have contact or communicate directly with [R.K.B.] born November 1992 and [A.S.B.] born May 2017. [Under s. 183(3)(a) of the Family Law Act, [R.S.B.], shall not attend, enter or be found within 200 meters of the residence, place of employment or school of [R.K.B.] and [A.S.B.].
2. Under s. 183(3)(a) of the Family Law Act, [R.S.B.], shall not possess or carry any firearm, cross-bow, prohibited weapon, restricted weapon, imitation weapon, prohibited device, ammunition, prohibited ammunition, explosive substance, or all such things, and any related authorizations, licenses and registration certificates.

3. The Respondent [R.S.B.] may set aside the Protection Order dated, February 26, 2020, on two days notice.
- [4] During the course of the hearing before me, the Mother and the Father agreed to vary the Amended Protection Order granted by Justice Crabtree, to allow the Father supervised parenting with the Child, in the presence of a professional third party, until I rendered this judgment. The parties also agreed they would work out the specific place and times for the Father's supervised parenting time between themselves, with the assistance of counsel. Accordingly, I varied Justice Crabtree's Amended Protection Order to permit the Father supervised parenting time with a professional third party until I rendered this judgment.
- [5] During the hearing the Father also agreed on a without prejudice, interim basis to pay the mother, R.K.B. ("Mother") \$423.00 per month for child support for the Child, commencing on September 1, 2020 and on the first of each month thereafter. Accordingly, I issued a consent order to this effect.
- [6] As regards the unresolved issues before me, I am of the view that unless and until the Father's psychiatric health is assessed and positively affirmed, following the completion and disclosure of an independent psychiatric report, the Father shall continue to have supervised parenting time with the Child, in the presence of a professional third party, on the specific terms agreed to by the parties. I am also of the view that, it is in the best interest of the Child that a s. 211 report be prepared as soon as possible to assess the Father's parenting capacity, as well as the risk of family violence. The Father's request for unsupervised parenting time will depend on the outcome of the psychiatric assessment and the s. 211 report. Once these reports are completed, the parties may apply to the Court for further directions or orders.
- [7] Further, at this time, in light of the evidence before me and considering the best interest of the Child, I decline the Father's request to further amend the Amended Protection Order issued by Justice Crabtree by deleting reference to the Child.

II. BACKGROUND FACTS

- [8] The Father and the Mother were married in India on February 12, 2012. The parties separated on January 24, 2020. The Child is currently three years old and the only child of the marriage. Before their separation, the Mother, Father and Child occupied a downstairs suite in a two-level home. There were two other suites on the downstairs level, occupied by others. The Father's aunt and uncle lived upstairs. The Mother's family lives in India, except for her sister who, at least from time to time, also resides in Abbotsford. The Father is employed as a delivery truck driver and the Mother is employed as a janitor.

A. Application before Justice Crabtree

- [9] The Mother brought an ex parte application before Justice Crabtree on February 26, 2020 seeking protection orders, and other orders relating to parenting and property issues. At the conclusion of the application, Justice Crabtree granted a number of orders, including the ones at issue before me.
- [10] The ex parte application before Justice Crabtree proceeded on the basis of an affidavit sworn by the Mother, dated February 25, 2020. The Mother deposed she had been the subject of physical and sexual abuse over the course of the marriage. These incidents had not been disclosed or reported to the police at the time of the hearing before Justice Crabtree, although they are now the subject of criminal proceedings against the Father.
- [11] In her February 25, 2020 affidavit, the Mother deposed that after the Child's birth, the Father suffered from mental health issues and "would often choke me and tell me to die." She also deposed that the Father had "on various occasions sexually assaulted me by engaging in anal intercourse without my consent." She stated in her February affidavit that "I would attempt to push the [Father] away and resist but I was unable to do so as the [Father] would use force." She deposed that she did not scream during the assault "as I was embarrassed and did not want the Child, the [Father's] uncle and aunt, or the [Father's] parents to hear the abuse."
- [12] The Mother deposed that she had discussed the incidents of physical and sexual abuse with her family doctor. In her February 25, 2020 affidavit, the Mother appends a letter written by a family physician, Dr. Malhi, dated February 14, 2020. In that letter, Dr. Malhi sets out, among other things, the Mother's recent reports to her of the physical and sexual assaults. In his Oral Reasons for Judgment, dated February 27, 2020, Justice Crabtree notes that, in the affidavit material filed by the Mother, there "is no independent corroboration of the physical contact or abuse", although "a recent allegation of abuse or physical contact" was apparently witnessed by the Mother's sister. At the time of the application before him, Justice Crabtree also observed that the family doctor had interviewed the Mother and that there could be records from the doctor's office available, although these records were not available at the time that the February 26, 2020 application was heard.
- [13] The circumstances surrounding the alleged physical assault in November 2019 are addressed by the Mother in her February 25, 2020 affidavit. The Mother deposed that "In our about November 2019, the [Father] twisted my arm when I came out of the bathroom and pushed me onto the bed." She explained she screamed and that her sister entered the room but by that time the Father had left the room. The Mother deposed she told her sister that she had fallen in the bathroom. The Father then re-entered the bedroom and "began to yell at me regarding the cleanliness of the house. The [Father] began to twist my arm again and I pushed him away with my leg" and "as a result, the [Father] slapped me in the face."

