
CANADA / JUDGMENT

R.S.R. v. J.N.

2020 BCSC 2015

COURT

Supreme Court of British Columbia

DECIDED

17 July 2020

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2020 BCSC 2015 R.S.R. v. J.N.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R.S.R. v. J.N.,

2020 BCSC 2015

Date: 20200717

Docket: E50463

Registry: New Westminster

Between:

R. S. R.

Claimant

And

J.N.

Respondent

Corrected Judgment: The text of the judgment was corrected
on the front page on December 16, 2020

Before: The Honourable Mr. Justice Tammen

Oral Ruling re Interim Parenting Time

Counsel for the Claimant:

S. Ahuja

The Respondent,

appearing on her own behalf:

July 3-6, 9-13, 2018, November 27, 2018,

March 11-13, 2019, July 29-31, 2019,

and August 1-2, 6, 8, 2019

J. N.

Counsel for the Respondent:

November 27, 2018

R. Cuddeford,

appearing as agent for M. Evans

Counsel for the Respondent:

November 25-29, 2019,

December 2-6, 2019, March 4,13, 2020, and July 17, 2020

T.D. Hunter

Place and Date of Trial:

New Westminster, B.C.

July 3-6, 9-13, 2018, November 27, 2018, March 11-13, 2019, July 29-31, 2019,

August 1-2, 6, 8, 2019, November 25-29, 2019, December 2-6, 2019, March 4,13, 2020,

and July 17, 2020

Place and Date of Judgment:

New Westminster, B.C.

July 17, 2020

[1] THE COURT: All right, I am going to make a ruling on interim parenting time.

[2] In the course of this ruling, I will refer to the parties here by their initials. Because both children of the marriage, the two daughters, have the same first and last initials, I will refer to the elder daughter as I.S. and the younger daughter as I.N. This is my ruling.

[3] I do not believe the respondent J.N.'s evidence. Specifically, I reject her claims of physical abuse directed at both her and the two girls by the claimant R.R.

- [4] My assessment of the evidence after this 33-day trial, clearly constitutes a material change in circumstances since the previous order I made concerning parenting time. Pursuant to ss. 47 and 216 of the Family Law Act, S.B.C, c 25, I intend to make an interim order to address parenting time between now and when a final judgment is rendered.
- [5] J.N. has demonstrated a disturbing pattern of encouraging I.S. to make false allegations against R.R. These claims have then been either repeated by I.S. to third parties at J.N.'s instigation, or advanced in this trial through video or other evidence. The claims have all been used by J.N. in aid of her desire to have sole custody of I.S. and I.N. and to deny R.R. parenting time. Chronologically, the claims are these:
- [6] First in time is the December 2015 allegation, supported by a photograph, that R.R. struck I.S. in the face. J.N. had I.S. repeat that claim to both the police and the Ministry of Children and Family Development ("MCFD") and showed that photograph to both those agencies. That allegation was the stated reason for J.N. denying R.R. parenting time immediately post-marital breakup. It led ultimately to an order that R.R. should have only supervised parenting time. Both the police and the MCFD investigated the matter, but neither agency took action.
- [7] Second was a video clip of I.S. in what appears to be a staged interview setting, sitting on a sofa and being asked questions by J.N. J.N. could not say when this video was made, but thinks it was perhaps the summer of 2016, at a time when there was 50/50 parenting time.
- [8] In that video, I.S. describes her father hitting and kicking her as punishment for a minor transgression. I have repeatedly watched the clip, and am convinced beyond any doubt that what is occurring is a form of play acting by I.S., instigated by J.N. I also note that at one point in evidence, J.N. conceded that I.S. thought she was going to do some acting at the time. In any event, I.S. clearly says she wants to be called a different name and appears to be acting for the camera. Her basic lines were likely fed to her by J.N. I.S. cannot stick to the script, and vacillates between including her sister I.N. as a co-perpetrator of the assaults on her, or as a victim of R.R.'s assaults. J.N. uses leading questions to elicit some desired answers. The demeanour of I.S. throughout can best be described as somewhat jocular and silly.
- [9] That video formed part of J.N.'s trial by ambush tactics and was only disclosed on Day 4 of her evidence in chief, November 28, 2019.
- [10] Third in time is the complaint made by one of the girls to Yasaman Madanikia in November 2016. Ms. Madanikia thinks it may have been I.N. who disclosed that her father had hit her the previous Saturday. I think Ms. Madanikia may be mistaken about which daughter it was, but that matters not. Clearly the allegation was created by J.N. The Saturday at issue was one on which the girls were in J.N.'s care, not R.R.'s.

- [11] Ms. Madanikia was a counsellor with Children Who Witness Abuse. J.N. was able to take her daughters there without R.R.'s knowledge or consent because she represented at intake that R.R. was an abusive father and husband. In support of that position, she presented the December, 2015 photograph of I.S., but did not disclose that the police and MCFD had already investigated that allegation.
- [12] Ms. Madanikia reported the matter to the MCFD resulting in a further investigation by them and a brief suspension of R.R.'s parenting time, from December 9 to 20, 2016. On the latter date, the MCFD advised both parents that their investigation had concluded and R.R. could exercise his court-ordered parenting time commencing on December 23, 2016.
- [13] That news from the MCFD led to the fourth effort by J.N. to create false evidence against R.R. On December 23, 2016, immediately prior to taking the girls to a Walmart location for a changeover to R.R.'s custody, J.N. made a video of I.S., clearly distraught, saying she did not wish to return to "papa" because he would take her to the police. Again, I have watched that video clip closely multiple times. It discloses emotional abuse being visited on I.S. by J.N. I have no doubt that J.N. planted the notion of R.R. taking her to the police in I.S.'s mind and that such greatly distressed I.S. Her distress is evident in the video clip.
- [14] R.R. had not seen his daughters since December 2; they had been in J.N.'s care for three weeks as of December 23, 2016. Moreover, the notion of R.R. taking I.S. to the police is absurd. There is no evidence of R.R. ever doing so or threatening to do so. It is J.N. who had done that in the past.
- [15] At the changeover that day, I.S. would not go with her father, resulting in the girls being separated for a period of time, with I.S. remaining in J.N.'s care. Ultimately, R.R. obtained a court order to enforce his parenting time with I.S., and by further court orders, J.N. became the supervised parent. She has remained supervised ever since.
- [16] At no time during those proceedings did J.N. disclose the video clip from December 23, 2016. It, like the earlier clip, she saved for trial, presumably to maximize its effect and to take R.R. by surprise. That deplorable tactic has backfired miserably on J.N.
- [17] Based on the evidence of Simeon Pang, there may be a further video clip of I.S. claiming that her father has punched and kicked her. What he described in his testimony does not seem to be the clip in evidence at trial, from the middle of 2016. J.N. may have further video clips in her possession that she has chosen not to share with R.R. or the court. I simply cannot say.
- [18] Finally, and perhaps of most concern to the court, is the evidence of Rodica Balaj, who described disclosures made by I.S. in her presence while riding the SkyTrain on January 27, 2019.

- [19] Ms. Balaj was a supervisor approved by the parenting coordinator who was in place briefly in late 2018 and early 2019. In my view, Ms. Balaj is not a suitable person to perform those duties. She is a self-described child advocate who is neither properly qualified nor capable of being objective. She was an extremely unimpressive witness.
- [20] Ms. Balaj described a SkyTrain trip at the conclusion of a two-hour visit on January 27, 2019, during which she was playing a game of "I spy" with I.N., and I.S. was engaged in conversation with J.N. Ms. Balaj said she could overhear the entire conversation, although I.S. occasionally lowered her voice. Of note, Ms. Balaj has consistently maintained that J.N. said nothing inappropriate.
- [21] Among the spontaneous statements Ms. Balaj attributed to I.S. are these:
- 1) "Papa told me you hate me and that you only chose two hours to see me today not four hours. Papa said I will miss another Christmas with you";
 - 2) I.S. asked if she could go see Dr. Jones again, because she wants to tell him something, and she won't lie to him. According to Ms. Balaj, J.N. said in response, "don't talk about that";
 - 3) "Papa makes your place sound scary";
 - 4) In reference to a paternal aunt, Munay, I.S. said she was glad Munay did not live with them anymore because Munay used to ask I.S. if she missed her mom, and if I.S. did not lie by saying "just a little bit", Munay would tell R.R. who would then hit I.S.;
 - 5) I.S. said she was glad Melita was gone. This is clearly a reference to Melita Passek, who for many months was the primary court-approved supervisor, with whom J.N. was in constant conflict. Ms. Passek testified during the first week of trial and her credibility and objectivity were seriously challenged by J.N. Over J.N.'s objection, I approved Ms. Passek as a suitable supervisor thereafter. By January 2019, Ms. Passek was not providing supervision because J.N. had not paid for some previous services rendered; and
 - 6) I.S. mentioned a time when J.N. took a picture of the bruise caused by R.R. hitting I.S. and a "mean lady", which Ms. Balaj took to be a reference to a social worker, yelled at J.N.
- [22] I have puzzled long and hard to make sense of this evidence and how it could have come about. I can conceive of only two possible explanations: (1) that the entire narrative was concocted from whole cloth by J.N. and Ms. Balaj jointly; or (2) J.N., through leading questions, managed to get I.S. to agree with some of her suggestions, which were then attributed to I.S. by Ms. Balaj as spontaneous utterances. That latter explanation is the more likely.
- [23] I categorically reject the evidence of Ms. Balaj that these were spontaneous statements made by I.S.