[14] Justice Crabtree notes in his Oral Reasons that in addition to the incidents of physical and sexual abuse alleged by the Mother against the Father, the Mother "also provided a statement that there is some concern with respect to [the Father's] mental well-being. I note, on that point, there is no evidence other than that bold statement."

[15] After considering the circumstances, Justice Crabtree concluded "against the backdrop of reported allegations of physical and sexual abuse in the home" as between the Mother and Father, that an ex parte order was appropriate, although he noted he was:

mindful that proceedings commenced in this fashion ought to be treated with considerable care, primarily because the court only hears one side of the circumstances; and of course, there are two sides to every circumstance or situation. As such, the court must be careful not to place either party in an unfair position; but, at the same time, one must be mindful of the risk and issues surrounding safety to individuals involved in the process, particularly when a child is involved.

[16] Justice Crabtree further reasoned that the Mother "is in a vulnerable position" and one "where there is potential for risk of harm" but he underscored that:

I will say for the record, though, any orders made with respect to the issues are without prejudice as it relates to further proceedings, because the court has only heard from one side of the dispute, at this point.

[17] Justice Crabtree then affirmed the Father's right to set aside his ex parte orders upon two days' notice to the Mother.

B. Additional Evidence before the Court in this Application

[18] In this Application, the Father has had the opportunity to present his evidence regarding the allegations of the Mother. By way of background, he deposed that he was raised in India and that he had no work history in India. Since arriving in Canada in February 2013, he has worked in the construction industry, in a poultry deboning factory, as a cashier/attendant at a gas station and, during the last few months, as a delivery man.

[19] The Father acknowledges that he has a history of mental illness. He also affirmed that he was arrested in February of this year and released on bail in relation to his alleged sexual assault of the Mother. The Father denies any allegation of assault "other than a "November 2, 2019 incident" which his counsel explains he cannot fully respond to, because there are outstanding criminal charges. The Father deposed that his mental health has improved and has stabilized since the fall of 2019. He very much misses his son and wishes to be part of his life once again.

[20] To the Mother's credit, she did not resist a supervised parenting arrangement between the Father and the Child at this time, provided the remainder of the Amended Protection order remains intact.

1. History of Mental Illness

- [21] The Father deposed that shortly after the Child was born in May 2017, his uncle and his father took him to see Dr. Malhi at the Langdon Medical Centre because "I was having emotional problems." He was prescribed medications and started to feel better. However, his mental health deteriorated and, on July 6, 2017, the Father was hospitalized at Abbotsford Regional Hospital. A psychiatrist, Dr. Shah F. Khan, diagnosed the Father with "major depressive disorder, mixed with psychotic features" and an "adjustment disorder." The Father explained his mental health deteriorated when he "quit using my medication for a few weeks and he [Dr. Khan] told me I should continue using it for around two years."
- [22] After he was released from his hospital stay in the summer of 2017, the Father deposes that he regularly saw his doctors at the Langdon Medical Centre, that he continued to take his medications, and that his mood stabilized.
- [23] On November 9, 2017, the Father saw another psychiatrist, Dr. Uppal. The Father deposes that he and the Mother consulted Dr. Uppal about stopping his medications but Dr. Uppal advised the Father to continue taking them, and he did so.
- [24] The Father describes his mental health as "quite good" for the remainder of 2017 and the first half of 2018. On July 2018, the Father deposes he saw a doctor and reported having the "occasional low mood". The Father asserts that "the general comments by my doctors were that I was doing well on my medications."
- [25] The Father deposes that, at a December 12, 2018 appointment with Dr. Aujla, "Dr. Aujla and I discussed weaning me off the medications for depression and we decided to start this in the Spring and Summer of 2019 if I continued to be stable." In early 2019, although it is not clear exactly when, the Father stopped taking quetiapine for anxiety.
- [26] The Father deposes that on March 19, 2019, he and the Mother saw Dr. Randhawa. They discussed "if I could start weaning myself off my depression medication" and Dr. Randhawa "advised me to taper down slowly over the coming months and see how it goes." The Father states that on April 9, 2019 he saw his psychiatrist, Dr. Uppal, who advised him that "my mental health was assessed as improving"; the Father's mental health care was transferred to his family doctors at that juncture.
- [27] The Father deposes that "by April 22, 2019 when he saw Dr. Malhi, "I had stopped taking sertraline and my mood was normal." However, the Father's mood started to decline shortly thereafter. At an April 26, 2019 appointment with Dr. Malhi, the states in his affidavit that "we decided that I would continue with the sertraline. I did so."
- [28] In late July 2019, the Father stopped taking sertraline for "around two weeks". He explains that he then began to feel suicidal and experienced low mood. He started taking sertraline again on August 12, 2019. On August 15, 2019, the Father attended another doctor's appointment with a Dr. Gill. The Father attests that "we decided that we would continue with sertraline to deal with my anxiety and mood disorder." The Father references a medical note

in his affidavit, made by Dr. Malhi on August 16, 2019, which provides "depression, no evidence of psychosis, continue current meds."

[29] On August 21, 2019, the Father saw Dr. Malhi again, with the Mother in attendance. He explains he reported "improvements to my mental health, but low mood, lack of motivation, and that I was withdrawing from the [Mother] and the Child." Dr. Malhi suggested the Father continue taking his current medications which the Father deposes he did.

[30] The Father attests that on October 15, 2019, at an appointment with Dr. Randhawa, he this doctor "to cut my sertraline dosage in half" and Dr. Randhawa "agreed, on my insistence, and noted in his records that I was a stable person."

[31] The Father deposes that on November 16, 2019:

I met with Dr. Luvdeep Malhi and I reported that I was doing well on the half-dose of sertraline, was working full time, was not self-isolating, and my mood was good. She noted in her records that my depression was stable.

[32] The Father acknowledges that after the Mother left the family home with the Child in January 2020, he experienced "sadness that was different than the depression I experienced previously" but that the "sadness lessened after about a month as I became accustomed to the absence of the [Mother] and the Child."

[33] On March 31, 2020, the Father saw Dr. Randhawa who noted "anxiety and "going through divorce." As to his current state of mind, following this doctor's visit, the Father deposes:

I have seen various doctors at the Langdon Medical Centre around 10 times. These appointments have been for general medical treatment and for advice on cutting down my sertraline. I have gradually reduced my sertraline intake to twice a month from usually taking it daily from my first two years of treatment. My mood has been fairly good since I adapted to the separation, and I expect it to become quite good once I can again be with [our Child].

[34] In response the Father's affidavit, the Mother acknowledges in her August Affidavit that, in July 2017, she told the family doctor that the Father's health improved "because I was concerned that if I did not, mine and [the Child's] safety and well-being was at risk." She deposed that between July 1 and July 6, 2017, the Father was behaving oddly, and that he physically assaulted her. More specifically, the Mother deposes:

On one occasion, the [Father] choked me and would not stop until his father and sister intervened. On another occasion, the entire family was sitting in the living room of our basement in Surrey, BC, and the [Father] got up and walked outside barefoot without reason. The [Father] advised that he was going to leave. I was afraid of the [Father's] odd behaviour which resulted in us attending the Abbotsford Regional Hospital.

[35] The Mother disputes the Father's evidence that he consistently took his medications. She deposes that he did not take his medication regularly and that she would find his medication spilled on the floor. She was afraid their Child might put the medication in his mouth. The

Mother deposes that she encouraged the Father to take his medications when he did not, and that "he would fight with me when I would ask him to take his medications." She deposes that "we did not jointly decide that the [Father] should stop his medication"; rather, the Father "told me that he wanted to stop the medication" and "it was entirely his choice on whether he was going to continue taking his medication or not."

- [36] The Mother deposes that that she believes the Father's mental health in 2019 was the same as it was when he was hospitalized in 2017. She underscores their family doctor's notes on August 15, 2019 which state that the Father was feeling "suicidal for the past three days." She deposes that at this time, the Father "continued to be disengaged with [the Child] and me, and continued to take his medication."
- [37] The Mother deposes that during the course of the relationship, the Father "would tell me he was having hallucinations but would deny these symptoms" at doctor appointments. She explained that at times the Father would "laugh and continue to laugh even when there was nothing funny happening; would cry and continue to cry for no apparent reason; and "would eat unconsciously and it appeared as if he did not know how much food he was consuming."
- [38] The Mother deposes that "one common denominator from all the visits to the doctors is that the advice of the professionals was that the [Father] should continue to take his medication." The Mother observes that while the Father has attended counselling, no report had been attached to his affidavit materials from that counsellor. Similarly, she notes that no medical assessment or psychiatric report has been filed which supports his statements that his mental health is stable.