- [24] If Ms. Balaj learned of ongoing physical abuse by R.R., she had a duty to report. At a minimum, she should have reported her concerns to the parenting coordinator. She did not do so, and has offered no satisfactory explanation for that failure.
- [25] Ms. Balaj was most certainly co-opted into J.N.'s trial by ambush strategy. She provided the parenting co-ordinator with sanitized reports and only produced the detailed reports on the day she ultimately testified, August 1, 2019. She had been scheduled to testify in March 2019, and was present one day during that sitting, but did not disclose the reports to counsel at the time.
- [26] Moreover, the content of the alleged comments of I.S. is much too comprehensive and consistent with J.N.'s litigation interests to be the product of spontaneous utterances of a child as young as I.S. She was then eight and a half years old. The comments dovetail nicely with the litigation issues of importance to J.N. at the time.
- [27] For example, the notion of wanting to see Dr. Lloyd-Jones again fits with J.N. taking the girls to her family doctor during a supervised visit, an event which caused some rancour between the parties. Similarly, the issue of the MCFD refusing to take the photograph showing injuries to I.S. in December 2015 is one which has been at the forefront of J.N.'s complaints ever since, but would hardly have been important to I.S., who was five and a half years old at the time. It seems inconceivable that I.S. would bring up that topic, seemingly out of the blue, on the SkyTrain more than three years later.
- [28] There would be no reason in January 2019, for R.R. to have told I.S. that she would be missing another Christmas with her mother. Conversely, the limited time J.N. had with her daughters in December 2018 was very much on J.N.'s mind.
- [29] The notion of one parent making the home of the other sound "scary" emerged in the initial s. 211 report, with some suggestion that J.N. had made some comments in that regard to the girls about R.R.'s house. That information came from Dr. Elterman's interviews with the children.
- [30] Finally, there is the offhand comment about Ms. Passek. There has been no suggestion of any dislike of Ms. Passek by I.S. The only individual who had personal conflict with Ms. Passek was J.N. In addition, Ms. Balaj had reviewed some of Ms. Passek's supervision reports and was highly critical of her conduct. By January 2019, Ms. Balaj had, to some extent, replaced Ms. Passek as the main supervisor. She was the direct beneficiary, in a financial sense, of Ms. Passek's departure from the scene.
- [31] I am satisfied that the comments noted by Ms. Balaj attributed to I.S. on January 27, 2019, were the product of suggestion and leading questions by J.N., rather than independent and spontaneous remarks made by I.S. I also question the accuracy of Ms. Balaj's so-called reporting of anything said during that SkyTrain trip. I say so-called since it is unknown when Ms. Balaj drafted her reports. Ms. Balaj was not a credible witness. She may have greatly embellished her reports.

- [32] In total, the conduct of J.N. and Ms. Balaj surrounding that SkyTrain trip, including the testimony of Ms. Balaj at trial, represents another effort by J.N. to mislead a third party, in this case the court, concerning physical abuse directed at I.S. by R.R.
- [33] Given the disturbing pattern of behaviour exhibited by J.N., I cannot conceive of any conduct order I could make that would effectively prevent her from continuing to attempt to get I.S. to repeat allegations of abuse by R.R. J.N.'s efforts to date in that regard, as demonstrated in the video from December 23, 2016, are obviously upsetting to both I.S. and I.N. No doubt if J.N. persists in this campaign of inappropriate persuasion, it would cause psychological harm to both girls. J.N.'s ability to co-opt a paid supervisor in her scheme satisfies me that supervised parenting time cannot adequately address the problem.
- [34] In those circumstances, the only means of ensuring the psychological and emotional well-being of I.S. and I.N. is to suspend J.N.'s parenting time. That is the interim order I make. J.N.'s in-person parenting time with I.N. and I.S. is suspended. J.N. shall have telephone contact with both girls three times per week, on dates and times to be agreed upon by the parties or by order of the court. If possible, these should be video calls.
- [35] I will provide full written reasons for judgment in this case as soon as I am able to do so. After that time, I will consider any application brought by J.N. for reinstatement of her parenting time, but such an application must be supported by some material from a mental health professional, either a psychologist or psychiatrist, that addresses the court's concerns in a meaningful way. J.N. must gain some insight into her behaviour and the potential damage it is causing to her daughters. She must also satisfy the court that she will not engage in this conduct when she is permitted to have contact with I.S. and I.N. in the future.
- [36] I am going to direct that these reasons be transcribed and a copy provided to both of the parties once that is done.
- [37] I am now prepared to make part of the order, the times for the video calls. The most recent order, in addition to whatever supervised in-person parenting time there was, had calls, preferably by video, occurring at 7:00 p.m., I believe it was Monday, Wednesday, and Friday. It seems sensible that we track the language from that clause, and that order also had a stipulation that Mr. Reel should attempt to ensure that those calls last approximately 30 minutes.
- [SUBMISSIONS AT 4:15:27 P.M. TO 4:29:57 P.M.]
- [38] THE COURT: Yes, it will be four video calls per week, Sunday, Monday, Wednesday, and Friday at 7:00 p.m., and the same wording as the previous order in terms of duration. There is no maximum duration for those calls. That is really up to I.S. and I.N.

"Tammen J."

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Prepared on 29 October 2026 · Esheria