2. Alleged Family Violence and Sexual Assault

- [39] The Father deposes "I never assaulted the [Mother] by engaging in anal or any other form of non-consensual intercourse of sexual touching" and that "I never told her to die." He also deposes he and the Mother had an argument on November 2, 2019 and that there "was minor physical contact" but that he was advised not to provide further details due to outstanding criminal charges.
- [40] In regard to her allegations of family violence and sexual assault, the Mother continues to rely on her February 25, 2020 affidavit, tendered before Justice Crabtree, summarized earlier in these Reasons. She deposed that in addition to feeling suicidal in July 2019, between January 18 and 24, 2020, the Father "was acting odd towards the [child]" and that on many instances the Father "advised me to take [the Child] away from him because he did not want to see [the Child's] face."
- [41] The Mother reiterates in her August 21, 2020 affidavit ("August Affidavit") that she is afraid of the Father and continues to be afraid for her Child's safety and well-being, as well as hers, due to of the Father's mental health and the family violence she has experienced. She does not want the Amended Protection Order set aside or varied to permit unsupervised parenting.

III. Legal Analysis and Discussion

- [42] The Father argues that the Mother has mischaracterized and misstated the Father's mental health. For example, she stated in her February 26th affidavit that she believes the Father is bipolar and may attempt to harm her. She also makes reference to a definition in a Google search of "bipolar disorder" in her August Affidavit. I put no weight on the Mother's characterization of the Father's mental condition. The Mother is clearly not a medical expert. Similarly, as discussed later in these Reasons, Justice Crabtree describes the Mother's evidence in this regard as a "bald statement."
- [43] The Father also argues that the Mother frequently attended his doctors' appointments, starting in May 2017 and the onset of what the Father describes as his "major depression with psychosis." The Father points out that the Mother was clearly aware that he regularly attended doctors' appointments, was prescribed medication that controlled his condition, and that he generally took those medications regularly. Further, the Father asserts, that in the doctor's clinical records, exhibited to his affidavit, there is no record or suspicion of bipolar disorder. Furthermore, he argues the Mother is clearly aware that his mental health diagnosis of major depression was non-symptomatic and successfully treated by late 2019 and prior to the separation on January 24, 2020. Accordingly, the Father asserts he poses no danger to the Mother or the Child.
- [44] The Father questions why the Mother would be actively supporting the Father in his advocating to his doctors to reduce his medications for depression and anxiety if he was "actively verbally abusing her, physically abusing her, and raping and sodomizing her." The Mother denies advocating for his medications to be decreased, and asserts his decision to decrease or stop his medications was entirely his. She asserts she was under the control of her husband when she wrongly reported in July 2017 that his mental health had improved; she feared if she did not do as he wished, that she and the Child were at risk.
- [45] In sum, the Father argues that the Mother did not make full and frank disclosure during the ex parte application, failed to disclose material facts, and purposefully attempted to deceive the court such that the ex parte order ought to be set aside. He relies on the following authorities: *Wilder v. Davis & Company* (1994), 92 B.C.L.R. (2d) 385 at p. 395; *Pixhug Media Inc. v. Steeves*, BCSC 1714; and *Pierce v. Jivraj* (2015) BCSC 1850. Specifically, the Father asserts the Mother purposely attempted to deceive the court by alleging a bipolar condition that she knew never existed, and also "by omission" by not mentioning that his depressive condition had been "diagnosed, treated and was basically almost cured by the date of the separation."
- [46] In regard to the argument that the Mother was deceptive in asserting that she believed the Father is bipolar, I am unable to conclude that she intentionally misled the Court. Justice Crabtree clearly placed little weight on this assertion, as have I, in light of there being no medical or expert evidence in support of the Mother's proposed diagnosis. In his Oral Reasons for judgment, Justice Crabtree states:

The final concern I should note is that in addition to the incidence of physical and sexual abuse, that [the Mother] alleges have occurred, she also provided the statement that there is some concern with respect to [the Father's] mental well-being. I note, on that point, that there is no evidence other than that bold statement.

- [47] In this light, I do not find the Mother's assertion, that the Father is bipolar, is a principled basis upon which to over-turn Justice Crabtree's Amended Protection Order; the assertion did not constitute a material fact in his judgment. Further, I am not persuaded that the additional evidence placed before me by the Father in this Application establishes deceptiveness or a lack of material disclosure by the Mother as it relates to the Father's current mental health. While, I have been provided with excerpts of various clinical records from various physicians dating back to 2017, no medical or psychiatric assessment has been placed before me which addresses the Father's current mental health. The various excerpts from physicians' clinical notes disclosed by the Father are inconclusive and do persuade me that there has been a material lack of disclosure or deliberate deception by the Mother.
- [48] Further, and more specifically, I am not persuaded by the Father's submissions that there is no basis to suggest the Child is in any danger, or that I should vary Justice Crabtree's Order by deleting the reference to the Child in the Amended Protection Order. The Father has confirmed his history of serious mental illness, and while he asserts he has recovered and is stable, there is no independent assessment from a medical professional that affirms his currently mental health is stable.
- [49] Indeed, the Father's own evidence confirms he felt suicidal as recently as August 2019. The Mother deposes that his condition at that time was the same or as serious as it was in 2017 when he was hospitalized. She deposes that in August 2019, the Father was unable to work and withdrew from both her and the Child.
- [50] Counsel for the Mother underscores that the medical records disclosed by the Father show that, in the Fall of 2019, the Father obtained a medical note from his doctor which stated he was not able to work for two months and, further, that the Father travelled to India, instead of taking the opportunity for rapid access to additional psychiatric help, which his doctor offered to him at that time. Counsel for the Father submits the medical note did not reflect a serious mental illness at that time but was obtained by the Father to provide to the Father's employer in order to justify two months off work, so that the Father could travel to India to visit his family.
- [51] Counsel for the Father submits that the Mother is lying, that she has not been assaulted sexually or otherwise, and that she has lied to this Court about her fears for the safety of her Child and herself. On the evidence before me, I am simply unable to draw the conclusion that she has lied. In light of all the affidavit evidence before me, I do not see a principled or evidentiary basis upon which to set aside or vary Justice Crabtree's Amended Protection Order.

- [52] Nor am I persuaded that unsupervised parenting time is in the Child's best interest. At all times in such cases, the best interests of the Child must be my focus: see s. 37(1) Family Law Act, see also Hansen v. Mantei-Hansen, 2013 BCSC 876 at paras. 61 and 95. In light of the additional evidence before me, relating to both the Father's history of mental illness and the serious allegation of family violence, I remain of the view that it is in the Child's best interest to continue the current supervised parenting arrangement, at least until further evidence of the Father's psychiatric health is tendered and a s. 211(1) report is completed: see Keith v. MacMillan, 2014 BCSC 1352 at para. 68. A s. 211 report will be a valuable source of information in this case in making crucial decisions about the Child's welfare and the appropriate parenting arrangements. The benefit of such expert advice far outweighs any inconvenience or cost.
- [53] To be clear, I make no conclusive findings relating to the Father's mental health or his propensity for family violence at this juncture. Nevertheless, as I have stated at the beginning of this judgment, as regards the unresolved issues before me, I am of the view that unless and until the Father's psychiatric health is assessed and positively affirmed, following the completion and disclosure of an independent psychiatric report, it is in the Child's best interest that the Father continue to have supervised parenting time with the Child, in the presence of a professional third party, on the specific terms agreed to by the parties.
- [54] At the hearing of this matter, the parties seemed to indicate that if ordered to do so, they could agree on an independent medical professional to conduct a psychiatric assessment and that the assessment report could be issued within a matter of weeks. Accordingly, unless the parties agree otherwise in writing, I direct that an independent medical professional be retained within a two week period and that the psychiatric assessment be conducted as soon as possible. I will leave this in counsel's capable hands to coordinate.

IV. CONCLUSION

- [55] The Father's Application, to further amend the Amended Protection Order by deleting reference to the Child, is dismissed.
- [56] Unless and until the Father's psychiatric health is assessed and positively affirmed, following the completion and disclosure of an independent psychiatric report, the Father shall continue to have supervised parenting time with the child, in the presence of a professional third party, on the specific terms agreed to by the parties.
- [57] As stated above, I am also of the view that, it is in the best interest of the Child that a s. 211 report be prepared as soon as possible to assess the Father's parenting capacity, as well as the risk of family violence. I direct that the parties exchange the name of two or more professionals to conduct the s. 211 report no later than ten days from the date of this judgment and that a s. 211 Report be prepared as soon as possible. Unless the parties agree otherwise and in writing, the cost of the s. 211 report will be shared equally.

"MORELLATO 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/20/21/2020BCSC2172.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-k-b-v-r-s-b-2020>

Prepared on 29 October 2026 · Esheria